

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

**MINIMUM STANDARDS FOR LAWYERS**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "*Minimum Standards for Lawyers*", dated 30<sup>th</sup> May 2023, they are of the opinion:-

1. To agree that a framework for a minimum standards test for lawyers and its administration by HM Greffier and the Guernsey Registry be established in accordance with the recommendations set out in this policy letter, including a requirement that staff providing professional legal advice 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 His 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 LAWYERS**

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

30<sup>th</sup> May, 2023

Dear Sir

**1 Introduction**

- 1.1 This policy letter proposes the introduction of legislation imposing additional requirements on law firms and lawyers 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 a regulatory 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. The international expectation is that a comprehensive approach is taken to preventing control and management of law firms by criminal elements, which means that sufficient legal provisions need to be in place so as to permit this. Law firms, for the purposes of this policy letter, means both firms of Advocates and English solicitors (and other non-locally qualified lawyers) operating in the Bailiwick.
- 1.2 It is recognised that the establishment and administration of a proportionate framework to address the issue is crucial, and the proposals in this letter would apply only to those businesses in the Bailiwick which are registered with the Guernsey Financial Services Commission (the “Commission”) as prescribed businesses and which are therefore subject to anti-money laundering and combatting the financing of terrorism (“AML/CFT”) obligations. There are statutory *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 lawyers are required to register with the Commission, pursuant to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “Proceeds of Crime Law”) and the Commission 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 point this letter describes these firms as the “law firms”. The proposals in this policy letter would only apply to such law firms and, for the avoidance of doubt, not to lawyers who are employed in other businesses or public sector authorities.

- 1.4 The Committee is aware that the Guernsey Bar is undertaking a detailed review of the Guernsey Bar (Bailiwick of Guernsey) Law, 2007 (the “Guernsey Bar Law”). It is possible that the outcome of that process may lead in due course to a revised system of professional oversight of lawyers (both advocates and non-locally qualified lawyers) in the Bailiwick which adequately addresses the gap which currently exists. However, at the present time the Committee is of the view that a regime as set out in this policy letter is necessary in order to demonstrate that Guernsey meets the requirements of the FATF standards in this regard. It also has the advantage of being aligned with similar regimes that have been proposed for minimum standards for the other categories of prescribed business (e.g. estate agencies and firms of accountants) under the Proceeds of Crime Law.

## **2 Background**

- 2.1 The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (the “Prescribed Businesses Law”) and the AML/CFT requirements in relation to customers<sup>1</sup> 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 law firms 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. Linked with this, when Guernsey is evaluated by MoneyVal (or any other body assessing Guernsey’s compliance with the FATF requirements) the expectation will be that Guernsey should have a comprehensive approach to preventing criminal elements from controlling/managing law firms and that this

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<sup>1</sup> 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”).

comprehensive approach should be demonstrably effective. The Committee therefore considers it appropriate to update our regime to introduce a minimum standards test for owners and controllers of the law firms, and for the linked legislative provisions to enable a comprehensive approach to be taken, as set out in this policy letter, to ensure that the Bailiwick meets the revised international standards.

- 2.3 Some of the law firms in the Bailiwick which are subject to the Prescribed Businesses Law, and the AML/CFT requirements, are established as sole practitioners, or traditional partnerships, whilst others are established as limited liability partnerships (“LLPs”) registered with the Registrar of LLPs in Guernsey. The provisions of the Beneficial Ownership (Guernsey) Law, 2017 apply to LLPs, and details of the beneficial ownership of LLPs is required to be provided to the relevant Registrar of Beneficial Ownership. In addition, there are provisions of the LLP Law regarding disqualification by the Court of persons considered to be unfit to be a member of an LLP.
- 2.4 In order to meet the FATF standards, the proposals in this policy letter cover any form which a law firm might take, even forms not currently permitted, or currently used, such as companies.
- 2.5 By way of further context with regard to regulation, individual lawyers are regulated by professional bodies. Locally qualified Guernsey Advocates have all taken the Oath requiring them to discharge the office of Advocate in conformity with the traditional Articles governing conduct. They are also professionally bound by Rules of Professional Conduct made by the Guernsey Bar Council, which include obligations as to conduct in both professional and private life.
- 2.6 The Guernsey Bar Law requires HM Greffier to maintain a Register of Advocates (the “Register”) which includes, inter alia, “notwithstanding the provisions of any enactment concerning the rehabilitation of offenders, any conviction or caution for an offence committed in any jurisdiction and which was punishable by a term of imprisonment exceeding two years” and “any sentence consequent upon any conviction”<sup>2</sup>. Any change in the information contained in the Register must be notified by an Advocate to HM Greffier within 28 days of that change<sup>3</sup>. At present, these provisions, as with the other contents of the register, rely on the Advocate to provide the relevant information to HM Greffier, whereas the FATF requires proactive monitoring of provisions to prevent criminal elements from managing or controlling law firms.
- 2.7 The Guernsey Bar Law gives the responsibility for discipline of Advocates to La

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<sup>2</sup> Section 14 of the Guernsey Bar (Bailiwick of Guernsey) Ordinance, 2007

<sup>3</sup> Failure to comply is an offence, punishable on summary conviction by a fine not exceeding level 3 on the uniform scale.

Chambre de Discipline (the “Chambre”). The Chambre deals with complaints of professional misconduct against Guernsey Advocates and has powers to investigate and hold disciplinary hearings. Sanctions in cases where a complaint is proved include private reprimand, public rebuke, a fine in a sum not exceeding level 3 (currently £2,000) on the uniform scale, an order for the completion of compulsory training, or suspension for a period of up to 3 months. The Chambre also has the power to refer the complaint to the Royal Court for consideration of a higher fine, a longer suspension, or disbarment. However, the scope of the Chambre’s current role (covering Guernsey Advocates only) does not lend itself to prevention of broader control and management of law firms by criminal elements.

- 2.8 Lawyers in Guernsey qualified in other jurisdictions will be regulated as to their conduct by professional regulatory bodies in other jurisdictions, most commonly the Solicitors Regulation Authority and the Bar Standards Board in the UK but also professional bodies in other jurisdictions. Such professional regulatory bodies impose professional standards on their members, including codes of conduct, and have enforcement powers that can lead to the imposition of sanctions including in the most serious cases disbarment. This is positive, but the FATF is looking for jurisdictions (in this case the Bailiwick) in which a lawyer may be working to accept responsibility themselves for establishing and monitoring compliance with anti-criminality requirements.

### **3 Standards**

- 3.1 While the beneficial ownership and commercial frameworks in the Bailiwick mentioned above, combined with professional regulation of qualified lawyers in their jurisdiction of qualification 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 for the owners and controllers of law firms. It is important for Guernsey to take ownership of meeting these standards rather than relying on the application and effect of regulatory regimes in other jurisdictions. The new legislation would supplement existing regimes to ensure that the Bailiwick takes responsibility for ensuring that only people who are fit to be involved in the management or control of a law firm 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, be aligned with and take advantage of information requirements for existing Bailiwick, UK and other regulatory purposes.
- 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 law firm, 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 or director (or equivalent) of a law firm, as well as any other person participating in, or being in any way concerned, directly or indirectly, in the management of the firm. 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) and also to non-locally qualified lawyers below the level of partner or director, where they are concerned in the management of the firm in the Bailiwick, the Guernsey Money Laundering Reporting Officer and the Guernsey Money Laundering Compliance Officer.
- 3.5 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 one off exercise of effective control not included in the 15% threshold (see paragraph 3.3) or the meaning of de facto director (see paragraph 3.4).
- 3.6 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 legislation for the Bailiwick should specify that individuals in law firms providing legal 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 make 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 3.3 to 3.5 above.

#### **4 Administration**

- 4.1 The routine administration of the test in relation to persons falling within the scope of the paragraph above would follow one of a number of different paths, depending on the category of person, recognising that owners and controllers of law firms will include both Guernsey Advocates and those who are not Guernsey Advocates. HM Greffier and the Chambre already have roles and responsibilities in respect of Guernsey Advocates, but they have no equivalent functions in respect of those who are not locally qualified Advocates.
- 4.2 First, it is therefore proposed that the current roles and responsibilities of HM Greffier and the Chambre are expanded to accommodate a minimum standards test in the case of Advocates who have management or control of a law firm. HM Greffier would act as the administrator of the test, in respect of Advocates, and would have the power to refer a failure to meet the minimum standards to the Chambre. Such a referral would be treated in the same way as a complaint of professional misconduct and the Chambre would have jurisdiction to impose sanctions in appropriate cases (see paragraphs 5.2 and 5.3 below).
- 4.3 In light of the Guernsey Registry's existing role in administering the various statutory regimes relating to legal persons in Guernsey, and in line with the equivalent statutory minimum standards framework agreed by the States of Deliberation in May 2022 in relation to estate agencies and the similar proposals for accountancy firms agreed in October 2022, the Registry should administer and enforce the new minimum standards test in respect of controllers and managers of law firms who are not Guernsey Advocates.
- 4.4 The legal framework should allow for non-Guernsey Advocates who are part of a wider firm structure, and based in another jurisdiction, to fall outside of the scope of the regime provided those individuals are subject to appropriate fit and proper requirements in a jurisdiction specified in regulations issued by the Committee. The Committee will engage with firms which are in scope of the regime as to the content of such regulations. 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, the territories in which they operate could be specified so they would not need to comply with the Bailiwick regime.
- 4.5 It is envisaged that a statutory role (referred to in this policy letter as the "Administrator") will be established in respect of the administration of the regime

as it relates to non-Guernsey Advocates and that the Registrar of Companies will occupy that role upon its establishment. 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 law firms 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.

4.6 In order to administer the framework described in this policy letter, the Administrator and HM Greffier (together referred to in this policy letter for ease of reference as the “Relevant Administrator”) should have powers to:

(a) require relevant information and documents from: law firms; their beneficial owners, controllers, members, and 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 such information with relevant third parties<sup>4</sup>.

For the avoidance of doubt, it is intended that the powers above should only extend to information which is relevant to the administration of the minimum standards test, in respect of registered individuals, and should be without prejudice to the usual rules relating to legal professional privilege and self-incrimination.

4.7 It is envisaged that there would be a requirement for new law firms to identify themselves and the individuals holding relevant positions mentioned above to the Relevant Administrator. This notification would be accompanied by the completion of a questionnaire, in a form specified by the Relevant Administrator. It is further envisaged that there would be a requirement for all law firms 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 law firm, or acquiring a relevant interest, to notify the Relevant Administrator of their position and confirm that they meet the minimum standards test. In order to mitigate the burden on professional businesses, the intention is to allow businesses to utilise information gathered to meet existing reporting to regulators in other territories as much as possible. Reporting on fit and proper requirements in some other jurisdictions, such as the UK, for regulatory purposes is well-established.

## 5 Sanctions

5.1 In order to ensure that the proposals are effective, sanctions will need to be

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<sup>4</sup> For example the GFSC, the Economic and Financial Crime Bureau and the Registrars of legal entities and beneficial ownership, the Guernsey Bar, the Administrator and HM Greffier.

available where requirements are not met.

- 5.2 As noted in paragraph 2.7 above, in the case of Advocates the Chambre has powers to dispose of a complaint of professional misconduct by dismissing the complaint or, if proven, by issuing a private reprimand, a public rebuke, a fine not exceeding level 3 on the uniform scale<sup>5</sup>, an order for the completion of training, or by suspending the Advocate from practice for a period not exceeding 3 months. It can also refer the complaint to the Royal Court for consideration of a fine in excess of level 3 on the uniform scale, suspension for a period of more than 3 months, or disbarment<sup>6</sup>.
- 5.3 It is proposed that the Chambre's jurisdiction should be extended to explicitly allow it to consider cases of a failure by an Advocate, to whom the minimum standards apply, to meet the minimum standards and that the Chambre should have the same disposals available to it as identified above.
- 5.4 It is proposed that the sanctions available to the Administrator, in respect of those non-Guernsey Advocates to whom the minimum standards apply, should reflect those available to the Registrar of Beneficial Ownership, pursuant to the Beneficial Ownership of Legal Persons (Bailiwick of Guernsey) Law, 2017.
- 5.5 Therefore, it is envisaged that there would be a range of penalties for failure, by law firms 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 Relevant Administrator.
- 5.6 In respect of non-Guernsey Advocates, the range of penalties available to the Administrator 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 law firm in Guernsey. 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.
- 5.7 The Relevant Administrator would need to be proactive in exercising their roles and would need the power to issue guidance. By way of illustration, the Relevant 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 Relevant Administrator could, for example, check information provided by using the internet, a commercial third-party data provider and/or liaison with third parties

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<sup>5</sup> Currently £3,000

<sup>6</sup> See section 27 of the Guernsey Bar Law.

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 law firm 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.

- 5.8 As indicated above at paragraph 1.4, the Guernsey Bar is undertaking a detailed review of the Guernsey Bar Law, and it is possible that the outcome of that process may lead in due course to a revised system of professional oversight of lawyers providing legal services in the Bailiwick (both advocates and lawyers qualified in other jurisdictions). The Committee recognises that the outcome might be relevant to meeting the FATF standards and, therefore, the mechanism for compliance with the FATF's anti-criminality standards for law firms will be reviewed in the medium term. It is possible that, in future, a revised legal professional regulatory regime might supplement, or replace, either in full or in part, the minimum standards test.

## **6 Consultation**

- 6.1 The Committee has consulted the Guernsey Bar, the GFSC, the Law Officers of the Crown, HM Greffier and the Guernsey Registry.
- 6.2 The Committee has also consulted the Committee for Economic Development, 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 lawyers and its administration by HM Greffier and the Guernsey Registry be established in accordance with the above recommendations, including a requirement that staff providing professional legal advice 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 His Majesty's Procureur for advice on any legal or constitutional implications.
- d) In terms of financial implications, administration of the minimum standards test will be added to the existing responsibilities of the Relevant Administrators. This will lead to efficiencies by (i) avoiding the need for recruitment of new office holders and (ii) allowing for the deployment of existing resources. However, the new regime will inevitably add to the workload of the Relevant Administrators and it is anticipated that two full time equivalent members of staff will be required to support the activities of the Relevant Administrators under this new regime and, in the case of the Guernsey Registry, to provide greater resilience with regards to existing functions.

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 the Propositions have the majority support of the Committee. Deputy Mahoney does not support the Propositions.

Yours faithfully,

P T R Ferbrache  
President

M A J Helyar  
Vice President

J P Le Tocq  
D J Mahoney  
R C Murray