

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

MINIMUM STANDARDS FOR ESTATE AGENCIES

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Minimum Standards for Estate Agencies”, dated 6th April, 2022, they are of the opinion:-

1. To agree that a framework for a minimum standards test for estate agencies and its administration by the Guernsey Registry be established in accordance with the recommendations of the Policy Letter; and
2. To direct the preparation of such legislation as may be necessary to give effect to the above.

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)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

MINIMUM STANDARDS FOR ESTATE AGENCIES

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

6th April, 2022

Dear Sir

1 Introduction

- 1.1 This policy letter proposes the introduction of legislation imposing additional requirements on estate agencies operating in the Bailiwick of Guernsey (including those which are owner managed and operated, i.e. which might be described as sole practitioners) so as to address the gap which currently exists in preventing criminals from controlling firms of estate agents. This gap has arisen as the Financial Action Task Force has revised the standards it requires jurisdictions to apply in relation to estate agencies.
- 1.2 It is recognised that the establishment and administration of a proportionate framework is crucial, and the proposals in this letter would apply only to those estate agencies in the Bailiwick subject to AML/CFT obligations. There are *de minimis* provisions in the AML/CFT framework which, in practical terms, mean that a very small estate agency would not be subject to the framework.
- 1.3 Estate agencies are required to register with the Guernsey Financial Services Commission (the “GFSC”), pursuant to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “Proceeds of Crime Law”) and the GFSC is the supervisory authority with responsibility for monitoring and enforcing compliance by estate agencies with their AML/CFT obligations. The Proceeds of Crime Law defines estate agency as “Acting, in the course of a business, on behalf of others in the acquisition or disposal of real property or any interest therein –
- (a) for the purpose of or with a view to effecting the introduction to the client of a third person who wishes to acquire or (as the case may be) dispose of such an interest, and

- (b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or (as the case may be) the acquisition of that interest.”¹

2 Background

- 2.1 The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (the “Prescribed Businesses Law”) and the anti-money laundering and combatting of terrorist financing (AML/CFT) requirements in relation to customers² were put in place because of the expectations of the Financial Action Task Force. This body, which is based in Paris, sets global standards for AML/CFT. All jurisdictions are expected to comply with these standards and, with few exceptions, are subject to periodic evaluation of their level of compliance. Guernsey has been evaluated several times, the last evaluation taking place in 2014 against the 2003 FATF standards.
- 2.2 Since the Prescribed Businesses Law and the AML/CFT requirements mentioned above were first enacted, the FATF’s standards in relation to non-financial services businesses such as estate agencies have been revised. The technical requirements for FATF Recommendation 28, embodied in the methodology used for evaluations, now state that an authority within each jurisdiction should take the necessary measures to prevent criminals from owning, controlling or managing designated non-financial businesses and professions, including real estate agents; and, linked with these measures, for that authority to have effective, proportionate and dissuasive sanctions in line with FATF Recommendation 35 available to deal with failure to comply with AML/CFT requirements. The Committee, with the support of the Policy & Finance Committees in each of Alderney and Sark, considers it appropriate to update our regime to introduce a minimum standards test for owners and controllers of estate agencies, as set out in this policy letter, to ensure that the Bailiwick meets the revised international standards.
- 2.3 Currently, all estate agencies in the Bailiwick which are subject to the Prescribed Businesses Law and the AML/CFT requirements are established as companies registered with either the Registrar of Companies in Guernsey or (in two cases) Alderney. Details of the directors of those companies are required to have been provided to the relevant Registrar and any changes in the directors, or in any of the particulars in the company’s register of directors, must be notified to the relevant Registrar within specified time frames. The provisions of the Beneficial Ownership (Guernsey) Law, 2017 or the Beneficial Ownership (Alderney), 2017 also apply, and details of the beneficial ownership of the companies is required

¹ Paragraph 3 of Schedule 2 to the Criminal Justice (Proceeds of Crime) Law, 1999.

² Formerly contained in the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 but are now included, in revised form, in Schedules 3 and 5 to the Proceeds of Crime Law (“the AML/CFT Requirements”).

to be provided to the relevant Registrar of Beneficial Ownership.

- 2.4 In both Guernsey and Alderney, there are provisions of companies law regarding who can act as a director of a company, and for disqualification by the Court of persons considered to be unfit to be concerned in the management of a company. Nevertheless, these provisions of companies law do not adequately cover all of the market entry and ongoing requirements of the FATF.

3 Standards

- 3.1 In order to allow the FATF's standards to be met unambiguously it is proposed that legislative provision should be made for a minimum standards test, which would supplement the existing regime, to ensure that only people who are fit to be involved in the management or control of an estate agency are able to hold relevant positions.

- 3.2 In broad terms, it is envisaged that in determining whether a person meets the minimum standards test, regard should be had to their probity, integrity, honesty and soundness of judgement for holding the position, and whether the interests of the public or the reputation of the Bailiwick are, or are likely to be, in any way jeopardised by their holding the position. In addition, the test should consider whether the interests, or potential interests, of clients are, or are likely to be, threatened by an individual holding their position. As part of the foregoing, regard may be had to the previous conduct and activities in business, or financial matters, of the person in question and, in particular, to any evidence that they have:

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty;
- (b) engaged in any business practices which are, or which might reasonably be regarded as appearing to be, deceitful or oppressive or otherwise improper or which otherwise reflect discredit on their method of conducting business or their suitability to carry on estate agency;
- (c) engaged in or been associated with any other business practices or otherwise conducted themselves in such a way as to cast doubt on their soundness of judgement.

- 3.3 This test should apply to anybody who is a director, partner or chief executive (or equivalent to any of these roles) of an estate agency, as well as any other person participating in, or being in any way concerned, directly or indirectly, in the management of the estate agency. For the avoidance of doubt, it is envisaged that the test would apply to any de facto director of a company carrying on business as an estate agency (i.e. any person in accordance with whose directions

or instructions anybody in the roles mentioned in the previous sentence is accustomed to act).

- 3.4 In addition, the minimum standards test should apply to any person with ownership of 15% or more of an estate agency, or with control of 15% or more of voting power, whether this is held directly or through a chain of ownership (e.g. where a person has a controlling interest in a company that holds 15% of the shares in a firm). 15% would be a proportionate threshold, rather than automatically requiring information about individuals with very low levels of ownership and/or control. This paragraph and the preceding paragraph include most of what the Financial Action Task Force includes within its concept of beneficial owner although the test will also need to embrace “the natural person(s) who ultimately owns or controls the estate agency”, which might e.g. include one off exercise of effective control not included in the 15% threshold or the meaning of de facto director.
- 3.5 The ownership structures of estate agents in the Bailiwick are generally simple and so the standards test should not be difficult to administer, either for firms or for the appointed authority.

4 Administration

- 4.1 The Committee has given careful consideration as to who should be responsible for administering and enforcing the minimum standards test. In light of the Guernsey Registry’s (the “Registry”) existing role in administering various statutory regimes relating to companies and other legal persons in Guernsey, the Committee considers that the appropriate way forward would be for the Registry to administer and enforce the new minimum standards test. It is possible for estate agents to be in different legal forms (e.g. sole trader, partnership, company, etc.) and there is no requirement that an estate agency is a locally registered entity, so administration of this new standards test would not fall within scope of any of the existing statutory regimes administered by the Registry. It is envisaged that a new statutory role will be established (referred to in this policy letter as the “Administrator”) and that this would be fulfilled by the Guernsey Registrar of Companies. It is anticipated that the Registry will align administration of the test with existing Registry processes and procedures, to the extent possible, in order to minimise the burden on estate agents and cost to the Registry. It is anticipated that there will be no additional fees charged in respect of the administration of the new minimum standards test.
- 4.2 In order for it to administer the standards test, the Administrator should have the power to:
- (a) require relevant information and documents from: estate agents; their beneficial owners, controllers, shareholders, directors, managers; (and

other persons who seem to be occupying these roles or who the Administrator believes may have relevant information or documents); and

(b) share confidential information with relevant third parties³.

- 4.3 It is envisaged that there would be a requirement for new estate agents to identify themselves and the individuals holding relevant positions mentioned above to the Administrator at the same time as registering with the GFSC as a prescribed business. This notification would be accompanied by the completion of a questionnaire, issued by the Administrator, and confirmation that all relevant persons meet the minimum standards test. It is further envisaged that there would be a requirement for all estate agents to provide information on an annual basis confirming that the test's requirements are met. In addition to the annual confirmation by estate agents, individuals should be required, on being appointed to a relevant position within an estate agent, or acquiring a relevant interest, to notify the Administrator of their position and confirm that they meet the minimum standards test.

5 Sanctions

- 5.1 In order to ensure the proposals are effective, sanctions will need to be available where requirements are not met. It is proposed that the sanctions should reflect those available to the Registrar of Beneficial Ownership, pursuant to the Beneficial Ownership of Legal Persons (Bailiwick of Guernsey) Law, 2017.
- 5.2 Therefore, it is envisaged that there would be a range of penalties for failure, by estate agents and individuals, to meet the minimum standards or otherwise comply with the requirements of the regime. This range would allow a proportionate approach to be taken by the Administrator. It should include provisions for civil financial penalties and private reprimands and, in order to cater for serious cases, powers to make public statements and to apply to the Royal Court for disqualification of individuals from being involved in the management or control of an estate agency. Powers of sanction will also need to be available in situations where a firm considers it needs information from a third party but where provision of information is refused. All powers of sanction should be subject to appropriate rights of appeal.
- 5.3 The Administrator would need to be proactive in exercising its role and would need the power to issue guidance. By way of illustration, the Administrator should seek confirmation that the minimum standards test is met. As mentioned above, it is envisaged that firms would be required to confirm this on an annual basis. As part of a proactive approach, the Administrator should require a basic

³ For example the GFSC, the Economic and Financial Crime Bureau and the Registrars of legal entities and beneficial ownership.

questionnaire to be completed by relevant individuals and check information provided by, for example, using the internet, a commercial third party data provider and/or liaison with third parties who might have information. Provision of false or misleading information should be an offence. Failure to provide information should be an offence and also give rise to liability to a civil penalty. Further, it is proposed that an individual who receives a criminal conviction, or an estate agency which becomes aware of a relevant conviction, should be required to inform the Administrator within twenty one days. Again, failure to comply with such a requirement should be an offence.

6 Consultation

- 6.1 The Committee has consulted with estate agents in the Bailiwick registered with the GFSC and with the GFSC. The GFSC is supportive of the need for the minimum standards to be established. No objections have been received from estate agents and those comments which were received were supportive.
- 6.2 The Committee has also consulted with the Committee *for* Economic Development and with the Policy & Finance Committee in Alderney and the Policy & Finance Committee in Sark. The Committees are supportive of the proposals in this policy letter.

7 Proposals

- 7.1 The States are asked to decide whether they are of the opinion:
 - (a) To agree that a framework for a minimum standards test for estate agencies and its administration by the Guernsey Registry be established in accordance with the above recommendations; and
 - (b) To direct the preparation of such legislation as may be necessary to give effect to the above.

8 Compliance with Rule 4

- 8.1 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.
- 8.2 In accordance with Rule 4(1)(b), the consultation undertaken with relevant stakeholders in the preparation of the Propositions is detailed in section 6 of this Policy Letter.
- 8.3 In accordance with Rule 4(1)(c), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

8.4 In accordance with Rule 4(1)(d), there should be no additional financial implications to the States of Guernsey of carrying the proposals into effect.

Yours faithfully,

P T R Ferbrache, President

H J R Soulsby, Vice-President

J P Le Tocq

M A J Helyar

D J Mahoney