

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

MINIMUM STANDARDS FOR ACCOUNTANCY FIRMS, ETC

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "*Minimum Standards for Accountancy Firms, Etc*", dated 12th September 2022, they are of the opinion:-

1. To agree that a framework for a minimum standards test for firms of accountants, auditors, insolvency practitioners and tax advisers and its administration by the Guernsey Registry be established in accordance with the recommendations set out in this Policy Letter, including a requirement that staff providing professional advice and services are appropriately qualified.
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) 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 ACCOUNTANCY FIRMS, ETC

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

12th September 2022

Dear Sir

1 Introduction

- 1.1 This Policy Letter proposes the introduction of legislation imposing additional requirements on firms of accountants, auditors, insolvency practitioners and tax advisers operating by way of business 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 such firms. This gap has arisen as the Financial Action Task Force (“FATF”) has revised the standards it requires jurisdictions to apply in relation to these businesses. It follows similar decisions made by the Assembly earlier this year directing the introduction of minimum standards for estate agencies.¹
- 1.2 It is recognised that the establishment and administration of a proportionate framework is crucial, and the proposals in this Policy Letter would apply only to those businesses in the Bailiwick subject to anti-money laundering and combatting of terrorist finance (“AML/CFT”) obligations. There are *de minimis* provisions in the AML/CFT framework which, in practical terms, mean that a very small firm would not be subject to the framework.
- 1.3 Firms of accountants, auditors, insolvency practitioners and tax advisers 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 these firms with their AML/CFT obligations. For ease of reference from this

¹ [Billet d’État IX of 2022](#)

point this Policy Letter describes these firms as “the professional businesses”.

2 Background

- 2.1 The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (the “Prescribed Businesses Law”) and the AML/CFT requirements in relation to customers² were put in place because of the expectations of the FATF. 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 the professional businesses 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 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. In response to this, the Assembly has already agreed that steps should be taken to introduce minimum standards for estate agencies. The Policy & Resources Committee (“the Committee”) considers it appropriate to further update our regime to introduce a minimum standards test for owners and controllers of the professional businesses, as set out in this policy letter, to ensure that the Bailiwick meets the revised international standards.
- 2.3 Most of the professional businesses in the Bailiwick which are subject to the Prescribed Businesses Law and the AML/CFT requirements are established as legal persons, particularly companies registered with either the Registrar of Companies in Guernsey or (in one case) 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) Law, 2017 also apply, and details of the beneficial ownership of the companies is required to be provided to the relevant Registrar of Beneficial Ownership.
- 2.4 In addition, in both Guernsey and Alderney, there are companies law provisions

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”).

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.

- 2.5 Moreover, all of the larger and medium-sized accounting firms (i.e. those auditing market traded companies) fall within the scope of the recognised auditor regime administered by the Guernsey Registry. Some half of the audit firms registered with the Registry as recognised auditors are subject to the Bailiwick AML/CFT framework as a result of carrying on business in the Bailiwick. A substantial proportion of the professional businesses not incorporated within the Bailiwick as a legal person are included within these audit firms. These firms have registered more than 100 individuals at the Registry and those individuals are recognised (i.e. permitted) to undertake audit work in relation to market traded companies. The individuals include directors and equity partners resident in Guernsey. The existence of the recognised auditor regime and the checks undertaken by the Registry within Guernsey and with the UK Institute of Chartered Accountants of England and Wales (“ICAEW”) to check the fitness and properness of the recognised individuals (and the ability of the Registry to prevent persons from being recognised individuals and to remove them from audit functions) are relevant to the proposals in this Policy Letter. Therefore, a large number of individuals proposed to be covered by these proposals are already subject to probity checks performed by the Registry.
- 2.6 By way of further context with regard to regulation, individual professional businesses are regulated by regulatory bodies in other jurisdictions, most usually the ICAEW, which impose fit and proper requirements on all their members and, in addition, fit and proper requirements on licensed firms, and require annual declaration of fitness and propriety from firms for all beneficial owners, officers and managers in accordance with their regulations. It is also worth noting that large and medium sized firms in the Bailiwick, and at least some small firms, require fit and proper declarations to be provided to the firm by all staff (irrespective of grade) with the final declaration being provided to a UK regulatory body in relation to beneficial owners, officers and managers (“BOOMs”) that they have not been convicted of a relevant offence for the purposes of the UK framework. In this respect, “Fit and Proper” declarations typically comprise confirmation that the employee has not been convicted of a relevant criminal offence, declared bankrupt or subject to disqualification orders or have civil orders against them.

3 Standards

- 3.1 While the beneficial ownership, commercial and recognised auditor frameworks in the Bailiwick mentioned above, combined with regulation of professional businesses and their staff go some way in meeting the FATF’s standards, in order for the Bailiwick itself to meet those standards unambiguously it is proposed that

legislative provision should be made for a minimum standards test. It is important for Guernsey to take ownership of meeting these standards rather than rely on regulatory regimes in other jurisdictions. The new legislation would supplement existing regimes to ensure that the Bailiwick will take responsibility that only people who are fit to be involved in the management or control of a professional business are able to hold relevant positions. On the basis of risk and proportionality the information requirements of the framework and its administration will, where possible, leverage information already gathered for UK and other regulatory standards.

- 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 a professional business;
 - (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 The minimum standards test should apply to any person with ownership or beneficial ownership of 15% or more of a professional business, or with control of 15% or more of voting power, whether this is held directly or through a chain of ownership. Fifteen percent would be a proportionate threshold, rather than automatically requiring information about individuals with very low levels of ownership and/or control.
- 3.4 This test should also apply to anybody who is a partner, chief executive or director (or equivalent to any of these roles) of a professional business, as well as any other person participating in, or being in any way concerned, directly or indirectly, in the management of the professional business. For the avoidance of doubt, it is envisaged that the test would apply to any de facto director (i.e. any person in accordance with whose directions or instructions anybody in the roles mentioned

in the previous sentence is accustomed to act). In order to recognise how professional businesses are structured in practice, relevant management below the level of partner, chief executive and director subject to the test will include a Responsible Individual (meaning those individuals who have been granted authority to sign engagement letters, reports or similar on behalf of the firm or to otherwise bind the firm); any other person of at least senior management level who the business considers has the ability to bind the firm; and the Guernsey Money Laundering Reporting Officer, the Guernsey Money Laundering Compliance Officer and, where one is appointed, the Nominated Officer.

- 3.5 The routine administration of the test by the Guernsey Registry in relation to persons falling within the scope of the paragraph above would follow one of two paths. First, the Registry would itself routinely administer the test in relation to persons operating within the context of the Bailiwick's AML/CFT framework. Second, the legal framework should allow for individuals who are part of a wider firm structure and based in another jurisdiction to be deemed as meeting the Guernsey requirements provided those individuals are subject to at least equivalent requirements in a jurisdiction specified as equivalent in regulations issued by the Committee. For example, a Guernsey based firm of accountants which is a UK limited liability partnership may have a significant number of partners resident in the UK of which one or two individuals may operate an office in Guernsey. On the basis of risk and proportionality, it is the local partners and other persons mentioned in the paragraph above for whom the Guernsey Registry would itself routinely administer the test while, with regard to the larger body of individuals who are caught under the UK requirements in respect of fit and proper standards, the UK would be designated as an equivalent jurisdiction and the Registry would use that equivalence and the application of fit and proper requirements by the UK regulator(s) to deem that the Bailiwick standards are met. It is possible that other jurisdictions might also be designated as equivalent jurisdictions. For the avoidance of doubt, persons resident in a foreign jurisdiction and with oversight of market traded company audits would remain subject to Guernsey's recognised auditor regime in the same way they are now – the proposals in this Policy Letter will not affect the recognised auditor regime.
- 3.6 The preceding paragraphs include most of what the FATF includes within its concept of beneficial owner. The test will also need to embrace "the natural person(s) who ultimately owns or controls the professional business", which might e.g. include a one off exercise of effective control not included in the 15% threshold (see paragraph 3.4) or the meaning of de facto director (see paragraph 3.5).
- 3.7 There is an additional FATF requirement in Recommendation 28 which has the aim of ensuring that criminals are not professionally accredited. It is envisaged that the legislation for the Bailiwick should specify that individuals providing professional advice in or from within the Bailiwick should be appropriately qualified. Whilst

further work and consultation will be required to determine how this requirement should be implemented, the Committee envisages that it would have ability to issue regulations in relation to this matter, in particular to enable the best way forward for administration of the framework for those individuals not covered by paragraphs 3.4 to 3.6 above.

4 Administration

- 4.1 In light of the Guernsey Registry's existing role in administering the various statutory regimes relating to legal persons in Guernsey and the recognised auditor regime, and in line with the equivalent statutory minimum standards framework agreed by the States of Deliberation in May 2022 in relation to estate agencies, the Registry should administer and enforce the new minimum standards test. It is envisaged that a new statutory role will be established (referred to in this Policy Letter as the "Administrator"). 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 professional businesses 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 framework described in this Policy Letter, the Administrator should have the power to:
- (a) require relevant information and documents from: professional businesses; 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 professional businesses to identify themselves and the individuals holding relevant positions mentioned above to the Administrator. This notification would be accompanied by the completion of a questionnaire, in a form specified by the Administrator. It is further envisaged that there would be a requirement for all professional businesses to provide information on an annual basis confirming the requirements are met. In addition to the annual confirmation by businesses, individuals should be required, on being appointed to a relevant position within a business, or acquiring a relevant interest, to notify the Administrator of their position and confirm that they meet the minimum standards test (and that they are appropriately qualified). In order to mitigate the burden on professional businesses, the Registry's intention is to allow professional businesses to utilise

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

information gathered to meet existing reporting to the UK regulators (and regulators in other jurisdictions designated as equivalent) as much as possible. Reporting on fit and proper requirements for UK regulatory purposes is well-established.

- 4.4 The role of the Registry proposed in this Policy Letter is similar to that agreed by the States earlier this year in relation to estate agencies. The Committee is mindful of the importance of monitoring compliance with the FATF standards and of marrying compliance and proportionality. Therefore, the Committee proposes that, in the medium term, it will work with the Committee *for* Economic Development in reviewing the effectiveness of the Registry's role in relation to meeting FATF Recommendation 28.

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 professional businesses 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 a professional business. 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 businesses would be required to confirm this on an annual basis. As part of a proactive approach, the Administrator could, for example, check information provided by 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 a professional business 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 firms who will be subject to the framework covered in this Policy Letter, the Guernsey Society of Chartered and Certified Accountants (“GSCCA”) and the GFSC. The GSCCA and the GFSC recognise the importance of the establishment of a statutory framework to meet FATF Recommendation 28.
- 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 legislation proposed 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 firms of accountants, auditors, insolvency practitioners and tax advisers and its administration by the Guernsey Registry be established in accordance with the above recommendations, including a requirement that those individuals within the firms providing professional advice and services are appropriately qualified; 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 The following information is provided in conformity with Rule 4(1):
- a) The Propositions accord with the States’ objective and policy plan to maintain compliance with international standards on financial crime and regulation and prepare for international evaluations, which was agreed as an action under the Government Work Plan 2022.
 - b) The consultation undertaken with relevant stakeholders in the preparation of the Propositions is detailed in section 6 of this Policy Letter.
 - c) The Propositions have been submitted to Her Majesty’s Procureur for advice on any legal or constitutional implications.

- d) There should be no additional financial implications to the States of Guernsey of carrying the proposals into effect.

8.3 For the purposes of Rule 4(2):

- a) It is confirmed that the Propositions engage the mandate of the Committee with respect to fiscal policy and economic affairs.
- b) It is confirmed that each of the Propositions have the unanimous support of the Policy & Resources Committee.

Yours faithfully,

P T R Ferbrache, President

H J R Soulsby, Vice-President

J P Le Tocq

M A J Helyar

D J Mahoney