

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

**AMENDMENTS RELATING TO TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL
ARRANGEMENTS**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Amendments Relating to Transparency and Beneficial Ownership of Legal Arrangements” dated 5th June 2023, they are of the opinion:-

1. To agree that the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 shall be amended as necessary to make provision for the transparency and beneficial ownership of legal arrangements, as set out in section 2 of this Policy Letter.
2. To approve the attached Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Trustees and Partners) (Amendment) Regulations, 2023.
3. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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.

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ARRANGEMENTS

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

5th June, 2023

Dear Sir

1. Executive Summary

- 1.1 This Policy Letter proposes some amendments to the Bailiwick’s legal framework for anti-money laundering and combatting the financing of terrorism (“AML/CFT”). The amendments concern the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (“the Proceeds of Crime Law”).¹
- 1.2 The States of Guernsey is committed to meeting international standards in relation to AML/CFT and sanctions. The principal standard setting body in this area is the Financial Action Task Force (“the FATF”). While the Bailiwick has a well-established legal framework in these respects, an amendment has been identified as necessary to ensure that the Bailiwick continues to meet the technical compliance obligations under Recommendations issued by the FATF (“the FATF Recommendations”).² The Bailiwick’s technical compliance with the FATF Recommendations will be assessed by MoneyVal in its forthcoming evaluation of the Bailiwick.
- 1.3 The amendment concerns the introduction of a framework for the transparency of legal arrangements created under the law of the Bailiwick that do not have any officers regulated by the Guernsey Financial Services Commission (“the GFSC”).

¹ [Criminal Justice \(Proceeds of Crime\) \(Bailiwick of Guernsey\) Law, 1999](#)

² [The FATF Recommendations](#)

2. Legal arrangements

- 2.1 FATF Recommendation 25 concerns the transparency and beneficial ownership of legal arrangements. These are entities such as trusts that are recognised in law but do not have legal personality.
- 2.2 The legal arrangements that may be created under the law of the Bailiwick are trusts, limited partnerships without legal personality (LPs)³ and general partnerships. The legislation governing the creation of these legal arrangements is, respectively, the Trusts (Guernsey) Law, 2007 (“the Trusts Law”), the Limited Partnerships (Guernsey) Law, 1995 (“the LP Law”), and the Partnership (Guernsey) Law, 1995 (“the Partnership Law”). While the vast majority of trusts in the Bailiwick are Guernsey trusts so are subject to the Trusts Law, there is also a small number established by statute or customary law in the other islands in the Bailiwick.
- 2.3 FATF Recommendation 25 sets out measures which jurisdictions must have in place in respect of all legal arrangements that may be formed under their law. These requirements cover the following matters:
- Obtaining and maintaining accurate and up to date information on the identity of the persons linked to a legal arrangement (for example, settlors, beneficiaries or partners) and of any other natural persons exercising ultimate effective control over the legal arrangement;
 - Obtaining and maintaining accurate and up to date information on parties providing services to the legal arrangement, for example investment advisers or managers, accountants and tax advisers;
 - Disclosure of a person’s status as an officer of a legal arrangement to financial institutions and others;
 - Provision of information to competent authorities and financial institutions or other businesses that are subject to the FATF Recommendations.
- 2.4 For Bailiwick legal arrangements that do not have a regulated trustee or partner (i.e. a person licensed by the GFSC), the only legislation currently applicable is the Trusts Law, the LP Law and the Partnership Law. This legislation contains some measures that may be said implicitly to cover some aspects of the first three matters referred to above, but the scope of these measures is limited as well as being inconsistent across the three enactments, and in any event implicit

³ Limited partnerships with legal personality are legal persons rather than legal arrangements, so are not covered by Recommendation 25.

obligations are not sufficient to meet the FATF Recommendations. Furthermore, as regards the non-Guernsey trusts referred to in paragraph 2.2 above, those that have unregulated trustees are not covered by any obligations in this area at all.

2.5 While it is recognised that many unregulated trustees and partners may already be complying with most of the measures covered by FATF Recommendation 25 as a matter of good practice, this will not be sufficient to meet FATF Recommendation 25 unless it is required as a matter of law.

2.6 The requirement to ensure that the officers of legal arrangements are not prevented from providing information about the legal arrangement to competent authorities is addressed by the information gathering powers currently available to the Bailiwick's competent authorities. However, these powers are located in various different parts of the legal framework and are not consistently worded, and there is merit in dealing with the requirements of FATF Recommendation 25 in one place. As to the provision of information to financial institutions and other businesses that are subject to the FATF Recommendations, at present this is dealt with at a contractual level, but there is currently no express provision to address this in the legal framework.

2.7 Jurisdictions with similar issues such as the Isle of Man and the Cayman Islands have addressed those issues by introducing specific obligations for unregulated officers of legal arrangements. It is proposed that this approach should be followed in the Bailiwick by amending the Proceeds of Crime Law to introduce the following measures with regard to unregulated trustees and partners of all trusts, LPs and general partnerships created under the law of the Bailiwick:

- An obligation to:
 - keep up to date information on the identity of settlors, co-trustees, protectors, beneficiaries and any other controllers or partners;
 - hold basic information on regulated agents of, and service providers to, the trust or partnership as the case may be, including investment advisory or management services, managerial services, accountancy services, tax advisory services, legal services, trust services, partnership services or corporate services. This information must be kept accurate, up to date and updated on a timely basis;
 - keep records for at least 5 years;
 - disclose their status as a trustee or partner when transacting with

a financial services business or other business subject to AML/CFT standards;

- A power to disclose the information mentioned above to third parties;
- Criminal offences for breach of the obligations mentioned above. These offences will be subject to a reasonable precautions defence.

2.8 It is also proposed to make provision for the Policy & Resources Committee to issue guidance to unregulated trustees and partners to assist them in meeting these obligations. As these obligations are very similar to those applicable to regulated officers subject to the oversight of the GFSC, it is envisaged that the Committee would work closely with the GFSC when preparing the guidance. This would be underpinned by a publicity campaign to bring the new requirements to the attention of persons currently acting as unregulated trustees or partners. The importance of a campaign was articulated within the responses to the consultation referred to below. It is further envisaged that the legislation bringing the new requirements into force will contain transitional provisions, to allow unregulated trustees and partners time to take any steps that they need to in order to comply with the requirements

2.9 For legal arrangements with a trustee or partner licensed by the GFSC, some of the measures outlined above are already in place because of the obligations applicable to regulated trustees and partners under the AML/CFT framework in Schedule 3 of the Proceeds of Crime Law. Some amendments to Schedule 3 are however required to ensure that it meets all aspects of FATF Recommendation 25. These amendments can be made by regulations made by the Policy & Resources Committee, but any such regulations shall not have effect unless and until approved by a resolution of the States under section 54(1A) of the Law. The attached Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Trustees and Partners) (Amendment) Regulations, 2023 contain the necessary amendments.

3. Consultation

3.1 The Committee has consulted with the private sector subject to AML/CFT supervision by the GFSC (this includes the Guernsey Association of Trustees and the Trust Bar) and with the Society of Trust and Estate Practitioners. The Committee has also consulted with the GFSC.

3.2 The Committee has also consulted with the Committee *for* Economic Development, the States of Alderney's Policy & Finance Committee and the Chief Pleas of Sark's Policy & Finance Committee in the course of developing this Policy Letter. The Committees support the proposals in this Policy Letter.

4. Compliance with Rule 4

4.1 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.

4.2 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 3 of this Policy Letter.
- c) The Propositions have been submitted to His 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.

4.3 In accordance with Rule 4(2):

- a) It is confirmed that the Propositions engage the mandate of the Policy & Resources 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

M A J Helyar
Vice-President

J P Le Tocq
D J Mahoney
R C Murray

**The Criminal Justice (Proceeds of Crime)
(Bailiwick of Guernsey) (Trustees and Partners)
(Amendment) Regulations, 2023**

Made

5th June, 2023

Coming into operation

8th July, 2023

Approved by the States

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by sections 49AA and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^a ("**the Law**") and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Amendment of the Law.

1. (1) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 is amended as follows.

(2) In section 51(1), in the appropriate places, insert the following definitions -

""relevant partnership" means -

- (a) a limited partnership within the meaning of, and subject to the provisions of, the Limited Partnerships (Guernsey) Law, 1995 that does not have legal

^a Ordres en Conseil Vol. XXXIX, p. 137; this enactment has been amended.

personality, or

- (b) a partnership within the meaning of, and subject to the provisions of, the Partnership (Guernsey) Law, 1995," and

""**relevant trust**"" means any express trust that is governed by or is otherwise subject to the law of any part of the Bailiwick,".

- (3) In section 52, in the appropriate places, insert -

""**relevant partnership**"" (section 51(1)),", and

""**relevant trust**"" (section 51(1)),".

- (4) In Schedule 3, after paragraph 15G, insert -

"PART IIIB

PROVISIONS APPLICABLE TO TRUSTEES AND PARTNERS

Application.

15H. This Part applies to any specified business that -

- (a) carries out regulated activities within the meaning of Schedule 1, and
- (b) in the course of those activities, acts as a trustee of a relevant trust or a partner of a relevant partnership.

Regulated agents and service providers.

15I. (1) A specified business to which this Part applies must hold information on the identity of any regulated agents and service providers to the relevant trust or relevant partnership, as the case may be.

(2) A specified business that holds information within subparagraph (1) must ensure that the information -

- (a) so far as is possible, is accurate and up to date, and
- (b) is updated on a timely basis.

Disclosure of status.

15J. (1) Where -

- (a) a specified business to whom this Part applies -
 - (i) enters into a business relationship with, or
 - (ii) carries out or is otherwise involved in an occasional transaction with,a financial services business or a relevant business, and
- (b) the specified business is carrying out the activity at subparagraph (a) in its capacity as a trustee of a relevant trust or a partner of a relevant partnership, as the case may be,

the specified business must disclose the matters in subparagraph (b) to the financial services business or relevant business in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable.

Disclosure of information.

15K. (1) A specified business within paragraph 15H may disclose upon request -

- (a) to any of the relevant authorities, any information relating to the trust or partnership, as the case may be, and
- (b) in the circumstances described in paragraph 15J(1)(a), to a financial services business or relevant business, any information relating to -
 - (i) the beneficial ownership of the trust or partnership, as the case may be, and
 - (ii) any assets of the trust or partnership, as the case may be, that are to be held or managed under the terms of a business relationship or occasional transaction in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable."

(5) In paragraph 21 of Schedule 3, in the appropriate places, insert the following -

"regulated agent " means a person who -

- (a) is acting in relation to or on behalf of a relevant trust or relevant partnership, as the case may be, and
- (b) for the purposes of so doing is required to hold, and does hold, a licence from the Commission or a corresponding body in another jurisdiction",

"relevant authorities" means -

- (a) His Majesty's Procureur,
- (b) a police officer,
- (c) the Committee,
- (d) the Commission,
- (e) the Alderney Gambling Control Commission,
- (f) the Director of the Economic and Financial Crime Bureau,
- (g) the Financial Intelligence Unit,
- (h) the Director of the Revenue Service,
- (i) the Registrar of Charities and other Non Profit Organisations,
- (j) the Registrar of Non-Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010,
- (k) the Registrar for the purposes of each of the Beneficial Ownership Laws,
- (l) the Registrar of Companies,
- (m) the Registrar of Limited Liability Partnerships,
- (n) the Registrar of Foundations,
- (o) the Greffier, and

(p) the Registrar for the purposes of the Companies (Alderney) Law, 1994," and

""**service provider**" means a person, other than a regulated agent, who is providing investment advisory or management services, managerial services, accountancy services, tax advisory services, legal services, trust services, partnership services or corporate services in relation to a relevant trust or relevant partnership, as the case may be,".

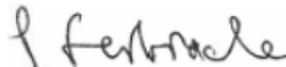
Citation.

3. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Trustees and Partners) (Amendment) Regulations, 2023.

Commencement.

4. These Regulations shall come into force on the 8th day of July, 2023.

Dated this 5th day of June, 2023



P. T. R. FERBRACHE

President of the Policy & Resources Committee

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce some amendments to the provisions in respect of specified businesses under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999. The amendments require specified businesses that act as trustees or partners in the course of their business to hold information on parties that provide services to a trust or partnership, and to disclose to such parties their status as a trustee or partner. There are also amendments governing the provision of information about a trust or partnership to third parties.

If approved by the States of Deliberation, these Regulations shall come into force on the 8th day of July, 2023.