

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

AMENDMENTS RELATING TO JURISDICTIONAL COUNTER MEASURES AND SANCTIONS

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Amendments Relating to Jurisdictional Counter Measures and Sanctions dated 22nd August, 2023, of the Policy & Resources Committee, they are of the opinion:-

1. To agree that
 - i. the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 shall be amended as necessary to enable the Policy & Resources Committee to apply countermeasures to countries carrying out money laundering, terrorist financing or weapons development activity, as set out in section 2 of this Policy Letter;
 - ii. the Sanctions (Bailiwick of Guernsey) Law, 2018 and the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011 shall be amended as necessary to introduce statutory requirements in relation to the functions of the Policy & Resources Committee concerning financial sanctions, as set out in section 3 of this Policy Letter;
 - iii. the Proceeds of Crime (Criminal Justice) (Proceeds of Crime) Law, 1999 shall be amended as necessary to specify that preventive measures apply to terrorist financing and sanctions breaches, as set out in section 4 of this Policy Letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

AMENDMENTS RELATING TO JURISDICTIONAL AML/CFT COUNTER MEASURES,
INTERNATIONAL SANCTIONS AND PREVENTIVE MEASURES

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

22nd August, 2023

Dear Sir

1. Executive Summary

- 1.1 This Policy Letter proposes amendments to the Bailiwick’s legal framework for anti-money laundering and combatting the financing of terrorism (“AML/CFT”) and the implementation of international sanctions measures. The amendments concern the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (the “Terrorism Law”)¹, the Sanctions (Bailiwick of Guernsey) Law, 2018 (“the Sanctions Law”)², the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011 (“the Terrorist Asset Freezing Law”)³ and the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (“the Proceeds of Crime Law”)⁴.
- 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, three amendments have 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”)⁵. The Bailiwick’s technical compliance with the FATF Recommendations will be assessed by MoneyVal in its forthcoming evaluation of the Bailiwick.

¹ [The Terrorism and Crime \(Bailiwick of Guernsey\) Law, 2002](#)

² [The Sanctions \(Bailiwick of Guernsey\) Law, 2018](#)

³ [The Terrorist Asset-Freezing \(Bailiwick of Guernsey\) Law, 2011](#)

⁴ [The Criminal Justice \(Proceeds of Crime\) \(Bailiwick of Guernsey\) Law, 1999](#)

⁵ [The FATF Recommendations](#)

- 1.3 The first proposed amendment concerns an additional power to apply jurisdictional AML/CFT countermeasures against business relationships and transactions originating from high-risk countries. The second concerns the introduction of statutory obligations in respect of some of the Committee's functions in relation to sanctions measures, and protection from civil liability for complying with sanctions. The third concerns clarification of the legal basis for requiring businesses to have measures in place to prevent terrorist financing and breaches of sanctions.

2. Jurisdictional Countermeasures

- 2.1 Under FATF Recommendation 19, jurisdictions must require financial institutions to apply enhanced due diligence measures to business relationships and transactions with parties from countries identified as being high-risk by the FATF.

- 2.2 FATF Recommendation 19 also requires countries to have the power to apply appropriate countermeasures, both when called upon to do so by the FATF and independently of any such call by the FATF. Such countermeasures should be effective and proportionate to the risks. The FATF Recommendations specify that examples of the countermeasures that could be undertaken by countries include the following, and any other measures that have a similar effect in mitigating risks:

- Requiring financial institutions to apply specific elements of enhanced due diligence;
- Introducing enhanced relevant reporting mechanisms or systematic reporting of financial transactions;
- Refusing the establishment of subsidiaries or branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant financial institution is from a country that does not have adequate AML/CFT systems;
- Prohibiting financial institutions from establishing branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have adequate AML/CFT systems;
- Limiting business relationships or financial transactions with the identified country or persons in that country;
- Prohibiting financial institutions from relying on third parties located in the country concerned to conduct elements of the customer due diligence process;
- Requiring institutions to review and amend, or if necessary, terminate, correspondent relationships with financial institutions in the country concerned;
- Requiring increased supervisory examination and/or external audit

requirements for branches and subsidiaries of financial institutions based in the country concerned; and

- Requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned.

- 2.3 Under FATF Recommendation 23, the same measures as those required in relation to financial institutions under FATF Recommendation 19 should be applied to certain other sectors considered vulnerable to being abused for money laundering and terrorist financing purposes, such as lawyers, accountants, and estate agents. These are referred to in the FATF Recommendations as designated non-financial businesses and professions (“DNFBPs”).
- 2.4 The power to require financial institutions and DNFBPs to apply enhanced due diligence measures as outlined above is addressed in the Bailiwick by the enhanced due diligence requirements applicable to financial institutions and other specified businesses under Schedule 3 of the Proceeds of Crime Law. There are corresponding measures in place with regard to eCasinos (which also come within the definition of DNFBPs) in the Alderney eGambling Ordinance, 2009. However, there is currently no Bailiwick legislation in place to enable the imposition of countermeasures, either at the request of the FATF or independently.
- 2.5 In the UK, the ability to impose some counter measures has been provided for under the Counter-Terrorism Act 2008 (the “UK Act”) which enables HM Treasury to issue a direction in relation to a country to members of the financial services sector. A direction may be issued (whether to particular parties or to the sector as a whole) if the FATF has advised that measures should be taken in relation to the country because of its money laundering or terrorist financing risks. A direction may also be issued if HM Treasury reasonably believes that activities relating to money laundering, terrorist financing or the development or production of nuclear, radiological, biological or chemical weapons are being carried out in the country and that these activities pose a significant risk to the national interests of the UK. A direction may involve additional customer due diligence requirements, ongoing monitoring, systematic reporting, and limiting or ceasing business.
- 2.6 The issuing of directions is underpinned by the power of regulators to take civil enforcement action, criminal enforcement provisions, procedural requirements (including as to the duration of a direction), the ability to apply for a licence from HM Treasury in respect of activity that would otherwise be prohibited by a direction, and rights of appeal. The UK Act also sets out special court procedures in relation to appeals against a decision of HM Treasury, under which the rights of appellants to receive information or to participate in a hearing may,

exceptionally, be restricted on public interest grounds. This could apply for example where disclosing information that had been relied on by HM Treasury in making a decision would compromise national security.

- 2.7 In Jersey, the Minister for External Relations and Financial Services has a power to issue a direction in cases of suspected money laundering or weapons development activity under the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012 (the “Jersey Law”). The power to issue a direction and the underpinning measures under the Jersey Law broadly correspond to those in the UK Act. In addition, the Jersey Law makes provision for reliance by the Minister on directions issued under the UK Act, both when issuing a direction and when responding to a legal challenge.
- 2.8 It is recommended that the Terrorism Law should be amended so as to introduce a direction making power along the lines of the UK Act, but which is applicable to both financial institutions and DNFBPs and which also covers all of the types of countermeasures referred to in the examples provided by the FATF Recommendations that are not included in the UK Act. The power to issue directions and licences should be exercisable by the Committee, which occupies the same position within the Bailiwick as HM Treasury and Jersey’s Minister for External Relations and Financial Services do in their respective jurisdictions with regard to similar issues such as financial sanctions and licences (see below). This will also complement the Committee’s existing power under the Terrorism Law to make administrative freezing orders in certain situations (for example to prevent action that is likely to be detrimental to the economy of the Bailiwick or to threaten life or property).
- 2.9 It is further recommended that the amendment to the Terrorism Law should include a requirement for the Committee to consult the Guernsey Financial Services Commission (“GFSC”) and the Alderney Gambling Control Commission before issuing a direction. This will enable the Committee’s decisions to be informed by the detailed knowledge of the affected sectors that the two regulators can bring to bear.
- 2.10 The amendment to the Terrorism Law should also include provision for the reliance on a direction issued under the UK Act in the same way as in the Jersey Law. With regard to special court procedures, the Terrorist Asset Freezing Law currently gives the States the power to enact legislation putting in place such procedures in certain circumstances. It is therefore recommended that this power should be extended to hearings in relation to the proposed countermeasures provisions in the Terrorism Law. This will enable a consistent approach to be taken to this issue across the legal framework should the need arise.

3. Sanctions procedures etc.

- 3.1.1 Under FATF Recommendations 6 and 7, jurisdictions must implement targeted financial sanctions, i.e. asset freezes and other financial restrictions that apply to persons designated for this purpose under United Nations Security Council Resolutions (UNSCRs) because of their links to the financing of terrorism or of the proliferation of weapons of mass destruction. This requirement is implemented in the Bailiwick by regulations made under the Sanctions Law that give effect to UK sanctions measures which implement the relevant UNSCRs. Under these regulations, the Committee is the competent authority for the purposes of financial sanctions. FATF Recommendation 6 also requires jurisdictions to have the power to make their own designations in terrorism related cases, both autonomously and to give effect to freezing requests from other jurisdictions. This requirement is implemented in the Bailiwick by a power for the Committee to make designations for the purposes of financial restrictions under the Terrorist Asset Freezing Law.
- 3.1.2 The FATF Recommendations also require the powers outlined above to be underpinned by mechanisms for submitting listing or de-listing requests to the United Nations and making or receiving designation requests to or from other jurisdictions. The Committee has had mechanisms in place to address these matters for several years. However, there is currently no explicit legal requirement in the Sanctions Law or the Terrorist Asset Freezing Law for it to do so.
- 3.1.3 Although the FATF Recommendations do not expressly require these mechanisms to be set out in legislation, experience of the evaluation process internationally is that mechanisms are likely to be given greater weight if they have a legal basis. Jersey has recently introduced amendments to its legislation in this area which confer explicit legal functions on the Minister for External Relations and Financial Services in relation to the matters outlined above, together with a requirement for the Minister to make information about procedures for the performance of these functions publicly available. It is recommended that the Sanctions Law and the Terrorist Asset Freezing Law be amended along similar lines in relation to the functions of the Committee. It is further recommended that this be accompanied by the power for the Committee to amend the Sanctions Law and the Terrorist Asset Freezing Law by regulations for the purposes of implementing the FATF Recommendations or other international standards. This will ensure that the legal framework can be swiftly revised as necessary in response to practical experience or changes to international standards in this area.
- 3.1.4 It is further recommended that the opportunity be taken to make an additional amendment to the Sanctions Law and the Terrorist Asset Freezing Law regarding protection against liability for actions carried out to comply with sanctions

measures. Under the sanctions legislation in the UK and Jersey, persons are not liable in civil proceedings for such actions, and in Jersey this protection goes further by applying to actions which a person reasonably believed were necessary to comply with sanctions measures. There is currently no protection against civil liability under Guernsey legislation. It is therefore recommended that the Sanctions Law and the Terrorist Asset Freezing Law be amended to introduce such protection and that this should be in line with the Jersey approach.

4. Measures to prevent terrorist financing and breaches of sanctions

- 4.1 Schedule 3 to the Proceeds of Crime Law sets out various requirements which financial institutions and DNFBPs must meet for the purposes of forestalling and preventing money laundering, and for related purposes. While related purposes are not defined in the legislation, the Law Officers have advised that this is wide enough to include measures to prevent terrorist financing and breaches of sanctions, so the legal basis is in place for the provisions in Schedule 3 (including the power of the GFSC to supervise compliance) to apply in these areas. However, it would be advisable to make this explicit on the face of the legislation and therefore to put this beyond doubt. It is therefore recommended that the Proceeds of Crime Law should be amended to specify that related purposes include the purposes of forestalling and preventing terrorist financing and breaches of sanctions.
- 4.2 The Committee has the power to amend Schedule 3 by regulations. It is envisaged that the Committee will enact regulations that make some clarifying amendments to Schedule 3 in order to leave no doubt as to the way in which the various provisions of Schedule 3 apply to terrorist financing and sanctions breaches. It is further envisaged that these regulations would come into force at the same time as the amendment to the Proceeds of Crime Law. In order for this to happen however, a technical change is required to the process by which regulations are considered by the States of Deliberation.

Currently, the Proceeds of Crime Law states that regulations amending Schedule 3 (and Schedules 4 and 5, which deal with the registration of financial services businesses and DNFBPs) are not effective unless and until they are approved by the States of Deliberation. By contrast, other regulations that implement international standards (including other regulations under the Proceeds of Crime Law) are effective unless and until the States resolves to annul them. (This is underpinned by a requirement to put the regulations in question before the States as soon as possible). Consequently, the current process for regulations amending Schedules 3 to 5 is at odds with that for comparable regulation making powers, and its effect is to delay the speed with which the Bailiwick can implement international standards. It is therefore proposed that the Proceeds of Crime Law be amended to bring the process for giving effect to regulations

amending Schedules 3 to 5 in line with that for other regulations made under that Law.

5. Consultation

5.1 The Committee has consulted with the Committee *for* Home Affairs, the Guernsey Financial Services Commission, the States of Alderney's Policy & Finance Committee, the Alderney Gambling Control Commission and the Chief Pleas of Sark's Policy & Finance Committee in the course of developing this Policy Letter. These parties have confirmed that they are supportive of the proposals as set out above.

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 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 Committee has consulted with the Policy & Finance Committee in Alderney and the Policy & Finance Committee in Sark.
- 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.

6.3 For the purposes of Rule 4(2):

- a) The propositions relate to the Committee's purpose and policy responsibilities with respect to fiscal policy and economic affairs.
- b) The propositions have the unanimous support of the Committee.

Yours faithfully

P T R Ferbrache
President

M A J Helyar
Vice-President

J P Le Tocq
D J Mahoney
R C Murray