

Rt Hon Andrew Mitchell MP
House of Commons
London
SW1A 0AA

Rt Hon Dame Margaret Hodge MP
House of Commons
London
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12th March 2019

Dear Andrew, Margaret,

AMENDMENT NC6 TO THE FINANCIAL SERVICES (IMPLEMENTATION OF LEGISLATION) BILL

Thank you for meeting representatives of Jersey and the Isle of Man on Monday 4th March 2019 and for your letter in response to the open letter that Deputy St Pier sent to signatories of the proposed amendments to the Financial Services Bill on 5th March 2019.

Whilst we agree with the thrust of the objectives to tackle money laundering and tax evasion as outlined in the *Financial Times*' editorial, which you enclosed with your letter, the editorial demonstrates a number of misconceptions that are at the heart of the issue. The Channel Islands are not part of the United Kingdom (UK), nor can they be described as a UK territory.

We are committed to recognised international standards, including those of the Financial Action Task Force ("FATF") on transparency of legal persons and the standards of the Organisation for Economic Co-operation and Development ("OECD") in relation to the retention and disclosure of information for tax purposes (which includes beneficial ownership information). We exchange tax and beneficial ownership information on that very basis and voluntarily submit ourselves to international assessment in this regard. With respect, although the *Financial Times* may consider the UK has positioned itself as a 'global leader', the UK approach is not a common standard and the UK itself is ultimately benchmarked against international standards. The UK's OECD Peer Review Report on the Exchange of Information on Request published in 2018 (for which it was assessed as overall 'Largely Compliant') made plain the limitations of the accuracy of the UK's beneficial

ownership register. Such concerns over accuracy were not raised in reports of Guernsey and Jersey in which both jurisdictions were assessed as Compliant.

Whilst the UK appears content to rely on Non-Governmental Organisations (NGO) and the media to scrutinise the UK's beneficial ownership data, fictitious information is often provided. In stark contrast, the information on our beneficial ownership registers is verified by regulated service providers and updated on a near-to-real-time basis. It is also accessible by law enforcement and tax authorities on request (and has been for many years).

Further, the suggestion in the editorial that the EU, in 2017, has followed the UK's lead, ignores the very real concerns expressed by the European Data Protection Supervisor in relation to the significant and unnecessary risks for individuals' rights to privacy and data protection.

You state that you have rejected our arguments against your proposals on the basis of two key points, the first relating to Closed Registers. However, the suggestion that the Panama and Paradise Papers provided evidence of wrong-doing in Guernsey and Jersey is patently wrong. It also overlooks the agreement to exchange data with the UK under the Exchange of Notes settled in April 2016 which on any analysis, can only assist in joining up any 'dots of corruption and malfeasance'.

In respect of the second point regarding the constitutional issue, your analysis errs on some basic principles, unfortunately all too easily misunderstood. The Kilbrandon Report, whilst authoritative, is not definitive and the relationship is still developing. The House of Commons Justice Committee Crown Dependencies Eighth Report of Session 2009–10 addressed the issue of the Crown's responsibilities in relation to the islands. In respect of the good government argument, that report noted that *"'good government' would only be called into question in the most serious of circumstances, such as a fundamental breakdown in public order or endemic corruption in an Island government, legislature or judiciary (2010, HC 56, para 37)"*.

Your first ground implies that even though the islands are meeting international standards, the UK government must decide what is best for them - a test for which there is no basis in Kilbrandon, and which, in any event, is clearly outwith 'the most serious of circumstances' noted above.

In this regard it is also of note that in the case of *R (Barclays and another) v Secretary of State for Justice and others [2014] UKSC 54*, Lady Hale, in giving the judgment of the UK Supreme Court, highlighted the view of the Select Committee concerning 'good government' and also that the Kilbrandon report (para 1502) acknowledged that the UK should be *"very slow to seek to impose their will on the Islands merely on the grounds that they know better than the Islands what is good for them"*.

Your second ground implies a 'national security' test (for which again there is no basis in Kilbrandon) and which is in any event outside the 'most serious of circumstances' noted above. Given that we currently meet and exceed the relevant international standards and have developed a timely and accurate mechanism to exchange information with the UK, there is no rational justification to suggest that our conformity to international standards represents either a breach in national security or anything like 'a fundamental breakdown in public order or endemic corruption in an Island government, legislature or judiciary'.

Finally, as regards the Foreign Affairs Select Committee report published on 21 May 2018, which asserted that "money laundering" is "now a matter of national security and, therefore, constitutionally under the jurisdiction of the UK", this report is merely the view of one parliamentary committee. It fundamentally distorts the constitutional position and does nothing but further promulgate misunderstanding. It is disappointing the authors of that report did not consider Kilbrandon, the relevant Justice Select Committee reports, or the United Kingdom's Supreme Court's analysis of the constitutional position before making their recommendations. The way in which our islands deal with money laundering offences is clearly a criminal justice issue which is a matter of our own domestic autonomy.

In the event any issue arose which genuinely concerned national security, we would of course engage with all relevant UK law enforcement authorities and government departments including the Ministry of Justice and the Foreign & Commonwealth Office (with whom we regularly liaise).

In the future development of the islands' own policies, we have committed to the adoption of an interconnected register with the EU, which could include the UK following the UK's exit from the EU. This would be consistent with a commitment made to the EU in 2018 following the work with the European Commission and the European Council to implement legal substance requirements for certain businesses. This offer was based on the mutual desire to enhance transparency, promote international cooperation and develop policy as a good neighbour to the EU. Furthermore, as we have indicated, we are supportive of the further exploration of the effectiveness of different models of beneficial ownership registers and the proactive development of an international standard in this regard. We are keen to work with you, the UK government and the relevant international bodies to expedite this work.

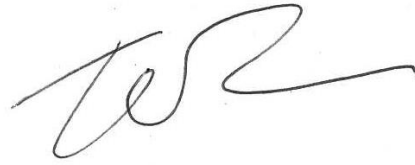
We strongly agree on the policy objective behind the proposed amendment. It is the fact that we have the same policy objective which makes the constitutional impact of the proposed amendment so disagreeable. Further, as drafted, the amendment seeks to impose a register which, in our view, would lead to a diminution of standards and effectiveness for tackling financial crime. We are supportive of developing standards to increase the effectiveness of the register of beneficial ownership, not just in these islands, but around the world. We remain willing to work with the UK Government and the relevant international bodies to achieve this objective and have reached out in this regard to instigate further discussions.

We look forward to discussing these matters further. We have copied in the Chief Minister of the Isle of Man, with whom we continue to work closely on this matter.

Yours sincerely



Deputy Gavin St Pier
Chief Minister, Guernsey



Senator John Le Fondré
Chief Minister, Jersey

cc. Hon Howard Quayle MHK, Chief Minister, Isle of Man, Office of the Chief Minister, Third Floor,
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