

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 2**  
**Implementation of the Standard**  
**in Practice**

**GUERNSEY**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Guernsey 2013**

PHASE 2:  
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2013  
(reflecting the legal and regulatory framework  
as at January 2013)

This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries or those of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

**Please cite this publication as:**

OECD (2013), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Guernsey 2013: Phase 2: Implementation of the Standard in Practice*, OECD Publishing.  
<http://dx.doi.org/10.1787/9789264192102-en>

ISBN 978-92-64-19209-6 (print)  
ISBN 978-92-64-19210-2 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews  
ISSN 2219-4681 (print)  
ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: [www.oecd.org/publishing/corrigenda](http://www.oecd.org/publishing/corrigenda).

© OECD 2013

---

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to [rights@oecd.org](mailto:rights@oecd.org). Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at [info@copyright.com](mailto:info@copyright.com) or the Centre français d'exploitation du droit de copie (CFC) at [contact@cfcopies.com](mailto:contact@cfcopies.com).

---

## *Table of Contents*

<b>About the Global Forum</b> .....	5
<b>Executive Summary</b> .....	7
<b>Introduction</b> .....	11
Information and methodology used for the peer review of Guernsey .....	11
Recent developments .....	19
<b>Compliance with the Standards</b> .....	21
<b>A. Availability of Information</b> .....	21
Overview .....	21
A.1. Ownership and identity information .....	23
A.2. Accounting records .....	59
A.3. Banking information .....	67
<b>B. Access to Information</b> .....	73
Overview .....	73
B.1. Competent Authority’s ability to obtain and provide information .....	74
B.2. Notification requirements and rights and safeguards. ....	84
<b>C. Exchanging Information</b> .....	87
Overview .....	87
C.1. Exchange of information mechanisms .....	88
C.2. Exchange of information mechanisms with all relevant partners .....	98
C.3. Confidentiality .....	99
C.4. Rights and safeguards of taxpayers and third parties. ....	104
C.5. Timeliness of responses to requests for information .....	106
<b>Summary of Determinations and Factors Underlying Recommendations.</b> . . .	117

<b>Annex 1: Jurisdiction’s Response to the Review Report</b> . . . . .	121
<b>Annex 2: List of All Exchange of Information Mechanisms</b> . . . . .	124
<b>Annex 3: List of Laws, Regulations and Other Relevant Material</b> . . . . .	126
<b>Annex 4: People Interviewed During On-Site Visit</b> . . . . .	129

## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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 review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).





## Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Guernsey as well as the practical implementation of that framework. The international standard, which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners. The assessment of effectiveness in practice has been performed in relation to a three year period (2009 through 2011).

2. The Bailiwick of Guernsey is a jurisdiction comprising three self-governing legislatures: Guernsey (including the islands of Herm and Jethou), Alderney and Sark (including the island of Brecqhou). The present report covers the jurisdictions of Guernsey and Alderney, which are effectively a single jurisdiction for taxation purposes. Sark is a separate jurisdiction for taxation purposes and the issue of the implementation of the international standards of transparency and exchange of information for tax purposes by Sark is not comprehensively dealt with in this report but has been considered separately by the Global Forum.

3. Guernsey's and Alderney's domestic laws establish a satisfactory framework to ensure that relevant ownership, identity, banking and accounting information is available. First, there are obligations imposed directly on companies, partners and trustees to retain and, in some instances, to provide such information to government authorities. This is complemented by obligations imposed through the licensing regime applicable to certain regulated business activities, including most partners, directors, corporate service providers, nominees, trustees and protectors of a trust.

4. The anti-money laundering regulations, which apply to regulated financial businesses and relevant professionals, create a third layer of requirements to capture relevant information. An oversight agency has been created in the Bailiwick, i.e. the Guernsey Financial Services Commission (GFSC) which is responsible for safeguarding compliance with regulatory and anti-money

laundering obligations. The GFSC wields an array of enforcement measures over fiduciary licensees, including private warnings, public statements, investigatory powers, and cancellation of licences. Financial penalties are also available to sanction breaches of obligations. In practice, the tax and company registration of entities are enforced in Guernsey and information has been found to be available in all instances for EOI purposes.

5. Pursuant to the recently enacted Income Tax (Keeping of Records, etc) (Amendment) Regulations 2012, domestic laws now consistently require the retention of reliable accounting information that includes underlying documentation. The implementation of these regulations should be monitored by Guernsey. Obligations to retain bank information on all account holders are established as a result of regulatory requirements imposed on banks as well as the Bailiwick's anti-money laundering regime.

6. Domestic laws enacted since 2006 provide the competent authority with powers to require the production of relevant information, which include confidentiality safeguards and access enforcement tools. Access relies predominantly on the issuance of notices for the production of information, and in some instances a search and seizure warrant may also be issued. Notification rights are not provided for in the legislation, and anti tipping-off provisions ensure that the person concerned should not be informed of a notice to third parties in serious cases. The competent authority has not experienced any difficulties in practice in accessing information required for EOI purposes. Compliance with the request process is high in Guernsey, thus the competent authority has never needed to employ sanctions or search and seizure powers to compel the production of information, nor has a request for information for EOI purposes been appealed in court. There have been no instances of attorney-client privilege or bank confidentiality legislation being invoked.

7. Guernsey has made substantive progress in expanding its EOI network, predominantly since 2006, and this has been combined with the development of a complementary domestic process based on clear internal guidelines to manage requests received from its EOI partners. All of the 38 TIEAs and its recently concluded DTC meets the international standard.

8. Guernsey has been exchanging information in accordance with the international standards since 2007. During the period 2009 through 2011, Guernsey received 32 requests from 8 different jurisdictions, with a clear increase of the numbers of requests and EOI partners. Although Guernsey started receiving requests for information relatively recently, input received from the exchange of information partners of Guernsey suggests that the competent authority of Guernsey provides the information requested quickly (mostly within 90 days and in some occasion within 180 days), despite a high rate of clarifications sought by Guernsey before requests are processed (44%

of the requests). The development of very cooperative relationships between competent authorities gives rise to efficient exchanges of information in practice.

9. Guernsey has been assigned a rating<sup>1</sup> for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Guernsey's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Guernsey has been assigned the following ratings: Compliant for elements A.1, A.3, B.1, B.2 and C.1, C.2, C.4 and C.5, and Largely Compliant for elements A.2 and C.3. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Guernsey is Largely Compliant.

10. A follow up report on the steps undertaken by Guernsey to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

---

1. This report reflects the legal and regulatory framework as at the date indicated on page 1 of this publication. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report.



## Introduction

### Information and methodology used for the peer review of Guernsey

11. The assessment of the legal and regulatory framework of Guernsey and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment has been conducted in two stages: Phase 1, performed in 2010, assessed Guernsey's legal and regulatory framework for the exchange of information, while Phase 2, performed in 2012, looked at the practical implementation of that framework, as well as any amendments made to the legal and regulatory framework since the Phase 1 review. The assessment is, therefore, based on the laws, regulations, and exchange of information mechanisms in force or effect as at January 2013. It reflects Guernsey's responses to the Phase 1 and Phase 2 questionnaires and supplementary questions, other materials supplied by Guernsey during the Phase 2 on-site visit that took place from 29-30 August 2012 in St. Peter Port, Guernsey, and information supplied by exchange of information partners. During the on-site visit, the assessment team met with officials and representatives of the Income Tax Office, the Attorney General's Office, the Companies Registrar, Guernsey Financial Services Commission, Commerce and Employment Department, and the Guernsey Border Agency within which the FIU is located (see Annex 4).

12. The Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum Secretariat. In 2010, these were: Ms. Valeria Sperandeo from the Italian Revenue Agency, Assessment Directorate, International Division, Exchange of Information Office; Miss Balbir Kaur, senior tax specialist with the Tax Policy and International Tax Division of the Inland Revenue Authority of Singapore; and Ms. Renata Fontana and Ms. Gwenaëlle Le Coustumer from the Global Forum Secretariat. In 2012, the assessment team was composed of 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; and Ms. Laura Hershey and Ms. Gwenaëlle Le Coustumer from the Global Forum Secretariat.

13. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Guernsey’s legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding Guernsey’s legal and regulatory framework that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Guernsey’s practical application of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect Guernsey’s overall level of compliance with the standards.

14. The ratings assigned in this report were adopted by the Global Forum in November 2013 as part of a comparative exercise designed to ensure the consistency of the results. An expert team of assessors was selected to propose ratings for a representative subset of 50 jurisdictions. Consequently, the assessment teams that carried out the Phase 1 and Phase 2 reviews were not involved in the assignment of ratings. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. The assignment of ratings was also conducted at a different time from those reviews, and the circumstances may have changed in the meantime. Readers should consult Annex 1 for information on changes that have occurred.

## Overview of Guernsey

### *Economic context*

15. The Bailiwick of Guernsey consists of a group of islands (Guernsey, Alderney, Sark, Herm, Jethou and Brecqhou) located in the English Channel off the coast of France. It is the 26<sup>th</sup> smallest country in the world with a population of 65 000. English is the official language. The official currency is the Pound Sterling (GBP),<sup>2</sup> in currency union with the United Kingdom.

---

2. On 1 October 2012, GBP 1 = EUR 1.24; EUR 1 = GBP 0.81.

16. Guernsey’s nominal Gross Domestic Product (GDP) for 2011 was GBP 1 895 million. The finance and professional services sectors of Guernsey jointly account for 27% of employment and 48% of GDP. Aside from financial and professional services, the industrial sector comprises construction (6.2%), tourism (2.8%) and manufacturing (2%), in addition to agriculture (3%).

### ***Governance and legal system***

17. 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, usage and Statute enacted in Westminster and extended by consent to the Islands. The Bailiwick of Guernsey is also subject to the uncodified constitution of the United Kingdom governing the relationship of the UK with the Crown Dependencies.

18. The Bailiwick of Guernsey is a jurisdiction comprising three self-governing legislatures:

- Guernsey (which includes Herm and Jethou), whose legislature is the States of Deliberation comprising the presiding judge of the Royal Court of Guernsey (the Bailiff) as ex-officio Presiding Officer, 45 elected People’s Deputies, two elected Representatives of the States of Alderney as a result of a 1948 tax agreement, and the two Law Officers of the Crown (Sark is not represented therein). The States of Deliberation (the States) sit for a term of four years. Powers granted to the States include the power to raise taxes, determine expenditure, and pass legislation which then requires the assent of the Queen to become law. Any reference to “Guernsey” in the report covers the island of Herm, unless specifically provided otherwise.
- Alderney, whose legislature is the States of Alderney, has a legal system separate from Guernsey (e.g. with separate legislation on companies), except for tax purposes (see below).
- Sark (which includes Brecqhou), whose legislature is the Chief Pleas of Sark, has no income tax, no company law (thus no companies are registered or incorporated therein) and no licensed banks (banking services in Sark are provided by two sub-branches of branches of banks that operate in Guernsey. There are no Sark banks).

19. Guernsey is the largest and most populous island in the Bailiwick, and the legislative competence of the States of Deliberation is wider than that of the States of Alderney and the Chief Pleas of Sark as it is, for example,

able to enact criminal legislation which has effect throughout the Bailiwick. Sark and Alderney are also subject to Guernsey's regime for the regulation of the finance industry 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.

20. The judicial 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 and the Court of the Seneschal of Sark, which in criminal matters possess only limited powers to try and punish summary offences. Appeals from the Royal Court are presided over by the Guernsey Court of Appeals. The ultimate court of appeals is the Judicial Committee of the Privy Council. Guernsey also has an Attorney General and a Solicitor General, HM Procureur and HM Comptroller respectively, who serve as legal advisors to the Crown and the States.

### *The taxation system*

21. As a result of a 1948 agreement, Guernsey and Alderney are effectively a single jurisdiction for taxation purposes and Guernsey's income tax legislation<sup>3</sup> applies directly to Alderney. Guernsey has also express power to legislate for Alderney in the area of exchange of information on tax matters. Therefore, the term "Guernsey" used in the following paragraphs covers Guernsey, Alderney and Herm.

22. Sark is a separate jurisdiction for tax law purposes (including exchange of information) and has no income tax.

23. All individuals who are solely or principally resident and companies which are resident in Guernsey are subject to income tax on their worldwide income wherever such income may arise or accrue (section 5 of the Income Tax Law). As regards individuals, residence in Guernsey is triggered by: (a) presence for 91 days or more in a tax year, or (b) presence for 35 days in that year and for 365 days in the four preceding years (section 3).<sup>4</sup>

- 
3. The primary legislation governing income tax is the Income Tax (Guernsey) Law, 1975. Jethou, which has a population below 10 individuals, is not covered by the Income Tax Act and this review.
  4. There are two subcategories of residents, which are treated alike for income tax purposes: (a) solely resident when the individual is considered resident in Guernsey during the particular year of charge and not resident elsewhere (i.e. the individual does not spend 91 days or more in any other place); and (b) principally resident when the individual is present in Guernsey for 182 days or more in a tax year, or is present for 91 days in that year and for at least 730 days in the



24. As to companies, residence for tax purposes in Guernsey is determined on the basis of: (a) shareholder voting control; or (b) incorporation, when the company has not been granted an exemption from tax<sup>5</sup> for the year of charge (section 4). 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. Persons trading or exercising a profession or business in Guernsey in a partnership are taxed on their separate shares of the partnership income.

25. Up until 2007, companies and individuals who are regarded as residents in Guernsey paid a flat tax rate of 20%. Since 1 January 2008, individuals have continued to pay the 20% income tax while companies have moved into a “zero-ten” corporate tax system, with the company standard tax on income from business, offices, employments, and other sources at 0%; the company intermediate rate, which covers certain income from banking business, at 10% (and from 1 January 2013 has been extended to also include certain income from fiduciary and domestic insurance business); and the company higher rate including income from trading activities regulated by the Office of the Director General of Utility Regulation and income from the ownership of lands and buildings at 20%.

26. There are no taxes chargeable upon capital wealth (such as Capital Gains Tax, Inheritance Tax or Gift Tax) in Guernsey. However, there are a number of forms of indirect taxation, such as duties upon alcohol, tobacco and petroleum spirit. There are no general sales, purchases or Value Added Taxes levied.

---

four preceding years, or takes up a permanent residence in Guernsey, in addition to meeting the definition of resident and being solely or principally resident in Guernsey in the following year of charge). There is a separate category of residence status when an individual is considered resident but not solely or principally resident in Guernsey. In general, an individual who is resident but not solely or principally resident in Guernsey is chargeable on his worldwide income during the year of charge, unless, within a period of two years immediately after the end of any year of charge commencing after 2012, he elects to pay tax on his Guernsey source income, other than bank interest (subject to a minimum standard charge of GBP 27 500).

5. Under section 40A and the Income Tax (Exempt Bodies) Ordinance of 1989 (Schedules 1 and 2). Since 2008, this exemption has only been available to public collective investment schemes.

***The regulatory framework (including the financial sector)***

27. Guernsey's regulatory legislation for financial services does not automatically apply either to Alderney or Sark. In order for the civil legislation to be binding throughout the Bailiwick, that legislation must be approved by all three legislatures and then receive Royal sanction.<sup>6</sup>

28. The financial services legislation (including AML/CFT legislation) confers functions on the GFSC which may exercise its legal powers equally in Guernsey, Alderney and Sark due to the fact that the legislation has been approved by all the three legislatures. The GFSC, as the main regulatory authority for the financial sector, is involved in matters concerning banking, insurance, investment, fiduciary business, and other services and administers the related laws. The Guernsey banking sector has been through a period of consolidation and restructuring over the past decade, which has seen the number of licensees fall. Currently, there are 32 licensed banks in the Bailiwick of Guernsey – most with head offices either in the United Kingdom or Switzerland. These are regulated and licensed by the GFSC.

29. Guernsey's fund sector has experienced eight consecutive quarters of growth leading into 2012, with the private equity and financial sector seeing particularly strong growth. The Guernsey fund sector remains popular for alternative investment funds including private equity funds, venture capital funds, property funds and funds of hedge funds, particularly where there is a demand to access capital markets. Guernsey has capitalised on supplementing business sourced from the traditional introducer centres of the UK and Europe with new streams from emerging markets such as China, India and Russia. On 30 June 2012, there were 658 institutions licensed to carry on investment business, comprising administrators/managers and custodians/trustees of collective investment funds, stock brokers, discretionary and non-discretionary asset managers, investment advisers and one stock exchange. As at that date, there were 240 authorised or registered open-ended collective investment schemes (of which 183 were umbrella or multi-class schemes resulting in a total 1 541 pools of assets) and 621 closed-ended investment schemes (of which 77 were umbrella schemes resulting in a total of 1 349 pools of assets), with total assets amounting to GBP 270.8 billion.

30. The insurance sector can be broadly divided into two sections: (i) the domestic sector, which includes local insurers, overseas insurers, recognised insurers, and intermediaries who advise on or arrange contracts of insurance in or from within Guernsey; and (ii) the international sector, which includes captive insurers, commercial insurers and life assurance companies who arrange contracts of insurance from within Guernsey, covering international risks.

---

6. The criminal justice legislation only has to be approved by the States of Deliberation and receive Royal Sanction to be applicable Bailiwick-wide.

31. Guernsey trusts are governed by Guernsey customary law (which comprises elements of English common law and Norman customary law). The main authoritative document, the Trusts (Guernsey) Law, 2007, and before that the Trusts (Guernsey) Law, 1989, were codifications of the Guernsey customary law and contain provisions which are identical in many respects to the English common law. The 2007 Law applies to Guernsey only. Alderney and Herm do not have trusts legislation, thus it is only possible to set up trusts therein under customary law.

### ***Exchange of information for tax purposes***

32. As of November 2012, Guernsey is signatory to 38 Tax Information Exchange Agreements (TIEAs). It is also a signatory to three Double Tax Conventions (DTCs), two of which contain EOI articles that do not meet the international standards (there are both a DTC and TIEA with the United Kingdom, the latter of which does meet the standards; a new DTC was also being negotiated with Jersey). The framework for the exchange of information for tax purposes is overseen by Guernsey's Director of Income Tax, who is Guernsey's competent authority for EOI purposes.

33. A complete list of the TIEAs and DTCs which have been concluded by Guernsey are set out in Annex 2, including their dates of signature and entry into force. A complete list of all the legislation and regulations relevant to the exchange of information, as well as non-binding guidance texts, is set out in Annex 3.

34. Since 2005, Guernsey has agreed to implement measures equivalent to those contained in the EU Directive on the Taxation of Savings Income (2003/48/EC). As a result, Guernsey has entered into reciprocal bilateral agreements with each EU Member State.

35. During the three year period under review (2009 through 2011), Guernsey received 32 requests for information from 8 different jurisdictions, with a rapid increase, from 1 request in 2009, to 9 in 2010 and 22 in 2011. Subsequently, Guernsey received 25 requests in 2012. The United Kingdom is Guernsey's main exchange of information partner, followed by France, Sweden and the Netherlands.

### ***Sark, a jurisdiction independent from Guernsey for tax matters***

36. Sark is the smallest of the self-governing Crown Dependencies which make up the Bailiwick of Guernsey. Sark has an area of 5.44 km<sup>2</sup> and a total resident population of approximately 600. Sark's economy depends primarily on tourism and to a lesser extent agriculture and fishing. As a result of its location, its historic ban on cars and the fact that there is no public lighting,

Sark was designated in 2011 as the first Dark Sky Island in the world by the International Dark-Sky Association.

37. As noted above, Sark is subject to Guernsey’s regime for the regulation of the finance industry by the GFSC and to the Bailiwick’s AML/CFT regime. Prior to the introduction of the AML/CFT framework in 2000, some Sark residents engaged in offshore company directorship and trusteeship on a large scale. With the introduction of the AML/CFT regime, these activities have been replaced with small scale service provider activities, with the majority of fiduciary licensees surrendering their licences. Currently, the regulatory framework for trust and company service providers (“fiduciaries”), banks, insurance companies and investment business is the same in Sark as applies in Guernsey and the GSFC has oversight of, and responsibility for, licensing banks, insurers, investment managers and fiduciaries across the whole Bailiwick. In 2012, there were only two full fiduciary licensees and two personal fiduciary licensees based in Sark, holding between them 24 appointments as directors of companies formed under the laws of other jurisdictions or as trustees of trusts.

38. Sark has its own set of laws based on Norman law and its own parliament, the Chief Pleas. It is a self-governing jurisdiction for all civil purposes, including tax purposes (and exchange of information) and it has no income tax. Guernsey has no power to represent Sark on the international stage and the TIEAs concluded by Guernsey do not apply to Sark. In addition, the powers given to Guernsey’s competent authorities to compel the production of information cannot be enforced in relation to persons in Sark. However, the Guernsey competent authority has the power to access information in relation to a Sark individual or relevant entity which is in the possession or control of a person in Guernsey.

39. As concerns the availability of ownership and identity information, Sark has no company law and thus no companies are registered or incorporated in Sark. Any company claiming to be registered or incorporated in Sark would thus be giving false information. In addition, there is no partnership or trust legislation in Sark, thus it is only possible to set up partnerships and trusts therein under customary law. The regulatory requirements on record keeping as well as the AML/CFT regime overseen by the GFSC are applicable throughout the Bailiwick, including the two full fiduciary licensees and two personal fiduciary licensees currently established in Sark. Sark has no banks – branches of two banks, which operate in Guernsey, have sub-branches established in Sark. Guernsey’s competent authority may obtain banking information, relating to the Sark sub-branches through the relevant branch in Guernsey.

40. In addition, under Guernsey’s criminal justice framework, which extends across the Bailiwick, Guernsey is able to provide assistance in

relation to Sark matters under legislation such as the Criminal Justice (Fraud Investigations) (Bailiwick of Guernsey) Law, 1991, the Proceeds of Crime (Bailiwick of Guernsey) Law, 1999 and the Criminal Justice (International Cooperation) (Bailiwick of Guernsey) Law, 2001. Guernsey can exchange information in criminal matters, including tax matters, without the need for a treaty, through the Attorney General’s Office.

41. Guernsey received two EOI requests, under TIEAs, in 2012 relating to Sark, one of which related to a foreign company that listed an address in Sark, and the other relating to a bank account at a bank branch in Sark. In the first instance, Guernsey’s competent authority was able to confirm for the requesting party that the company was not registered or incorporated in Sark (as it is not possible to do so, on the basis that there is no company law or registry in Sark). In the second instance, Guernsey’s competent authority provided the information requested with respect to the bank account (which was obtained from the Guernsey branch).

42. This report is not an assessment of the Bailiwick of Guernsey as a whole, as it does not cover Sark. This report, therefore, covers in detail the other two entities of the Bailiwick, i.e. Guernsey (which includes the island of Herm) and Alderney.

## Recent developments

43. Some projects, announced at the time of the Phase 1 review, have materialised in new laws, or are still at the project stage. The States of Guernsey resolved to introduce private foundations in March 2012. The Foundations (Guernsey) Law, 2012 was approved by the States of Deliberation (the Island’s parliament) in July 2012 and came into force on 8 January 2013. Pursuant to the legislation, foundations in Guernsey are registered with the Guernsey Registrar. Moreover, the formation of Guernsey foundations is restricted to licensed fiduciaries, and as such are regulated by the GFSC, which will ensure compliance with AML/CFT obligations as well as the regulatory oversight of the administrators of foundations.

44. Guernsey’s parliament had approved a proposal to draft amendments to the Limited Partnerships (Guernsey) Law, 1995 in 2010. The primary changes include: transferring administration of the Register from HM Greffier<sup>7</sup> to the Registrar of Companies; enabling an online register of LPs; clarifying the role of Limited Partners; and, introducing Protected Cell Limited Partnerships and allowing migrations, conversions and amalgamation. Draft legislation has

7. Her Majesty’s Greffier is the Clerk of the Royal and Magistrate’s Courts, Registrar of the Guernsey Court of Appeal and Clerk and Registrar of the States.

been released for public consultation and the legislation will be presented to the States of Deliberation in the 2<sup>nd</sup> quarter of 2013.

45. Amendments to the Companies (Alderney) law 1994 received Royal Assent in October 2012 and have effect from 1 January 2013, which introduce a resident agent requirement synonymous with Guernsey's.<sup>8</sup> The Policy Council agreed to lay before the States of Deliberation in November 2012 a proposal to repeal the Control of Borrowing Ordinance. Upon approval, the current system of using the Control of Borrowing Ordinance to provide oversight of beneficial ownership at the company formation stage will cease.

46. The States of Deliberation resolved to repeal section 75(CA) of the Income Tax (Guernsey) Law 1975, as amended, before the Ordinance bringing that section of the Law into effect was registered. Had this section not been repealed it would have introduced a new procedure under which the Guernsey competent authority would have provided a member of the Guernsey Tax Tribunal with evidence to support his conclusion that a request for the exchange of information, made under an international agreement, satisfied the terms of that agreement, in order that the competent authority could then invoke the information gathering powers within the Income Tax Law.

47. Since its Phase 1 review in 2010, Guernsey has significantly expanded its network of exchange of information instruments. It signed an additional 21 EOI agreements, including 20 TIEAs, and a DTC with Malta, and brought an additional 17 agreements into force.

---

8. A resident agent is an individual, resident in Guernsey, who is a director of the company, or a corporate services provider whose duty is to take reasonable steps to ascertain the identity of the persons who are the beneficial owners of members' interests in that company.

## Compliance with the Standards

### A. Availability of Information

#### Overview

48. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report describes and assesses Guernsey's and Alderney's legal and regulatory frameworks on availability of information. It also assesses the implementation and effectiveness of these frameworks in practice.

49. In respect of ownership and identity information, the obligations imposed by Guernsey and Alderney on companies, partnerships and trusts are generally sufficient to meet the international standard. 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. In practice, the tax and

company registration of entities are enforced in Guernsey and no issues have been raised on the availability of identity and ownership information by Guernsey's exchange of information partners.

50. The obligations imposed in respect of accounting records are generally satisfactory, with sufficient specificity in respect of the precise information to be maintained. Pursuant to the recently enacted Income Tax (Keeping of Records, etc) (Amendment) Regulations 2012, records and documents are to be kept in respect of a business irrespective of whether it is required to make an income tax return. The documents include underlying documents and records that reflect the details required by the Terms of Reference Accounting records are required to be kept for at least five years. These obligations result in Guernsey being able to provide accounting information to its exchange of information partners when requested. Since the enactment of the amended regulations is recent, their implementation in practice should be monitored by Guernsey.

51. In respect of banking information, the combination of the AML/CFT regime and licensing requirements for deposit-taking institutions impose appropriate obligations to ensure that all records pertaining to accounts, as well as related financial and transactional information, are available in Guernsey. 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. Bank information was available and exchanged, within 90 days, in all cases where this was requested by exchange of information partners.

52. In the years 2009 through 2011, Guernsey received a total of 32 requests, which related to companies, partnerships and trusts, in addition to individuals. Guernsey received a total of 11 requests for identity or ownership information, as well as 10 questions on accounting information and 8 on banking information.



## A.1. Ownership and identity information

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

### *Companies (ToR<sup>9</sup> A.1.1)*

53. The Bailiwick of Guernsey has two distinct bodies of company legislation: the Companies (Guernsey) Law, 2008 (Guernsey Companies Law) and the Companies (Alderney) Law, 1994 (Alderney Companies Law), which govern the companies in Guernsey and Alderney respectively. These are now dealt with separately.

54. First, as regards Guernsey Companies Law two broad types of companies exist: non-cellular and cellular companies (sections 1-10). The first correspond to the types of companies generally available across jurisdictions. The second type involves the cell concept developed in Guernsey to address risk-management concerns of the insurance industry.

- Non-cellular companies:
  - Companies limited by shares, in which the member's liability is limited to the amount unpaid (if any) on their shares. These are the most commonly used companies.
  - Companies limited by guarantee, in which the members enter into an arrangement to guarantee a certain amount of the debts of the company, and liability is limited to the amount of the guarantee. These companies are used primarily by not-for-profit organisations or companies.
  - Companies with unlimited liability, in which the members have unlimited liability.
  - Companies with mixed liability, which can have a combination of shareholders, guarantee members and unlimited liability members.
- Cellular companies:
  - Protected Cell Companies (PCCs), and
  - Incorporated Cell Companies (ICCs) and Incorporated Cells (ICs) of the ICCs.

---

9. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.

55. As at 31 August 2012, Guernsey had 16 952 non-cellular companies (including eight States Regulated Companies)<sup>10</sup> and 634 cellular companies (332 PCC, 46 ICC and 256 IC). 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. A cell of a PCC is not a company and cannot contract in its own name; it is the PCC which is the contracting party, in respect of the relevant cell which must be identified. Assets and liabilities in a PCC cell are, by law, segregated from those of other cells and those assets are not available to creditors of other cells in insolvency. By law, a cell does not have access to the assets of the PCC core unless a recourse agreement has been put in place. The concept serves the same purpose as unit trusts.

56. An ICC is a legal entity as are each of the incorporated cells (ICs) associated with it. An ICC and each of its ICs have directors, secretary and registered office in common. Introduced in Guernsey law in 2006, ICCs are seen as versatile structures due to having a lower cost base, which is attractive for start up operations and the ability to “spin off” an IC or convert it into a standalone company. Legal segregation is achieved by the fact that an ICC and an IC are distinct corporate entities.

57. Alderney Company Law provides for the incorporation of two types of companies (sections 1-18):

- Public companies: having more than 20 members, the memorandum of which states or is deemed to state that it is a public company.
- Private companies: having less than 20 members.

58. Both public and private companies in Alderney may be incorporated in Alderney with the liability of its members limited by guarantee or by shares.

59. As at 31 October 2012, there were 462 companies on the Alderney Companies Register, with approximately 200 licensees with a regulatory requirement. Of these licensees, 51 are involved in e-gaming activities. The remainder are largely local trading companies with a relatively small proportion involved in the financial services industry.

---

10. The term refers to all companies that are regulated by the Office of Utilities Regulation under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. It covers all electricity, telecommunications and postal providers in Guernsey, of which two are wholly owned by the States of Guernsey.

*Information kept by public authorities*

60. Guernsey companies are registered with public authorities, which maintain some primary ownership information upon incorporation, as well as the GFSC upon licence application. All companies formed in Guernsey are required to register with the Director of Income Tax and to submit tax returns (or claim exemption),<sup>11</sup> but tax files do not contain any ownership information, except where the information is included in financial statements which might accompany tax returns or where the information is required to be provided by a company under the “zero-ten” tax system, in respect of distributions and deemed distributions of the company’s income (section 81B). Alderney companies are subject to similar obligations (see section, Registration of Alderney companies), as Guernsey’s income tax legislation extends to Alderney.

## Registration of Guernsey companies

61. All Guernsey companies must register with the Registrar (an independent statutory official, administratively a part of the Commerce and Employment Department), inform the Registrar of certain changes (not related to ownership), and file an annual validation. First, all Guernsey companies must submit the following information to the Registrar for incorporation: (i) registered office’s address in Guernsey (Guernsey Companies Law, section 30; IC and ICC have the same registered office, section 31); (ii) names and addresses of founder members; particulars of the directors (see section 143(4)(b)), who need not be residents in Guernsey; (iii) resident agent (section 485; IC and ICC have the same resident agent, section 484)<sup>12</sup>; and (iv) for companies limited by shares, the number of shares of each founder member (and their class) and the aggregate value of those shares<sup>13</sup> (section 15). The Register of Companies is publicly available and may be

11. All companies formed in Guernsey are regarded as resident in Guernsey for tax purposes, unless they have been granted an exemption from tax under the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989. Since 2008, this exemption has only been available to public collective investment schemes.
12. As an exception, the listed companies, closed and open ended investment companies or subsidiaries thereof, other GFSC supervised companies (listed under section 530) and States Trading Companies governed by the Companies (Beneficial Ownership) (Guernsey) Regulations, 2008 and the States Trading Companies (Bailiwick of Guernsey) Law, 2001, are not required to have a resident agent.
13. Similarly, in the case of a company limited by guarantee, the memorandum must indicate the guaranteed amount of each member and the maximum number of guarantee members which the company may have.

searched for free online and documents made available upon payment of a small fee.<sup>14</sup> In practice, some peers indicated that they use the Registrar's website to access information on companies. The Registrar does not receive information on beneficial ownership of companies.

62. Changes concerning the registered office's address, director and/or the resident agent must be notified to the Registrar within 14 days (sections 25, 30, 145 and 485). In practice, the Registrar has confirmed that 98% of companies update their details within the statutory time frames. The Registrar maintains the name of the founder members only, and does not maintain information on subsequent members.

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 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. It does not disclose the ownership structure of the company. The annual validation is a possible ground for further inspections and steps when suspected to be false or misleading.

64. Any company that fails to submit an annual validation or knowingly supplies false information in its annual validation submission is guilty of an offence and may be struck from the register. Any company that submits its annual validation after the deadline of 31 January will incur a late filing fee of GBP 100 per month or part thereof with effect from 1 February. Annual validations may be submitted online.

65. Since the entry into force of the new Guernsey Companies Law in 2008, companies may only be formed by corporate services providers (CSPs) holding a full fiduciary licence in Guernsey<sup>15</sup> and the GFSC no longer receives details of proposed beneficial owners nor undertakes "pre-vetting" on each Guernsey company formation application (except for cell companies).<sup>16</sup> Instead, the GFSC exercises scrutiny over the fiduciary licensees, such as directors (individuals or CSP) and partners of local and foreign

- 
14. Registrar website: [www.guernseyregistry.com](http://www.guernseyregistry.com). Some information is available free of charge, although for copies of filings and access to company profiles a small fee of between GBP 2 and GBP 25 is charged, depending on the nature of the document.
  15. Guernsey Company Law, sections 17(9) and 532; and sections 83(5) and 97(4) as concerns the incorporation or removal of an existing company as a Guernsey company.
  16. Cell companies (PCC and ICC) must still first obtain the prior approval of the GFSC (section 10).

companies and partnerships, performing regulated activities by way of business. There is therefore an increased focus on the role of fiduciary licensees as “gatekeepers” when applying for formation.

66. Companies (as well as partnerships and trusts) that are charities or non profit organisations (NPOs)<sup>17</sup> based in Guernsey, holding assets above GBP 10 000 or annual income above GBP 5 000, and which are not administered, controlled or operated by a fiduciary licensee, are obliged to register on the Register of Charities and NPOs (Schedule I, section 2(1)), maintained by the Director of Income Tax, in his capacity as Registrar of NPOs (Charities and Non Profit Organisation (Registration) (Guernsey) Law, 2008 – NPO Law). These entities are obliged to provide identity information on the directors, officers and trustees (but not on the beneficiary, settlor and protector); address within the Bailiwick; and details of the purposes and manner in which the assets, funds and income of the organisation are applied or used (Schedule I, section 2(2)). They have to provide annual financial statements and updated information while annually renewing the registration with the Registrar (Schedule I, sections 5, 6 and 8).

### Registration of Guernsey companies in practice

67. As at November 2012, there were 17 546 companies on the Guernsey Registry. The Registrar released an Annual Validations Guidance note, available on the Guernsey Registry website, to assist Guernsey registered companies to understand and comply with annual validation requirements. As at 1 August 2012, 98.4% of Guernsey companies completed their annual validation on time.

68. The Guernsey competent authority was able to answer three questions in EOI requests solely by consulting the Guernsey Company Registry website (which satisfied the request). The website was also consulted to gather part of the information requested in another nine questions in EOI requests. The information so collected relates, for instance, to Memorandums and Articles of Association, Annual Validation returns, changes of directors.

---

17. Charity means any organisation established for charitable purposes only. NPO means any organisation established (solely or principally) either for the non-financial benefit of its members or for the benefit of society or any class or part of society and, without limitation, includes any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works, and includes a charity (Charities and Non Profit Organisation (Registration) Law, 2008, section 12).

## Registration of Alderney companies

69. Alderney companies are subjected to registration obligations similar to the ones of Guernsey companies, which means that the Registrar keeps primary ownership information (the companies being responsible for maintaining up-to-date ownership information). They are registered with the Alderney Registrar of Companies, who must, amongst other data, receive the name, address and signature of all founder members of the company (section 4). Alderney companies must also submit an annual return to the Registrar which includes, amongst other data, the address of the company's registered office, the name and address of its directors and members, and the number of shares issued to each member and the amount paid up (section 37). Unlike in Guernsey, Alderney companies were not required to have a resident agent, until January 2013.

70. Alderney companies can only be formed by Advocates of the Royal Court (sections 4, 162 and 163) with the consent of Guernsey's Policy Council pursuant to the Control of Borrowing Ordinance 1959. The Control of Borrowing Ordinance controls the raising of capital by companies (including by the issuance of founder shares). The Policy Council is a body chaired by the Chief Minister and comprised of the Minister from each of the governmental departments, responsible for, amongst other matters, examining proposals and reports placed before Guernsey's Parliament (the States of Deliberation). The Policy Council delegates its powers and functions in relation to the Control of Borrowing Ordinance to named officers of the GFSC. Before giving consent, the GFSC carries out due diligence on the proposed beneficial owners of the company and considers its proposed activities. The GFSC uses both public material and confidential intelligence databases in considering these applications. The GFSC must exercise judgement as to the need to refer applications for borrowing back to the Policy Council in cases where consent may be refused or where a decision may be negative and the case may involve a high reputational risk to the Bailiwick.

71. Changes of director and company secretary must be notified to the Company Registrar within fourteen days of the change. A company must also notify the Registrar of a change of registered office. The Alderney Registrar of Companies does not require notification of changes of shareholders outside the annual return.

72. Alderney has developed an e-gambling industry regulated by the Alderney Gambling Control Commission (AGCC). Companies that wish to engage in e-gambling activity must apply for a licence from the AGCC. Currently, 51 companies are licensed. All licensed e-gaming activities must be conducted through an Alderney company. This policy ensures that there is a legal entity within the jurisdiction over which regulatory enforcement action can be taken given the on-line nature of the e-gaming industry. The GFSC does not exercise its delegated responsibility in respect of the Control

of Borrowing Ordinance for applications to raise founder shares for Alderney companies that intend to undertake activities under licence by the AGCC or undertake other e-gambling related activities. The Policy Council reviews these applications in respect of the proposed beneficial owners using open source material and information supplied by relevant CSPs, the GFSC, the States of Alderney, and the AGCC, which in turn utilises investigative and regulatory tools and databases. The Policy Council will not process the application until the AGCC has determined whether it will recommend to the Alderney Gambling Control Commissioner that the company should be licensed under the Alderney eGambling Ordinance 2009. In this manner, the AGCC and Policy Council work collectively to investigate and resolve any concerns that arise from an application. Where necessary, the Policy Council consults with or informs law enforcement agencies. The Policy Council receives approximately one application per month.

73. Where the GFSC considers that there are significant reputational concerns in respect of the proposed beneficial owners or activities, it refers Control of Borrowing Ordinance applications to the Policy Council for consideration. The Policy Council processes these applications in a similar manner as for e-gambling companies (except for the AGCC involvement).

74. The Alderney Companies Law was amended in October 2012 and those changes have effect from 1 January 2013. These amendments introduce a resident agent requirement synonymous with Guernsey's Companies Law. Following this amendment to the Alderney's Company Law the States of Deliberation agreed to repeal the Control of Borrowing Ordinance on 29 November 2012 and legislation to give immediate effect to this decision will be laid before the Assembly on 27 February 2013.

75. The obligations surrounding charities or non profit organisations (NPOs) based in Alderney are the same as in Guernsey (see section Registration of Guernsey companies).

### Registration of Alderney companies in practice

76. As at 31 October 2012, there were 462 companies on the Alderney Companies Register, including 51 companies with an e-gambling licence. For the period 2009 through 2011, the Alderney Gambling Control Commission issued 33 new licenses. During this period, one application was refused, and the AGCC conducted 83 inspections and five investigations of gambling licensees. As a result, AGCC issued 41 sanctions, revoked three licenses, and submitted 115 suspicious transaction reports (STRs).

77. For all other companies, the principal enforcement mechanism available in Alderney is the ability to strike a company off the Register for failure to file an annual return or otherwise failing to comply with the Law. Over the

past four years the Registrar has taken action to strike off 34 companies which have failed to file an annual return or in circumstances where the Registrar suspects that the company is no longer carrying on business. During 2012, 92% of Alderney companies completed their annual validation on time. The Registrar also routinely refuses to accept documentation which does not comply with the legal requirements of the Alderney Law. No EOI requests were received concerning an Alderney company in the period under review.

78. The obligation to appoint a resident agent entered into force on 1 January 2013, but the Alderney Company Registrar took steps to inform all companies in November 2012 of the change in the legislation and many companies have already appointed a resident agent. The Alderney Registrar has not issued particular rules for new resident agents, but considers it reasonable to expect companies to have regard to known guidance published in the Bailiwick (i.e. in Guernsey). The Alderney Registrar explained that it will continue to monitor compliance with the obligation on an annual basis, which will culminate in the Registrar starting the strike off procedure (which will occur at the same time as dealing with those companies which have failed to file annual returns).

### Registration of Foreign Companies

79. Foreign companies administered locally are generally not required to be registered in Guernsey, except where there is a specific statutory requirement (such as for financial services businesses) to do so, but they are covered by the Bailiwick's AML/CFT regime.

80. A foreign company may apply to the Registrar to be registered as a Guernsey company, by providing a copy of its memorandum of incorporation and disclosing its legal ownership structure (sections 75, 83, and 84, in conjunction with section 15). Upon registration, the foreign company will be subject to the same requirements applicable to any Guernsey company, as described above (section 75). Guernsey does not provide guidance notes to companies prior to or upon migration to Guernsey. However, applications to migrate to Guernsey have to be made by a CSP, which would in the course of such business provide necessary advice and guidance on Guernsey's legal and regulatory environment to these companies. In the years 2009 through 2011, the Registrar indicated that 92 companies transferred their registration to Guernsey.

81. It is possible for foreign companies to have some aspects of their administration in Guernsey. This occurs where a Guernsey licensed fiduciary may provide some services, such as providing directors or officers, maintaining certain business records, etc. Guernsey's authorities indicated that licensed fiduciaries provide corporate services to approximately 14 500 non-Bailiwick incorporated companies. Corporate services include approximately 13 000 directorships, and company administration. In practice, where a



foreign company is administered in Guernsey, the extent of its activities will determine if it has a tax liability. Guernsey does not operate the effective place of management principle for tax residence. The test is whether the foreign company is carrying on business in Guernsey. The Guernsey authorities indicate that generally, foreign companies administered in Guernsey will not carry on sufficient activity in Guernsey to be considered to be carrying on business in Guernsey, thus Guernsey has no tax records for the majority of foreign companies administered in Guernsey (no statistics are maintained on the number of foreign companies tax resident in Guernsey). Any person carrying out administration services by way of business must be licensed by the GFSC as a fiduciary. They will be subject to all the relevant regulatory laws which include compliance with the AML/CFT and record keeping requirements. This has the effect of ensuring information is held and available for EOI purposes for those companies, despite them being domiciled elsewhere.

82. There is no legal or practical 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). Foreign companies administered locally by a financial services business are covered by the Bailiwick's AML/CFT regime, including the obligation for the licensed financial services business to maintain identity information on the owners of the foreign company (see section ToR A.1.1 *Anti-Money Laundering Regime*).

### Regulated business activities

83. Only persons licensed by the GFSC under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc, Law of 2000 (Fiduciaries Law) may operate a business providing services defined as regulated activities in the Bailiwick, including:

- company or corporate administration, including the formation, management or administration of companies (as well as partnerships, trusts and other unincorporated bodies); and
- acting as or providing for corporate or individual directors of companies (as well as partnerships and other unincorporated bodies, or corporate or individual trustee or protector of a trust) whether incorporated or established in the Bailiwick or elsewhere.

84. In March 2012, 186 individuals and companies were licensed to perform these functions in Guernsey, a list of whom is available on the GFSC website.<sup>18</sup> They are subject to the regulation, oversight, investigatory and information gathering powers, and enforcement powers of the GFSC.

18. GFSC website: [www.gfsc.gg/](http://www.gfsc.gg/).

85. Full fiduciary licences are available to companies or partnerships. When applying for a fiduciary licence, companies (as well as partnerships and other unincorporated bodies, whether incorporated or established in the Bailiwick or elsewhere) must disclose their ownership structure to the GFSC. Where the shares of the applicant are held within a trust, information must be provided on the trust settlor, trustees, protector and beneficiaries, together with a copy of the trust deed. When the applicant belongs to a group, it must provide the GFSC with its group structure. Applicants must also identify any other controller (15% or more of the voting powers in the company or its parent), and changes of controllers (direct or indirect) or partners of the fiduciary licensee must be authorised by the GFSC in advance of the acquisition. Failure to give notice of the change to the GFSC within 14 days is an offence (Fiduciaries Law, sections 14, 21 and 22).

86. Personal fiduciary licences, authorising a restricted range of activities (including acting as individual director, co-trustee or protector) may be granted to individuals (Fiduciaries Law, sections 4 and 5).

87. Schedule 1 of the Fiduciaries Law sets out the minimum criteria for licensing and includes an obligation for the applicant and licensed fiduciary to demonstrate that it meets the fitness and propriety criteria, which includes understanding of the legal obligations of a resident agent and having in place appropriate AML/CFT procedures.

88. However, none of these obligations will apply when the person performing a regulated activity is not doing so in the course of business or when the activity is exempted under section 3 of the Fiduciary Law, such as acting as director of their own company, or a listed company, or a supervised company (or a subsidiary thereof), or an individual director of not more than six companies.

89. In practice, the GFSC has not had cause to refuse a licence solely because of inadequate AML/CFT procedures. In cases of refusal of a licence, the issues tend to be wider than procedural defects, such as lack of fitness and propriety. There have been instances where the GFSC has postponed the licensing of an applicant until its Board of Directors has amended its AML/CFT policies, procedures and controls to demonstrate it would be compliant with the AML/CFT framework upon licensing. Where the GFSC has identified these issues, it has prioritised the undertaking of an on-site visit to the licensee to assess its compliance.

#### *Information kept by the companies, service providers and other persons*

90. Guernsey and Alderney companies maintain up-to-date identity information on their legal owners. Although Guernsey companies are not obliged to check the identity of their beneficial owners, most Guernsey companies must have a resident agent who needs to identify and keep records of the companies'

beneficial owners. This is now also the case of Alderney companies. Up until January 2013, Alderney companies did not have similar obligations under the Alderney Companies Law, but they could only be formed with the consent of the GFSC, which carries out prior due diligence on the proposed beneficial owners of the company. In addition, financial services business (including fiduciary licensees) must observe customer due diligence requirements and are subject to the AML/CFT regulatory framework.

### The company and its members

91. Guernsey Companies Law requires companies 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 has a share capital, the register must also contain a statement of the shares number, class and amount paid and unpaid on each share (section 123).

92. 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 ICs. When a company has more than 50 members, it must also maintain an index of members (for ICs, the obligation lies on the ICC).

93. 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. A company which fails to maintain that information is guilty of a criminal offence. There is no obligation for the companies to check the identity of their beneficial owners, but they must keep a record of beneficial owners prepared by their resident agent (see below) at their registered office (section 487).

94. Under 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 a period of 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. There is no obligation for the companies to check the identity of their beneficial owners.

### Resident agent

95. A resident agent is mandatory for most Guernsey companies (and his/her identity must be notified to the Registrar; Guernsey Companies Law, sections 484 and 485, see further below). As at November 2012, there were 162

legal persons registered to be resident agents in Guernsey. In addition there were 2 904 natural persons acting as resident agents.

96. The responsibilities and powers of resident agents, are provided for in the Companies Guernsey Law, the Companies (Beneficial Ownership) Regulations, 2008 (GSI no. 36 of 2008), and the Companies (Recognised Stock Exchanges) Regulations 2009 (GSI no. 25 of 2009). Moreover, the Commerce and Employment Department released a Guidance Note which is available on the Guernsey Registry website, to assist Guernsey registered companies to understand and comply with resident agent requirements. The company must keep a record of its resident agent's name and address.

97. The resident agent must take reasonable steps to identify, and keep records of, the company's beneficial owners (Guernsey Companies Law, sections 486-487) holding at least 10% of the total voting rights of all members eligible to vote at a general meeting. A resident agent must keep the record of beneficial owners at the company's registered office and will be required to disclose the record, if necessary, for EOI requests. The record of the beneficial ownership structure must contain:

- for individuals: the name, usual residential address, nationality and date of birth; and
- for companies (including overseas companies): corporate or firm name, registered or principal office, legal form and law by which it is governed, and if applicable, the register in which it is entered and its registration number.

98. A corporate legal owner has no duty to notify the resident agent of any change in its ownership structure, but the resident agent may give the owner notice to disclose whether it holds its interest in the company for its own benefit or the benefit of another person, and if so, the details in respect of that person. Failure to answer the notice or giving a false answer is an offence (section 488) and should be reported to the company. In turn, the company may restrict the rights of the member or even cancel the member's interest in the company (Guernsey Companies Law, section 489). Moreover, if the member of the company refused to provide the information, the resident agent may refer the matter to the police for investigation, as a criminal offence. There have been no instances to date of such action being taken.

99. Resident agents are not required to keep records when the class of beneficial owners is "of such a size that it is not reasonably practicable to identify each member of the class" (Guernsey Companies Law, section 487(5)). The exact meaning of such an expression is unclear from the laws and regulations. Guernsey officials explain that whereas section 487 sets out what details a resident agent must record in order to comply with the provisions of the Companies Law, paragraph 5 provides an exception to that rule where a

company has a large number of shareholders such that the burden of recording the beneficial owners would be excessive compared to the risk. In this case, the resident agent is entitled to identify the beneficial owners by reference to a class. Guernsey officials explain that it is a matter for resident agents to use their judgement on the extent to which they can rely on this simplification. Where a request for information is made to the resident agent by the competent authority, the resident agent can issue a notice to members to disclose beneficial ownership, and the interests of a member may be cancelled or suspended for non-compliance (Guernsey Companies Law, sections 488 and 489). No request for EOI has been frustrated due to this simplification measure.

100. Companies not required to have a resident agent are those listed on a recognised stock exchange, open-ended or closed-ended investment companies (meaning a collective investment scheme which are currently supervised by the GFSC under the Protection of Investors (Bailiwick of Guernsey) Law, 1987) or any other prescribed category of company (which currently are GFSC supervised companies and States Trading Companies) and subsidiaries of these exempt companies (section 483).<sup>19</sup>

101. In addition, the resident agents must be either an individual director of the company (resident in Guernsey) or a CSP. Individual directors, as well as CSPs, may be fiduciary licensees, and subject to AML laws and regulations (see Regulated business activities above).

102. Alderney introduced on 1 January 2013 a resident agent requirement identical to the one existing in Guernsey (The Companies (Alderney) (Amendment) Law, 2012).

103. As at November 2012, of the 17 546 companies on the Guernsey Registrar, 1 725 claim resident agent exempt status under section 483. The Registrar undertook reviews in 2010 and 2012, and identified 36 companies that require a resident agent be appointed and has contacted the companies for rectification. Failure to comply will result in the company being struck off the Register of Companies in accordance with Part XX of the Companies Law, during 2013, if appropriate.

### Anti-money laundering regime

104. Guernsey has a significant insurance and investment fund business. Financial services business (including fiduciary licensees), as defined in

---

19. The standard does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties (OECD Model TIEA, Article 5(4)).

Schedule 1 of the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 (FSB Regulations), are subject to the Bailiwick's AML/CFT regulatory framework. This includes the following specific industry sectors:

- banking, including deposit taking business as defined in the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (see section A.3. *Banking information* below);
- insurance business, as defined in the Insurance Business (Bailiwick of Guernsey) Law, 2002 or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002. Insurance business in the Bailiwick can be divided into three distinct sectors: domestic insurance, international insurance and insurance intermediaries. As at 30 November 2012, there were 8 insurers engaged in domestic business, 338 licensed international insurers (most UK based groups, including 67 PCCs, 5 ICCs and 17 ICs), and 39 registered intermediaries. The GFSC supervises insurance business under the Insurance Business Law, 2002 and the Insurance Managers and Insurance Intermediaries Law, 2002.
- investment business and investment funds, including controlled investment business as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Protection of Investors Law). In the Bailiwick, collective investment funds may be established as unit trusts, investment companies (including PCCs and ICCs), or limited partnerships, and they may be organised as authorised or registered investment schemes as declared by the GFSC. Managers, trustees, and custodians of authorised and registered, open-ended and closed-ended schemes must be licensed under the Protection of Investors Law. Any changes to the directors, controllers, partners or managers of a fund must be notified to the GFSC within 14 days. The GFSC wields an array of enforcement measures including private warnings, public statements, investigatory powers or cancellation of licences to oversee remedial measures.
- regulated activities, as defined in the Fiduciaries Law, including fiduciary and nominee services, trust and corporate service providers;
- the formation, management or administration of foundations, and the provision of advice in relation to the formation, management or administration of foundations, including (without limitation) (i) acting as corporate or individual foundation official, (ii) the provision to foundations of corporate or individual foundation officials; or acting as a foundation official for foundations, but only where the individual is resident in Guernsey; and

- non-regulated financial services businesses, as defined in the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.

105. Companies and other entities in the Bailiwick may enter into a relationship with lawyers (legal professionals), accountancy service providers and tax advisors or estate agents (collectively “prescribed businesses”), who in turn are subject to separate but similar sets of AML/CFT laws under the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 and the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants, and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 (PB Regulations).<sup>20</sup> In June 2012, there were 20 firms of lawyers, 51 firms of accountants and 30 firms of estate agents (including sole practitioners) registered with the GFSC.

106. When establishing a business relationship or carrying out an occasional transaction, financial services businesses and prescribed businesses must perform customer due diligence checks, as follows:<sup>21</sup>

- the individual customer (name, address, nationality, date and place of birth) and/or the non-individual customer (name, date and jurisdiction of incorporation, registered office address, legal status) are identified and verified;
- the beneficial owner and underlying principal are identified and reasonable measures are taken to verify such identity using identification data; such measures include, in the case of a legal person or legal arrangement, measures to understand the ownership and control structure of the customer.<sup>22</sup> The FSB Regulations define beneficial owners as the natural person who ultimately owns or controls the customer, but the FSB Handbook notes that in normal risk situations,

20. These Regulations created a public register for AML/CFT purposes of “prescribed businesses”. The requirement to register with the GFSC is linked to specified types of business by firms (including sole practitioners) which do not fall within an exemption provided in the regulations. These include estate agencies, legal services (lawyer, notary or other independent legal professional) and accountancy services (auditor, external accountant, insolvency practitioner or tax adviser).

21. Regulation 4(3) of the FSB and Prescribed Businesses Regulations and the Handbook for Financial Services Businesses on Countering of Financial Crime and Terrorist Financing (FSB Handbook) and the Handbook for Legal Professionals, Accountants and Estate Agents on Countering of Financial Crime and Terrorist Financing.

22. Where the customer is a collective investment scheme regulated by the GFSC or a listed company, the FSB may consider the legal body to be the principal to be identified and verified (FSB Handbook, paragraph 4.6.1), which is in line with the standard (Model TIEA, Article 5(4)).

beneficial owners are individuals ultimately holding at least 25% interest in the capital or net assets of the legal body. The Handbook further notes that a general threshold of 25% is deemed to indicate effective control or ownership. In the case of foundations, this will include members of the governing council of a foundation and any supervisors. The Guernsey authorities state that this obligation also extends to the identification of all beneficiaries.

- the veil of nominees is pierced: (i) any person purporting to act on behalf of the customer is identified and his identity and his authority to so act is verified; and (ii) a determination is made as to whether the customer is acting on behalf of another person and, if the person is so acting, reasonable measures are taken to obtain sufficient identification data to identify and verify the identity of that other person.

107. In some instances the AML/CFT regime allows reliance on introducers, who may be outside the scope of the Bailiwick regulatory framework (Regulation 10) to have verified the identity of the customer, beneficial owners and any underlying principals. Such introducers must be (a) established in a jurisdiction listed in Appendix C to the FSB Handbook, which are considered by the GFSC to have in place AML/CFT legislation compliant with FATF Recommendations, currently comprising 35 jurisdictions; or (b) from the same group. The customer due diligence process can be waived for introduced businesses, i.e. if an introducer gives a written confirmation of identity and other matters,<sup>23</sup> provided that the introducer keeps such identification data and documents and make them available to the CSP or legal professional upon request and without delay (chapter 4 of the handbooks). The responsibility of complying with the above mentioned regulations remains with the licensee.

108. Financial services businesses and prescribed businesses must keep records for five years after the relationship with the customer ceased or the occasional transaction was completed (regulations 14 and 19) but they do not routinely/systematically maintain up-to-date information on the legal and beneficial ownership structure of their customers. Instead, changes in the ownership structure of the customers must be monitored on a risk-sensitive basis, i.e. the FSB Handbook (paragraphs 265-267) indicates that it is not necessary to re-verify or obtain current documentation unless an assessment has been made that the identification data held is not adequate for the assessed risk

---

23. The Handbook defines an introduced business relationship as a financial services business, lawyer or accountant acting on behalf of one or more third parties who are also its customers and establishes a business relationship on their behalf with a financial services business. Introducer relationships may be business relationships on behalf of a single third party or on behalf of more than one third party, including a pool of such persons.



of the business relationship and it also allows for simplified or reduced CDD measures to be applied in limited circumstances where the risk of ML/FT is assessed as being low (section 6).

109. Section 49B of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 provides for the GFSC's officers to enter any premises in the Bailiwick in order to determine whether a financial services business or prescribed business has complied with any regulations, rules and guidance issued by the GFSC. It also provides for the GFSC's officers to require the financial services business or prescribed business to produce for examination any documents held by the business, including providing copies of any documents for the officers of the GFSC to take away, and to answer questions. The Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008 also contains wide powers for the GFSC to conduct on-site visits and to obtain information. Visits can be made either with or without the agreement of the licensee. Finally, the individual regulatory laws contain powers for the GFSC to obtain information and documents and to interview individuals (including section 23 of the Fiduciaries Law and section 5 of the Prescribed Businesses Law).

### Anti-money laundering regime in practice

110. The Income Tax Office, Police, Regulator, Attorney General's Chambers, and Company Registrar work together through a strategic group which assesses international developments, threats, and legislative developments. They host industry awareness events on AML/CFT obligations and requirements.

111. The GFSC's programme of supervising financial services businesses and prescribed businesses comprises desk-based reviews, on-site inspections and off-site monitoring. The desk-based review comprises an evaluation of the business's AML/CFT policies, procedures and controls, training records, business risk assessment, staff organisation, and Board minutes. The on-site inspection comprises recorded interviews with senior management and others, a sample of account and transaction files of clients, and confirmation of certification of third party introducer businesses and that testing of these parties is carried out. Off-site monitoring comprises information exchange via surveys, annual returns, financial reports, annual compliance returns, questionnaires and declarations. During the period 2009 through 2011, the GFSC undertook 367 onsite inspections, across all entities subject to the GFSC's programme of supervising financial services businesses and prescribed businesses.

112. The GFSC presents findings in respect of possible breaches, and when appropriate, it uses its powers of sanction when deficiencies are established. Such sanctions can include: i) conditions or directions being attached to licences requiring the entity to remediate deficiencies within a specified time-frame; ii) a condition that no new business may be undertaken until the GFSC

is satisfied that the appropriate remediation has been carried out; and iii) in the most serious cases, more significant penalties can be imposed. In practice, 47 sanctions (mostly conditions but also some fines) have been imposed on fiduciary licensees and registered entities by the GFSC since 2008.

113. The regulatory Divisions of the GFSC comprise 70 supervisory staff, including six persons undertaking AML/CFT on-site inspections. Other officers of the GFSC, such as senior management and Legal Counsel's team, are involved in reviewing findings and actions to be taken by the GFSC.

### *Nominee identity information*

114. The provision of nominee services to any company (as well as partnerships, trusts or other unincorporated bodies), including acting as or providing nominee shareholders, is a business activity regulated under section 2(1)(b)(ii)(C) of the Fiduciary Law for which a license must be obtained. This law applies to persons providing nominee services in or from within the Bailiwick and to Bailiwick companies rendering such services in or from within any place in the world.

115. A person who acts as, or arranges for another person to act as, a nominee shareholder is subject to the fiduciary licensee obligations concerning identity information under the Fiduciaries Law and the AML/CFT regulatory framework. However, these obligations will not apply when the person providing nominee services is not carrying on such activity "by way of business". In that case, there are no obligations imposed on nominees to retain identity information on the persons for whom they act as the legal owner.

116. Guernsey's authorities indicate that the object of excluding persons who were not acting "by way of business" was to exclude from the scope of regulation the occasions when people acting in their own private individual capacity undertake regulated activities. The expression "by way of business" is cast wide enough to catch situations where the person in question receives some form of consideration for the services performed: for the purposes of the Fiduciaries Law "a person who carries on any activity shall be deemed to do so by way of business if he receives any income, fee, emolument or other consideration in money or money's worth for doing so". Therefore the rules only exclude persons that perform services gratuitously in the course of a purely private non-business relationship, and Guernsey's authorities consider that it would be impossible, and undesirable, to attempt to subject private individual functions or transactions which can arise on an everyday basis to mandatory licensing by the GFSC.

117. As only a limited number of nominees would be excluded from the scope of the Fiduciary Law in practice, Guernsey's authorities consider that this exception is narrow and does not prevent effective EOI. With respect to

nonprofessional trustees, it is extremely improbable that a nominee acting in a private capacity and not acting “by way of business” will not know who he/she is representing. Guernsey has received a number of requests for details of ownership of companies, where the legal ownership was held by a nominee. However, no problems have been encountered in obtaining the beneficial ownership details, and no issues have been raised by Guernsey’s exchange of information partners in relation to nominee ownerships.

### *In practice*

118. In the period 2009 through 2011, the Guernsey competent authority received 11 requests relating to ownership of companies. In three of these, the request could be satisfied by obtaining legal ownership details from the Guernsey Company Registry Website. In the other 8 cases, the competent authority also made a request to the entity/corporate service provider for additional information in relation to beneficial ownership. All information relating to companies was provided within 90 days.

### ***Bearer shares (ToR A.1.2)***

119. Bearer shares and warrants to bearer are implicitly prohibited under both the Guernsey and the Alderney Companies Law since the name of all members must be kept in the register of members. A Guernsey company which fails to maintain that information is guilty of a criminal offence (sections 123 and 72 respectively).

120. The FSB Handbook indicates that banks should only open accounts for companies or structures capable of issuing bearer instruments (bearer shares, bearer warrants or bearer negotiable instruments) where the holders of the instruments are verified (paragraph 5.6). Banks should take steps to ensure that bearer instruments are held in secure custody by the bank or a trusted intermediary which has undertaken to inform the banks of any proposed change in ownership of the company or structure. They must undertake enhanced CDD measures to ensure that these instruments are not misused for money laundering and/or terrorist financing.

121. In practice, the GFSC’s on-site inspections of the banking sector in Guernsey show that banks within the Bailiwick comply with the Handbook and their legal obligations with respect to bearer instruments. Guernsey authorities state that enhanced CDD measures are so onerous that the majority of banks will not open an account for companies or structures capable of issuing bearer instruments. No issues have been raised in relation to bearer shares by Guernsey’s EOI partners.

### *Partnerships (ToR A.1.3)*

122. The Bailiwick of Guernsey currently has two types of partnerships: ordinary partnerships in the whole territory, and limited partnerships (LPs) in Guernsey. Whilst ordinary partnerships are not subject to registration in Guernsey (unless they perform a financial service business), LPs are registered with the Greffier (a function shortly to be transferred to the Registrar of Companies). The general partners of the LP must file a declaration stating, *inter alia*, details of the general partners. There is no requirement to file details of the names of the limited partners or their capital contributions in the declaration form, but LPs maintain a register of limited partners. Neither ordinary nor limited partnerships are required to submit partnership tax returns to the Director of Income Tax. However, their partners must include their share of the partnership's income into their tax return.

123. In the years 2009 through 2011, Guernsey received a total of 32 requests, including one pertaining to a limited partnership, information about which was gathered from the general partner. No issues have been raised by Guernsey's exchange of information partners regarding the availability of information on partnerships.

### *Ordinary partnerships*

124. In Guernsey, ordinary "trading" partnerships are governed by the terms of the Partnership (Guernsey) Law, 1995 (Partnership Law), which was enacted to codify and clarify the customary law on partnerships. 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. The below paragraphs apply to all ordinary partnerships.

### Information held by public authorities

125. Ordinary partnerships are not registered by a public authority (neither the States of Guernsey nor the GFSC) unless their activities are specifically covered by statute (for example, in the case of a financial services business). Partnerships have no legal personality and the partners are taxed on their separate shares of the partnership's income on the basis of the partner's residence and subject to the ordinary principles of the Income Tax (Guernsey) Law, 1975 (sections 42 and 137). The tax authorities know whether an individual or legal entity is a partner in a partnership, where the partner is liable to tax in respect of a share of the partnership income. The income tax return requires each partner to provide "a copy of the accounts and computations". In practice, the Director of Income Tax ordinarily receives a set of partnership accounts showing the profits of the partnership and an allocation of the

shares to the individual partners, to which each individual partner can refer, in order to dispense with the requirement for him/her to send the accounts him/herself. This measure avoids the Income Tax Office receiving multiple sets of the same accounts. As a result, the tax authorities do maintain ownership information of general partnerships, updated every year.

### Information held by the partners and service providers

126. There are no specific requirements for partnerships to retain information under the Partnership Law. When acting as a partner of a local or foreign partnership by way of business, a person holding a fiduciary licence is subject to the obligations mentioned above concerning the acquisition, retention and production of information arising under the Fiduciaries Law and the AML/CFT regime; and the partnership itself may be subject to specific statutory obligations (for example, as in the case of a financial services business).

### *Limited Partnerships in Guernsey*

127. Under the Limited Partnerships (Guernsey) Law, 1995, LPs may be created in Guernsey. Although LPs generally do not have separate legal personality, they may elect to have one when formed (section 9A). However, this does not change the liabilities of the general or limited partners, nor does it affect the relationship between them. There are 1 399 LPs registered in Guernsey (281 with legal personality), a significant number of which are collective investment schemes.

### Information held by public authorities

128. LPs must have at least one general partner and one limited partner (either one could be an individual, company or partnership), and be created by a written partnership agreement (section 2(2) of Limited Partnership (Guernsey) Law 1995). In essence the general partner operates the business while the limited partners are passive investors in the operation.<sup>24</sup>

129. LPs must be registered with the Greffier. The application for registration must contain the name and address of every general partner, in addition to the name and registered office of the LP, its nature and principal place of

---

24. The general partners are jointly and severally liable for the debts of the partnership. The limited partners contribute capital to the partnership but are not liable beyond that amount for the debts of the limited partnership. The limited partners obtain the benefit of limited liability but they may not participate in the management of the partnership.

business, and the duration of the partnership (section 8). The Registrar does not hold identity information on limited partners; the obligation to maintain that information rests on the partnership (see below).

130. The absence of registration prevents the limited partners from having limited liability and all partners are deemed to be general partners (section 11). Changes to the address of the registered office or of a general partner must be notified to the Registrar within 21 days of the change. The absence of notification is an offence punishable on summary conviction to a fine up to GBP 10 000 (applicable to the partnership and each general partner).

131. All LPs must file an annual return in order to remain in good standing, pursuant to the Limited Partnerships (Fees and Annual Return) (Guernsey) Regulations, 2008. The annual return must contain the updated identity information on the general partners, as well as a statement of whether or not the LP has complied with its obligation to keep a register of limited partners and accounting records. The Register of Limited Partnerships is publicly available and the file may be viewed by visiting the Registry. Once the Law is revised, the documents will be available online, and may then be searched upon payment of a small fee.

132. Like ordinary partnerships (see above), partners of an LP must include their share of the partnership's income in their tax return, but the LP itself does not fill in an information statement indicating the name and share of income of each of its partners. A limited partner which is a non-resident company or an individual not solely or principally resident in Guernsey is not liable to tax in Guernsey provided that the income obtained through the LP is wholly derived from international operations (section 5(1B) of the Income Tax Law). In such instances, Guernsey public authorities will have no information on limited partners.

### Information held by the partners and service providers

133. Every LP must keep at its registered office a register of all limited partners showing their full names and addresses, and the capital account of each of them with details of the amounts and dates of the (planned) contributions and payments representing a return thereof (sections 15 and 23). The records maintained at the LP's registered office are available for inspection by any partner (section 15(2)). 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).

134. General partners holding a fiduciary licence are also subject to licensing obligations arising under the Fiduciaries Law (see section A.1.1 *Regulated business Activities*), as well as to obligations concerning the acquisition, retention and production of information under the AML/CFT regime (see the

section above on *Anti-money laundering regime*). Limited partners are exempt (unless they are themselves carrying on a regulated activity, financial services business or prescribed business).

### *Trusts (ToR A.1.4)*

135. The Trusts (Guernsey) Law, 2007 (Trusts Law) contains the statutory provisions relating to the creation and governance of trusts in the island of Guernsey, and permits both standard and purpose trusts to be created. There is no trust legislation in Alderney and Herm, thus it is only possible to set up trusts therein under customary law.

136. Trusts have no legal personality and are not of themselves subject to a system of registration. Under the Income Tax Law, there is a general requirement to file an income tax return upon the trustees themselves, and the beneficiary (or the settlor, if the trust is revocable), but the Director of Income Tax may exempt trustees from this obligation if there are no Guernsey resident beneficiaries and the trust has no (taxable) Guernsey sources of income. Nevertheless, fiduciary licensees performing regulated activities (including trust-related activities such as acting as a trustee) are subject to the AML/CFT regulatory framework, under which trustees need to hold sufficiently detailed identity information on settlor(s), protector(s), co-trustee(s), and beneficiaries with a vested interest.

137. According to the 2012 annual return required from all licensed fiduciaries, the data shows that as at 30 June 2012, there were 23 698 trusts where a Guernsey licensed trust services provider acts as the trustee. In addition, there were 766 trusts where a Guernsey licensed trustee services provider is not acting as the trustee. There are 151 trust service providers licensed under the Fiduciaries Law. The majority of trusts are Guernsey discretionary trusts established for the benefit of individual families but there are also pension trusts (both individual and corporate schemes) established for local and ex-UK market and employee benefit trusts.

### *Trust identity information required to be provided to government authorities*

138. Trusts are not subject to a system of registration.<sup>25</sup> Formal documents are not essential for the establishment of trusts in Guernsey, unless they are unit trusts or hold real property in Guernsey (Trusts Law, section 6).

25. Nevertheless, trusts may themselves be subject to licensing and regulation under specific regulatory enactments, e.g. in the case of a collective investment scheme, subject to licensing/authorisation under the Protection of Investors Law, 1987.

The most common form of Guernsey trust is the private discretionary trust. Besides their private use in family situations, increasing use has been made of trusts as investment vehicles (collective investment funds) and for company pension schemes, retirement annuities and employee benefit schemes. Guernsey trusts with both local and international beneficiaries are commonly managed by professional licensed fiduciaries situated in Guernsey.

139. In principle, the Income Tax Law (sections 53 and 65) imposes a requirement to file an income tax return either upon the trustees themselves, the beneficiary, or the settlor (in the case of a revocable settlement), on his/her own personal return. However, the Director of Income Tax has issued a Statement of Practice which provides concessionary treatment whereby, if he is satisfied that there are no Guernsey resident beneficiaries<sup>26</sup> of a trust, and the trust has no (taxable) Guernsey sources of income, he will not seek to charge the income of the trust to Guernsey income tax. In such circumstances, there will be no requirement to file a tax return and the competent authorities will have no record of the identity of the trustees, beneficiaries, settlor(s) or protector(s).

*Trust ownership and identity information required to be retained by the trust*

140. In general, there are no restrictions in the Trusts Law as to who may act as trustee, save that a trustee must be a natural or legal person. Guernsey's authorities have explained that there is a customary fiduciary obligation imposed on trustees to know the identity of the settlor and (where they exist) the beneficiaries in order for the trust to have certainty evidenced by the case of *Re Double Happiness Trust*<sup>27</sup> which has effect in Guernsey.<sup>28</sup> Trustees that perform regulated activities (Fiduciaries Law, section 2) and persons acting as professional trustee or providing trustees must be licensed by the GFSC and are subject to the obligations concerning the acquisition, retention and production of information arising under the Fiduciaries Law and the AML/CFT regime (see section above on *Anti-money laundering regime*).

- 
26. The personal income tax return issued to individuals subject to Guernsey tax contains a section requiring them to declare any interest they may have in a settlement, including a trust. This therefore enables the Director to identify trusts which may have a liability to Guernsey income tax.
27. In *Re Double Happiness Trust* (2002) JLR note, the Jersey Royal Court declared that if the identity of the beneficiaries or beneficial interests are not certain then the trust will be void.
28. In accordance with *Morton v. Paint* (1996) 21 GLJ 61, which permits the Courts of Guernsey to follow the relevant cases of other comparable jurisdictions to determine the matter for them if there is no Guernsey authority on the issue.



141. As concerns trusts in particular, the FSB Handbook provides that, when establishing a trust relationship, licensed fiduciaries which are acting as trustees must identify and verify the identity of their clients and any beneficial owner and underlying principal, including the settlor(s), any protector(s) or co-trustee(s), and any beneficiaries with a vested interest (paragraph 4.6.3).

142. Furthermore, the licensed fiduciaries dealing with trusts must (paragraph 4.6.4): (i) verify the identity of the trustees (unless these trustees are themselves subject to the handbooks 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.

143. Where a foreign trust (usually from the United Kingdom or Jersey) is administered by a Bailiwick-licensed fiduciary, it will be subject to the AML/CFT regime (see above). A foreign law trust is generally enforceable in Guernsey.<sup>29</sup> The Royal Court of Guernsey has jurisdiction over trusts formed under the laws of other jurisdictions to the extent that such trusts have Guernsey-resident trustees or property situated or administered in Guernsey or where the terms of the trust give the Royal Court jurisdiction (Trusts Law, section 4).

144. However, trustees (and persons acting as trustee or providing trustees) of a Guernsey, Alderney, Herm or foreign trust can be unregulated persons, if they were not doing so “by way of business” or if the activity falls within one of the specified exemptions to the “regulated activities” set out in section 3 of the Fiduciaries Law. In those circumstances, the trust will not be subject to Guernsey’s AML/CFT framework unless it were to: (i) open an account or establish a relationship with a Guernsey bank or other licensed fiduciaries subject to the AML/CFT framework, or (ii) purchase any real property in Guernsey, Alderney or Herm via a lawyer and estate agent who would also be subject to the AML/CFT framework.

145. Guernsey’s authorities are of the view that these exceptions are limited to a narrow class of cases where licensing or regulation was not considered necessary or cases in which government has no legitimate interest or concern. For instance, the formation of a trust can occur in everyday private domestic situations (e.g. where parents receive gifts on behalf of their

---

29. Except where: it purports to do anything contrary to the law of Guernsey; it confers any right or function the exercise of which would be contrary to the law of Guernsey; or the Royal Court declares that it is immoral or contrary to public policy (Trusts Law, section 65).

children) to which it is not felt appropriate to subject the trustees to regulation and licensing. They add that it is extremely improbable that a trustee acting in a private capacity and not acting “by way of business” will not know who the underlying principal/settlor of the trust is. Guernsey’s authorities similarly consider it almost inconceivable that a person acting as trustee for a non Guernsey resident will not be acting by way of business, and thus caught by the Fiduciaries Law.

146. Moreover, Guernsey maintains that all trustees of Guernsey trusts are required to have information on the settlor and (where they exist) the beneficiaries under customary fiduciary obligations, which extend to maintaining accounting information and other trust documents such as the trust deed and documents relating to transfers of property made by the settlor and all other documents required in order to ensure that the trustee’s duty to the beneficiaries is carried out. This is codified in section 25 of the Trusts Law: “A trustee shall keep accurate accounts and records of his trusteeship” (see also Section A.2 *Accounting Records*). In practice, Guernsey officials met during the on-site visit confirmed that only a narrow class of persons would be concerned. The existence of trustees not acting by way of business has not affected EOI to date but the effect of this on EOI in practice should be monitored by Guernsey on an ongoing basis.

147. As for the exempted activities under section 3 of the Fiduciaries Law, they concern activities regulated by other means, such as (i) acting as a trustee or custodian of a collective investment scheme authorised by the GFSC under the Protection of Investors law; (ii) acting as trustee of testamentary trusts created by the will of a person who was resident or domiciled in the Bailiwick at the time of the execution of the will or at the time of death, provided that the person so acting is a lawyer. In both cases, the trustee is licensed or registered under a regulatory law administered by the GFSC and subject to the full AML/CFT framework. Further, under the Fiduciaries Law the GFSC can impose conditions on the exemption or can vary or revoke the exemption at any time. Between 1 January 2008 and 30 June 2012, the GFSC granted 170 exemptions from licensing under the Fiduciaries Law by virtue of a discretionary power in that law.<sup>30</sup> The GFSC’s on-site inspections include

30. Of the 170 discretionary exemption applications, 162 were to applicants which were either licensed under another regulatory law or registered under the NRFSB or PB Laws, or were administered by a regulated financial services business. In the remaining cases, three applicants for exemptions act as co-trustee or co-protector alongside a licensed fiduciary or individuals employed by a registered prescribed business. The five other cases were still subject to the full AML/CFT obligations even though they were not licensed or registered or administered by a licensed or registered entity. The GFSC ensured that these five cases were aware of their AML/CFT obligations.

an assessment of compliance with the AML/CFT framework in respect of exempted persons. Accordingly, exempted persons do not provide any gap in Guernsey's AML/CFT framework.

148. As only a limited number of trustees would be excluded from the scope of the Fiduciary Law, this exception is narrow and does not prevent effective EOI. Moreover, Guernsey maintains that all trustees of Guernsey trusts are required to have information on the settlor and (where they exist) the beneficiaries under customary fiduciary obligation.

### *Conclusion*

149. The mechanisms described above in Guernsey ensure the availability of information on trusts, whether Guernsey or foreign law trusts, where significant elements of the trust such as the residence of its trustees are connected with Guernsey. In the years 2009 through 2011, Guernsey received a total of 32 requests, 11 of these pertaining to trusts, wholly or in part. Guernsey has been able to answer EOI requests received in 10 such cases, mostly within 90 days. Subsequently, discussions have been held regarding 2 of these 11 cases (see paragraphs 306 and 372).

150. Whilst a trust could be created which has no connection with Guernsey other than that the settlor chooses that the trust will be governed by the laws of Guernsey (in which event there may be no information about the trust available in Guernsey) in practice, Guernsey has not received EOI requests in such circumstances to date.

### *Foundations (ToR A.1.5)*

151. Jurisdictions that allow for the establishment of foundations should ensure that information is available to their competent authority for foundations formed under those laws to identify the founders, members of the foundation council, and beneficiaries (where applicable), as well as any other persons with the authority to represent the foundation.

152. The States of Guernsey resolved to introduce foundations in Guernsey in March 2012. The Foundations (Guernsey) Law, 2012 was approved by the States of Deliberation in July 2012 and came into force on 8 January 2013. (The establishment of foundations is not allowed in Alderney.) The Registrar maintains information on the officials of the foundation, while information on founders and beneficiaries is held by the foundation itself.

153. A Guernsey foundation is a legal entity which is created when a person (the founder) provides assets for a specific purpose set out in its constitutional documents and is administered according to contractual principles. A foundation may be established for any purpose, save that it cannot carry

out any commercial activities except those necessary for, and ancillary or incidental to, its purpose (s. 7). In addition to the Foundations Law, foundations are governed by their constitutional documents – a public charter document and private rules.

154. Pursuant to the new legislation, private foundations in Guernsey are legal persons registered with the Company Registrar (with a unique identifying number). The Registrar must receive details of the foundation officials (councillors, and guardian if any) and of its registered office in Guernsey at the time of registration. Providing false or misleading information to the Registrar is an offence (section 47). The register is publicly available and can be accessed online.<sup>31</sup> Foundations will be taxable as “any body of persons corporate or unincorporate not being a partnership”, i.e. in the same way as companies. As such they will be registered with the tax authorities.

155. Founders, when creating a foundation, must subscribe their name, as founders, to the Constitution of the foundation (section 1). Subsequent contributors do not need to be identified in the Constitution, as “following the endowment of the initial capital, no person has any interest in a foundation, or is a founder of a foundation, by virtue only of endowing it with further property”. Similarly, whereas a description of the initial capital is contained in the Constitution, the latter does not need to be amended when assets are added thereafter. However, any addition of property to the foundation has to be recorded in the accounting books of the foundation. This information is available to the licensed fiduciary member of the Council (or resident agent).

156. The beneficiaries are the persons who may benefit from a foundation and who are (a) so identified in the Constitution by name, or (b) whose identity is ascertainable from the terms of the Constitution by reference to (i) a class<sup>32</sup> or (ii) a relationship to another person, whether or not living at the time of the creation of the foundation or at the time by reference to which, under the terms of the Constitution, members of a class are to be determined (section 31). It would therefore appear that beneficiaries would be identifiable.

157. The Constitution of the foundation may identify (by name and address) a default recipient to whom all the foundation assets shall pass in the event of the termination of the foundation, failing which the default recipient

---

31. <http://guernseyregistry.com/article/104797/Foundations-Register>.

32. Further, and “subject to the terms of the Constitution, where a foundation is made in favour of a class of persons then (a) the class closes when it is no longer possible for any other person to become a member of the class, and (b) where the interest of the class relates to income, and no member of the class exists, the income shall be accumulated and retained until a member of the class exists or the class closes” (section 35).

shall, unless the Guernsey Receiver-General directs otherwise, be the Crown (section 6).

158. Moreover, the formation of Guernsey foundations is restricted to licensed fiduciaries, and as such will be regulated by the GFSC, thus ensuring compliance with AML/CFT obligations as well as regulatory oversight of the administrators of foundations (see above section A.1.1 *Anti-Money Laundering Regime*). 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, whether a councillor or resident agent, has access to all documents of the foundation.

159. Finally the Guernsey authorities indicated that they intend to introduce regulations which will require foundations to file an annual return with the Registry, subject foundations to striking off the Register for failure to comply with the filing obligations or otherwise being in breach of the Law. Upon strike off the foundation will be dissolved and its assets will pass to the Crown. Moreover a Code of Practice on foundations for licensed fiduciaries is under preparation.

160. There are to date five foundations registered. However, given that the legislation is so new, none was in existence during the period under review, as Guernsey's legal and regulatory framework did not provide for the establishment of foundations in Guernsey. As a result, there could not have been any EOI request in relation to a foundation, and the enforcement of the law on foundations could not be assessed either. Guernsey should monitor the operation of these new provisions and their enforcement.

### ***Enforcement provisions to ensure availability of information (ToR A.1.6)***

161. Guernsey should have in place effective enforcement provisions to ensure the availability of ownership and identity information, one possibility among others being sufficiently strong compulsory powers to access the information. This subsection of the report assesses whether the provisions requiring the availability of information with the public authorities or within the entities reviewed in section A.1 are enforceable and failures are punishable. Questions linked to access are dealt with in Part B.

### ***Filing of information with the tax authorities***

162. Part VI of the Income Tax Law requires every person, to whom a notice has been given, to deliver a return of their income (and any person chargeable with tax that has not received a notice, also has a duty to inform the Director of Income Tax that they are chargeable to tax and make a return

of that income). If a taxpayer has failed to deliver a tax return, but can demonstrate that if it had made a return it would not have been liable to pay any tax, that person is liable to a maximum administrative penalty of GBP 50 (section 190(ii), Income Tax Law). This lower sanction is not available to local trading companies subject to 0% tax and local trading companies with employees. The maximum penalty provided for by the law is GBP 300 with a continuing penalty of a maximum of GBP 50 for each day that the return remains outstanding after the initial penalty has been imposed. In practice, the actual level of the penalty imposed is determined by the Director, on a case by case basis. Whenever a Guernsey or Alderney company or LP has committed an offence under the Income Tax Law, and it is proved that it has been committed with the consent, connivance of, or is due to the negligence of, a director, manager, secretary, etc. of the company, this person is also punishable (section 208A). The Companies, Limited Partnership and regulatory Laws contain the same provision.

163. Guernsey officials have indicated that compliance of the relevant entities with the obligations imposed upon them is very high. During 2012, penalties were imposed in 176 such cases, although up to 2012 proceedings were instituted only in those cases where returns had not been submitted and it was considered, for example, that tax was significantly at risk as a consequence. From the end of 2012 an automatic penalty system for outstanding returns is being introduced which, initially, will impose a penalty of GBP 100 plus GBP 10 per day, in place of the statutory maximum, but will apply to all non-filers.

### *Registration of Guernsey and Alderney Companies*

164. The Guernsey and Alderney Registrars of Companies have powers to request the production of and otherwise obtain such documents, accounts and information which are necessary for the purpose of exercising their functions. However, in Guernsey only, when receiving an application for incorporation of a company or LP, the Guernsey Registrar may rely upon the declaration of compliance in all respects and accordingly is not bound to enquire further as to whether, in relation to any application for incorporation, the provisions of the laws have been complied with. This does not prevent the Guernsey Registrar from rejecting an application or validation when it considers that the provisions of the law have not been complied with (section 19(2), 500 and 505 of Guernsey Companies Law; section 8(5) of the Limited Partnership Law).

165. Failure to comply with a number of provisions of the Guernsey Companies Law and Alderney Companies Law is a criminal offence that on summary conviction entails (similar penalties apply as concerns LPs):<sup>33</sup>

- a fine up to GBP 1 000 against Guernsey or Alderney companies that fail to (properly) keep a register of members, and fail to notify the Registrar of a change of director.
- a fine up to GBP 10 000 against:
  - a Guernsey person, who makes a false declaration of compliance concerning a registration application or annual validation;
  - Guernsey companies that fail to have a resident agent or to notify the Registrar of its change;
  - Guernsey company members, who fail to disclose beneficial ownership information to the resident agent, and resident agents who fail to disclose this information to law enforcement authorities.
- a fine up to GBP 10 000, imprisonment up to three months or both against a person who provides false or misleading information to the Guernsey or Alderney Registrar or the GFSC.

166. The Guernsey Registrar has the power to make orders directing payment of civil penalties, for instance when a company fails to notify a change of director or resident agent to the Guernsey Registrar or does not complete an annual validation of the data maintained by the Guernsey Registrar. A company is however not liable to a civil penalty if a prosecution in respect of the matter has been commenced.<sup>34</sup>

167. In addition, the Guernsey and Alderney Registrars can strike a company off the Register where the company has failed to submit an annual validation (or in the case of Alderney, annual return) or no longer has a registered office (section 355 of Guernsey Companies Law and Sections 107 of Alderney Companies Law). 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). 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, 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

33. Section 513 of the Guernsey Companies Law, in conjunction with the Guernsey Uniform Scale of Fines Law and section 155 of the Alderney Companies Law in conjunction with the Alderney Uniform Scale of Fines.

34. Sections 145, 237, 485, 516-518. In default of payment, the Registrar may enforce payment as if it were a civil debt.

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. 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). The same does not apply to LPs.

168. Every Guernsey company is required to file an annual return at which point they are obliged to certify, via a declaration of compliance, that they hold the relevant information required to be held by their resident agent, and that the company has maintained its register of members as required by law. Filing a false or misleading declaration of compliance is a criminal offence and also may be grounds for disqualification of the directors of that company.

169. In practice, 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.

170. Similarly, the Alderney Gambling Control Commission may issue rectification proposals to licensees believed to be in breach of the Gambling Ordinance setting out the process to remedy. If the licensee does not act on the AGCC's rectification proposal it will issue a hearing notice, in which a regulatory hearing is convened and a financial penalty (not exceeding GBP 25 000), suspension or revoking of the company's eGambling licence may be imposed. The AGCC may also issue formal notices warning companies about the consequences of any repetition of the type of act or omission giving rise to the AGCC's view.

171. In the last three years, the Registrar has exercised his discretion under the provisions of section 355 of the law to strike off companies as follows: 260 companies in 2009, 218 companies in 2010, and 228 companies in 2011 (these companies were struck off due to failure to file annual validations or "registered office not effective", not for failure to maintain ownership information).



*Resident agent*

172. 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. In practice, no company has been struck off on this basis, although one company is currently listed for strike off for not having a resident agent.

173. A resident agent may give a corporate legal owner 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 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 then 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.

174. The Registry is aware that it is the usual practice for CSPs acting as resident agents to file a notice under section 32 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.

175. On average the Registry receives 115 such notices per annum, leading to 73 companies being struck off, 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. If such a pattern did emerge the Registrar would take steps to investigate and refer the matter to the GFSC or Law Enforcement for investigation.

176. When a resident agent fails to maintain a record of beneficial owners, different sanctions may apply, depending on whether he/she is a locally

resident individual director or a CSP. Individuals who fail to comply with their obligations as resident agents may be disqualified by the Court on application by the GFSC or the Registrar from acting as a director in Guernsey for a period of up to 15 years (sections 427-429). A CSP which fails to comply with its obligations as resident agent will also fail to meet the standards required by the Fiduciaries Law (Schedule 1, section 1) and may be subject to different sanctions from the GFSC (see below).

177. In practice, the Registry conducted a review of compliance with the resident agent requirements in 2010 and repeated this exercise in August 2012. The results of that later review are that of the 17 500 companies on the Register, 1 725 obtained resident agent exempt status under section 483 of the Guernsey Companies Law (as per section A.1.1 above, 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 Registry identified 36 companies that require a resident agent to be appointed and has contacted the companies for rectification. Failure to comply will result in the company being struck off the Register of Companies in accordance with Part XX of the law. Companies will be struck off on this basis in 2013, as appropriate.

### *Regulated Business Activities*

178. The GFSC has investigation and seizure powers to obtain information relating to the supervision of financial services business in and outside the Bailiwick.<sup>35</sup> The regulatory requirements on record keeping as set out above as well as the AML/CFT regime overseen by the GFSC are applicable throughout the Bailiwick. Site visits may take place at any or all of the premises where business is conducted or records are maintained by the licensee or associated party (or any person acting on their behalf) and are not limited to premises in the Bailiwick (section 1(2)). Any person who without reasonable excuse obstructs or fails to comply with the GFSC's information request is guilty of an offence and liable to imprisonment for up to six months and/or a fine not exceeding GBP 10 000 on summary conviction, or imprisonment for a maximum of two years and/or a fine of any magnitude on conviction on indictment.

179. The consequences of any significant failure to meet the standards required by the Fiduciaries Law (Schedule 1, section 1), the handbooks and the relevant enactments include: (i) revocation of the fiduciary licence; (ii) Public

---

35. Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 8; Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance of 2008.

Statements made under section 11C of the Financial Services Commission Law; or (iii) imposition of a financial penalty of up to GBP 200 000 (section 11D). Furthermore, a person who performs a regulated activity without obtaining a fiduciary licence from the GFSC or in contravention of the conditions of such a licence is guilty of an offence and may be required to:

- repay monies accepted from or paid over by clients (section 1(3) in conjunction with section 32);
- on summary conviction, pay a fine not exceeding GBP 10 000 and/or be liable to imprisonment for a term not exceeding three months (section 1(3) in conjunction with section 47); or
- on conviction on indictment, pay a fine of any magnitude and/or be liable to imprisonment for a term not exceeding two years (section 1(3) in conjunction with section 47).

180. The GFSC also has powers to approach the court to wind up a prescribed business if the person carrying on the prescribed business has contravened the Prescribed Businesses Law in respect of that business, or in order to counter financial crime, or the financing of terrorism (section 3 of the Prescribed Businesses Law), to appoint inspectors (section 6 of the Prescribed Businesses Law), to impose conditions (regulation 8 of the Prescribed Business Regulations), and to approach the court to disqualify individuals from being involved with prescribed business (section 15 of the Prescribed Businesses Law).

181. In practice, applications for disqualifications of directors are 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.

182. The GFSC's powers also include the ability to dis-apply the exemption in the Fiduciaries Law for individuals from licensing where they hold six or fewer directorships (section 3 of the Fiduciaries Law), to revoke licences (section 8 of the Fiduciaries Law), to impose conditions (section 9 of the Fiduciaries Law), to prohibit individuals from performing specified functions or all regulated activity (section 17A of the Fiduciaries Law), to appoint inspectors (section 24 of the Fiduciaries Law).

183. Sections 11C and D of the Financial Services Commission Law provide for public statements and discretionary financial penalties to be imposed by the GFSC for non-compliance by financial services businesses with

the regulations and rules. Sections 13 and 14 of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 provide for discretionary financial penalties and public statements for non-compliance by prescribed businesses with the regulations and rules. Since 1996, the GFSC has made five prohibition orders, as referred to in section 34F(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, section 28B(1) of the Insurance Business (Bailiwick of Guernsey) Law, 2002, section 18B(1) of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 and sections 17B(1) of each of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 and the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended in each case. Under these prohibition orders, the GFSC has prohibited the individuals named in the orders from carrying out some functions. One of these prohibitions orders has been issued in relation to significant AML/CFT failings.<sup>36</sup> In some cases, the GFSC imposed penalties/sanctions following an onsite visit, if not satisfied that the verification of ownership and identity information is satisfactory. Following the imposition of the penalty/sanction the business had to carry out the necessary remediation, monitoring of which was carried out by the GFSC.

184. Further, since 1996, the GFSC has issued two public statements under section 11C of the Financial Services Commission Law, one of which was issued in relation to significant AML/CFT failings. Sixteen warnings have been issued by the GFSC in addition to the listing of bogus banks and other financial institutions the GFSC maintains. Other sanctions have also been imposed in relation to AML/CFT breaches.

### *Conclusion*

185. Enforcement provisions are in place in respect of the relevant obligations to maintain ownership and identity information for all relevant entities and arrangements. The 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 respect of the timely submission of income tax returns and annual validations, Guernsey has a high compliance rate. In practice, 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 some occasion within 180 days.

---

36. [www.gfsc.gg/fiduciary/news/pages/directors-of-kingston-management-\(guernsey\)-limited-\(in-administration\).aspx](http://www.gfsc.gg/fiduciary/news/pages/directors-of-kingston-management-(guernsey)-limited-(in-administration).aspx).

### Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.
Phase 2 rating
Compliant.

## A.2. Accounting records

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

186. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records. The obligation to maintain reliable accounting records are found in most of the laws governing the various types of entities covered by this report, and in the Income Tax Law and Regulations. During the period under review, Guernsey received 10 requests relating to accounting information and provided the requested documents.

### *General requirements (ToR A.2.1)*

#### *Relevant entities' governing laws*

187. Every Guernsey company must keep accounting records which are sufficient to show and explain its transactions and which are such as to disclose with reasonable accuracy, at any time, the financial position of the company at that time (section 238 of the Guernsey Companies Law). The accounting records must be kept at the company's registered office or in such other place as the directors think fit (sections 30 and 239). If the records are kept at a place outside Guernsey, a copy updated at least every six months must be kept in Guernsey. A company which fails to keep accounting records is guilty of an offence and liable on summary conviction to a fine up to GBP 10 000 (section 242).

188. In addition, companies must prepare individual or consolidated accounts in accordance with generally accepted accounting principles (Generally Accepted Accounting Principles or International Financial Reporting Standards) that include a profit and loss account and a balance sheet (section 243).

189. Under the Alderney Companies Law, companies need to keep accounting records at their registered office (or other appropriate place) which are sufficient to show and explain the company's transactions for a period of at least six years from the date on which they are made (section 74). A company which contravenes this provision is guilty of an offence and liable on summary conviction to a fine not exceeding GBP 5 000 (section 155(b)).

190. LPs must keep accounting records (i) sufficient to show and explain the partnership's transactions, (ii) such as to disclose with reasonable accuracy the partnership's financial position at any time, and (iii) sufficient to ensure that the partnership's balance sheet and profit and loss account are prepared properly (Limited Partnerships Law, section 15). Records must be kept in Guernsey, or, if kept abroad, accounts must be sent to Guernsey at least every six months.

191. In an ordinary partnership, partners must render true accounts and full information of all things affecting the partnership to any partner or his personal representatives (Partnership Law, section 27). There is no general obligation to keep books and records in Guernsey. These obligations are now supplemented, however, by newly enacted requirements in the Income Tax Law (see *Tax Law* below).

192. The Trusts Law requires trustees to keep accurate accounts and records of their trusteeship (section 25). Guernsey's authorities interpret this provision, together with the obligation of trustees to give information to other persons concerned with the trust (section 26), as requiring that all documentation and records necessary to enable the trustee fully and accurately to account to the beneficiaries as to the state and amount of the trust property must be retained and available. There is no requirement that the records be kept in Guernsey.

193. Moreover, trustees will be subject to the common law requirements on trustees, which include a fiduciary duty to the beneficiaries to keep proper records and accounts of their trusteeship. Guernsey authorities confirmed that the common law requirements are those principles as set out under English common law. It is a well established principle of English common law that it is the "duty of a trustee to keep clear and distinct accounts of the property he administers and to be constantly ready with his accounts".<sup>37</sup>

194. Such accounts should be open for inspection at all times by the beneficiary and should trustees default in rendering such accounts, the beneficiary is entitled to apply for an order of the court to obtain the accounts. In such

---

37. The Trustee must allow a beneficiary to inspect the trust accounts and all documents relating to the trust. See *Halsburys Laws of England* Vol. 48, 4<sup>th</sup> Edition, para 961 and 962.

instances trustees would be held liable for paying the costs of such an order and in certain cases may also be removed and/or lose their licence to operate as trustees. Furthermore where trustees are found guilty of active breaches of trust or wilful default or omission, they may be held personally liable for any loss.<sup>38</sup> Guernsey trust law being based heavily upon English trust law, these principles of English common law apply equally to any trustees of a trust governed by Guernsey Law. However, it remains that should a beneficiary not sue the trustee, no other sanction is available against a trustee that does not keep proper accounts. Guernsey authorities have explained that during the period 2009 through 2011 they have not encountered any issues with trustees failing to keep appropriate records and have received information from trustees when needed. These obligations are now supplemented, however, by newly enacted requirements in the Income Tax Law (see *Tax Law* below).

195. Where a charity entity (company, partnership or trust) is required to register under the NPO Law, it must make, keep and retain records of all financial transactions (with whosoever made) in order to evidence the application or use of the organisation's assets, funds and income (NPO Law, Schedule 1, section 8(1)). Such records must be sufficiently detailed to enable verification that the organisation's assets, funds and income have been applied or used in a manner consistent with the purposes, objectives and objects of the organisation, as stated (section 8(2)(b)).

196. Section 22 of the Foundations Law provides that the accounting records must be sufficient to show and explain the foundation's transactions, the foundation's financial position at that time, and to enable the foundation officials to ensure that the foundation's accounts are prepared properly and in accordance with any relevant enactment for the time in force. These obligations are supplemented by newly enacted requirements in the Income Tax Law (see *Tax Law* below).

197. Under the AML/CFT regime, financial services businesses and lawyers, accountants and estate agents are obliged to keep records of documents on their transactions carried out with, by or on behalf of their clients, in the course of both domestic and international business (FSB Regulation 14, as clarified by the FSB Handbook). Such records must include: (i) the name and address of the customer, beneficial owner and underlying principal; (ii) if a monetary transaction, its amount; (iii) an account name and number by which it can be identified; (iv) details of the counterparty, including account details; and (v) the date of the transaction.

---

38. *Lewin on Trusts*, 17th Edition, p. 627, 1198 and 1199.

*Tax law*

198. The Income Tax Law itself does not impose any obligation to keep accounting records. It nonetheless provides that every person required to fill in a tax return must furnish to the Director of Income Tax such accounts or other information as he may require (certified, if he so requires, by an accountant, who is in turn subject to the AML/CFT regime; section 68). In practice, any persons carrying on a business (whether an individual, a trustee, a partner of a partnership or a company) must submit their accounts together with their tax returns. Companies are also required to submit a copy of the annual financial accounts along with the income tax return form.

199. The Income Tax (Keeping of Records, etc) (Guernsey) Regulations, 2006 (Record Keeping Regulations) imposed some obligations to keep particular records and underlying documents, varying according to the type of income. The requirements are the same whether a business is carried on in Guernsey or elsewhere, and the records should be updated regularly. Up until July 2012, the Record Keeping Regulations required any persons filing a tax return to retain all records (and supporting documents) in respect of their business and property income (sections 1 and 2) but only records which were used in making the entries on their tax return in respect of other income (section 3). Therefore, such regulations did not impose an obligation to keep records with respect to income from sources other than businesses and property that trace financial transactions not relevant for tax purposes (e.g. non-business expenses that are not linked to a deduction claim). The Income Tax (Keeping of Records, etc) (Amendment) Regulations, 2012, which entered into force on 1 July 2012, amended the Regulations and now records and documents are to be kept in respect of a business, whether or not the person is required to make an income tax return to the Director of Income Tax in Guernsey.

200. In addition, the Amendments also deal with the absence of a statutory obligation to keep records related to non-business or property income when these records were not used for making entries on the tax return. Persons in receipt or possession of income other than business income or income from letting property are now required to keep and maintain records of all amounts received, arising or accruing; the names or descriptions of the persons or sources from whom the amounts were received or arose or accrued, and details of the periods involved (new section 3 of the Record Keeping Regulations).

201. The Amendments also clarify that where records or documents required to be made, maintained, kept or retained under the Record Keeping Regulations are kept or retained outside Guernsey, there is an obligation to ensure that those records remain under the control or power of the person on whom the obligation rests, and that effective arrangements are in place



to ensure that the records can be made available in Guernsey if the Director of Income Tax requires (section 4A of the Record Keeping Regulations). A person who without reasonable excuse fails to comply with this duty is guilty of an offence and liable on summary conviction to a fine not exceeding GBP 10 000 and the Director of Income Tax may by order impose a penalty not exceeding GBP 2 500 (sections 4A(2) and 5(1)(a) of the Record Keeping Regulations).

202. The 2012 amendments ensure that Guernsey meets the international standard on the availability of accounting information.

### *Underlying documentation (ToR A.2.2)*

203. The Guernsey Companies Law, the Alderney Company Law, the Partnership Law, the Limited Partnership Law and the Trusts Law do not expressly impose an obligation to retain underlying documentation, such as invoices, contracts, etc. In particular, the Guernsey Companies Law does not expressly impose an obligation that accounting records reflect details of all sums of money received and expended, all sales and purchases and other transactions, and the assets and liabilities of the company.

204. LPs must keep accounting records that contain day to day entries of all monies received and expended (Limited Partnerships Law, section 15). Similarly, the Foundation Law gives the council of the foundation the duty to maintain records at its registered office in Guernsey (section 22, and Schedule 1, paragraph 2). The accounting records shall in particular contain day to day entries of all sums of money received and expended by the foundation, the matters in respect of which the receipt and expenditure takes place and a record of the assets and liabilities of the foundation. In addition, Section 52(1) defines the term “accounting records” as including all underlying documentation, such as invoices, receipts and contracts, and details of property endowed upon the foundation (including the name and address of the person who endowed the property). The council member who breaches this duty is liable for any loss or depreciation in value of the foundation property resulting from the breach (section 28).

205. According to Guernsey’s authorities, the fiduciary duty of directors of companies, partners or partnerships and trustees, 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. According to Guernsey authorities, 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. Guernsey’s authorities have indicated that the term

“accounting records” means not only the books of account/nominal and other ledgers, but also the underlying documentation (primary records including invoices, cheque stubs, banks statements etc.) which support whatever is posted to the books.<sup>39</sup>

206. No case law or other authoritative sources have been provided to support this interpretation. However, the matter is now clarified thanks to the 2012 amendments. As noted above under section A.2.1, however, pursuant to the Income Tax (Keeping of Records, etc) (Amendment) Regulations, 2012, the Record Keeping Regulations have been amended to apply to a 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. As a result, supporting documents required include underlying documents, whatever income they relate to, and whether or not they support a tax return (sections 2 and 3 of the Record Keeping Regulations). These include (without limitation) contracts, leases, licences or other agreements, vouchers and receipts, or where in relation to any goods purchases there are no such supporting documents the name and address of the supplier of those goods.

207. The 2012 amendments ensure that Guernsey meets the international standard on the availability of underlying documentation to accounts for all relevant entities.

### ***5-year retention standard (ToR A.2.3)***

208. Guernsey companies and LPs must keep their accounting records for at least six years.<sup>40</sup> A trustee is under an implicit duty to keep such records for the duration of his role (Trusts Law, section 25). 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. It is noted, however, that these record-keeping obligations are not expressly extended under the laws mentioned in this paragraph to cover underlying documentation. With respect to liquidated companies, the Registrar currently maintains all filings in perpetuity.

39. The Guernsey Society of Chartered and Certified Accountants has also confirmed that, as a matter of practice, it regards the term “accounting records” as including the underlying documentation in line with the fiduciary duties.

40. Section 239 of the Guernsey Companies Law and section 15 of the Limited Partnership Law, respectively. If a company is wound up and struck off for any reason, its property becomes *bona vacancia* and belongs to the Crown (and in practice administered by Her Majesty’s Receiver-General, section 369). Guernsey authorities indicate that this includes accounting records.

209. The Record Keeping Regulations have been amended in 2012 by the Income Tax (Keeping of Records, etc) (Amendment) Regulations, 2012 in particular to extend the retention period. Any person in receipt or possession of any income or profits arising or accruing from the carrying on of a business must maintain accounting records and underlying documentation relating to that business and retain them for six years. The six year period starts from the end of the year in which a tax return has been delivered, or, when no return is delivered concerning the income, from the end of the year in which the relevant accounting period of the business ends (section 1). This provision would in particular cover partners of a partnership as it is in the nature of the partnership that partners are carrying on a business (section 1(1) of the Partnership Law). The same obligation to keep documents for six years continues to apply in relation to tax returns delivered by persons in receipt or possession of any income arising from the ownership of any land or building situate in Guernsey or elsewhere (section 2).

210. Section 3 of the Regulations (as amended) also provides for the maintaining of accounting records in relation to all other income received, as well as supporting documentation relating to that income. All legal persons must maintain these records for a period of six years. Similarly, natural persons are only required to maintain the records related to income not deriving from business and the letting of property for a period of two years, except where the record or document relates to the income of a trust or foundation. Trustees must therefore maintain the records for six years in respect of the income of a trust. Similarly, the foundation must keep its accounts for six years. The 2012 amendments therefore ensure that Guernsey meets the international standard on the retention period of accounting records and underlying documents.

211. Finally, the 2012 amendments to the Record Keeping Regulations set clear rules in relation to records kept outside Guernsey: records must remain within the control or power of the person that must maintain them. 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 (new section 4A). The Guernsey authorities indicated that they considered that the requirement set out in this section of the amendment was always an implicit obligation, therefore, the amendment to the regulations was viewed as putting the matter beyond doubt.

#### *Availability of accounting records in practice*

212. In practice, the Director of Income Tax is responsible for the enforcement of the record keeping obligations of the Records Keeping Regulations (as amended). Enforcement measures are conducted during the normal tax investigation process: if a taxpayer's records form part of the review being

undertaken, their conformity with the Regulations would also form part of that review.

213. Sanctions are provided for in the Records Keeping Regulations (as amended). Pursuant to section 5(1), failure to make, maintain, keep or retain accounting records and underlying documentation as required by regulations may result in an administrative penalty not exceeding GBP 2 500. Further, pursuant to section 6, a person who without reasonable excuse fails to make, maintain, or keep accounting records as required under 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, he/she is required to keep under the Regulations; or makes false, deceptive or misleading statements; or produces or furnishes accounting records he/she knows or has reasonable cause to believe to be false, he/she 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.

214. In addition, the Guernsey income tax return includes a statement to the effect that the necessary records have been maintained as well as highlighting the possibility of penalties or prosecution if the person making the return fails to make/keep the appropriate records. 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 Records Keeping Regulations are normally dealt with together with the offence of failure to make a correct return. No breach of the accounting obligations were detected through an EOI request.

215. Several of Guernsey's exchange of information partners reported that they regularly request accounting information, which was provided within 90 days. Types of information requested included entire business records, copies of invoices, ledger data, transaction data and annual accounts and publicly available accounting information.

### *Conclusion*

216. In conclusion, 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 Income Tax Record Keeping 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. Together, these obligations result in Guernsey

being able to provide accounting information to its exchange of information partners when requested.

217. However, whilst no issues have arisen to date in relation to any EOI request received by Guernsey, Guernsey only recently enacted the Income Tax (Keeping of Records, etc) (Amendment) Regulations 2012, pursuant to which records and underlying documents are to be kept for a business irrespective of whether it is required to make an income tax return, and for at least five years, and with respect to non-business or property income. Accordingly, the effectiveness and enforcement of the amended statutory obligations in practice could not be assessed during the period under review, and the impact of these new provisions on effective EOI should be monitored by Guernsey.

### Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Phase 2 rating	
Largely Compliant.	
Factors underlying recommendations	Recommendations
Guernsey has no enforcement experience following changes to the provisions on the availability of accounting information made in 2012.	The implementation and enforcement of the new legal provisions on the availability of accounting information should be monitored.

## A.3. Banking information

Banking information should be available for all account-holders.

### *Record-keeping requirements (ToR A.3.1)*

218. Access to banking information is of interest to the tax administration only if the bank has useful and reliable information about its customers' identity and the nature and amount of financial transactions. Banking information is available in Guernsey primarily as a result of the AML/CFT obligations on the identification of clients and the keeping of transaction records.

### *Banking laws*

219. There are 32 banks in the Bailiwick, all deposit-taking businesses,<sup>41</sup> currently licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (Banking Supervision Law). In order to perform their activities, deposit-taking businesses must obtain a licence granted by the GFSC (sections 1 and 6) and meet the minimum criteria for licensing under Schedule 3, which include maintaining systems of control and record keeping of the institution for business undertaken or contemplated and developing such systems (sections 4(3) and (4)(b)). When establishing a business relationship or carrying out an occasional transaction, financial services businesses must perform customer due diligence checks, as described above (see section ToR A.1.1 *Anti-Money Laundering Regime*).

220. In 2000, banks became subject to AML/CFT regulations and AML/CFT guidance (this replaced guidance issued in 1991). In addition, a separate Code of Practice was issued in 2003 to provide licensed banks with guidance as to their duties, the requirements and standards to be complied with and the procedures to be observed (e.g. identification, record-keeping, etc.). The Code of Practice sets out the obligations in respect of record keeping, which include that the licensed banks should (paragraphs 4 and 5):

- keep and preserve appropriate records of their business for at least the periods required by applicable law;
- ensure that policies, practices and procedures include a sound and adequately controlled credit granting and investment process; and
- ensure that the assessment of any credit decision includes not only an assessment of the identity and geographical location of the borrower and other parties involved in the credit transaction, but also of the quality and geographical location of any assets forming the collateral for such credit transactions (for example the quality, type and location of any property and real estate).

221. Whilst the contravention of the provisions of the code is not in itself considered an offence, this can be taken into account by the courts in determining any questions arising in any legal proceedings, criminal or otherwise (section 36A(4)). Therefore, contravening the code can be used as evidence against the licensed bank.

222. In addition, regulation 14 of the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 requires that a financial services business keeps a “transaction document” or a copy thereof for five years.

---

41. As defined in section 3. Collective investment schemes are subject to similar obligations under the Protection of Investors Law.

### *Transfer of funds*

223. Under the Transfer of Funds (Guernsey) and (Alderney) Ordinances, 2007 (section 2), any transfers of funds in any currency which are sent or received by a payment service provider established in Guernsey and Alderney must be accompanied by complete information on the payer, including name, address and account number.<sup>42</sup>

224. The payment service provider of the payer must, before transferring any funds, verify the complete information on the payer and such verification must be on the basis of documents, data or other information obtained from a reliable and independent source (section 2(3)), subject to a *de minimis* limitation of EUR 1 000 (GBP 800, section 2(5)). Where information on the payer accompanying a transfer of funds is missing or incomplete, the payment service provider of the payee must take this into account in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether, accordingly, a disclosure is required under the AML/CFT legislation (section 7(1)).

225. The payment service provider of the payer (section 2(6)) and the payee (section 7(2)) must keep records of any information received by it on the payer for five years from the date of the transfer of funds in question. Unjustified failure to comply with the requirements described above is considered an offence, punishable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding GBP 10 000 or both, or punishable on conviction on indictment to imprisonment for a term not exceeding five years, a fine or both.

### *Anti-money laundering and countering the financing of terrorism regime*

226. Under the AML/CFT regime, a bank engaged in a “correspondent banking” relationship<sup>43</sup> must take additional steps in relation to enhanced customer due diligence including gathering sufficient information about a respondent institution to understand fully the nature of the respondent’s business and documenting the respective AML/CFT responsibilities of each institution (FSB Handbook, paragraph 5.4).

- 
42. Except that: the address of the payer may be substituted with his date and place of birth (where relevant), his customer identification number or national identity number, and, where the payer does not have an account number, the payment service provider of the payer shall substitute it with a unique identifier, which allows the transaction in question to be traced back to that payer.
43. A “correspondent banking” is a relationship which involves the provision of services by one bank (correspondent bank) to another bank (respondent bank) (section 5(1) of the FSB Regulations).

227. Furthermore, a bank is forbidden to (sections 8(1) and 8(2) of the FSB Regulations):

- set up anonymous accounts or accounts in names which it knows, or has reasonable cause to suspect, to be fictitious,
- enter into, or continue, a correspondent banking relationship with a shell bank<sup>44</sup> or with a respondent bank known to permit its accounts to be used by a shell bank.

*The availability of banking information in practice*

228. In practice, the supervision of banks is conducted by the banking division of the GFSC, which comprises 12 employees. In addition to desk-based analysis of regulatory and statistical returns and other relevant data, all banks licensed by the GFSC are subject to on-site inspections. Moreover, banks must submit to the GFSC annual audited financial statements, and notify the GFSC of significant events or changes within the business as they arise. The GFSC reviews and approves firms and individuals who act as controllers, directors or managers of the licensee's business.

229. Over the three year period under review, the banking division of GFSC conducted 39 onsite inspections of banks, all conducted in Guernsey. GFSC has indicated the high level of compliance to be found in the course of these inspections.

230. In the years 2009 through 2011, Guernsey received a total of 32 requests, of which 8 pertained to banking information, from several EOI partners. The information provided related to bank account statements, signature card/account opening documents, supporting documents (cheques, deposit slips, wire transfers, etc.), loan documents, credit/debit card information, and transactional documents (e.g. trust documents, contracts, etc.). Guernsey's competent authority has exercised its authority to obtain information pertaining to banks operating throughout the Bailiwick of Guernsey, and has been able to send the requested information within 90 days. No issues were raised by Guernsey's exchange of information partners regarding the availability of banking information.

---

44. Defined under section 8(3)(c) as a bank that has no physical presence in the country or territory in which it is incorporated and licensed and which is not a member of a group of bodies corporate which is subject to effective consolidated supervision.



*Conclusion*

231. The combination of the AML/CFT legislation as well as the regulatory regime for licensed banks and other financial institutions ensures that all records pertaining to accounts as well as related financial and transactional information are available. These obligations result in Guernsey being able to provide banking information to its exchange of information partners in practice when requested.

**Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant.</b>



## B. Access to Information

### Overview

232. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, and accounting information in respect of all such entities. This section of the report examines whether Guernsey’s legal and regulatory framework gives to the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice. As noted in the introduction, Guernsey and Alderney are a single jurisdiction for taxation purposes. They have a single competent authority and every reference to “Guernsey” in this part of the report covers Alderney.

233. 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 Income 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 or her possession or power such information. Guernsey’s competent authority also has access to bank information for EOI purposes. The competent authority also 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.

234. In practice, Guernsey’s competent authority has accessed information by a two-stage process of informal and formal requests, by which taxpayers or third parties are given the opportunity to provide information requested for EOI purposes voluntarily prior to the formal mechanism of notices being

instituted (except in cases where such a process would be seen to prejudice the inquiry, which has not happened in the period under review for EOI purposes, but has happened for EOI purposes subsequent to the period under review). The legal provisions on access powers were amended in July 2012, and the competent authority will now normally issue formal notices to GFSC licensees, from the outset, as they are usually prevented from answering informal requests in view of their fiduciary responsibilities towards their clients. The competent authority has always received the information requested to answer an EOI request either after an informal request or a subsequent formal notice.

235. The competent authority has never had to impose sanctions or employ search and seizure powers to compel the production of information in relation to an EOI request. In no instances has attorney-client privilege been invoked by the persons from whom information has been requested and there is no possibility of invoking bank confidentiality provisions to prevent access to information for EOI purposes.

236. The rights and safeguards that apply to persons in Guernsey appear to be compatible with effective exchange of information. In practice, no appeal has ever been presented to the Royal Court with respect to an EOI request.

## **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).

237. Guernsey’s competent authority is the Director of Income Tax. His functions include the “obtaining and exchanging of information” pursuant to an “approved international agreement”,<sup>45</sup> meaning an agreement which includes exchange of information provisions in line with the standard, and which has been confirmed as such by Ordinance of the States. All Tax Information Exchange Agreements (TIEAs) signed and ratified by Guernsey

45. Pursuant to section 205(2) of the Income Tax Law, the Director of Income Tax’s functions include, for the purposes of the implementation and administration of any approved international agreement (within the meaning of section 75C), the obtaining and exchanging of information in relation to (a) income tax, or (b) tax of a class or description set out in the agreement. Section 75C expressly authorises the Director of Income Tax to use his information gathering powers for EOI purposes based on a TIEA or DTC, with the appropriate provisions.

meet this definition, while Guernsey’s old Double Tax Conventions (DTCs) with Jersey and the United Kingdom do not. Guernsey has remedied the situation with the United Kingdom by concluding a TIEA with it and has renegotiated its DTC with Jersey. Therefore, to date, the competent authority can use its information gathering powers to answer an EOI request from all jurisdictions with which Guernsey has concluded a TIEA which is approved and in force, but cannot use its information gathering powers to answer any request from Jersey. The authorities of Guernsey indicated that the States would be asked to specify that each DTC that Guernsey concludes and which contains the equivalent of Article 26 of the OECD Model, is an “approved international agreement” (this is currently underway for the DTC signed with Malta).

238. Guernsey’s competent authority has broad information gathering powers, as set out in sections 75A to 75Q of the Income 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”.

239. Before gathering information, the competent authority must be satisfied that the request for information is made in accordance with the provisions of, and for the purpose of, the TIEA or DTC pursuant to which the request is made (section 75C(2)). In practice, to date, in just over half of the cases, Guernsey’s competent authority has not been satisfied *prima facie* that the request for information was made in accordance with the TIEA. As detailed under section C.5 *Responses and status updates within 90 days in practice*, three requests were based on TIEAs not in force (9% of all cases) and in the case of 44% of EOI requests, Guernsey has sought clarifications from the requesting Party due to the information provided by the requesting Party in its request being considered by the Guernsey competent authority as incomplete, unclear, or not sufficiently precise.

### ***Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)***

240. Guernsey’s competent authority has broad information gathering powers, as set out in sections 75A to 75Q of the Income Tax Law.<sup>46</sup> The competent authority may by notice in writing require a person to provide him with documents and furnish information deemed to be relevant to any

46. In June 2009, the Director of Income Tax issued A Guide to Income Tax Information Powers, published on the internet at [www.gov.gg/taxpractioners](http://www.gov.gg/taxpractioners) (last updated in December 2012). Without legal status, this Guide explains what information gathering powers are available to the Director.

liability to tax to which that person or another person may be subject, or the amount thereof (section 75A and 75B).

241. The competent authority may obtain information from a taxpayer (or any other person) who has in his or her 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.<sup>47</sup> 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.

242. Third parties from whom information can be requested include States Departments and their officers, the GFSC, the Company Registrar and other similar regulatory bodies. They also include banks and any person acting in an agency or fiduciary capacity such as nominees and trustees.

243. The competent authority can require not only documents or information, but he can also require a taxpayer or third party to give an explanation of, and to answer questions relating to, any document or information produced, and to attend a meeting as required for that purpose (section 75D).

244. Any person who fails to comply with a notice issued under sections 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 to 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, destroys or otherwise dispose of a document which has been requested by an informal request or a notice issued by the Director of Income Tax, or by a court order, he is punishable by imprisonment up to two years and/or a fine up to GBP 20 000. The same sanction is applicable against persons who knowingly or recklessly make statements or provide information which are false, deceptive or misleading (section 75L).

245. Pursuant to sections 75A(2) and 75B(3) of the Income Tax Law, the Director of Income Tax must systematically request information informally before issuing a formal notice, unless he believes that that would prejudice the inquiry. Although the law does not distinguish between inquiries related to domestic or international tax purposes, the Guide to Income Tax Information Powers indicates that the Director will normally have to use his formal powers to provide information to another jurisdiction. Guernsey's authorities clarify that this is particularly the case when information is held by accountants, fiduciaries and others owing a duty of confidentiality to their clients. The Guernsey authorities advise that it is the Department's

---

47. This covers, among others, information held by anyone for anti-money laundering purposes.

experience that regulated entities generally require the protection of complying under a formal notice, given their fiduciary duty towards their clients. As a result, the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance of July 2012 introduces a new section 75B(3A) to the Income Tax Law which states that the Director of Income Tax “may” rather than “must” give a GFSC regulated entity the option to voluntarily deliver information on third parties, and can therefore issue a formal notice in the first place.<sup>48</sup> The Guernsey authorities have also amended the Guide to Income Tax Information Powers to clarify the procedure in December 2012.

### *Use of Access powers in practice*

246. Guernsey’s exchange of information partners reported that they regularly request ownership and accounting information. The requested information was provided by Guernsey after the competent authority had used its information gathering powers in most cases (the competent authority was able to exchange information extracted solely from publicly available sources on three occasions during the period under review and to answer twelve questions included in EOI requests by simply consulting the Guernsey Company Registry website). Information was generally gathered from third parties, including banks, corporate service providers, trust service providers, etc.

### A two-stage approach

247. Guernsey’s competent authority has traditionally utilised a two-stage process of requesting information, comprising an informal request and then, where necessary, a formal notice, whether the request was addressed to the person subject of the request or a third party. The practical steps taken follow internal guidelines set for the handling of EOI requests. However, as noted above, the necessity for an informal approach is now disengaged in the case of regulated entities such as banks or fiduciaries bound by confidentiality obligations, that require a formal notice in practice.

48. This new provision applies in respect of a person or body of persons, corporate or unincorporated, holding or deemed to hold a licence, registration or authorisation from the Guernsey Financial Services Commission under the following Laws: (a) the Protection of Investors (Bailiwick) Law, 1987, (b) the Banking Supervision (Bailiwick) Law, 1994, (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick) Law, 2000, (d) the Insurance Business (Bailiwick) Law, 2002, (e) the Insurance Managers and Insurance Intermediaries (Bailiwick) Law, 2002, (f) the Registration of Non-Regulated Financial Services Businesses Law, 2008, and (g) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Treasury and Resources Department.

248. When requesting information informally, the Income Tax Office (ITO) may do so in person by email or by telephone, but in all instances a subsequent letter confirms the details of the conversation. The letter explains that the Director has received a request under an international agreement as a result of which he requires information from that person, and contains a summary of the process that the Director will follow in accordance with section 75A or section 75B of the Law, and an outline of the information and/or documentation being requested. The “informal approach” letter enables the person to review the information being requested and to discuss any concerns the person may have. A response confirming whether the person is able to provide the information voluntarily is required within 7 days of the date of the “informal approach” letter being provided.

249. Once the “informal approach” process has been completed, if the persons confirm they will provide the information or documents voluntarily, they are required to provide them within the next 30 days. In a majority of such instances, the competent authority received the requested information at this stage. In exceptional circumstances, the 30 day deadline may be increased where the persons have provided credible grounds why they require more time to collate the information, but this has occurred only once in an EOI case during the period 2009 through 2011.

250. In most cases, a formal notice is requested by the person having received the informal letter (see comments above on the fiduciary duties of GFSC supervised entities to their clients). If the persons require a formal Notice, it is prepared (normally within the next three working days) and sent via recorded delivery or if the Notice is delivered by hand the recipient is required to sign for its receipt. The Guernsey competent authorities indicate that if some information is missing in the answer from the third party, the third party would be required to provide a written response detailing the reasons for the omission. In the case of a perceived deficiency in the third party’s compliance with the request, it will be necessary to liaise with the third party to establish the reason why some of the information is missing. This has not happened in the period under review.

251. The Guernsey authorities have indicated that their practice will evolve with the benefit of experience, following the July 2012 amendment on the introduction of exceptions to the two-stage approach. Where appropriate, the initial request for information will be in the form of the formal notice under section 75B(2) of the Income Tax Law in relation to persons or a body of persons holding or deemed to hold a licence, registration or authorisation from the GFSC under the regulatory laws.



## The minimum prerequisites to exercise access powers

252. At the time of the on-site visit, the competent authority's internal guidelines set out some rules on the content of a formal notice to third parties. In particular, they noted that in formal Notices issued in cases involving international agreements it was necessary to include... "the name, address and any other information (provided by the requesting Party) concerning the identity of the subject of the request (for example, bank account number, date of birth, company registration number, etc)". In addition, the Guide to Income Tax Information Powers indicated that the competent authority will "always" name the taxpayer when gathering information from a third party. This policy might have caused serious problems in practice, had the EOI partner provides identifying information that would have not included the name and address of the concerned person, as set in the Commentaries to Article 5(5) of the Model TIEA.

253. In practice, Guernsey's competent authority has not received a request where the taxpayer was not identified. The Guernsey authorities have indicated that had the issue arisen, in practice they would have followed the Commentaries to the Model TIEA, and it was never intended that a request would only be processed if the name and address of the concerned person was available. As a consequence of the Peer Review process, the Guernsey competent authority has amended the Guide in December 2012 to clarify the matter by replacing "always" with "always, if it is available", noting that "there are some circumstances when a valid request may be possible even though the precise identity of the person is not held". Similarly the internal guidelines of the competent authority have also been amended to clarify this issue. The Guernsey authorities indicate that in that case the formal notice would indicate that the name of the taxpayer is not known.

254. The internal guidelines also address the issue of the identification of the third party supposed to be in possession of the requested information, in a flexible way. The guidelines acknowledge that in a number of EOI requests, the identity of that person may not be completely clear, and that this should not be a ground for declining the request: attempts should be made to establish the correct identity using public record information, and records already in the Income Tax Office possession.

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

255. The information gathering powers of the competent authority are not subject to Guernsey requiring such information for its own tax purposes. In practice, no issues have, therefore, arisen.

### *Compulsory powers (ToR B.1.4)*

256. In addition to the power to issue notices mentioned above, the Director of Income Tax can apply for a court order, and ask the Bailiff to issue a search warrant (instead of making an order).

257. First, the competent authority may ask the Royal Court to make an order for the delivery of documents, information or explanations (sections 75E to 75H). The order can be issued against a taxpayer or a third party, when they have not complied with a notice from the competent authority, or the information or documents provided are false or incomplete. It can also be issued when the competent authority is satisfied that there are reasonable grounds for suspecting that if such a notice was served, it would not be complied with, documents would be destroyed or falsified, or this would seriously prejudice the performance of the Director's functions.

258. Second, pursuant to section 75I of the Income Tax Law, the competent authority can in serious cases ask the Bailiff (i.e. President of the Royal Court) to issue a warrant, authorising him to enter and search premises, and to seize documents. The Bailiff may issue such a warrant if he is satisfied that a Court order has been made but there are reasonable grounds for suspecting that it has not been complied with, or any information or document furnished pursuant thereto is false, misleading, inaccurate or incomplete; or that there are reasonable grounds for suspecting that if a Court order were made, it would not be complied with, relevant documents would be destroyed or falsified, or the making of the order might significantly prejudice an inquiry.

259. Failure to comply with a court order amounts to a contempt of court punishable by a fine or imprisonment. Similarly, a person who obstructs the search is punishable with a fine up to GBP 20 000 and/or imprisonment up to one year.

### *Use of compulsory powers in practice*

260. Guernsey authorities indicated that in practice taxpayers and third parties comply with requests to produce information for EOI purposes, and there have been no instances in any EOI cases where sanctions (monetary penalties or imprisonment) had to be imposed. However, such sanctions have been applied in two domestic tax investigations against persons refusing to provide information (in application of section 75L of the Income Tax Law). Similarly, no court order or search and seizure warrant has been necessary to compel the production of information in any EOI case to date.

261. Guernsey's EOI partners have not raised any issues with respect to non-compliance by Guernsey taxpayers or third parties. The Guernsey authorities have indicated that they would be ready to use these compulsory

powers in EOI cases, should a taxpayer or third party refuse to provide the requested information.

262. As a matter of comparison, Guernsey's tax authorities have not yet sought court orders under the Income Tax Law in domestic cases either. Nonetheless, the tax authorities have occasionally resorted to search and seizure under other legislation (as a consequence of the involvement of the Police in domestic criminal tax enquiries).

### ***Secrecy provisions (ToR B.1.5)***

#### *Confidentiality rules – corporate secrecy*

263. Section A.1 noted that some ownership and identity information is confidential. 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 his functions (Guernsey Companies Law, section 151).

264. For the other provisions, section 75M of the Income Tax Law lifts the duty of confidentiality of 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. Thus the confidentiality obligation or restriction is not contravened by the making of a disclosure pursuant to a notice, order or warrant as described in section B above. Similarly, when the competent authority directs a person to not disclose to any person the existence of the notice, this person must comply with this direction notwithstanding any contractual or other obligation to which the person is subject (see section B.2 below).

265. The competent authority can therefore have access to all the information qualified as confidential in section A of this report. For instance resident agents will have to disclose beneficial ownership information about a company to the competent authority even though the Companies Law does not list the Director of Income Tax in the list of persons that have access to the information (section 490). Section 75M also applies to accountants and auditors.

266. As for attorney-client privilege in Guernsey and Alderney, section 75D indicates 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. At the time of the Phase 1 review, it was determined that the definition of attorney-client privilege in Guernsey and Alderney covered any communication between a professional legal adviser (i.e. advocate or solicitor) and his or her client, or between the legal

adviser or his or her client and any other person, made in connection with the giving of legal advice or legal proceedings. Items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege. This definition appears to include not only information enclosed within a communication between an attorney and client but also within a communication between a client and another person who is not an attorney-at-law, which is beyond the exemption for attorney-client privilege under the international standard.

267. During the on-site visit of the Phase 2 review, officials of the Attorney General's office in Guernsey confirmed that legal professional privilege covers two broad circumstances, pursuant to the principles of English common law: legal advice privilege and litigation privilege. In addition, it was clarified that 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. This interpretation, illustrated by a narrow set of examples, is within the standard (and the Guernsey authorities have provided local case law supporting the statement that Guernsey courts follow the UK precedent on attorney-client issues).

268. In practice, the Guernsey authorities and Guernsey's exchange of information partners have indicated that no cases have occurred in practice where information was requested from a lawyer or any other person subject to a professional confidentiality obligation which was not supplied.

### *Bank secrecy*

269. 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 provision on confidentiality of information obtained by the licensed fiduciaries under section 43.<sup>49</sup> Section 75M of the Income 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

---

49. In both laws, disclosure of information is permitted "for the purpose of enabling or assisting a relevant supervisory authority in a country outside the Bailiwick to exercise its functions" (section 44(f)).

apply equally to banks, or any other financial institution, as they would do to any other person who is subject to these provisions.

270. Personal data is also protected under the Data Protection (Bailiwick of Guernsey) Law, 2001, which incorporates the principles of the EU Data Protection Directive (95/46/EC). Nevertheless, 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.

271. As noted above under B.1.1, the competent authority's recently updated internal guidelines prescribe that formal notices to third parties should include the name and address (or other identifying information if the name is unknown) of the subject of the request. The Guernsey authorities provided assurance that this amendment to the internal guidelines is a clarification of Guernsey's competent authority's existing policy should an actual EOI request have been received where the name or address (or both) had not been available but other identifying information had been provided, together with sufficient detail to clarify the foreseeable relevance of the request. Guernsey's authorities have confirmed that if an EOI partner requests information on a bank account without providing the name of the account holder, then the Guernsey competent authority would be able to take the appropriate steps to obtain the information.

272. In practice, as described in section ToR A.3.1 on *the availability of banking information*, in the years 2009 through 2011, Guernsey received a total of 32 requests, including 9 on banking information. In these nine instances, bank information was accessed by the Competent Authority requesting information primarily from the bank itself. Banks have in all cases provided the requested information after having received a formal notice. The Guernsey authorities attribute this to the fact that banks in Guernsey have extensive experience of dealing with Production Orders served on them by law enforcement authorities, a procedure which has been in existence for a number of years.

#### **Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant.</b>

## B.2. Notification requirements and 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.

### *Not unduly prevent or delay exchange of information (ToR B.2.1)*

273. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

### *Notification and “tipping-off”*

274. The Income Tax Law contains no provisions requiring notification of the person who is the object of a request for information. Guernsey confirmed this in a letter released to all competent authorities of partner jurisdictions, dealing with interpretation and practical matters surrounding its EOI agreements (see below section C.1 on *Exchange of Information Mechanisms*). The letter, dated 16 December 2011, stated that “...there is no provision within the Guernsey Income Tax Law requiring [the Director] to notify the person who is the subject of the TIEA request that [the Director] has received a request relating to them”.

275. On the contrary, the Income Tax Law expressly provides for the possibility to prevent the taxpayer from being aware of the information gathering activities taking place. The competent authority may direct a third party to whom he requests information that he must not disclose to any person (including the taxpayer) any information which is likely to prejudice the inquiry to which the notice relates or the performance by the competent authority of his functions. Thus, for example, the competent authority is able to require a bank to not disclose to the concerned account-holder or his accountant that a request for information has been made. Failure to comply with this obligation is punishable on summary conviction to a fine up to GBP 20 000, unless the third party can show that he took all reasonable precautions to avoid the disclosure (section 75B(4)). The same anti tipping-off provision applies concerning court orders. The anti tipping-off provision applied only to formal notices of section 75B(2) and not to requests for voluntarily delivering information under section 75B(3). This has been changed pursuant to an amendment made by the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2012.

276. This provision is however subject to the appeal rights of the third party to which the notice is made. In this case, the appeal is heard in court in public and the taxpayer may be aware of the procedure.

277. Whilst it is not a requirement of the Income Tax Law, the Director of Income Tax has decided that where a request for information has been made under an international agreement with another territory, he will only make a direction that the third party is prevented from disclosing if:<sup>50</sup>

- there is a similar “no tipping-off” provision in the domestic tax legislation of the other territory (since June 2011 the Guide to Income Tax Information Powers has clarified that the Director will consider that there is a “no tipping-off” provision if the other territory is not required to name the person who is the subject of the request when making a similar request for information in their own jurisdiction),
- that territory confirms that it would exercise that power if it received a request for information from Guernsey, in similar circumstances,
- the other territory has specifically asked for the “no tipping-off” direction to be made, and
- the other territory has confirmed that disclosure would seriously prejudice the assessment or collection of tax in the other territory.

278. This rule is in conformity with the OECD Model TIEA, which states that the requesting jurisdiction must state that the request is in conformity with its law and administrative practices. In practice, Guernsey has been asked, on one occasion, in 2012 (just after the review period), to exercise the “anti-tipping off” provision in relation to a request received under a TIEA on the basis of the “serious prejudice” condition. Guernsey agreed and the requested information was provided. Guernsey has never refused to apply the anti-tipping off provision. The Guernsey authorities have advised that they have had the same experience when the “anti tipping off” provision was exercised in domestic tax investigations.

### *Appeal rights*

279. The Income Tax Law contains appeal rights to the Royal Court against the decisions of the competent authority (section 75K). Any person to whom the competent authority has given a notice may within 30 days apply for the consent of the Bailiff to an appeal. The decision of the Bailiff may itself be appealed against to the Court of Appeal within seven days. Guernsey’s authorities explain that the Bailiff’s consent is required, in order to ensure that

50. “A Guide to Income Tax Information Powers – what they are and when and how they will be used”.

appeals are not lodged on improper grounds<sup>51</sup> or designed to delay or frustrate the investigative powers of the competent authority. Ultimately, the decision of the Royal Court can be appealed to the Court of Appeal.

280. The notice of the competent authority 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 Income Tax Law.

281. During the course of the three year period under review, there were two applications for the consent of the Bailiff to an appeal in EOI cases, and none in domestic cases. In each case, the application led to the Income Tax Office redrafting and re-issuing the notice, whereupon the application for appeal was subsequently withdrawn. Guernsey officials explain that, with experience, they have improved their drafting of formal notices in recent years (see section C.5.2 on *Organisational process and resources*).

**Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant.</b>

51. The main grounds for an appeal are that the decision to issue a notice was outside the competent authority’s powers, beyond the scope of the law, or unreasonable in law, or that a material error as to the facts had been made. These appeal rights are the same for domestic and international tax purposes, albeit that the last ground of appeal (“or that a material error as to the facts had been made”) is, however, restricted in relation to notices issued under section 75C (relating to EOI requests) by the provisions of section 75K(6)(b)(i) and (ii).



## C. Exchanging Information

### Overview

282. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report examines Guernsey's<sup>52</sup> network of exchange of information agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

283. On 21 February 2002, Guernsey made a political commitment to cooperate with the OECD initiative on transparency and effective exchange of information. Since 2008, Guernsey has actively sought to extend its network of EOI agreements, and by 2010 had signed 15 further agreements in addition to the pre-existing agreement with the United States which was concluded in 2002. Subsequently, the number of EOI instruments more than doubled. In total, Guernsey has signed TIEAs and DTCs with 40 jurisdictions, of which 30 are now in force (and Guernsey has completed its procedures with most of the others). Guernsey continues to actively develop its EOI network, which covers a significant number of relevant partners and has a number of agreements finalised and awaiting signature.

284. The TIEAs signed by Guernsey generally follow the OECD Model TIEA and in the few instances where provisions are included which could be seen to potentially have the effect of applying the agreement more narrowly than the international standard, Guernsey's competent authority provided assurance to its treaty partners that such provisions will not be interpreted or applied in such a manner (see below) and Guernsey no longer includes some

---

52. As noted in the introduction, Guernsey and Alderney are a single jurisdiction for taxation purposes. They have a single competent authority and all EOI mechanisms cover Alderney; every reference to "Guernsey" therefore also covers Alderney.

of these provisions in newly negotiated instruments. In practice, these provisions have not created any problems.

285. The confidentiality of information exchanged with Guernsey is protected by obligations imposed under the TIEAs, as well as in its domestic legislation (oath of secrecy), and is supported by sanctions for non-compliance. However in practice the competent authority sometimes discloses to third parties more than what is necessary for gathering the information and the authorities are reconsidering their practice. The restrictions to exchange certain types of information in accordance with the international standards, such as business or professional secrets, or information the subject of attorney-client privilege, or where the disclosure of the information requested would be contrary to public policy, are also incorporated in domestic law as well as in its TIEAs. No issues related to these matters have been raised in practice.

286. During the three year period under review (2009 through 2011), Guernsey received 32 requests for information from 8 different jurisdictions, with a rapid increase, from 1 request in 2009, to 9 in 2010, and 22 in 2011. Guernsey's main exchange of information partners are France, the Netherlands, Sweden and the United Kingdom (under its DTC with Guernsey, despite the fact that it does not meet the standard). Guernsey has been able to respond to information exchange requests in a timely manner. Updates and interim responses are commonly sent. Feedback from peers demonstrates that, despite a high rate of requests for which clarifications are sought by Guernsey before being processed (44%), very cooperative relationships between competent authorities have meant efficient exchanges of information in practice.

### C.1. Exchange of information mechanisms

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

287. Guernsey<sup>53</sup> is signatory to TIEAs with 38 jurisdictions: Argentina, Australia, Bahamas, Canada, Cayman Islands, Chile, China, Czech Republic, Denmark, Faroe Islands, Finland, France, Germany, Greece, Greenland, Iceland, India, Indonesia, Ireland, Italy, Japan, Latvia, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, St Kitts and Nevis, San Marino, Seychelles, Slovenia, South Africa, Sweden, Turkey, the United Kingdom and the United States.

288. It is also a signatory to DTCs with three jurisdictions: Jersey, Malta and the United Kingdom. Guernsey's DTCs with the United Kingdom and

53. The TIEAs provide that "Guernsey" means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law." They do not specify whether Jethou is included.

Jersey, signed in 1952 and 1955 respectively, do not meet the international standards, in particular because Guernsey's competent authority cannot exercise its information gathering powers to answer requests made based under these treaties.<sup>54</sup> In practice, under these DTCs, Guernsey is unable to provide information in response to requests by the United Kingdom or Jersey for identity, accounting and banking information, if the entities concerned are not required to file the related documents under Guernsey's Income Tax Law as such information would be outside the scope of the treaties. In practice, over the last three years, certain information could not be exchanged, for example banking information or ownership information concerning exempted entities, as well as some accounting information (which was not available under taxation laws in Guernsey). This issue was solved with the signature of a TIEA between Guernsey and the United Kingdom in 2009 which meets the international standards for EOI.

289. On 16 December 2011, Guernsey released a letter to the competent authorities of all its EOI partners, dealing with interpretation and practical matters surrounding its TIEAs, including:

- Guernsey's interpretation of the Article on "Exchange of Information on Request" in its TIEAs;
- clarifying the timescales in which EOI requests will be dealt with by Guernsey;
- detailing the extent to which Guernsey is able to deal with EOI matters electronically;
- Guernsey's process and procedure for clarifying EOI requests from treaty partners;
- clarifying Guernsey's policy on its "no tipping-off" provision in its Income Tax Law; and
- the contact details of the competent authorities of Guernsey and a model template for requests.

---

54. As mentioned on Part B above, those DTCs, which date from the 1950s, have not been incorporated as "approved international agreement" by Ordinance under domestic tax law. In any event, the provision on exchange of information (Article 10) does not conform to the international standards as it does not follow Article 26 of the Model Convention: "The taxation authorities of Guernsey and [Jersey/the UK] shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provision of this Arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to taxes which are the subject of this Arrangement...".

290. This letter, which is also available on the website of the Income Tax Office ([www.gov.gg/tiea](http://www.gov.gg/tiea)), is further analysed in the sections below.

### *Other forms of information exchange*

291. In addition to exchanging information on request, since 2005, Guernsey has agreed to implement measures equivalent to those contained in the EU Directive on the Taxation of Savings Income (2003/48/EC). As a result, Guernsey has entered into reciprocal bilateral agreements with each EU Member State. Those agreements provide for (i) a 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 a voluntary disclosure. As from July 2011, Guernsey moved to automatic exchange of information with the competent authority of the jurisdiction in which the beneficial owners of such interest and similar payments reside.

### ***Foreseeably relevant standard (ToR C.1.1)***

292. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions”, i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 1 of the OECD Model TIEA set out below:<sup>55</sup>

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

293. Guernsey’s TIEAs and its recent DTC with Malta provide for the exchange of information that is “foreseeably relevant” for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States.

294. Nonetheless, there are a number of provisions found in Guernsey’s TIEAs which may have the effect of departing from the standard. In almost

---

55. Article 26(1) of the Model Tax Convention contains a similar provision.

all of Guernsey’s TIEAs (except for those with Canada, China, France, Japan, and Turkey), a provision is included which provides:<sup>56</sup>

The [competent authority of the] requesting party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

295. Whilst similar, this is an important variation on the statement required by Article 5(5)(g) of the OECD Model TIEA, which refers to “all means available in its own territory”. Under the wording contained in Guernsey’s TIEAs, this could capture other means including, e.g. TIEAs with other jurisdictions. That is, it may have the effect that until a requesting party has sought the information from its other relevant EOI partners, it may not make an EOI request to Guernsey. Guernsey’s authorities do not interpret the language in this way, however; and to make the position clear, the letter of clarification of 16 December 2011 by the competent authority to all current and prospective TIEA partners confirmed this.

296. The letter of clarification between competent authorities reads, in part:

It is ... theoretically conceivable that a person may interpret the Article “Exchange of Information on Request” as requiring the requesting Party to use all its TIEAs with other jurisdictions before the requesting Party could exercise its rights under the TIEA with Guernsey.

For the avoidance of doubt, I wish to clarify that, in such TIEAs, I do not interpret the first reference in the TIEA in any wider context... than contained in the Article [5 of the Model TIEA] on the “Possibility of Declining a Request”.

297. The Guernsey TIEA request template requested TIEA partners to confirm that “all reasonable measures have been pursued in our territory”... The assessment team found that at no time, to date, has an issue arisen in relation to any particular request for EOI in connection with the interpretation of these terms.

298. Guernsey’s authorities have also indicated that they have developed a new Model request template that is now being used (but is not a mandatory

---

56. In addition to this wording, all the TIEAs signed by Guernsey also require the requesting party to make a statement to this effect which is equivalent to Article 5(5)(g) of the OECD Model TIEA.

requirement), which specifies that the requesting party must have used all means “within its own territory”.

299. Under most of the TIEAs concluded by Guernsey, the requested party is under no obligation “to provide information which is neither held by the authorities nor in the possession of nor obtainable by persons who are within its territorial jurisdiction”. The relevant provisions under those TIEAs use the words “obtainable by” instead of the expression “in control of” used in Article 2 of the OECD Model TIEA. Guernsey’s authorities have assured that their official interpretation of the words “obtainable by” in place of “control of” does not reduce EOI and it may actually widen its effectiveness. The words “in control of” are missing from Article 2 of the TIEA between Guernsey and the United States. In its TIEAs with Chile, France and Turkey, Guernsey includes all three terms: “in the possession of or in the control of or obtainable by”. No issue has arisen in practice in relation to any request for EOI in connection with the interpretation of these terms.

300. In all other regards, the TIEAs concluded by Guernsey meet the “foreseeably relevant” standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA.

301. In practice, Guernsey, in its letter dated 16 December 2011, invited all its TIEA partners to use its model template when making a request. The template requires, in conformity with Article 5(5) of the Model TIEA, that the requesting jurisdiction provides certain information to demonstrate the foreseeable relevance of the information requested: the identity of the person under examination or investigation and of the person believed to be in possession or control of the information; a statement of the information or documents sought, including the format in which to provide it; the tax purpose for the request; grounds to believe that the information is available in Guernsey; a statement of conformity with the laws of the applicant party; and a statement on measures pursued domestically.

302. The template also requests from the applicant jurisdiction that it provides the reasons why the information requested is considered to be foreseeably relevant to the tax administration and enforcement within its territory, with respect to the person identified, meaning a summary of relevant details of the examination or investigation which indicates that the information requested is foreseeably relevant. Guernsey’s competent authority highlights that the use of the template is optional and presents a “best case” situation (as confirmed in the EOI Manual used by the EOI officers in Guernsey). It appears that use of Guernsey’s request template enables information to be exchanged more efficiently in some cases.

303. In cases where Guernsey is of the view that the content of the request, the circumstances that led to a request, or foreseeable relevance of the

requested information are not clear, its competent authority routinely seeks clarifying or additional information from the requesting jurisdiction (to date, this has occurred in 44% of the requests received) in order to be able to action the request. The requested information affected by the clarification is gathered only after a response to the clarifications sought is received. A partner in particular questioned the extent of some requests for clarification and their impact on the response time. In this case, the partner had to provide extracts from its tax law and explain the tax rules applicable in its jurisdiction, for Guernsey to ascertain the nexus between the information requested and the application of the law. It is expected that as the relationship between Guernsey and this peer is built up, the number of requests for clarification will reduce in future and the effectiveness of their cooperation will be further improved.

304. Finally, the template for TIEA requests used during the period under review asks the requesting party to provide the name and address of the taxpayer and the name and address of the holder of information. In practice, Guernsey accepts elements less precise to identify third persons. As noted above under section B.1. Guernsey’s authorities have confirmed that their practice is to accept identification elements that may not be as precise as a name and address. The new TIEA template now makes clear that as many fields as possible (not necessarily all) should be completed.

305. Guernsey’s authorities have advised that in two EOI requests from a peer there are ongoing discussions regarding the ability to exchange the information. One case relates to the foreseeable relevance of the requested information, in light of the information the Guernsey authorities initially obtained, and the other case (which falls out of the period currently under review) relates to an issue of the entry into force provisions of the TIEA. Guernsey and the relevant peer are in discussions with a view to resolving the issues.

### ***In respect of all persons (ToR C.1.2)***

306. For exchange of information to be effective it is necessary that a jurisdiction’s obligations to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

307. A number of Guernsey’s TIEAs do not contain under Article 1 the wording “with respect to persons liable [or subject] to such taxes”. Nevertheless, it is noted that the personal scope of those TIEAs is not restricted to, but rather includes, information related to such persons. Therefore, it can be concluded that none of Guernsey’s TIEAs is restricted to certain persons such

as those considered resident in or nationals of one of the contracting jurisdictions, or precludes the application of EOI provisions in respect to certain types of entities.

308. Article 26(1) of the Model Tax Convention indicates that “the exchange of information is not restricted by Article 1”, which defines the scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States. Guernsey’s recent DTC with Malta contains this language.

309. In practice, no difficulties have arisen with respect to this issue, relating to agreements which meet the international standards.

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

310. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Convention and the OECD Model TIEA, which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

311. The TIEAs concluded by Guernsey (under Article 4.4 or 5.4), and its recent DTC with Malta, explicitly forbid the requested jurisdiction to decline to supply the information requested 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.

312. In practice, no difficulties have arisen with respect to this issue, relating to Agreements which meet the international standards.

### ***Absence of domestic tax interest (ToR C.1.4)***

313. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

314. All of the TIEAs concluded by Guernsey (usually under Article 4.2 or 5.2) explicitly permit the information to be exchanged, notwithstanding



that it may not be required for a domestic tax purpose. Similarly, Guernsey's domestic powers to access relevant information are not constrained by a requirement that the information must be required for a domestic tax purpose.

315. In line with Article 26(4) of the Model Tax Convention, Guernsey's recent DTC with Malta contains explicit provisions obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest.

316. In practice, no difficulties have arisen with respect to this issue, relating to Agreements which meet the international standards.

***Absence of dual criminality principles (ToR C.1.5)***

317. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to the information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

318. None of the TIEAs, nor the recent DTC with Malta, concluded by Guernsey apply the dual criminality principle to restrict the exchange of information.

319. In practice, no difficulties have arisen with respect to this issue.

***Exchange of information in both civil and criminal tax matters (ToR C.1.6)***

320. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

321. All of the TIEAs and the recent DTC with Malta concluded by Guernsey explicitly or implicitly provide for the exchange of information in both civil and criminal tax matters.

322. In practice, Guernsey's authorities have advised that they have exchanged information in both civil and criminal tax matters and no difficulties have arisen with respect to this issue (except to the extent that in some cases it has been necessary to enter into discussion with the requesting Party to clarify whether a case was criminal or civil in nature).

***Provide information in specific form requested (ToR C.1.7)***

323. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

324. All of the TIEAs concluded by Guernsey (under Article 4.3 or 5.3) allow for information to be provided in the specific form requested, i.e. the form of depositions of witnesses (except for Japan) and authenticated copies of original records, to the extent allowable under the requested jurisdiction's domestic laws. There are no restrictions in Guernsey's recent DTC with Malta or laws that would prevent it from providing information in a specific form.

325. In practice, Guernsey is prepared to provide information in the specific form requested to the extent permitted under Guernsey law and administrative practice, and had for instance provided authenticated copies of original documents when requested. No difficulties have arisen with respect to this issue.

***In force (ToR C.1.8)***

326. Exchange of information cannot take place unless a jurisdiction has EOI arrangements in force. Where EOI arrangements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

327. Guernsey has signed agreements which allow for the exchange of information for tax purposes with 40 partners. Of the 38 TIEAs and 3 DTCs (there being both a DTC and TIEA with the United Kingdom), 30 are now in force. As regards the agreements not in force (9 TIEAs and the 1 recent DTC), Guernsey has completed all domestic steps necessary to bring these into force except for its recently concluded agreements with Chile and Malta. The status of Guernsey's agreements is set out in Annex 2.

***Be given effect through domestic law (ToR C.1.9)***

328. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

329. The United Kingdom has constitutional responsibility for the defence and international relations of the Crown Dependencies. However, in certain circumstances, the Crown Dependencies may be authorised to represent their own interests internationally by a process of entrustment, through letters of entrustment from the UK Government. A Letter of Entrustment is a formal means by which Her Majesty’s government transfers the competence to conclude international agreements to Guernsey. To date, this has occurred in relation to the process of concluding Guernsey’s agreements with the 27 EU Member States in accordance with the Directive on the Taxation of Savings Income (2003/48/EC) and for the purposes of concluding TIEAs with OECD, G20 and EU members, as well as jurisdictions that have substantially implemented the internationally agreed tax standard according to the Progress Report. New letters of entrustments can be solicited to conclude DTCs or TIEAs with other jurisdictions.

330. Section 75C(4) of the Income Tax Law indicates that an EOI agreement or arrangement made between the States of Guernsey and the government of another territory is considered as “approved” when it is “specified... by Ordinance of the States”. Guernsey’s authorities explain that this Ordinance is usually enacted as part of the ratification process upon signing of the TIEA or DTC. All Guernsey’s EOI arrangements, except for its TIEA with Chile and its DTC with Malta have been approved by an Ordinance and are therefore considered “approved international agreements” under section 75C of the Income Tax Law.

### Determination and factors underlying recommendations

Phase 1 Determination	
<b>The element is in place.</b>	
Factors underlying recommendations	Recommendations
The DTC between Guernsey and Jersey only provides for the exchange of information which is available to the competent authorities under their respective income tax laws. A revised DTC, which has been negotiated, is expected to be signed shortly.	Guernsey should sign and bring into force a revised DTC with Jersey which includes exchange of information provisions in line with Article 26 of the Model Convention, or equivalent to those contained in Guernsey’s TIEAs.
Phase 2 rating	
<b>Compliant.</b>	

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

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

331. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

332. In application of its policy decision to expand its EOI network, Guernsey wrote in 2010 to all OECD, G20, EU (as well as some other relevant) jurisdictions, with which it did not already have a DTC or a TIEA, inviting those jurisdictions to enter into negotiations. Of the 38 TIEAs Guernsey signed, 35 are with Global Forum members, including 15 G20 countries. In addition, TIEA negotiations have been held with 28 Global Forum jurisdictions, two of which are G20 countries), and DTC negotiations have been held with nine jurisdictions (all of which are Global Forum members) (see Annex 2). Requests by Guernsey to negotiate TIEAs were declined or have not been responded to by three jurisdictions. In addition, Guernsey has approached a number of jurisdictions to propose the negotiation of a TIEA or DTC and five jurisdictions have responded that they are considering Guernsey's offer. Guernsey publishes, and regularly updates, on its tax administration website "Guernsey's policy on Tax Information Exchange Agreements (TIEAs) and Double Taxation Agreements (DTCs)", which details its negotiation programme.

333. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised the assessment team that Guernsey had refused to negotiate or conclude a TIEA with it.

**Determination and factors underlying recommendations**

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Guernsey should continue to develop its EOI network with all relevant partners.
Phase 2 rating	
Compliant.	

**C.3. Confidentiality**

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

334. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

***Information received: disclosure, use, and safeguards (ToR C.3.1)***

335. The TIEAs and recent DTC concluded by Guernsey meet 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 TIEAs into its domestic law, and are also reflected in specific domestic provisions.

336. Treaty obligations are complemented by domestic law. All persons who are concerned with tax matters in Guernsey are required, under section 206 of the Income 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, pursuant to section 205(3) of the Income 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.<sup>57</sup> These laws cover all the basic principles necessary for an adequate level of protection for natural persons, including laying down specific rules concerning processing of sensitive data. The application of these standards is guaranteed by judicial remedy and by independent supervision carried out by the authorities, such as the Data Protection Commissioner, invested with powers of investigation and intervention. These laws incorporate the principles of the EU Data Protection Directive (95/46/EC), which provides that data cannot be transferred to a territory that does not have adequate protection of personal data.

337. The confidentiality obligations have some exceptions, primarily in relation to the States Social Security Department (Income Tax Law, section 206A). Law Enforcement may 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, however.

### ***All other information exchanged (ToR C.3.2)***

338. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

339. The confidentiality provisions in Guernsey's EOI agreements and domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves.

---

57. [www.gov.gg/CHttpHandler.ashx?id=2502&p=0](http://www.gov.gg/CHttpHandler.ashx?id=2502&p=0)  
[www.gov.gg/ccm/treasury-and-resources/income-tax/website/publications/codes-of-practice/data-protection.en](http://www.gov.gg/ccm/treasury-and-resources/income-tax/website/publications/codes-of-practice/data-protection.en).

### *Ensuring confidentiality in practice*

340. Physical security is secured in Guernsey by means that all exchanges of information are made or received through the competent authority, and the administrative process of obtaining and collating information is delegated to a restricted number of EOI officers (see further section C.5 below). These officers are all within the Income Tax Office Compliance and Investigation Unit (CIU), which consists of 4/5 staff, and is separate from the Income Tax Office's (ITO) other functions. The competent authority's internal guidelines remind EOI officers of their confidentiality duty and related sanction in case of breach. Guidelines also stress that strict control of the information exchanged should be maintained throughout each stage of the process.

341. Access to premises is secured in Guernsey: the CIU is housed within the Income Tax building, which is a building exclusive to use by officers of the Department. Members of the public are not authorised to enter the building except for limited reception areas, unless accompanied at all times by ITO officers.

342. All records relating to EOI are kept on files separate from the other income tax files, so that it is not available to ITO staff generally and will be restricted only to those persons within the CIU, who each have a unique user ID and password in the case of electronic data. The files with hard copies of correspondence and documents are retained within the CIU in a locked cabinet. With respect to all files stored electronically, all correspondence between the competent authorities and the Guernsey subject regarding the exchange of information are retained in a separate electronic file only available to members of the CIU. Guernsey's servers are secure and firewalled. In some cases, where large amounts of information is received, that information is retained on the ITO's general electronic document management system, for ease of reference in case of query, but access to this is only available to a restricted number of officers, all within the CIU. In this way, it is not possible for any other ITO staff to access EOI information.

343. To perform their access power functions, the Guernsey competent authority discloses part of the information provided in the EOI request to the person from whom the information is requested. The "informal approach" letters and formal notices will include in particular the legal basis for the request, the type of request (investigation, assessment of taxes, etc.), the taxes covered and the identity of the person subject of the request. The template for formal notices indicates that the following information should be included in the notice:

- "The request has been made by the authorised authority designated as the competent authority for the purposes of the relevant Agreement between Guernsey and the [insert Requesting Authority]."

- The request relates to the [enter nature of request], which is in accordance with Article [enter number] of the relevant Agreement, [in relation to [the] person(s) whose liability to [enter name of country] tax is being enquired into, or is being enforced or sought to be enforced (hereinafter referred to as the “Taxpayer(s)”)] OR [in relation to [the] person(s) where prosecution is being sought (hereinafter referred to as the “Taxpayer(s)”)].
- The request relates to [enter relevant tax], which is in accordance with Article [enter number] of the relevant Agreement.

344. Guernsey’s authorities have explained that this was considered to be the minimum level of information which is required to satisfy the provisions of section 75C(2) of the Income Tax Law, and that they do not provide any information which may be considered to breach the confidentiality Article of the international agreements. In particular, Guernsey’s authorities indicate that using the text provided by the requesting Party is restricted to the details of the actual information/documents required from the Guernsey person who is believed to be in possession of the information/documents. The internal guidelines specify that when detailing the information the person is required to produce, the EOI officer could simply copy from the text of the request itself (as far as possible), having agreed the relevant sections of the text with the requesting Party. This practice is followed to ensure that there is no misinterpretation of what the requesting Party is actually seeking by the Guernsey competent authority using alternate language.

345. The amount of information that the Guernsey competent authority discloses to the information holder in such EOI notices as a matter of policy may cause concern with respect to ensuring the confidentiality of requests for information. The Model TIEA and the Model Convention, upon which the EOI agreements of Guernsey are patterned, state as the basic position that any information received by a jurisdiction under EOI must be treated as confidential or secret, and “may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement...” The commentary to the Model TIEA explains that the wording of Article 8 permits the communication of the information to the taxpayer, his proxy or to a witness. It is noted that this permission does not include the communication of the information to a third party (even if he/she is the holder of the requested information).

346. As a matter of practicality, it is generally accepted that a requested jurisdiction needs to disclose information contained in an EOI request as necessary for the requested jurisdiction to gather and provide the requested information to the requesting jurisdiction. However, the amount of



information that needs to be provided may vary depending on the circumstances of each case, including, for example, the type or form of information requested or from whom the information is sought. For example, it may not be necessary for the person who is served an EOI notice to know the identity of the EOI partner's taxpayer in all cases in order to produce the information sought, for instance when accounting records of an entity are requested. The systematic disclosure of such information, which is not otherwise public information, is therefore not in accordance with the principle that the information contained in an EOI request should be kept confidential. The Guernsey authorities are encouraged to ensure that the confidentiality of information contained in EOI requests is adequately protected.

347. The confidentiality of information is ensured during the transmission of information exchanged. All information exchanged by Guernsey is treaty stamped before dispatch to the requesting Party, to indicate that it has been obtained under statutory information gathering powers for the purposes of an EOI instrument with a foreign tax jurisdiction.

348. Guernsey, when exchanging information via mail will always use a courier service including a tracking system. Guernsey also utilises electronic means, e.g. for the purpose of corresponding with partners using encrypted e-mails and CD-Rom. EOI partners who agree to use electronic means of communication are noted on Guernsey's competent authority contact details spreadsheet.

349. Where the e-mail correspondence relates to seeking clarification of the EOI request with the TIEA/DTC partner, it is possible that such e-mail correspondence may, at the request of the requesting Party, be carried out without encrypting the e-mail. In such cases the content will always be anonymised. Guernsey's separate secure email address for such e-mails, [eoigov@gg](mailto:eoigov@gg), is a dedicated e-mail used only for the exchange of information function carried out within the CIU. Access to this e-mail address is restricted to only the Director, Deputy Directors (as competent authorities) and the officers within the CIU (who are permitted to deal with the practical aspects of EOI requests). Guernsey's EOI partners are asked to email the password to unlock the encrypted document separately to one of the officers in the CIU who is delegated to deal with the practical aspects of TIEA requests (so that the encrypted document and the password are not sent to the same e-mail address).

350. The letter of clarification sent to all TIEA partners by Guernsey in December 2011 provided full details on Guernsey's ability to correspond by electronic means and its security requirements.

351. In practice, there have been no cases in which information received by the competent authority from an EOI partner has been disclosed other than in accordance with the terms under which it was provided.

#### Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Phase 2 rating	
Compliant.	
Factors underlying recommendations	Recommendations
The systematic disclosure to third parties of details that are not necessary for gathering the requested information is not in accordance with the principle that information contained in an EOI request should be kept confidential.	Guernsey should not disclose to third parties information that is not needed to obtain the information requested.

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

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

##### *Exceptions to requirement to provide information (ToR C.4.1)*

352. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other listed secret may arise.

353. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and

relating to any such activity cannot be declined because of the attorney-client privilege rule.

354. The limits provided for in the OECD Model TIEA on information which can be exchanged are included in each of the TIEAs concluded by Guernsey. That is, information which is subject to legal privilege; which would disclose any trade, business, industrial, commercial or professional secret or trade process; or which would be contrary to public policy, is not required to be exchanged. The recently concluded DTC with Malta is equally consistent with Article 26 of the Model Tax Convention.

355. 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. Some of the TIEAs signed by Guernsey<sup>58</sup> provide that a requested party “shall use its best endeavours” to ensure that they do not so unduly prevent or delay effective EOI. Similarly, two of its agreements, with the Czech Republic and Germany, provide that “the rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable.” Finally, the TIEAs with Portugal, Romania, Saint Kitts and Nevis, the United Kingdom and the United States do not make any provision to circumscribe rights and safeguards found in domestic law. Nevertheless, it is unlikely that this variation will materially affect the exchange of information to the international standards.

### *Ensuring rights and safeguards in practice*

356. Guernsey officials have confirmed that these 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.

### **Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>Compliant.</b>

58. With Argentina, Australia, Bahamas, Canada, Cayman Islands, Greece, Indonesia, Netherlands, New Zealand, San Marino, Seychelles South Africa and Turkey.

## C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

### *Responses within 90 days (ToR C.5.1)*

357. In order for exchange of information to be effective, it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting authorities. This is particularly important in the context of international cooperation as cases in this area must be of sufficient importance to warrant making a request. Article 5(6) of the OECD Model TIEA provides that:

The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
- b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

358. Guernsey’s TIEAs with the Bahamas, Cayman Islands, Latvia, Poland, Seychelles, and Slovenia use the wording of the Model TIEA. Guernsey’s agreement with Greece adds that the Parties should provide the information no later than 6 months following the date of confirmation of receipt of the request, provided that where circumstances require; both competent authorities may agree on a longer deadline.

359. The majority of Guernsey’s TIEAs do not require the provision of request confirmations, status updates or the provision of the requested information, within the timeframes foreshadowed in Article 5(6) of the OECD Model TIEA. Instead, they provide that the requested Party shall use its best endeavours to forward the requested information to the requesting Party: (i) “with the least possible delay” (ii) “with the least reasonable delay (iii) “as soon as possible”; or (iv) “as promptly as possible”.

360. Guernsey's DTCs and its TIEAs with China, Japan, and the United States do not contain any provisions at all relating to the timeframe for the provision of request confirmations, status updates or the provision of the requested information.

361. There appear to be no legal restrictions on the ability of Guernsey's competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

362. In the letter sent by Guernsey's competent authority on 16 December 2011 to all current and prospective EOI partners which is available on its website (see section ToR C.1.1 *Foreseeably relevant standard*), timelines are outlined: "The timescales included in the OECD Model TIEA are ... used as the basis for determining the timescales for dealing with all requests. Indeed, our internal guidelines are in fact more stringent than the OECD guidelines". The letter clarifies Guernsey's objectives and practice, regardless of the provisions of the TIEA. Guernsey's competent authority acknowledges receipt of requests within 5 working days, sends letters of clarification or advising of a deficient or invalid request within 30 days, and sends a status update within 90 days of receipt of a "complete" request. Guernsey states that a request is considered complete when all the clarifications sought have been given. This could lead to some misunderstandings where the Partner counts the time from the date when the first letter of request is sent to Guernsey.

### *Responses and status updates within 90 days in practice*

363. During the period 2009 through 2011, Guernsey received 32 requests for information<sup>59</sup> from 8 different jurisdictions. In each case, Guernsey sent an acknowledgement of receipt of the request within 5 days. Guernsey has declined to provide information for three requests made under a TIEA that was not yet in force.

364. According to Guernsey's records, Guernsey was in a position to provide a final response within 90 days of the receipt of a complete request (i.e. that includes clarifying information requested from Guernsey, see below) with respect to all EOI partners save one. In that case the majority of the information was exchanged within the 90 day period and the remaining information was exchanged within a 95 day period. In this one case, the Guernsey person (to whom a formal Notice requiring the documents and information had been served) required further time to research their archives and to clarify matters concerning the content of the formal Notice. In this case, a

---

59. Unlike some jurisdictions, Guernsey considers a request is regarded as a single request irrespective of the number of persons involved.

status update letter was sent shortly after the 90 day time limit and with that letter the Director provided all of the documents and information obtained to that date. The outstanding information was then obtained shortly thereafter and the full exchange of all of the requested documents/information was completed within 95 days. In one case, the partner did not consider that Guernsey answered fully and the two competent authorities have discussed and identified a way to address the situation.

365. Guernsey’s practice to take into account “complete” requests as a starting point of its statistics for response time, instead of the initial request letter, triggers some discrepancy between the statistics of the Guernsey competent authority and those of some partners. However, Guernsey was always able to provide the information requested within 180 days of the receipt of the initial request, whether complete or not (but see paragraph 306 regarding one case which is still under reconsideration as the competent authorities had to meet to clarify some misunderstandings on the request).

#### *Clarification issues*

366. Guernsey has sought clarifications from the requesting Party in 14 out of 32 EOI requests received in the period under review (in 3 other cases, the TIEA was not in force and the Guernsey authorities informed the treaty partner accordingly): (some requests involve more than one issue for clarification)

- in 7 instances, the requesting Party did not specify whether the request was criminal or civil, or the period of the review was not stated – these requests for clarification were required because Guernsey’s TIEAs generally enter into effect on different dates for civil and criminal tax matters; the number of such cases should diminish over time;
- in 4 instances, mandatory statements were not provided (e.g. reciprocity or conformity with the law of the requesting jurisdiction) – these requests for clarification should reduce because of improved communication between the competent authorities concerned;
- in 1 instance, the requesting Party requested information about a company it believed to be a Guernsey company, but which was not in fact a registered company in Guernsey;
- in 9 instances Guernsey considered that the specific information requested was unclear, or too wide and thus potentially giving rise to an appeal.

367. In all these cases, a letter was sent to the requesting party within 30 days seeking clarification or consultation on the deficiency of the request. The requesting parties were asked to reply by way of providing a revised

request, to ensure that if an appeal is made against formal notices requiring the production of information, the entirety of the details of the request can be presented to the Court in a single document. As a result, the requests were revised or superseded by different requests in 10 cases. The request was withdrawn in 1 case. In the other 3 cases, the requesting jurisdiction has still to come back to Guernsey. In the 10 cases, where the initial request was revised or superseded by a new request, the Guernsey competent authority provided full information (5 cases were replied within 90 days and 5 within 180 days from the date of the original request).

368. The requested information affected by the clarification is gathered only after a response to the clarifications sought is received (i.e. the rest of the information covered by the request is gathered in the meantime). However, in cases where a request based on an EOI instrument in force is not considered to be valid, but the requested information is publicly available (such as legal ownership details of Guernsey registered companies) the Director has provided the requesting Party with this publicly available information when seeking to clarify the request.

369. Two treaty partners acknowledged that it is generally “challenging” for them to obtain information from Guernsey (as from some other TIEA partners) because the level of details required in the request is significantly different compared with exchange with traditional partners within the European Union. Guernsey has made some significant efforts to make its position clear to its EOI partners, and create good working relationships. It remains that extensive requests for clarification may, in some cases, delay the response. However, such clarifications have not in fact delayed responses to an unreasonable degree. The situation should continue to be monitored and the Guernsey authorities should continue to work closely with their EOI partners to reduce the need for clarifications.

370. Whilst Guernsey often asks for clarifications, its EOI partners have not had to make further enquiries in relation to what could have been determined as an incomplete or inadequate response. Moreover, Guernsey seeks, in all instances, confirmation of completion and requests feedback from its EOI partners following an EOI request, with a reminder note for feedback sent at six weeks and again at 14 weeks, at which time if a response has not been received the request file is considered concluded.

### *An enhanced relationship with peers*

371. Guernsey is very active in building good working relationships with its EOI partners. This starts from the time of the negotiation of a new EOI instrument, continuing with introductory meetings and participation in

multilateral events, and also correspondence updating partners on Guernsey's practice (including use of the EOI Portal for this purpose).

372. During the course of all negotiation of EOI agreements, where feasible, the Director takes the opportunity to meet with the relevant competent authorities. In addition, Guernsey has undertaken a number of independent visits to meet with competent authorities, to explain the Guernsey tax system, Guernsey's access powers and discuss other matters relevant to EOI. Guernsey, together with Spain, raised the idea of the Global Forum organising a meeting of competent authorities (subsequently adopted by the Global Forum in 2012) and provides presentations on Guernsey's EOI systems. Guernsey also holds case specific bilateral meetings with some EOI partners, as required.

373. At or around the time when an EOI instrument enters into force, Guernsey provides a letter to the relevant EOI partner, providing contact details of the competent authority and of 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. The letter contains Guernsey's template request, which it promotes to its EOI partners, for their use when making a request of Guernsey. The purpose of the template (which has been compiled and revised using experience in dealing with actual requests for information) is to be beneficial to both sides by ensuring that the request is compliant with the requirements of TIEAs and Guernsey's access powers legislation. When meetings are held with partners to discuss actual requests for information, the opportunity is also taken to discuss with them (voluntary) use of the template.

374. Inputs from peers praise a cooperative and constructive working relationship with the Guernsey competent authority. Several peers praised Guernsey for its competence and kindness.

### ***Organisational process and resources (ToR C.5.2)***

375. All of Guernsey's TIEAs and the DTC with Malta indicate that the Director of Income Tax or his delegate is the competent authority. The two Deputy Directors of Income Tax are, by law, empowered to act as Competent Authority. One has the title of Deputy Director of Income Tax (Compliance and International), and his main duties include the oversight of the Income Tax Office Compliance and Investigation Unit (CIU) which has prime responsibility for dealing with EOI.



## *Resources*

376. Within the Guernsey Income Tax Office (ITO) all EOI requests received by the competent authority are dealt with in the CIU. Although a CIU has existed within ITO for over twenty years, it consisted of a number of tax inspectors and tax officers carrying out the domestic compliance and investigation work in addition to their other duties. The CIU was restructured, as a standalone unit, to integrate exchange of information work in June 2009 when Guernsey started signing an increasing number of TIEAs. Prior to that date, the Director, Deputy Director and Compliance and International Manager performed the EOI work directly. The CIU remains tasked with dealing with cases of domestic tax evasion/tax avoidance, but its EOI function takes priority. The CIU is headed by a Compliance and International Manager who has one Senior Inspector as Deputy. There are also two Analyst posts and one Support post. These five persons represent 6% of the 85 Income Tax Office full time posts.

377. The competent authority and CIU is composed of experienced tax officials with investigative and accounting backgrounds. The Director is a member of the Association of Certified Fraud Examiners and is a former Inspector of Taxes in the UK tax administration. He also, over more than two decades, investigated cases of domestic tax evasion/tax avoidance and has been in charge of EOI in Guernsey for many years. Both the Deputy Director (Compliance and International) and Compliance and International Manager have completed the HMRC Tax Professional Qualification Programme (Compliance and Investigation training modules), and Financial Investigator training with the National Police Improvement Agency. They have more than a decade of experience in investigating domestic tax evasion/tax avoidance. Both the Senior Inspector and one of the Compliance Analysts are former Police Officers and Detective Constables and both undertook the National Fraud Course and acquired the certification of an accredited Financial Investigator.

378. The Director and the Deputy Director (Compliance and International) have also attended Global Forum assessor training courses (and acted as assessors in Global Forum peer review reports), attended OECD conferences, training courses and seminars in tax crimes, DTC negotiations, and international tax coordination. The Deputy Director (Compliance and International) and the Compliance and International Manager have also attended an OECD EOI course.

379. CIU also receives in-house training and day-to-day guidance from the competent authority. The Income Tax Office produces comprehensive and up-to-date internal guidelines for CIU staff (Procedure Manual on Exchange of Information), as well as a request review template used to review TIEA/DTC requests. When issues arise in cases involving exchange of information,

conferences are held between the Director and/or Deputy Director (and members of the CIU), in order to expedite the resolution of any perceived problems.

380. In turn, the CIU provides training and awareness-raising seminars on EOI matters to governmental agencies, associations and third parties (e.g. financial institutions). Finally, ITO produced a publicly available EOI information pamphlet “A Guide to Income Tax Information Powers – what they are and when and how they will be used”. This demonstrates a whole of community approach in ensuring that all stakeholders are up to date and fully aware of EOI processes and latest developments.

### *Organisational Process*

381. All EOI requests are received by the Director or Deputy Directors, as competent authority. The request is then handed to the Compliance and International Manager for allocation within CIU.

382. The Compliance and International Manager is directly responsible for monitoring performance of the effective exchange of information, and reviews matters on a weekly basis, updated in an EOI spreadsheet maintained on a shared electronic folder within CIU. Comprehensive indicators of performance recorded in the spreadsheet include all data to ensure all requests are processed in a timely and complete matter.

383. The CIU members also use a task and information management software to keep track of deadlines: each stage and deadline corresponds to an alert message for all members of CIU, to ensure that all officers within CIU are aware of what is expected to be received from third parties.

384. A physical file is maintained for each EOI request, each file being given its own unique reference number. The file is continually kept up to date with the latest correspondence.

385. Requests are acknowledged within 5 working days, of the date of receipt. (In a case where the TIEA/DTC is not yet in force, this is addressed in the acknowledgement letter). Letters of acknowledgment, where no information is being exchanged, may be signed by a member of staff within CIU. In all cases where information is being exchanged or any perceived deficiencies are being addressed the letter is signed by a competent authority.

386. An initial review is carried out within 14 working days, against a review checklist, which is continually updated to provide a “snapshot” of the current position of the request. All of the documents are retained for a period of six years to ensure that should the original documents not be received by the requesting Party, or other issues arise, the Director will be able to provide

duplicate copies or consult the information exchanged in an attempt to deal with the matter.

387. If the EOI request includes a request for consideration of the Director making an application to the Royal Court for a court order, in accordance with sections 75E to 75H of the Income Tax Law, it must detail the reason(s) why the case is considered so serious that the normal administrative Notice (in accordance with sections 75A or 75B) would not be effective or may prejudice their enquiry. The same requirement will exist where the requesting Party seeks consideration for the Director to make an application to the Royal Court for a warrant to search any premises and to seize material considered to be relevant to the requesting Party's request. In all such cases the matter should be discussed with the Deputy Directors/Director within the initial 14 day review period. No such cases have arisen to date.

388. When the review of the request is completed, the request file is handed to a competent authority for their approval of the CIU officer's conclusions to reject or process the request or seek clarifications from the requesting jurisdiction, and sign the correspondence to the requesting party. The CIU officer then takes the appropriate action, as directed by the Deputy Directors/Director. The CIU officer directly performs all the actions required to answer the EOI request (nothing is delegated to other ITO officers).

389. All of the documents received from a taxpayer or third party are scanned into an electronic document management system by an administrative officer. When reviewing the documents, the officer stamps each of them to ensure that the documents are used only for the purposes authorised in the EOI agreement and kept confidential in the requesting jurisdiction (see section C3 on *Confidentiality*). If the response received from the taxpayer/third party is considered deficient, the CIU officer may correspond with the requesting competent authority to discuss any issue raised by the third party to enable the Director to determine what further action, if any, should be taken. The CIU officer also transmits the information/documents obtained at that stage so as to ensure the investigation in the requesting Party is not being unduly delayed. In these cases the covering letter clearly sets out what the issues are, what documents may be missing and what action is being taken to attempt to resolve the matter. Peers of Guernsey noted their appreciation for this way of handling cases.

390. If after 90 days from the date of the TIEA/DTC request being considered "complete", it is not possible to provide the requesting Party with all of the requested information, a letter is sent to the requesting Party explaining the situation, including an estimate of when the competent authority anticipates being in a position to fully answer the request. In practice, this has happened only once during the three years under review. A peer indicated that in one case it had not received a formal status update after 90 days

of sending a request to Guernsey, but this was unnecessary because the two competent authorities remained in contact throughout the processing of the request.

391. Following the exchange of the information Guernsey sends a reminder when it has not received a notification of receipt and feedback from the requesting Party. If after a period of 6 weeks a response has not been received, a reminder is issued. If after a further 8 week period a response has not been received the request file is considered as being concluded and placed in the “concluded” drawer of the filing cabinet.

### *Conclusion*

392. The CIU’s Procedure Manual on Exchange of Information and request review template used to review TIEA requests ensure that effective internal processes are followed and that exchange of information in practice is aligned with the international standard. Additionally the development of sound internal processes and checklists further ensures that a streamlined, efficient and responsive procedure is in place to facilitate the exchange of information in practice. The competent authority is adequately staffed with appropriately qualified and trained personnel who are each responsible for the execution of all exchange of information requests. Extensive and continuous on the job and OECD-organised training is undertaken regularly by the CIU.

393. Both the requests templates available for Guernsey’s treaty partners to use to assist in drafting the request, and the letter of clarification between competent authorities on matters related to the practical aspects of EOI exchange act as further guides to ensure a well organised and coordinated process operates with the requesting jurisdictions. Whilst Guernsey has had to issue letters seeking clarification from requesting Parties in just over one half of cases, these were done promptly and did not lead to significant delays in Guernsey’s response time in practice.

394. The information received from Guernsey’s exchange of information partners shows that Guernsey has been able to respond to information requests in a timely manner. Where the provision of information was delayed, updates and provisional information were provided. No partner indicated an inappropriate delay and several peers commented on their good working relationship with Guernsey. It can be concluded that Guernsey has both the appropriate organisational processes and adequate resources in place to ensure that exchange of information takes place in an efficient manner and that timely responses are received.

***Absence of restrictive conditions on exchange of information***  
*(ToR C.5.3)*

395. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

396. Under section 75C(2) of the Income Tax Law, before gathering information, the competent authority must be satisfied that the request for information is made in accordance with, and for the purpose of, the TIEA pursuant to which the request is made. This includes, in particular ensuring that:

- the requesting Party is only asking for information that is foreseeably relevant to the administration and enforcement of its domestic laws concerning taxes covered by the TIEA;
- the information requested is held by the authorities in Guernsey or is in the possession of, or obtainable by, a person within the territorial jurisdiction of Guernsey;
- the requesting Party has provided all of the information that it is required to provide when making a request, as set out in the Article “Exchange of Information Upon Request”; and
- the circumstances in which Guernsey may decline to exchange information detailed in the Article “Possibility of Declining a Request” are not present.

397. At the time of the Phase 1 assessment, Guernsey had proposed to amend the Income Tax Law with the Income Tax (Guernsey) (Amendment) Law, 2008 to require that all EOI requests be reviewed by a Member of the Guernsey Tax Tribunal (an independent body) to ensure that the request meets the formal and procedural terms of the TIEA. However, this amendment was repealed before it came into force. As such, there are not additional safeguards which may result in an unduly restrictive condition which may prevent Guernsey from fully complying with its obligations under its EOI agreements.

**Determination and factors underlying recommendations**

<b>Phase 1 Determination</b>
<b>This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</b>
<b>Phase 2 rating</b>
<b>Compliant.</b>



## Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
<b>The element is in place</b>		
<b>Phase 2 rating: Compliant</b>		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: Largely Compliant</b>	Guernsey has no enforcement experience following changes to the provisions on the availability of accounting information made in 2012.	The implementation and enforcement of the new legal provisions on the availability of accounting information should be monitored.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: Compliant</b>		
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>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: Compliant</b>		

Determination	Factors underlying recommendations	Recommendations
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>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: Compliant</b>		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i>		
<b>Phase 1 determination: The element is in place.</b>	The DTC between Guernsey and Jersey only provides for the exchange of information which is available to the competent authorities under their respective income tax laws. A revised DTC, which has been negotiated, is expected to be signed shortly.	Guernsey should sign and bring into force a revised DTC with Jersey which includes exchange of information provisions in line with Article 26 of the Model Convention, or equivalent to those contained in Guernsey's TIEAs.
<b>Phase 2 rating: Compliant</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
<b>Phase 1 determination: The element is in place.</b>		Guernsey should continue to develop its EOI network with all relevant partners.
<b>Phase 2 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>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: Largely Compliant</b>	The systematic disclosure to third parties of details that are not necessary for gathering the requested information is not in accordance with the principle that information contained in an EOI request should be kept confidential.	Guernsey should not disclose to third parties information that is not needed to obtain the information requested.



Determination	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>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: Compliant</b>		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
<b>This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</b>		
<b>Phase 2 rating: Compliant</b>		



## Annex 1: Jurisdiction's Response to the Review Report<sup>60</sup>

Guernsey is pleased that, after completion of its Phase 1 and 2 reviews, the efforts of the States of Guernsey (the Guernsey government) to demonstrate its practical commitment to the principles of transparency and exchange of information in tax matters, to which it made a political commitment in 2002, have been recognised, in that all elements have been found to be in place.

As at 16 October 2013, Guernsey had signed 47 TIEAs and 7 comprehensive DTCs, all of which meet the international standards, and continues to be active in that it currently has 20 further such agreements completed and awaiting signature and an additional 9 agreements under various stages of discussion. It also remains open to approaches from other jurisdictions to consider new requests for negotiation of agreements. In addition, Guernsey is in the process of signing an inter-governmental agreement with the US in relation to FATCA, and a similar agreement with the UK. Guernsey has also committed to participating in the pilot programme to roll out the FATCA model as the future international standard in automatic exchange, and the Chief Minister of Guernsey has undertaken to recommend to the States of Guernsey, later this year, that Guernsey should participate in the Convention on Mutual Administrative Assistance in Tax Matters. This demonstrates Guernsey's commitment to continue to negotiate agreements with all relevant partners, in accordance with the C2 recommendation. As a matter of course, Guernsey takes the internal steps required for entry into force of EOI agreements promptly after signature. The revised DTC signed with Jersey in January 2013, as referred to in the C1 recommendation, has already been through this process and came into force on 9 July 2013.

As regards element A2, during the period covered by the Phase 2 review, Guernsey had received 32 EOI requests in total. To date, this has increased to 84 requests. At no time in practice has an A2 issue arisen in relation to any request received, either before or since the Phase 2 review. This demonstrates Guernsey's view that there is no gap in law or in practice, and there has never been such a gap.

---

60. This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Guernsey is of the view that the current rating of element A2 as “Largely Compliant” is not warranted as there have been no cases of failure in practice in relation to any request received which involves accounting records and/or underlying documentation and the Record Keeping Regulations simply supplement pre-existing obligations (which already satisfy element A2). Further, the “Largely Compliant” rating is inconsistent with the ratings proposed for other Global Forum members. Guernsey will therefore request a supplementary Peer Review Report at the earliest opportunity in order to demonstrate the above and to seek an upgrade of the element A2 rating to “Compliant”.

The issue of the number of times that Guernsey has found it necessary to refer back to its EOI partners before it has been in a position to execute a number of requests that it has received (as detailed in paragraphs 366 to 370 of the report) came as a surprise to Guernsey, in so far as the concern may have been that such requests for clarification may have frustrated the effective exchange of information. Guernsey is happy, however, that the report reflects the fact that in all cases where Guernsey requested clarification the request was justified, and in fact facilitated the effective exchange of information, by ensuring our EOI partners received the information which was relevant to their investigation. Whilst Guernsey agrees with the sentiment expressed in the report, that this should improve, in any event, with the passage of time, as relationships with EOI partners mature, inevitably this will be dependent on the quality of requests also improving. Guernsey does not believe it is alone in facing this issue of having to seek clarification as a result of poor quality or badly phrased requests and fully supports the need to address this matter. We were pleased, therefore, to see this issue was an agenda item for the Competent Authority meeting, held in the Netherlands, in May 2013, and we expect it to be an issue of ongoing concern for any such future meetings.

Guernsey does not hold, and never has held, the view that the signing and entry into force of a TIEA or DTC is the completion of a relationship with another jurisdiction, but rather it is the beginning, and one to which Guernsey remains committed to enhancing. Guernsey is open to meet with the competent authorities of its EOI partners, either multilaterally during events such as the Global Forum meetings, and indeed the Competent Authority meetings (which was created after Guernsey’s suggestion during the Global Forum meeting in Bermuda in 2011) or by holding bilateral meetings, in which Guernsey provides in depth presentations covering the background of Guernsey, its tax system and its EOI practices.

Guernsey has also provided detailed information, which it hopes will be of assistance to its EOI partners, on the Global Forum’s EOI Portal website, including an outline of the type of questions which EOI partners may wish to include in requests, in different scenarios. This is intended to aid our EOI partners in phrasing requests, including in relation to subjects with which

the partner may not be wholly familiar (for example, for some jurisdictions, trusts).

In relation to paragraph 159, Guernsey would like to clarify that, currently, the treatment of assets of a foundation on strike off has not yet been finalised and will be dealt with in the relevant regulations.

Guernsey will continue to monitor the position regarding trustees acting for a trust not by way of business, as detailed in paragraph 146 of the report, but agrees with the findings in the report that only a very narrow class of persons would not be covered by the Fiduciary Law, and those who were not covered would be acting for someone they knew (on the basis that they would not be receiving any reward for the services provided) and would therefore hold the required information. In addition, such persons would now also be covered by the requirements of the amendment to the Record Keeping Regulations, in relation to accounting information. Guernsey is also able to confirm that, out of the 84 requests received to date, this issue has never arisen once in practice, notwithstanding the fact that many requests involve trusts.

Concerning the C3 recommendation, Guernsey believes that no breaches of confidentiality, of the type to which the report refers, have taken place in relation to the requests that it had received, and which were considered in the Phase 2 review (indeed the report itself confirms that no issues in practice were discovered to have occurred during the period under review) and no such issues have been brought to our attention since. As this is therefore, purely a theoretical situation, Guernsey is of the view that the current rating of element C3 is not warranted. Guernsey will therefore request a supplementary Peer Review Report at the earliest opportunity in order to demonstrate the above and to seek an upgrade of the element C3 rating to “Compliant”.

Nevertheless, for the avoidance of doubt, the Guernsey Treasury and Resources Department is taking proposals to the States of Guernsey, in December 2013, for a legislative change which, if accepted, will address the concerns expressed in the report in regard to element C3.

In respect of Guernsey’s overall rating, Guernsey will submit in relation to its supplementary report that the overall rating should be upgraded to “Compliant”.

In accordance with paragraph 10 of the report, Guernsey will submit a progress report to the PRG, within 12 months of the date that the report was adopted.

Finally, Guernsey thanks the Assessment Team for its assistance in compiling a report that considers the legal and practical framework which is in place in Guernsey for ensuring effective EOI.

## Annex 2: List of All Exchange of Information Mechanisms

	Treaty partner	Type of Eol arrangement	Date signed	Date in force
1	Argentina	TIEA	22/07/11 28/07/11	04/01/12
2	Australia	TIEA	07/10/09	27/07/10
3	Bahamas	TIEA	29/07/11 08/08/11	28/03/12
4	Canada	TIEA	19/01/11	18/01/12
5	Cayman Islands	TIEA	29/07/11	05/04/12
6	Chile	TIEA	04/04/2012** 24/09/2012	*
7	China	TIEA	27/10/10	17/08/11
8	Czech Republic	TIEA	15/09/11	09/07/12
9	Denmark	TIEA	28/10/08	06/06/09
10	Faroe Islands	TIEA	28/10/08	21/08/09
11	Finland	TIEA	28/10/08	05/04/09
12	France	TIEA	24/03/09	04/10/10
13	Germany	TIEA	26/03/09	22/12/10
14	Greece	TIEA	08/10/10 29/09/10	*
15	Greenland	TIEA	28/10/08	25/04/09
16	Iceland	TIEA	28/10/08	26/11/09
17	India	TIEA	20/12/11	11/06/12
18	Indonesia	TIEA	27/04/11	*
19	Ireland	TIEA	26/03/09	10/06/10
20	Italy	TIEA	05/09/12	*
21	Japan	TIEA	06/12/11	*

	Treaty partner	Type of Eol arrangement	Date signed	Date in force
22	Jersey	DTC	1955	11/07/56
		DTC	24/01/13 ***	
23	Latvia	TIEA	05/09/12	*
24	Malta	DTC	12/03/12	*
25	Mexico	TIEA	27/06/11 10/06/11	24/03/12
26	Netherlands	TIEA	25/04/08	11/04/09
27	New Zealand	TIEA	21/07/09	08/11/10
28	Norway	TIEA	28/10/08	08/10/09
29	Poland	TIEA	06/12/11	01/11/12
30	Portugal	TIEA	09/07/10	*
31	Romania	TIEA	12/01/11	22/01/12
32	Saint Kitts and Nevis	TIEA	18/01/12** 07/02/12	*
33	San Marino	TIEA	29/09/10	16/03/11
34	Seychelles	TIEA	20/12/11	22/07/12
35	Slovenia	TIEA	26/09/11	09/08/12
36	South Africa	TIEA	21/02/11	26/02/12
37	Sweden	TIEA	28/10/08	23/12/09
38	Turkey	TIEA	13/03/12	*
39	United Kingdom	DTC	1952	24/06/52
		TIEA	20/01/09	27/11/09
40	United States	TIEA	19/09/02	30/03/06

\* These exchange of information mechanisms will come into force once the partner jurisdictions have completed their necessary internal requirements/procedures.

\*\* These agreements were signed by Guernsey on the first date listed, in respect of Argentina, Bahamas and Chile, and on the second date in respect of Greece, Mexico, Romania and Saint Kitts and Nevis and counter-signed by Guernsey's treaty partner on the other date listed.

\*\*\* This new treaty was signed after the cut-off date of the report and could not be taken into account in this review.

## **Annex 3: List of Laws, Regulations and Other Relevant Material**

### **Legislation**

Companies (Guernsey) Law, 2008 (“Guernsey Companies Law “)  
Companies (Alderney) Law, 1994 (“Alderney Companies Law “)  
Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959  
Limited Partnerships (Guernsey) Law, 1995 (“Limited Partnerships Law”)  
Limited Partnerships (Fees and Annual Return) (Guernsey) Regulations  
of 2008  
Partnership (Guernsey) Law, 1995 (“Partnerships Law”)  
Trusts (Guernsey) Law, 2007 (“Trusts Law”)  
Charities and Non Profit Organisation (Registration) (Guernsey) Law,  
2008 (“NPO Law”)  
Control of Borrowing Ordinance 1959  
Alderney eGambling Ordinance 2009  
Foundations (Guernsey) Law, 2012  
The Uniform Scale of Fines (Bailiwick of Guernsey) (Amendment)  
Ordinance, 2006  
The Uniform Scale of Fines (Alderney) (Amendment) Ordinance 2007

### **Regulatory Framework**

Financial Services Commission (Bailiwick of Guernsey) Law, 1987  
Financial Services Commission (Site Visits) (Bailiwick of Guernsey)  
Ordinance, 2008



Banking Supervision (Bailiwick of Guernsey) Law, 1994 (“Banking Supervision Law”)

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

Insurance Business (Bailiwick of Guernsey) Law, 2002

Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002

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

Data Protection (Bailiwick of Guernsey) Law, 2001

### **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”)

Disclosure (Bailiwick of Guernsey) Law and Regulations, 2007

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”)

Transfer of Funds (Guernsey) Ordinance, 2007

Transfer of Funds (Alderney) Ordinance, 2007

Guernsey: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, IMF Country Report No. 11/12, January 2011.

## Tax Laws

Income Tax (Guernsey) Law, 1975 (“Income Tax Law”)

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005

Income Tax (Keeping of Records, etc) (Guernsey) Regulations, 2006 (“Record Keeping Regulations”)

Income Tax (Keeping of Records, etc) (Amendment) Regulations, 2012

The Statement of Practice issued by the Director of Income Tax in respect of these Regulations

Guernsey laws are available at:

[www.guernseylegalresources.gg/](http://www.guernseylegalresources.gg/)

[www.guernseylegalresources.gg/ccm/portal/](http://www.guernseylegalresources.gg/ccm/portal/)

## **Annex 4: People Interviewed During On-Site Visit**

### **Guernsey Income Tax Office**

Director (Competent Authority)

Deputy Director (Technical and Operations) (Competent Authority)

Compliance and International Manager

Senior Inspector – Compliance and Investigation

Compliance and Investigation Analyst

Compliance and Investigation Analyst

Compliance and Investigation Officer

### **Guernsey Registry**

Registrar of Companies

### **Guernsey Financial Services Commission**

Director (Policy and International Affairs)

Assistant Director (Fiduciary Services Division)

### **Guernsey Border Agency**

Assistant Chief Officer (Head of Cross Border Crime)

Head of Financial Investigation Unit

**Guernsey Commerce and Employment Department**

Director (Finance Sector Development)

**St. James Chambers (Attorney General's Office)**

Advocate (Legislative Counsel of Guernsey)

## **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 co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.



# Global Forum on Transparency and Exchange of Information for Tax Purposes

## PEER REVIEWS, PHASE 2: GUERNSEY

This report contains a “Phase 2: Implementation of the Standard in Practice” review, as well as revised version of the “Phase 1: Legal and Regulatory Framework review” already released for this jurisdiction.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standard of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the *UN Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction’s legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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 review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).

Consult this publication on line at <http://dx.doi.org/10.1787/9789264192102-en>.

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

Visit [www.oecd-ilibrary.org](http://www.oecd-ilibrary.org) for more information.