

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

LEGISLATION RELATING TO THE INVESTIGATION OF ECONOMIC CRIME

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Legislation Relating to the Investigation of Economic Crime”, dated 27th September 2021, they are of the opinion:-

1. To agree to introduce legislation to create a statutory office of Director of the Economic and Financial Crime Bureau as described in section 4 of the Policy Letter;

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

LEGISLATION RELATING TO THE INVESTIGATION OF ECONOMIC CRIME

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

27th September 2021

Dear Sir

1 Executive Summary

- 1.1 The purpose of this Policy letter is to recommend that legislation be introduced to create a statutory office of Director of the Economic and Financial Crime Bureau (EFCB), a new specialist investigative organisation.
- 1.2 These proposals follow recent discussions between the Bailiwick authorities about enhancing the jurisdiction's investigative capacity in respect of money laundering, terrorist financing and other forms of economic crime.

2 Background

- 2.1 The work leading up to the publication in 2020 of the Bailiwick's assessment of its money laundering and terrorist financing risks (informally known as the national risk assessment), together with other reviews of the criminal justice system, demonstrated the need for structural changes to the Bailiwick's regime for investigating economic crime and related matters such as tracing criminal proceeds. As a result, discussions took place between the Law Officers, the Head of Law Enforcement and officers from the Policy & Resources Committee and the Committee *for* Home Affairs ("the Committee"), who together form the Economic Crime Project Board, about the form that these changes should take. Following these discussions, the Committee has received advice from Her Majesty's Comptroller (HMC) as to the options for taking this forward from a legal perspective.
- 2.2 It has already been agreed that a new organisation, the EFCB, would be created to exercise specialist investigatory functions in relation to acquisitive economic

crime, tax evasion and money laundering (primarily relating to criminal proceeds generated outside the Bailiwick), terrorist financing, and the financing of the proliferation of weapons of mass destruction and other breaches of international financial sanctions. The EFCB has now been established by the Committee on an administrative basis. It has responsibility for the detection and investigation of the offences listed above (and related financial investigations to trace criminal proceeds), and for preparing cases to be taken forward as prosecutions and confiscation or as applications for civil forfeiture. The EFCB has taken over these responsibilities from the divisions of the Guernsey Border Agency (GBA) where they previously resided, namely the Economic Crime Division and the International Cooperation and Asset Recovery Team. Recruitment is ongoing but when fully staffed, the EFCB will comprise teams of financial investigators, supported by in-house lawyers and others exercising technical functions such as forensic accountants. A highly experienced investigator who previously worked at Board level at the UK's Serious Fraud Office has been appointed as its first Director. These changes have been made to enable the EFCB to become operational as quickly as possible, given the need to demonstrate that progress has been made in this area for the purposes of Moneyval's forthcoming evaluation of the Bailiwick.

3 Legal recognition of the EFCB

- 3.1 The component parts of Guernsey's Law Enforcement services, such as the Economic Crime Division, the Joint Emergency Services Control Centre, Trading Standards and the Financial Intelligence Service, are established by way of simple administrative arrangement. It would also be possible for the EFCB to continue to operate on the basis of the administrative changes that have been made to the allocation of Law Enforcement resources. However, this would be undesirable, because there would be a lack of clarity around the legal basis on which the EFCB was purporting to exercise investigatory powers and no legally enforceable way to maintain or protect its resources. These matters are perceived to affect its ability to discharge its functions effectively and its operational independence.
- 3.2 In order to alleviate any concerns in relation to the above matters, HMC has suggested that legislation should be enacted to provide a legal basis for the activities of the EFCB. This would have the additional advantage of making an unambiguous statement to parties both within and outside the jurisdiction of the Bailiwick's commitment to enhancing its capacity to investigate economic crime.
- 3.3 One way to provide this legal basis would be to establish the EFCB as a statutory agency with legal personality and its own dedicated powers and functions, along the lines of bodies such as the Guernsey Financial Services Commission. However, this would mean that the EFCB would be responsible for dealing with infrastructure matters such as premises and IT services, as well as human

resources and data protection issues. Dealing with such matters would inevitably mean a delay in the EFCB becoming operational, and it would also make considerable demands on the time and attention of the Director at the expense of operational matters.

- 3.4 A second option would be the creation of a statutory office of Director of the EFCB, the holder of which would hold the power to conduct investigations, appoint staff or take any other steps necessary to ensure the effective functioning of the EFCB. The EFCB itself would continue to be established administratively under the auspices of the Committee but would be operationally independent. The EFCB's status within the existing States of Guernsey structure would enable access to government resources for dealing with infrastructure issues. While this would be a less comprehensive way to recognise the EFCB in law than the creation of a statutory agency, it would be similar to the position of some other important bodies such as the GBA or the Revenue Service, which are non-statutory organisations whose staff are employees of the States of Guernsey but which are headed by a statutory office holder with the powers necessary for the organisations to discharge their respective functions.

4 Recommendation

- 4.1 Given the need for swift action, HMC recommends the second option outlined above, that is, the introduction of legislation to create a statutory office of Director of the EFCB, to which appointment and removal would be made by the Committee. This will allow matters to be taken forward quickly, and consideration can be given in the longer term to putting the EFCB on a full statutory footing in the future.
- 4.2 The legislation will need to ensure that the investigatory powers across the legal framework which are used for investigating economic crime, and which are currently exercisable by police and customs officers, are available to members of the EFCB. The easiest way to address this is for the legislation to specify that the Director, and persons working at the EFCB who have been designated by the Director, may exercise investigative powers under specific enactments. It should however be made clear that this would be without prejudice to the ability of police officers and customs officers to investigate economic crime or to exercise those powers. The legislation should enable the Committee to amend the list of enactments by regulation, to ensure that if any powers have been inadvertently overlooked, this can be swiftly remedied. At the same time, there should be amendments to other aspects of the legal framework (for example to the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003) as necessary to ensure that all necessary powers and safeguards are applicable to the operations of the EFCB.

- 4.3 The exercise of investigatory powers by members of the EFCB would be subject to the same oversight and disciplinary measures as those applicable to other employees of the States of Guernsey (including members of the Revenue Service, who are also States' employees and exercise investigatory powers). It would however also be advisable for the avoidance of doubt to specify that a person exercising those powers does not come within the disciplinary processes applicable to a police officer or customs officer (except for persons working for the EFCB on secondment from the Guernsey police or the GBA, who will remain subject to the oversight and disciplinary measures attaching to their employment status within those organisations).
- 4.4 The legislation will also need to provide for some basic administrative and operational matters. These would include the obligation of the States to fund the operation of the office, the exclusion of liability except where the office holder is not acting in good faith, payment of a salary, delegation of functions, a power to appoint Deputy Directors, service of documents on the Director and proof of documents issued by or on behalf of the Director. The provisions of the relevant legislation would not be unlike some of those in the Public Trustee (Bailiwick of Guernsey) Law, 2002. However, the provisions related to financial provision would not need to be replicated as the office and its operations would be funded as part of the Committee's budget. To clarify, these administrative provisions will be set in accordance with States appointments and budget procedures and practices.

5 Financial Intelligence

- 5.1 The Bailiwick's Financial Intelligence Unit (FIU), i.e. the competent authority with regard to the receipt and analysis of financial intelligence as required by international standards, is the Financial Intelligence Service which is a division of the GBA. The effect of this is that, while operationally independent, the head of the FIU reports to the Head of Law Enforcement. One of the reasons for locating the FIU within the GBA was to facilitate the provision of financial intelligence to the arm of the GBA charged with investigating economic crime. With the creation of the EFCB, much of the rationale for locating the FIU within the GBA falls away, and the sharing of financial intelligence in support of investigations is likely to be more effective if the head of the FIU reports to the Director of the EFCB going forward. In order to comply with international standards, it is important however that the FIU remains operationally independent. HMC therefore recommends that the legislation creating the office of Director of the EFCB should codify the relationship between the FIU and the EFCB, while at the same time explicitly recognising the separate functions and operational independence of the FIU.

6 Compliance with Rule 4

- 6.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 6.2 In accordance with Rule 4(1)(a), the Proposition contributes to Priority 2 of the Government Work Plan by ensuring compliance with international agreements and standards.
- 6.3 In accordance with Rule 4(1)(b), the Committee has consulted the Policy & Resources Committee, States of Alderney, Sark Chief Pleas and the Head of Law Enforcement.
- 6.4 In accordance with Rule 4(1)(c), the Proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 6.5 In accordance with Rule 4(2)(a), the Proposition relates to the duties of the Committee to advise the States and to develop and implement policies on matters relating to its purpose including law enforcement, including policing and customs.
- 6.6 In accordance with Rule 4(2)(b), it is confirmed that the proposition above was supported unanimously by the Committee Members.

Yours faithfully

R G Prow
President

S P J Vermeulen
Vice-President

S Aldwell
M P Leadbeater
A W Taylor

P A Harwood
Non-States Member