

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE AND THE COMMITTEE *FOR* ECONOMIC DEVELOPMENT

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 20 December, 2016, of the Policy & Resources Committee and the Committee *for* Economic Development, they are of the opinion:-

1. To agree to the establishment of a register of beneficial ownership information ("the register") applicable to all forms of legal person that can be established in Guernsey;
2. To agree that the register should not be publicly accessible, and that the information on it should be treated as confidential and protected by all necessary security measures;
3. To agree to the provision of direct access to the register for the Bailiwick's law enforcement authorities and the GFSC, for the purposes of their respective criminal justice and supervisory functions;
4. To agree to the establishment of legal gateways to permit the sharing of beneficial ownership information with domestic and foreign authorities for specified purposes, such purposes to be based on those set out at Part II of the Disclosure (Bailiwick of Guernsey) Law, 2007;
5. To agree to the establishment of the office of Registrar of Beneficial Ownership, with the office holder to be appointed by the Committees;
6. To agree to the provision of proportionate oversight and enforcement powers for the Registrar, including the power to impose administrative financial penalties;
7. To agree to the extension of the powers and duties of resident agents in relation to obtaining, providing and retaining beneficial ownership information;
8. To agree to the introduction of criminal and administrative financial penalties for breaching obligations in relation to beneficial ownership information;
9. To agree to the introduction of a statutory process governing the resignation of resident agents;
10. To agree to the provision of powers to address additional matters relating to beneficial ownership information by regulations, guidance and standard forms;

11. To agree to the introduction of an express statutory prohibition on the use of bearer instruments; and
12. To direct the preparation of such legislation as may be necessary to give effect the foregoing, including any necessary consequential and incidental provision.

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.

POLICY & RESOURCES COMMITTEE AND THE COMMITTEE *FOR* ECONOMIC DEVELOPMENT

REGISTER OF BENEFICIAL OWNERSHIP

Presiding Officer
Royal Court
St Peter Port
Guernsey

20 December 2016

Dear Sir

1. Executive Summary

- 1.1 Guernsey has long been committed to meeting international standards aimed at tackling financial crime including those relating to transparency as to the natural persons who ultimately own or control legal persons, usually referred to as beneficial owners. The principal standards on transparency of legal persons are those set by the Financial Action Task Force (FATF), which in broad terms seek to ensure that the authorities of a jurisdiction have timely access to adequate, accurate and current information on beneficial owners of the legal persons created in that jurisdiction.
- 1.2 Guernsey has high standards in relation to transparency, which has been demonstrated on numerous occasions. This includes the evaluation report published by MoneyVal earlier in 2016, as well as previous evaluation reports of Guernsey's framework for addressing money laundering and terrorist financing. In addition, Guernsey is routinely commended by foreign authorities to whom it provides beneficial ownership information. It is nevertheless important that Guernsey's standards evolve with international standards as they continue to be developed.
- 1.3 The FATF recommends a number of possible options for meeting its standards on beneficial ownership information, and recent international attention to this issue such as the G20 initiatives and the EU's fourth money laundering directive has included looking at the particular advantages of a register of beneficial ownership. A large number of jurisdictions, including the UK, have been inspired by the FATF standards and these subsequent initiatives or by other reasons to establish registries of beneficial ownership. In addition, Jersey, which already has a register of beneficial ownership, is taking steps to enhance its existing register.
- 1.4 The Policy and Resources Committee and the Committee *for* Economic Development have considered this issue and have concluded that a private, secure, consolidated and locally-accessed register of beneficial owners of Guernsey legal persons would enhance the timeliness of access by the authorities to the relevant information. It would also help to address a point made by MoneyVal in its 2016 report about the need for an oversight process in relation to beneficial ownership obligations for

companies where directors are not licensed by the Guernsey Financial Services Commission (GFSC). Against that background, and in response to international interest in the issue, the Chief Minister of the previous States advised publicly that Guernsey will put such a register in place.

- 1.5 This will not involve a major departure from the current position. There are already obligations to obtain beneficial ownership information and provide it to the authorities applicable to the resident agents of some legal persons under commercial legislation, whether or not the resident agent is licensed and supervised by the GFSC. In addition, there are obligations to obtain beneficial ownership information in the customer due diligence requirements applicable to corporate service providers under the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 and the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing issued by the GFSC (collectively, the AML/CFT framework). The intention is to enhance the existing beneficial ownership obligations on resident agents under commercial legislation and to extend them to all forms of legal person. Recommendations on the best way to achieve this are set out below.

2. The Current Position

2.1 Guernsey Legal Persons

There are four types of legal persons that can be established in Guernsey, namely:

- Companies incorporated under the Companies (Guernsey) Law, 2008 (the Companies Law)
- Foundations created under the Foundations (Guernsey) Law, 2012 (the Foundations Law)
- Limited partnerships with legal personality formed under the Limited Partnerships (Guernsey) Law, 1995 (the Limited Partnerships Law)
- Limited liability partnerships formed under the Limited Liability Partnerships (Guernsey) Law, 2013 (the LLP Law).

2.2 Obligations in respect of Beneficial Ownership Information

- 2.2.1 Under the Companies Law and the LLP Law, Guernsey companies and limited liability partnerships respectively must appoint a resident agent who may be either a corporate services provider licensed by the GFSC under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (the Fiduciaries Law), or a locally resident official (a director in the case of companies and a member in the case of limited liability partnerships). A record of the resident agent must be kept and provided to the Registrar of Companies or Registrar of Limited Liability Partnerships (both situated within the Guernsey Registry). This record must contain the name of the resident agent and its address (unless the resident agent is a locally resident official who is in any case already subject in the legislation to an obligation to provide his or her address). A company or limited liability partnership that fails to comply with these obligations commits a

criminal offence and may be struck off. Changes to the recorded details about resident agents must be notified to the Registrar of Companies or Registrar of Limited Liability Partnerships within 14 days, subject to an administrative late filing fee for breach, underpinned by criminal sanction in the case of companies.

- 2.2.2 The resident agent must take reasonable steps to ascertain the identity of the persons who are the beneficial owners of members' interests. Where the resident agent ascertains that a member of a company or limited liability partnership is not the beneficial owner of that member's interest, it must keep a record at the registered office of the company or limited liability partnership of specified details of the beneficial owner in respect of that member. The concept of beneficial owner is not defined in the Companies Law or the LLP Law, but the language of the legislation makes it clear that beneficial owners may include companies so it is not necessary to establish the underlying natural person in all cases. In addition, beneficial ownership of companies is subject to a 10% threshold as, under the Companies (Beneficial Ownership) Regulations, 2008, there is an exemption from the requirement to keep beneficial ownership information in relation to any member who holds less than 10% of the total voting rights of all the members of the company having a right to vote at general meetings. These features are in contrast to the obligations under the AML/CFT framework, which require the natural person who ultimately owns or controls a legal person to be identified and which provide that meeting a 25% ownership threshold will generally be regarded as indicative of ownership or control.
- 2.2.3 The details that must be recorded in the record of beneficial ownership in relation to an individual are the individual's name, usual residential address, nationality and date of birth. The details that must be recorded in relation to a company are its corporate or firm name, its registered office (or, if it has no registered office, its principal office), its legal form and the law by which it is governed, and, if applicable, the register in which it is entered and its registration number in that register.
- 2.2.4 The resident agent also has information gathering powers that are exercisable against members on service of a notice. Members who fail to comply with the notice or who provide false or misleading information commit a criminal offence. In addition, if a resident agent believes that a member has failed to comply with the notice or has provided false or misleading information, it must report that to the company or limited liability partnership and the company may impose restrictions on that member's interest including suspension or cancellation. This is subject to the safeguard that the member may apply to the court for the restriction to be set aside, provided that the company or limited liability partnership is given notice. The resident agent must also maintain a record of beneficial ownership at the registered office of the company or limited liability partnership, and make beneficial ownership information available to HM Procureur, the law enforcement agencies or the GFSC if requested for the purposes of criminal or regulatory investigations and proceedings in Guernsey or elsewhere.

2.3 Access to Information

2.3.1 The effect of the obligations currently in place in commercial legislation and the AML/CFT framework is that, although beneficial ownership information is available within the jurisdiction, it is held by individual businesses and there is no central data base. This means that, if, during the course of an investigation, the law enforcement agencies or the other relevant Guernsey authorities with investigatory functions have reason to believe that several different businesses hold relevant beneficial ownership information, they must make a separate approach to each business. This clearly has the potential to cause delay. In addition, the absence of a central data base means that there is currently no quick way of carrying out a search across all beneficial ownership information to check whether a particular individual or company that is under investigation has an involvement with a Guernsey legal person that has not previously been identified. The ability to carry out a search in this way would obviously be of particular benefit for criminal investigations in cases where time is of the essence.

3 Proposals for Change

3.1 Establishment of a Register of Beneficial Ownership

3.1.1 It is proposed that Guernsey should establish a Register of Beneficial Ownership (the Register) in order to facilitate improved speed of access to the necessary information by the authorities. It should be applicable to limited partnerships with legal personality and foundations as well as to companies and limited liability partnerships, in order to ensure that the benefits of registration for the purposes of enhanced information gathering identified above will apply equally to all Guernsey legal persons. Although limited partnerships with legal personality and foundations are not currently subject to any specific beneficial ownership requirements corresponding to those in the Companies Law and the LLP Law, requiring them to appoint a resident agent and bringing them within the scope of the Registry in the same way as other legal persons will not present a significant departure from the present situation in practical terms. This is because all foundations are currently obliged to obtain beneficial ownership information under the AML/CFT framework (by virtue of the need for every foundation to have either an official or a resident agent who is a licensed fiduciary or authorised person as defined under the Fiduciaries Law), and although there is no corresponding requirement under the Limited Partnerships Law, in practice the vast majority of limited partnerships are subject to the beneficial ownership information obligations under the AML/CFT framework because of the nature of the activities that they undertake. In addition, the possibility of specific beneficial ownership obligations applying to limited partnerships has already been identified as part of a separate work stream and new legislation governing limited partnerships has been under active consideration for some time.

3.1.2 There will still be exemptions from the beneficial ownership registration requirements for legal persons that are already subject to disclosure requirements

that ensure adequate transparency of beneficial ownership. There is currently an exemption from the beneficial ownership requirements under the Companies Law for companies listed on a stock exchange recognised by the Registrar of Companies, open-ended and closed-ended investment companies and any other category of company that may be prescribed by regulations. There is a corresponding exemption from the beneficial ownership requirements under the LLP Law for open-ended and closed-ended investment schemes and any other category of limited liability partnership that may be prescribed by regulations. These exemptions will be maintained (although the regulations that have been made to date will be reviewed as part of a separate exercise) and there will be a power to amend the exemptions by regulation in line with the existing power under the Company Law and the LLP Law, to permit changes to be made as necessary to reflect any future developments in this area.

3.2 Administration of the Register

3.2.1 The Register would be administered by a Registrar of Beneficial Ownership (the Registrar), who would be appointed by the Policy and Resources Committee and the Committee *for* Economic Development. The Policy and Resources Committee and the Committee *for* Economic Development have given detailed consideration as to who would be the most appropriate party to act as the Registrar, including whether to appoint an individual whose only responsibility will be to discharge this office or to confer the function on an existing authority with other functions such as the Registrar of Companies or the GFSC. They have decided to appoint the Registrar of Companies as the Registrar, as they believe that government should be responsible for such an important project and for delivering the commitment that the States of Guernsey has made. This will give the international community the clearest possible signal that Guernsey is committed to meeting international standards. The decision also means that the same body will be responsible for maintaining the registers of legal persons and the register of beneficial ownership. The two functions are very closely aligned and their location within the same body has obvious practical benefits, as it greatly facilitates the cross-checking of basic and beneficial ownership information that is necessary for an effective regime and also enables those wishing to incorporate legal persons to make a single application to one organisation. This single application process will mirror the position in other jurisdictions that have beneficial ownership registries.

3.2.2 The Registrar will have powers to monitor and verify the information provided by resident agents, but to avoid duplication these powers will not be applicable to legal persons that are administered by persons licensed by the GFSC, as the provision of beneficial ownership information in relation to these legal persons is already subject to oversight under the GFSC's supervisory regime and it is anticipated that the oversight and enforcement powers of the GFSC will be extended to cover the adequacy of information provided to the Registrar. In light of this division of oversight the Registrar and the GFSC will be given information sharing powers.

3.2.3 The Registrar's powers will include issuing notices to obtain information from the legal person, the registered agent or third parties (such as financial services businesses with which the beneficial owner or another legal person owned or controlled by the beneficial owner has an established business relationship), and the right to immediate and direct access to the record of beneficial ownership maintained at a legal person's registered office, whether by attendance at the premises or otherwise. The exercise of these powers will be subject to strict safeguards including confidentiality obligations and data protection measures, and the Registrar will only be entitled to take copies of documents at the registered office where this is necessary for the purposes of enforcement action. The Registrar's monitoring and verification powers, which will be exercised on the basis of risk, taking into account matters such as the objects or areas of activities of a legal person, will assist in addressing comments made by MoneyVal about the need for an oversight process in relation to beneficial ownership information obligations for companies whose directors are not licensed by the GFSC.

3.3 Access to Information on the Register

3.3.1 The Register should not be publicly accessible as it is not considered that such accessibility would allow Guernsey to demonstrate the information is secure. Information on the Register would be treated as confidential and would be protected by all necessary security measures including encryption of data. Both the Policy & Resources Committee and the Committee *for* Economic Development consider sound security to be of paramount importance (soundness of security was the main concern expressed in the consultation referred to below). The only parties who would have direct access to the Register apart from the Registrar would be designated persons in Guernsey's law enforcement authorities and the GFSC for the purposes of their respective criminal justice and supervisory functions.

3.3.2 In addition, there would be legal gateways in place to permit the sharing of beneficial ownership information with other Guernsey entities such as HM Procureur and the Director of Income Tax for certain specified purposes, as well as with foreign authorities for the same purposes. The specified purposes would mirror those already in place elsewhere in Guernsey law, primarily in the Disclosure (Bailiwick of Guernsey) Law, 2007, and would include the prevention, investigation or prosecution of crime, civil forfeiture investigation or proceedings, the exercise of regulatory functions and the exercise of the functions of intelligence services, tax authorities and authorities with responsibilities in relation to international sanctions measures. There will also be a power to amend the list of purposes by regulations to permit the inclusion of any other functions that may necessary in future to keep pace with developing international standards.

3.4 Definition of Beneficial Owner

3.4.1 In order to ensure compliance with the FATF standards and some specific recommendations made by MoneyVal, there will be a statutory definition of beneficial ownership (introduced by regulations following further consultation) for

the purposes of providing information to the Registrar. Subject to the outcome of the consultation process, it is the intention of the committees that a beneficial owner will be defined as an individual and that the beneficial ownership information obligations will be brought closer to those under the AML/CFT framework than they are under commercial legislation at present. It is envisaged that once the definition of beneficial owner for the purposes of the legislation proposed in this policy letter has been finalised, any necessary amendments will be made to the AML/CFT framework to ensure its alignment with the registration regime as far as possible and appropriate.

3.4.2 It is also envisaged, again subject to the consultation process, that the definition will be based on the approach in the FATF standards with regard to ownership and control. It will apply in the case of companies to individuals who hold, either directly or indirectly through a chain of ownership, more than a specified percentage of the shares or voting rights in a company or the right to appoint or remove the majority of its directors, as well as to individuals who otherwise control the company. This definition will be modified as necessary in relation to other forms of legal person to reflect their particular characteristics. Provision will also be made for joint interests so that where two or more persons hold a share or similar right jointly both are treated as holding it. Similarly, where shares are held by a number of associated persons, for example members of the same family or persons who have entered into an arrangement to exercise their rights jointly, each person is treated as holding the combined shares or rights of them all.

3.5 Obligations of Resident Agents

3.5.1 International standards require beneficial ownership information to be adequate, accurate and timely. In order to ensure that these standards are met, the existing beneficial ownership information obligations on resident agents under the Companies Law and the LLP Law will be enhanced in three respects.

3.5.2 First, the required details about beneficial owners as outlined under section 2.2 above will be extended slightly to include any former name of an individual, a service address if that is different from an individual's usual residential address, the date on which the individual became a beneficial owner (only applicable to the period after the date on which the legislation comes into force) and a statement that no beneficial owner has been identified if that is the case. Second, the resident agent will now have an explicit obligation to verify these details rather than, as now, an implicit obligation to do this under the Companies Law and the LLP Law (although resident agents who come within the AML/CFT framework are already subject to an explicit verification obligation). Third, in addition to keeping its own record of these details the resident agent will be obliged to provide the details to the Registrar, together with a statement confirming that the information has been verified. For legal persons created in the future, this information will have to be provided upon incorporation, and existing legal persons will be obliged to provide the same information within time frames specified in transitional provisions. It is also important that the Registrar is made aware of changes to the beneficial ownership of

a legal person once it has been incorporated. Therefore, resident agents will be required to notify the Registrar within a specified time period of any such changes that it becomes aware of or could reasonably be expected to have become aware of, as well as to verify them and provide a confirmation statement as soon as practicable thereafter.

3.5.3 Specific requirements will also be introduced in respect of nominees. The FATF standards emphasise that nominee shareholder arrangements must not be misused, and this has long been recognised by Guernsey in the regulatory framework under the Fiduciaries Law which expressly extends to acting as or providing nominee shareholders. Where there is a nominee relationship, both the legal owner and the beneficial owner of a legal person will have to be notified to the Registrar in line with the criteria identified above. In order to meet international standards, ensure full transparency and inform the exercise of oversight functions this should be underpinned by a specific requirement to notify the fact of each nominee relationship to the Registrar, to identify the person on whose behalf the nominee is acting (the nominator) and to state why the nominee relationship has been established.

3.5.4 It is also intended that measures should be introduced to ensure that all board members or equivalent officers of a legal person who are not licensed by the GFSC are aware of the beneficial ownership of that legal person in order to facilitate compliance with the AML/CFT framework. Therefore, resident agents that are not licensed by the GFSC will be required to provide the officers of the legal person (directors of companies and the equivalent positions for other legal persons) upon request with the information that they provide to the Registrar. The introduction of measures to ensure that such officers have access to the information necessary to discharge their AML/CFT obligations will be an additional step in helping to address the comments made in the MoneyVal report about unlicensed directors referred to above.

3.6 Enforcement

3.6.1 As the obligations outlined above assist Guernsey to meet international standards, both for the purposes of its own information gathering powers and to assist overseas authorities, they should be underpinned by enforcement measures. These measures should include administrative and criminal penalties in addition to the criminal penalties currently in place for resident agents that fail to provide information or provide false or misleading information in respect of beneficial ownership.

3.6.2 The Registrar will therefore be given powers to issue compliance notices (for example, notices requiring confirmation that the information provided is up to date or requiring a resident agent to obtain and provide further information), issue warnings and public statements, impose administrative financial penalties and disqualify persons from acting as resident agents. As with the monitoring and verification powers outlined above, these powers will not be applicable to legal

persons that are administered by persons licensed by the GFSC and the information sharing powers referred to above will apply here also.

- 3.6.3 Alongside the enforcement powers available to the Registrar in respect of legal persons that are not administered by persons licensed by the GFSC and to the GFSC in relation to licensees that administer legal persons, breach of obligations in relation to beneficial ownership information for all legal persons will be liable to criminal penalties of fines and sentences of imprisonment, as well as to the powers of the Guernsey Registry to strike off or suspend legal persons or particular ownership interests. As now, it is envisaged that criminal penalties and strike off or suspension will only be applied in more serious cases.
 - 3.6.4 The range of available penalties will therefore be similar to those already in place for violation of comparable obligations under Guernsey law, for example failure to comply with the AML/CFT framework, failure to notify a change in directors under the Companies Law, failure to notify a change in registered particulars under the Limited Partnerships Law and failure to provide information or providing false or misleading information about beneficial ownership under the Companies Law and the LLP Law.
 - 3.6.5 The introduction of explicit obligations for resident agents in respect of responsibilities that were formerly implicit increases the exposure of resident agents to criminal penalties. This is likely to lead to resident agents who no longer wish to act for particular legal persons, for example, because they are unable to obtain information from a client, feeling obliged to resign more promptly than they do under the existing legal framework. In recognition of this, and in order to ensure that there is a mechanism in place to protect resident agents from allegations by clients that they have resigned too precipitately, the resident agent's existing powers to suspend or cancel a member's interests under the Companies Law and the LLP Law should be enhanced by the right to serve notice of intention to resign. This would apply to all resident agents and would be similar to the existing provisions under the Companies Law enabling a corporate services provider to serve notice on its directors and on the Registrar of Companies to the effect that the registered office is no longer effective. Any legal person that fails to replace a resident agent that has resigned will be liable to being struck off (or dissolved, in the case of limited partnerships), in line with the existing provisions of the Companies Law and the LLP Law referred to above.
- 3.7 Powers of resident agents
 - 3.7.1 The introduction of wider obligations for resident agents necessitates the extension of their existing information gathering powers under the Companies Law and the LLP Law in relation to members, to enable them to obtain information from third parties who may hold relevant information about a potential beneficial owner. This may be, for example, from a financial institution which has an established business relationship with the individual in question or with another entity owned or controlled by that individual. This power, which would be subject to both criminal

penalties for breach and an obligation on the resident agent to treat such information as confidential, would correspond to the information gathering powers in respect of the register recently introduced in the UK.

3.8 Liquidations and striking off

3.8.1 The record keeping obligations under the AML/CFT framework ensure that, in the case of legal persons administered by licensed entities, records on beneficial ownership where a legal person ceases to exist are maintained for at least five years from the date of dissolution. Legislative provisions are required to ensure the maintenance of records for the same period where a legal person not administered by an entity subject to the AML/CFT framework has been liquidated, dissolved or struck off, either at its own request or by the Registrar of Companies. These will provide that the records must be kept by the resident agent in office immediately before the liquidation, dissolution or striking off, except where a liquidator has been appointed as this will be the responsibility of the liquidator. The authorities will continue to have access to the records for the purposes outlined above.

3.9 Standard forms and guidance

3.9.1 In order to assist resident agents in the discharge of their various functions, statutory provision will be made for the Registrar to issue standard beneficial ownership declaration forms to be completed when submitting information to the Registrar. The Registrar will also have the power to issue statutory guidance.

3.10 Consequential amendments

3.10.1 In addition to introducing new legislation governing the creation of the Register, it will be necessary to make consequential amendments to existing legislation (including the repeal of some provisions) in order to ensure consistency across Guernsey's legal framework as a whole. This will affect primarily, but not exclusively, the existing legislation for the establishment of legal persons.

4. Other Measures

4.1 Bearer Instruments

4.1.1 The FATF standards emphasise the importance of preventing bearer shares and bearer warrants from being misused. Guernsey's legislation for legal persons does not permit the issue of bearer shares as shareholdings in companies and interests held in other legal persons must be registered. However, there are no explicit or implicit provisions in Guernsey law in relation to bearer warrants. In light of this, it is proposed to introduce explicit prohibitions on the issuing of bearer instruments conferring ownership rights or potential ownership rights by Guernsey legal persons.

5. Engagement and Consultation

- 5.1 In May 2015 a consultation paper was issued by the then Policy Council on whether or not a central registry should be established in Guernsey for the registration of information on the beneficial ownership of legal persons. This was followed in May 2016 by a technical consultation paper issued by the Policy & Resources Committee on the overarching shape of the framework to be established and the other measures referred to above. Twenty-seven responses were received from businesses, industry associations and individuals in their private capacity, as well as from the Registrar of Companies, the GFSC and the Guernsey Border Agency. The proposals in this policy letter have taken into account the responses received, as well as further input provided in subsequent discussions between industry representatives and representatives from the Policy and Resources Committee and the Committee *for* Economic Development Department.
- 5.2 The Law Officers have also been consulted and raise no legal objection to the proposals in this policy letter.

6. Resources

- 6.1 The capital cost of establishing the register of beneficial ownership information is estimated to be a maximum of £300,000. A loan facility is considered to be the most appropriate funding arrangement and is consistent with the approach taken for the establishment of the Guernsey Registry in 2008.
- 6.2 Following consideration of the 2015 Budget Report, the States authorised the Treasury and Resources Department (Policy & Resources Committee) to *“issue a States of Guernsey Bond.....; and to lend on the capital thereby raised to States owned entities, trading accounts and funds, on such terms that the Department may approve, subject to each recipient repaying such borrowing in full from a secure income stream and without direct recourse to General Revenue.”*
- 6.3 The existing business case for this project includes confirmation that any additional expenditure will be met by the Guernsey Registry (loan interest and capital repayments, together with any administrative costs) without increasing its expenditure level (i.e. by efficiencies and reprioritisation) such that there will be no negative impact on the Registry’s overall annual surplus which is transferred to General Revenue.
- 6.4 Therefore, as this project meets the criteria for accessing loan finance from the proceeds of the States of Guernsey Bond, the Policy & Resources Committee, following approval of a final business case for the capital investment necessary to establish a register of beneficial ownership information, will make available a loan to the Guernsey Registry of a maximum of £300,000 from the proceeds of the States of Guernsey bond issue, to be repaid over a period of five years, with the interest and capital repayments to be met from Guernsey Registry income already received from legal entities.

7. Recommendations

7.1 The States are asked to decide whether they are of the opinion:-

1. to agree to the establishment of a register of beneficial ownership information ("the register") applicable to all forms of legal person that can be established in Guernsey;
2. to agree that the register should not be publicly accessible, and that the information on it should be treated as confidential and protected by all necessary security measures;
3. to agree to the provision of direct access to the register for the Bailiwick's law enforcement authorities and the GFSC, for the purposes of their respective criminal justice and supervisory functions;
4. to agree to the establishment of legal gateways to permit the sharing of beneficial ownership information with domestic and foreign authorities for specified purposes, such purposes to be based on those set out at Part II of the Disclosure (Bailiwick of Guernsey) Law, 2007;
5. to agree to the establishment of the office of Registrar of Beneficial Ownership, with the office holder to be appointed by the Committees;
6. to agree to the provision of proportionate oversight and enforcement powers for the Registrar, including the power to impose administrative financial penalties;
7. to agree to the extension of the powers and duties of resident agents in relation to obtaining, providing and retaining beneficial ownership information;
8. to agree to the introduction of criminal and administrative financial penalties for breaching obligations in relation to beneficial ownership information;
9. to agree to the introduction of a statutory process governing the resignation of resident agents;
10. to agree to the provision of powers to address additional matters relating to beneficial ownership information by regulations, guidance and standard forms;
11. to agree to the introduction of an express statutory prohibition on the use of bearer instruments; and

12. to direct the preparation of such legislation as may be necessary to give effect the foregoing, including any necessary consequential and incidental provision.

8. Propositions

- 8.1 In accordance with Rule 4(4) of The Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions accompanying this policy letter are supported unanimously by the Policy & Resources Committee and the Committee *for* Economic Development.

Yours faithfully

G A St Pier
President

P T R Ferbrache
President

L S Trott
Vice-President

J Kuttelwascher
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

A C Dudley-Owen
J S Merrett
J I Mooney