

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

**A NEW GUERNSEY ANTI MONEY LAUNDERING/COMBATING THE FINANCING OF
TERRORISM FORUM**

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'A New Guernsey Anti Money Laundering/Combating the Financing of Terrorism Forum' dated 3rd October 2022, they are of the opinion –

1. To endorse the policy approaches set out in the Policy Letter;
2. To agree to amend the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 and the Disclosure (Bailiwick of Guernsey) Law, 2007 (and to make such consequential and incidental legislative provision as may be necessary) to:
 - (a) enable information to be shared between the Financial Intelligence Unit and third parties in line with the information-sharing provisions in the Crime and Courts Act, 2013, the Proceeds of Crime Act 2002 and the Terrorism Act 2000,
 - (b) introduce confidentiality provisions applicable to any information shared under the provisions referred to above, and
 - (c) introduce a power for the Committee *for* Home Affairs to make regulations to introduce a process whereby information provided by the private sector to their head offices or other linked organisations in another jurisdiction are shared with the Guernsey Financial Intelligence Unit;
3. To agree to amend the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006 (and to make such consequential and incidental legislative provision as may be necessary) to extend the exemptions from the provisions in the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 to questions asked in relation to assessing the suitability of any person for the purposes of participation in the proposed Guernsey Integrated Money Laundering and Terrorist Financing Intelligence Task Force, and;
4. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

A NEW GUERNSEY ANTI MONEY LAUNDERING/COMBATING THE FINANCING OF
TERRORISM FORUM

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

3rd October, 2022

Dear Sir

1. Executive Summary

- 1.1 It is becoming increasingly accepted internationally that jurisdictions which have close cooperation between the Anti-Money Laundering/Countering the Financing of Terrorism (“AML/CFT”) authorities (i.e. the public sector) and the private sector in partnership arrangements are more effective in efforts to counter-act the adverse effects of money laundering and terrorist financing, than those which do not have such arrangements in place. These Public and Private Partnerships (“PPPs”) are voluntary arrangements in which the coordinating authority for the PPP asks if the private sector members have information relevant to a particular case or cases and, if any of them do, it is a matter for the member(s) whether they provide information to the authority. Such PPPs do not replace the traditional mechanisms for obtaining confidential information but add to them.
- 1.2 The Joint Money Laundering Intelligence Taskforce (“JMLIT”), a PPP arrangement in the UK, has received particular attention in light of its effectiveness since it commenced operations in 2015. As at quarter 3, 2022, JMLIT had developed over 950 cases, identified over 7500 accounts previously not known to law enforcement, received over 5900 JMLIT Suspicious Activity Reports (“SARs”), closed over 4800 accounts, made over 280 arrests, granted over 700 legislative orders, identified over £92m in criminal assets under restraint and issued 66 alerts to the wider sector.
- 1.3 Following the success of the UK model and the increasing traction of such structures internationally, with at least 20 national and 3 trans-national financial information sharing partnerships currently in operation, it is proposed that the

Bailiwick's Financial Intelligence Unit ("FIU") should establish a similar task force in the Bailiwick of Guernsey. It is expected that this PPP, the Guernsey Integrated Money Laundering and Terrorist Financing Intelligence Task Force ("GIMLIT"), will be established in 2022. In order for this to be achieved, Guernsey's legislation requires amendment to allow members of GIMLIT to provide information voluntarily to the FIU and to enable voluntary disclosures to be made within the regulated sector, under certain conditions and to ensure that all members of GIMLIT can be properly security vetted. In particular, this would mean amendments to the Disclosure (Bailiwick of Guernsey) Law, 2007 ("the Disclosure Law")¹ and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("the Terrorism Law")² are needed in order to provide aspects of the legal framework for the new PPP to be effective.

- 1.4 In considering the best model for Guernsey, the FIU has liaised with JMLIT and with the equivalent PPPs in Hong Kong and Singapore. These and other PPPs are confident that they have generated considerable value in addressing serious crime. The FIU has also liaised with the other Quad Islands (Gibraltar, Isle of Man, and Jersey) and has been instrumental in setting up a Quad Island PPP forum. The forum has been liaising with the UK JMLIT and have subsequently signed a Memorandum of Understanding ("MOU") with JMLIT in June 2022, which will increase the effective sharing of information between the FIUs and the UK. Gibraltar formed its own independent PPP in July 2022, and the other Quad Islands also aim to form their own PPPs in 2022.

2. Guernsey Integrated Money Laundering and Terrorist Financing Intelligence Task Force

- 2.1 The Guernsey task force would be similar to that in the UK and other models, including the Quad Islands. The key point made by PPPs elsewhere is to ensure that there is trust between the public and private sectors (and between different firms in the private sector) and this takes time to build.
- 2.2 The Quad Island FIUs PPP models will initially comprise representatives from the banking 'retail' sector. The intention in Guernsey is to set-up a 'Pilot Scheme' GIMLIT model which will consist of the four main retail banks in the Bailiwick. This 'Pilot Scheme' will not require any change in the legal framework, or approval from the States members as this model will only be sharing FIU and law enforcement information with the members, and there will be no sharing of information between members. The FIU will be using its coercive powers under the Disclosure Law and supporting regulations to obtain information from the 'Pilot Scheme' members where appropriate, primarily regulation 2 of the Disclosure (Bailiwick of

¹ [Disclosure \(Bailiwick of Guernsey\) Law, 2007](#)

² [Terrorism and Crime \(Bailiwick of Guernsey\) Law, 2002](#)

Guernsey) (Information) Regulations, 2019³. This regulation is looked at in more detail below.

- 2.3 The 'Pilot Scheme' will be extended to other international banks on the approval of the Policy Letter and the changes proposed to the legal framework. The FIU has sought feedback/engagement from the main retail banks and they have all confirmed that they are keen to promote and participate in the 'Pilot Scheme' model.
- 2.4 GIMLIT would have an overriding objective, which is the optimisation of the collective capabilities of the members of the task force so as to prevent, identify and disrupt financial crime, money laundering, terrorist financing and financing of weapons of mass destruction. This would be consistent with Guernsey's money laundering and financing of terrorism national risk assessment. In practice, in light of Guernsey's risk profile, GIMLIT would be almost entirely concerned with money laundering. The objective of PPPs in other jurisdictions is achieved in two main ways, first at an operational level by sharing of case-specific information by the public sector with the private sector members on the PPP and, second, at a strategic level building on common understandings of threats, risks and associated systems and controls required to mitigate risk (which includes the preparation of "Alerts" outlining typologies, indicators and other allied material relevant to the jurisdiction). The FIU proposes to begin with the first of these two approaches.
- 2.5 However, it is important to stress that SARs submitted to the FIU by reporting entities will not be shared within GIMLIT. While case information might reflect the contents of one or more SARs (in the same way as any exchange of intelligence material), the GIMLIT framework would be different to the framework for reporting of suspicion of money laundering or the financing of terrorism. It will not be possible to identify any Guernsey party, or other GIMLIT member, as a source of information, or subject of a request leading to a request for further information from members of GIMLIT. This will be an important element in maintaining trust between the FIU and the private sector.
- 2.6 The initial 'Pilot Scheme' members and industry sub-sectors and firms represented as future members would be agreed by the FIU and other GIMLIT members from among those sub-sectors subject to AML/CFT obligations; each firm would select an appropriate officer or officers at senior level to represent it (for example, the money laundering reporting officer), this would be subject to the vetting procedures referred to below. It is typical for the starting point to be the inclusion of representatives of major retail banks and in the Guernsey context, it is envisaged that the membership of the task force would be governed in this way. Membership of the GIMLIT will be regularly reviewed by the FIU and current members, and consideration may be given to new members subject to operational

³ [Disclosure \(Bailiwick of Guernsey\) \(Information\) Regulations, 2019](#)

experience and demand. However, membership of GIMLIT will continue to be on a voluntary basis.

- 2.7 In order to mitigate risk and maximise trust between members of GIMLIT all of the members would be vetted by the FIU. Public authority representation would include officers of the Economic & Financial Crime Bureau, the Revenue Service, and supervisory authorities (the Guernsey Financial Services Commission and the Alderney Gambling Control Commission). Each member of the task force would sign a MOU concerning the GIMLIT information sharing arrangements; this would be modelled on that used in the UK as that precedent has worked successfully. In addition, in light of the links between groups active in both the UK and Guernsey, this should increase trust with regard to the flow of information.
- 2.8 The FIU would make requests to members of GIMLIT for information; first, the FIU would make requests based on its own analysis. Second, it would share elements of requests for assistance received from domestic and international law enforcement agencies, financial intelligence units, and other PPPs such as JMLIT, and other Quad Island PPPs, to identify financial assets or products or to provide tactical intelligence about specific subjects or suspect financial activity within the Bailiwick. The aim would be for each member of GIMLIT to search its databases and then provide the FIU (and, if that member considers it appropriate, other private sector participants) with any information it holds (or can obtain from elsewhere in the group to which the member belongs) which is relevant to a request. The aim of the FIU in making the request would be to receive information that will or might assist in determining any matter in connection with a suspicion that a person is or has been engaged in financial crime, money laundering or the financing of terrorism or proliferation – or potentially other serious crime if the information points in that direction. The provision of information to the FIU through GIMLIT will be voluntary. That said, if information provided by the FIU to GIMLIT leads to a suspicion then the reporting requirements and obligations under the Disclosure and Terrorism Laws, and supporting regulations, will still be applicable.
- 2.9 In order to facilitate specific information sharing between other PPPs including JMLIT members must sign an MOU. An initial MOU with the 'Pilot Scheme' members will be signed and amendments made to the MOU accordingly, with new members joining.
- 2.10 In order to facilitate information sharing, including ensuring that members of GIMLIT are confident that they will receive a reasonable amount of information, the FIU will use a template document for its requests.
- 2.11 On receipt of request for information members of GIMLIT must respond within thirty (30 days) and within twenty-four hours for terrorist related requests. A negative response after 30 days would denote that the member has no

information to share with the FIU. In other words, this would comprise a nil response.

- 2.12 On receipt of information through GIMLIT, the FIU could utilise the provisions of the Disclosure Law or the Terrorism Law and supporting regulations as appropriate to formally request the information from the member. On receipt of the information, the FIU would undertake operational analysis and, if a requesting authority is involved, disseminate relevant intelligence to that authority.
- 2.13 The FIU needs no new legal powers to establish GIMLIT. However, the legislative framework on the provision of information sharing will require amendment for the effectiveness of GIMLIT to be assured, including the confidentiality provisions or other restrictions on sharing such information between the members of the GIMLIT.
- 2.14 The members of GIMLIT will meet quarterly or on an ad-hoc basis to discuss specific GIMLIT referrals.

3 Existing Powers in Relation to Provision of Information to the FIU

- 3.1 There is a range of circumstances in which Guernsey businesses subject to the AML/CFT framework can already provide information to the FIU.
- 3.2 First, businesses are required to report suspicion of money laundering or terrorist and proliferation financing to the FIU under the Disclosure and Terrorism Laws. Linked with this, under the Disclosure (Bailiwick of Guernsey) Regulations, 2007, and corresponding regulations under the Terrorism Law, the FIU can require businesses to provide additional information, either after receipt of a report of suspicion, or when a business is identified in a third party's report.
- 3.3 Second, in the absence of a SAR from the private sector, the FIU can compel a business to provide information to it under the Disclosure Law and the Disclosure (Bailiwick of Guernsey) (Information) Regulations, 2019 (or, in terrorist financing cases, under the equivalent powers and supporting regulations under the Terrorism Law), in relation to a report from a domestic or foreign authority (a report for these purposes includes a request for information). For example, the FIU might receive a report which includes a request for information from an authority in another jurisdiction, and it might be appropriate to respond to that request by compelling a business in Guernsey to provide that information. Provision of both positive and negative information falls within these provisions. By way of illustration of negative findings, if a foreign authority advises the FIU that an individual is under investigation and requests the FIU to find out whether that person has a business relationship in Guernsey for the purposes of their investigation, confirmation that the individual does not have a business relationship within this jurisdiction is just as relevant to the foreign authority's

request as confirmation that the individual does have a relationship with a firm in Guernsey.

- 3.4 The FIU can also use its information gathering powers not only to make a request to a particular firm to provide information, but also to make a general request to the finance sector to establish whether a business relationship with a particular individual or entity exists within the Bailiwick, and if so with whom. Once that has been clarified, the FIU can then use its powers under the Disclosure Law and supporting Disclosure Regulations provisions (or its equivalent powers under the Terrorism Law and supporting regulations) to obtain specific details from any entity that has a business relationship with the individual.
- 3.5 These powers are underpinned by “confidentiality” provisions, when financial institutions provide information to the FIU. The lawful sharing of such information, voluntarily by GIMLIT members including personal data is covered by the Data Protection (Bailiwick of Guernsey) Law, 2017 (para 13A of Schedule 2).
- 3.6 There are also "tipping off" provisions, which make it a criminal offence in certain circumstances to disclose information relating to SARs or to requests for information from other jurisdictions.

4 Proposed Changes

- 4.1 There are no legal barriers to prevent the FIU from cooperating with a foreign authority, including PPPs such as JMLIT. However, some amendments to the Guernsey legal framework are necessary in order to put in place a similar scheme for domestic purposes. This is because the existing information sharing gateways in the Disclosure Law, Terrorism Law and supporting regulations are not wide enough to permit the private sector to disclose confidential information to the FIU voluntarily (i.e. without the FIU using its formal powers under legislation to require information to be provided) or to enable the FIU to require information from the private sector in the absence of a domestic report of suspicion or foreign report of suspicion or request for information. In addition, there is currently no power for business participants to share information among themselves should they consider it appropriate, proportionate and necessary to do so to enhance the sharing of information. Therefore, in order to ensure that business participants are fully protected, and to give them comfort that if they decide to share information they will not be exposed to any claims of breach of confidentiality, it is proposed to address this by making amendments to the Disclosure Law and the Terrorism Law, based on the provisions of the UK's Crime and Courts Act 2013, Proceeds of Crime Act 2002 and Terrorism Act 2000. These provisions enable disclosures within the UK's regulated sector subject to specified conditions. To be clear, these provisions do not require any person to provide information, but simply protect persons who choose to provide information on a voluntary basis (and this protection will apply to any person from the regulated sector, not just GIMLIT

members). The proposed amendments should be underpinned by regulation-making powers for the Committee *for* Home Affairs so that any practical issues in connection with the FIU having access to information relating to its core functions that may have been provided by the private sector to a head office or other linked organisation in another jurisdiction which might arise once GIMLIT becomes operational can be easily addressed.

5. Confidentiality

- 5.1 The tipping off offences referred to above are likely to protect much of the information relevant to GIMLIT, but the possibility of cases where the criteria for those offences is not met cannot be ruled out. Therefore, while it is not expected that any firm within the GIMLIT environment will provide any confidential information to any external party, the intention of GIMLIT is to provide an environment whereby members will enhance the sharing of information and build trust by ensuring that members of the task force are aware of and acknowledge the sensitivity of the information provided within GIMLIT. In addition, foreign authorities will need to be confident that the information they provide will be circulated only within a secure environment, specifically via the FIU's secure online THEMIS Money Laundering Reporting Officer Portal. Accordingly, it is proposed that the Disclosure and Terrorism Laws should be amended along the lines of confidentiality provisions in the Civil Contingencies (Bailiwick of Guernsey) Law, 2012⁴. These provide that it is an offence for any member of the Civil Contingencies Authority, or any employee of the States of Guernsey engaged in work for the Authority, to unlawfully disclose any information, document or other article to which they have access by virtue of their position.
- 5.2 In addition, as indicated in paragraph 2.5 above, the FIU proposes to follow other PPP models and would require all participants in GIMLIT to sign a MOU. This document will highlight the importance of confidentiality and the purpose(s) for which information obtained by GIMLIT members can be used.
- 5.3 Related to this, it is clearly important that all members of GIMLIT are properly vetted, including with regard to any previous convictions. Under the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002⁵, it is a general rule that the obligation to disclose details of previous convictions under any agreement or arrangement and the ability to ask questions about those convictions do not apply to convictions that are to be treated as spent by virtue of the passage of time. This general rule would apply to the proposed MOU underpinning participation in GIMLIT, unless it is subject to an exemption under the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions)

⁴ [Civil Contingencies \(Bailiwick of Guernsey\) Law, 2012](#)

⁵ [Rehabilitation of Offenders \(Bailiwick of Guernsey\) Law 2002](#)

Ordinance, 2006⁶ (“the 2006 Ordinance”). The effect of exemption under the 2006 Ordinance is that questions may be asked about any convictions a person has, irrespective of how long ago the convictions may have occurred. The exemption currently applies to people working at senior levels in the financial services sector, but only in respect of questions asked by an employer, or by the Guernsey Financial Services Commission for the purposes of the licensing process. This means it is not wide enough to cover questions asked by the FIU for the purposes of GIMLIT. It is therefore proposed that the 2006 Ordinance be amended to enable questions to be asked by the FIU about any convictions, whenever incurred, in relation to members of the private sector for the purposes of participation in GIMLIT.

- 5.4 In addition to an MOU, the FIU propose to draft a Data Protection Impact Assessment (“DPIA”) which will identify and minimise the data protection risks that may need to be considered when developing GIMLIT. This DPIA will include the process that the FIU will adopt when sharing information between the GIMLIT members, the legal basis for sharing information, and the controls and measures that will be put in place to reduce the risk of breaching data protection requirements.

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 propositions contribute to Priority 2 of the Government Work Plan by ensuring compliance with international agreements and standards.
- b) In preparing the propositions, consultation has been undertaken with:
 - a. institutions in the private sector subject to AML/CFT requirements. The importance and value of sharing information is recognised. PPPs, and the voluntary ethos for information sharing which underpins them, are a step change in approach from the compulsory mechanisms which have existed to date. They require a different way of thinking. In that regard, the Financial Intelligence Unit, which is proposed to administer GIMLIT, has paid particular attention to addressing, to the extent that it can, concerns by some banks as to how the PPP will operate. These concerns included the extent to which a formal legal structure is needed and the potential volume of

⁶ [Offenders \(Bailiwick of Guernsey\) Law, 2002 \(Commencement, Exclusions and Exceptions\) Ordinance, 2006](#)

work. The Association of Guernsey Banks has been provided with the draft procedural documentation. The Association recognises the proposed protections offered by a legal framework in establishing GIMLIT and that procedures will be put in place to emphasise protection and trust in voluntary information sharing.

- b. the Law Officers Chambers, the Financial Intelligence Unit, the Economic and Financial Crime Bureau, Bailiwick Law Enforcement, the Guernsey Financial Services Commission, the Alderney Gambling Control Commission and the Revenue Service. All of these authorities are supportive of the establishment of GIMLIT.
- c. the States of Alderney Policy & Finance Committee and Sark Chief Pleas Policy & Finance Committee.
- c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no financial implications to the States of carrying the proposals into effect.

6.3 In accordance with Rule 4(2):

- a) The propositions relate to the Committee's purpose and policy responsibilities to advise the States and to develop and implement policies on matters relating to its purpose including law enforcement, including policing and customs.
- b) The propositions have the unanimous support of the Committee.

Yours faithfully

R G Prow
President

S P J Vermeulen
Vice-President

S Aldwell
L McKenna
A W Taylor

P A Harwood OBE
Non-States Member