

CONSULTATION
TRANSPARENCY OF BENEFICIAL
OWNERSHIP OF COMPANIES IN GUERNSEY

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GLOSSARY

AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
Beneficial Ownership Regulations	Companies (Beneficial Ownership) Regulations, 2008
CDD	Customer Due Diligence
Companies Law	Companies (Guernsey) Law, 2008
DNFBPs	Designated Non-Financial Services Businesses and Professions
Double Tax Arrangements (DTAs) and Tax Information Exchange Agreements (TIEAs)	DTAs and TIEAs are legal instruments that are used to facilitate the exchange of information for tax purposes between party jurisdictions
FATF	Financial Action Task Force
Fiduciaries Law	The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000
FSB Handbook	Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing issued by the GFSC
FSB Regulations	Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007
GFSC	Guernsey Financial Services Commission
MLD	European Union Fourth Money Laundering Directive
TCSP	Trust and company services provider

INTRODUCTION

This consultation paper arises from the then G8 (now G7) agenda on tax, trade and transparency and seeks views from interested stakeholders on whether or not a central register of beneficial ownership information for Guernsey companies should be established.

This paper is being issued now so that both it, and responses to the paper, can take account of and benefit from the development of the international debate on transparency of beneficial ownership of legal persons, progress by G20 countries, the issue of guidance by the FATF, the UK Government's conclusions on the establishment of a publicly accessible central register of beneficial ownership of companies (including the contents and discussion on primary legislation currently being considered by Parliament in the UK), and finalisation of the EU's further money laundering directive. The issue of this paper also takes account of a review in 2014 by the authorities on the accessibility and quality of beneficial ownership information in practice.

The Policy Council would like to receive views on whether or not it would be appropriate to introduce a central register of beneficial ownership of companies.

How to submit comments to the consultation

Responses can be made in writing, by post or email, as follows:

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Comments should be received by the close of business on 10 July 2015

BACKGROUND

The UK made “Tax, Trade and Transparency” the focus of its presidency of the G8. Accordingly all G8 countries published action plans to demonstrate their commitment to this agenda. The Crown Dependencies and Overseas Territories also published action plans. It should be noted that the G8 countries recognised the different constitutional circumstances of its members and that a one-size-fits all approach may not be appropriate and effective.

In June 2013 Guernsey, along with the other Crown Dependencies and Overseas Territories published an action plan to prevent the misuse of companies and legal arrangements. The action plan reiterates Guernsey’s commitment to meeting the FATF standards on AML/CFT and included the statement *“that it would carry out an assessment of the costs and benefits of a central register of information on company’s beneficial ownership available to law enforcement and tax authorities; and in the event that a central register proves to be more effective than Guernsey’s current regime, commit to implementing such a register following its implementation by G8 members and the other Crown Dependencies and Overseas Territories”*.

In September 2013, following the St Petersburg summit, the G20 issued a declaration stating *“We encourage all countries to tackle the risks raised by opacity of legal persons and legal arrangements, and we commit to take measures to ensure that we meet the FATF standards regarding the identification of the beneficial owners of companies and other legal arrangements such as trusts that are also relevant for tax purposes. We will ensure that this information is available in a timely fashion to law enforcement, tax collection agencies and other relevant authorities in accordance with confidentiality legal requirements, for example through central registries or other appropriate mechanisms. We ask our Finance Ministers to update us by our next meeting on the steps taken to meet FATF standards regarding the beneficial ownership of companies and other legal arrangements such as trusts by G20 countries leading by example”*.

In October 2013 the UK Government made public its decision to push ahead with the creation of a central, publicly accessible register on beneficial ownership, together with a commitment to place requirements on companies to obtain and hold adequate, accurate and current information on their beneficial ownership. This decision followed the publication of a discussion paper by the UK Department for Business, Innovation & Skills (BIS) in July 2013 entitled “Transparency & Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business”.

In November 2013 UK Prime Minister David Cameron wrote to the President of the European Council. In this letter he states that *“Europe must now, through the 4th Money Laundering Directive, visibly lead global efforts to strengthen transparency of company beneficial ownership”* The letter further stated *“.....a lack of knowledge about who ultimately owns and controls companies facilitates illicit domestic and cross-border money laundering, corruption, tax evasion and other crimes”*.

UK OUTCOME AND CONSIDERATION

In April 2014 the UK Government published its response to the BIS discussion document on “Transparency and Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business”. Within this response it was reiterated that the UK will

press ahead with the introduction of a publicly accessible central registry on beneficial ownership.

The following advantages were suggested as a result of having a public central register:

- it will help promote good corporate behaviour and help authorities to prevent and tackle the misuse of companies for illicit purposes;
- it will help individuals and companies to identify who really owns and controls a company they are considering doing business with;
- transparency and accountability will engender trust. Business, investors and society can have confidence in accessing the information they need to make the best decisions and complete transactions;
- it will assist banks and other regulated business to undertake and conduct CDD requirements; and
- public scrutiny of the information held at the public registry will add another level of examination thereby enhancing the accuracy of that information.

The UK Government has identified potential exemptions where public entry on a central register may not be appropriate, e.g. where individuals may be at risk as a result of their inclusion on the register. In addition, the UK Government has recognised that there is the potential to “*displace illicit activity elsewhere*” and, therefore, that the introduction of a central register will need to be undertaken in a way that ensures this does not occur.

Several independent bodies responded to the UK discussion paper outlining their concerns on the proposal for a public register and gave examples of when companies might have legitimate reasons to keep the identities of private beneficial owners. These included beneficial owners:

- if companies that carry out activities which are legitimate but may be controversial. Beneficial owners could be open to harassment and/or physical harm if their identities were to be revealed;
- who are wealthy individuals who might be targeted for possible kidnapping or extortion;
- of companies which are seeking to invest in competitors or potential acquisition targets;
- who might be concerned that their interest in a particular company may trigger market speculation;
- who are families and other persons which have particular arrangements as to ownership. In the absence of evidence of illegality, individuals should be able to own assets directly or indirectly without having to make the information publicly available which may then lead to questioning of those arrangements by other interested parties; and

In addition, it was suggested that the information might be used to assist identity theft and other criminal activities.

The UK Parliament has now enacted legislation entitled the Small Business, Enterprise and Employment Act 2015 which contains amendments to the Companies Act 2006. These amendments, once in force, will require companies to maintain registers of people who have significant control over the company and will also provide for the introduction of a publically accessible central register. This is scheduled to be introduced from 2016. Secondary legislation setting out the detail of the registration regime will follow in due course.

CURRENT G20 POSITION

At their meeting in Brisbane in November 2014 the G20 countries agreed high level principles on beneficial ownership transparency, which included the following text:

“3. Countries should ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current.

4. Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. Countries could implement this, for example, through central registries of beneficial ownership of legal persons or other appropriate mechanisms.”

The G20 sees central registration as one way, but not the only way, of meeting international standards on transparency.

ACTION BY OTHER JURISDICTIONS

Of the G7 countries only the UK and France have formally committed to the adoption of a public central registry of beneficial ownership information.

Member States of the EU will be subject to the requirements of the MLD. Member States will have two years (i.e. until 2017) to transpose the directive into law once it has been published in the Official Journal (expected in the summer of 2015).

Guernsey is not a Member State of the EU and is not required to meet EU directives in relation to financial services. Nevertheless, this consultation paper would be incomplete if it did not outline the EU position on transparency of beneficial ownership of companies.

While the MLD has not yet been published, it has been agreed at political level. Member States will be required to ensure that corporate entities incorporated within their territory will be required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. It is also likely that Member States will be required to ensure that the information on beneficial ownership of companies should be held in a central register in each Member State and that the register should be adequate, accurate and current.

Information on the register should be available to competent authorities and FIUs, without any restriction; entities subject to CDD requirements; and to any persons or organisations that can demonstrate a legitimate interest. It appears that individual Member States will be able to

define what comprises a legitimate interest. It is likely that different Member States will have different approaches to what comprises a legitimate interest.

The authorities in the other Crown Dependencies, Jersey and the Isle of Man, have not issued conclusions on the future frameworks for transparency of beneficial ownership in those jurisdictions.

FATF AND OECD

The FATF sets the global standards for AML/CFT. In addition, the OECD sets standards for tax information exchange. Guernsey has been committed to meeting the standards of these bodies for many years and remains committed to meeting these standards. The commitment has long been recognised and verified through independent assessments, including:

- the International Monetary Fund Assessment of Guernsey’s AML/CFT framework, published in January 2011;
- the OECD Global Forum on Tax Transparency and Information Exchange Peer Review of Guernsey, published in 2013.

FATF

In its report published in 2011, the IMF concluded that in Guernsey “*companies are subject to a wide variety of measures which in summary ensure that accurate and comprehensive beneficial ownership information is obtained for all legal entities*”.

The FATF published revised Recommendations in 2012.

Recommendation 10 (on customer due diligence) of the revised recommendations requires that measures to be taken include: “*Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer*”.

Recommendation 24 sets out the standards on transparency and beneficial ownership of legal persons as follows: “*Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing.*

Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22”.

The interpretive note that accompanies this Recommendation contains a number of relevant points on the minimum amount of data that should be held on the company registry and made publicly available. This is: “*company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (e.g. memorandum & articles of association), a list of directors.*”

The FATF Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems states: “*Countries should use one or more of the following mechanisms to ensure that information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority:*

- (a) requiring companies or company registries to obtain and hold up-to-date information on the companies’ beneficial ownership;*
- (b) requiring companies to take reasonable measures to obtain and hold up-to-date information on the companies’ beneficial ownership;*
- (c) using existing information, including: (i) information obtained by financial institutions and/or DNFBSs, in accordance with Recommendations 10 and 22; (ii) information held by other competent authorities on the legal and beneficial ownership of companies (e.g. company registries, tax authorities or financial or other regulators); (iii) information held by the company as required above in Section A; and (iv) available information on companies listed on a stock exchange, where disclosure requirements (either by stock exchange rules or through law or enforceable means) impose requirements to ensure adequate transparency of beneficial ownership.”*

The FATF does not specifically mandate a central register for beneficial ownership registration and there is no requirement for the information to be publicly available. Instead, the FATF provides a series of options on how to comply with its standards on transparency.

The FATF has also recently issued guidance on transparency and beneficial ownership. Paragraph 45 of the guidance contains considerations should jurisdictions wish company registries to be used as registries for the beneficial ownership of companies. These considerations are included in Appendix 1.

OECD

The OECD and its standards are less well known than the FATF and the opportunity is therefore taken below to provide information on the OECD and Guernsey’s compliance with its standards in light of the importance of tax and tax information exchange as a foundation for the G8 initiative.

Guernsey has constructively engaged with the OECD since the late 1990s on its transparency agenda, commenced negotiations on its first TIEA at the end of 2001, gave a formal commitment to the OECD process in February 2002 and concluded its first TIEA with the United States in September 2002. Guernsey now has 57 TIEAs signed, as well as a number of DTAs.

In addition to TIEAs and DTAs, Guernsey has signed an Inter-Governmental Agreement with the USA in relation to the implementation of FATCA; a similar agreement was signed with

the UK on 22 October 2013. Guernsey is participating in the process of rolling out such agreements as an international standard (the Common Reporting Standard) as a member of the Global Forum Working Group on Automatic Exchange of Information for tax purposes. In respect of the new international standard on automatic exchange of information for tax purposes (the Common Reporting Standard), Guernsey has committed to implementing the framework in order to enable the first exchange of information with relevant partner jurisdictions to take place in 2017 (in respect of information relating to the calendar year 2016). Furthermore, in December 2013, the States of Guernsey agreed that Guernsey should participate in the Convention on Mutual Administrative Assistance in Tax Matters. This Convention became effective on 1 August 2014.

Guernsey's ability to provide information (including beneficial ownership information) has been independently assessed at an international level and against international standards by the Global Forum on Transparency and Exchange of Information for Tax Purposes in the peer review report published in November 2013. In the context of retention, obtaining and disclosing beneficial ownership information, from a legal and regulatory position the OECD concluded that Guernsey has the relevant elements in place and, in addition, effectively implements the elements. During the peer review assessment, Guernsey was able to evidence the fact that all requests for beneficial ownership details of Guernsey companies made by TIEA partners had resulted in the Director of Income Tax being able to obtain the relevant information (using the relevant information gathering powers contained within the Income Tax Law) and transmit it to the competent authority in the requesting jurisdiction.

THE CURRENT GUERNSEY POSITION

There are extensive requirements in Guernsey governing the formation of companies and the maintenance and provision of basic ownership information, that is, information about persons who apparently own or control a legal person. These requirements are set out at Appendix 2.

Guernsey law also contains two distinct legal regimes governing the holding and provision of information about the beneficial owners of legal persons. There is considerable overlap in the application of these two regimes but there are some differences between them. The regimes, which are looked at in detail below, may be summarised as follows:

- company law requirements, including resident agent requirements - under the Companies Law companies are obliged to appoint a resident agent, who is in turn obliged to obtain and record beneficial ownership information. Save for some limited exemptions, the obligations apply in respect of all companies. The records must be kept at the registered office of the company.
- AML/CFT CDD framework¹- under the CDD measures in the FSB Regulations and the FSB Handbook there are obligations to obtain and retain beneficial ownership information. These obligations apply to financial services businesses, which include TCSPs, when acting by way of business. TCSPs acting by way of business must also be licensed by the GFSC and are therefore subject to its supervision (unless covered by an

¹ For ease of reference only the regulatory framework for financial services businesses is referred to in this paper, but the equivalent frameworks in place for prescribed businesses (lawyers, accountants and estate agents) contain corresponding provisions.

exemption for persons with not more than six directorships, but such persons are still subject to the CDD requirements if acting by way of business).

COMPANY LAW REQUIREMENTS

Share holdings in Guernsey companies must be registered. As a consequence, companies cannot issue bearer shares.

All companies (other than closed or open ended investment companies and companies listed on a recognised stock exchange) are obliged to appoint a resident agent, who must be either a locally resident director of the company or a licensed TCSP. A company that fails to do so may be struck off by the registrar. Guernsey registered companies are required to keep a record of who is acting as resident agent at the registered office address. The resident agent must take reasonable steps to ascertain the identity of the beneficial owners of all members' interests. This is subject to an exemption set out in the Beneficial Ownership Regulations, whereby the obligation to obtain beneficial ownership information in respect of a member's interest does not apply where the relevant member holds less than 10% of the total voting rights of all the members of the company having a right to vote at general meetings.

Where the resident agent ascertains that a member is not the beneficial owner of his or her interest, it must maintain details of beneficial ownership in a record of beneficial owners at the company's registered office. In the case of beneficial owners who are natural persons, these are details as to the name, usual residential address, nationality and date of birth of the person who is the beneficial owner. In the case of beneficial owners who are legal persons, these are details as to 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.

A resident agent may serve notice on a member requiring him to disclose whether or not he is the beneficial owner of his interest and, if not, to provide the necessary details in respect of the beneficial owner. A member who without reasonable excuse fails to comply with a notice or provides information that is materially false, deceptive or misleading commits a criminal offence and the company may suspend or cancel his interest.

Companies that fail to meet the foregoing requirements are subject to civil penalties issued by the registrar and to being struck off the company register.

COMPANY SERVICE PROVIDERS AND OTHER FINANCIAL SERVICES BUSINESSES

Guernsey regulates TCSPs under the Fiduciaries Law. This regime ensures that TCSPs are fit and proper, having in place appropriate policies and procedures with respect to AML/CFT. TCSPs are subject to on-site inspections by the GFSC.

There are beneficial ownership provisions in the CDD requirements under the AML/CFT framework, which are underpinned by criminal sanction for breach.

The FSB Regulations set out the steps that must be carried out when establishing a business relationship or carrying out an occasional transaction, or in circumstances which are otherwise exempt from the requirements if the financial services business has a suspicion of

money laundering or terrorist financing, or doubts about the veracity or adequacy of previously obtained identification data. The requirements are as follows:

- the customer shall be identified and his identity verified using identification data;
- any person purporting to act on behalf of the customer shall be identified and his identity and his authority to so act shall be verified;
- the beneficial owner and underlying principal shall be identified and reasonable measures shall be taken to verify such identity using identification data and such measures shall include, in the case of a legal person or legal arrangement, measures to understand the ownership and control structure of the customer;
- a determination shall be made as to whether the customer is acting on behalf of another person and, if the person is so acting, reasonable measures shall be taken to obtain sufficient identification data to identify and verify the identity of that other person;
- information shall be obtained on the purpose and intended nature of each business relationship; and
- a determination shall be made as to whether the customer, beneficial owner and any underlying principal is a politically exposed person.

The FSB Regulations define a beneficial owner as the natural person who ultimately owns or controls the customer, and a person on whose behalf the business relationship or occasional transaction is to be or is being conducted.

The FSB Handbook sets out the rules and provides guidance in respect of the CDD procedures to be undertaken by a financial services business in order to meet the CDD provisions of the FSB Regulations including the requirement for enhanced CDD in respect of high risk relationships. The rules of the FSB Handbook require financial services businesses to:

- identify and verify the identity of the legal body. The identity includes name, any official identification number, date and country or territory of incorporation if applicable;
- identify and verify any registered office address and principal place of business (where different from registered office) where the risk presented by the legal body is other than low;
- identify and verify the individuals ultimately holding more than a 25% interest in the capital or net assets of the legal body;
- identify and verify the individuals with ultimate effective control over the capital or assets of the legal body, including beneficial owners, underlying principals, directors or equivalent; and
- verify the legal status of the legal body.

The guidance in the Handbook states that a general threshold of 25% is deemed to indicate effective control or ownership. Individuals having ultimate effective control over a legal body will often include directors or equivalent.

These requirements apply to the work of formation, management and administration of legal persons, and the carrying on of regulated activities as defined in the Fiduciaries Law, in accordance with a licence granted by the GFSC. The definition of regulated activities in the Fiduciaries Law covers company or corporate administration and expressly includes:

- the formation, management or administration of companies and partnerships, and the provision of advice in relation to the formation, management or administration of companies and partnerships, whether incorporated or established in or under the laws of the Bailiwick or elsewhere;
- the provision to any such companies or partnerships of -
 - corporate or individual directors or partners,
 - individuals or companies to act as company or corporate secretary or in any other capacity as officer of a company or partnership, other than a director,
 - nominee services, including acting as or providing nominee shareholders,
 - registered offices or accommodation addresses;
- acting as director of any company or a partner of any partnership, whether incorporated, registered or established in or under the laws of the Bailiwick or elsewhere.

Applications to form a company must be made by a licensed TCSP. Once a legal person has been created, any TCSPs or unlicensed individual directors who manage or administer it by way of business are subject to ongoing CDD requirements. The CDD requirements will also apply if a legal person is involved in activity that brings it within another category of financial services business, for example, investment business in the case of limited partnerships that are formed in connection with collective investment schemes.

The AML/CFT framework expressly requires ongoing and effective monitoring of any existing business relationship, including reviewing identification data to ensure that it is kept up to date. It also specifies that documents and CDD information must be kept in a readily retrievable manner.

While the foregoing text focuses on TCSPs in light of their relationship with companies, the obligations of the FSB Regulations and the FSB Handbook apply to other financial services businesses such as banks.

AVAILABILITY OF INFORMATION

Under the Companies Law, a resident agent must disclose to the Attorney General, the GFSC or the law enforcement agencies upon request any information he or she holds as required under the legislation, including beneficial ownership information.

It is a criminal offence for a resident agent without reasonable excuse to fail to provide the requested information or to provide information that is materially false, deceptive or misleading.

Under the AML/CFT CDD framework, documents and CDD information must be kept in a readily retrievable manner, and must be made available promptly to any police officer, the FIS, the GFSC or any other person where such documents or customer due diligence information are requested pursuant to the FSB Regulations or any relevant enactment. CDD information must be made available to the GFSC upon request. It is also available to the law enforcement authorities under a court order (unless the information relates to a suspicious activity report, in which case no order is necessary). During 2014, the Guernsey authorities reviewed to what extent beneficial ownership information has been and is available for their own purposes and also for the provision of assistance of other jurisdictions. This review found that good quality information is available and disclosed to the authorities in other jurisdictions. Ownership information available from businesses is adequate, accurate and current, and can be accessed by the authorities in a timely manner.

PARTICULAR CONSIDERATIONS AND CONSULTATION

Unlike the G20 countries and EU Member States, Guernsey has subjected TCSPs to AML/CFT requirements from 2000, supervision of the fitness and properness of TCSPs since 2001, and onsite inspections to monitor compliance with AML/CFT obligations since 2001. Guernsey adopted this proactive approach to regulation and supervision in order to seek to reduce the risks in the TCSP sector and to protect the Island's reputation. This approach has worked well but it is also clearly expensive. In addition, the provisions in Companies Law, which were also introduced to protect Guernsey's reputation are also not without cost to the jurisdiction.

The Guernsey framework works well in providing access by the authorities to good quality beneficial ownership information and disclosure of information to other jurisdictions in support of their efforts to counter financial crime (including tax evasion) and money laundering and terrorist financing. The jurisdictions which are choosing to introduce publicly accessible central registries do not have the framework already in place in Guernsey (and which can be developed) and have not supported the expense of establishing such approaches to transparency. Any significant revisions to the current approach in Guernsey, with their attendant costs, advantages and disadvantages, need to be considered carefully.

Much of the recent debate to do with transparency centres on the introduction of registries.

One potential advantage of a central register is that it can allow access to information on an intelligence basis by the authorities without alerting the entity concerned. As identified above, the Guernsey authorities have been able to obtain adequate, accurate and timely information without a registry of beneficial ownership. Under the Companies Law, requests for information from the authorities are protected by criminal offences applicable to resident agents who disclose information that may prejudice an ongoing or contemplated criminal or regulatory investigation, whether in Guernsey or elsewhere. There is no intelligence or evidence to suggest to the authorities that the provision of beneficial ownership information to them has led to the subjects of enquiries being "tipped off" or the objectives of the authorities compromised. Nevertheless, the advantage of certainty of the prevention of "tipping off" is offered by a registry.

Another potential advantage of a central register is that an electronic or digital database of beneficial owners would allow searches to be made of the information in the database.

An element of the discussion on registries is that public access to beneficial ownership information enhances trust when dealing with a company. A consideration here is that, as a

generality, the pattern of the purposes of Guernsey companies is different to that in, for example, G20 countries and EU Member States. Guernsey is not a major centre for the incorporation of companies.

There are 18,075 registered companies in Guernsey. Thirteen thousand five hundred are administered by TCSPs and therefore have a resident agent) which is licensed and supervised by the GFSC. Most of these companies have been established for wealth management purposes (i.e. they are not providing services to third parties).

The other 4,600 companies have a local director who has been appointed as resident agent. Approximately half of these companies are asset holding vehicles, in other words companies that have been set up for the express purpose of owning particular property, typically a house. The other half primarily comprises companies where the director, resident agent and beneficial owner is the same person, which have been established for the purposes of local trading, for example, small building companies. These trading companies inevitably require access to banking services and therefore are subject to the CDD requirements in the AML/CFT framework.

Another element of the recent discussion, specifically in relation to whether or not registries should have public access to beneficial ownership information, is that investigation by the public in relation to companies in which they have a relevant interest will help to check whether the information on the register is accurate and current. An example which has been cited is the ability to check the beneficial ownership of companies which have signed contracts with international bodies involving the payment of substantial funds to a company in order to seek to ascertain whether or not corrupt persons are controlling the relationship and receiving the funding. However, even if one accepts that corrupt persons will not hide their beneficial ownership of registered companies, this reliance on the public (or rather active members of it wishing to track down beneficial ownership for their own reasons) would not appear to be a systematic and convincing approach to meeting international standards and to ensuring information is accurate and current. In addition, in any case, as identified above, there is the consideration of whether or not such reliance on the public on verifying accuracy and adequacy fits with the pattern of activity of Guernsey companies.

Further, there is discussion around whether a register can be considered to have accurate and current information unless (a) beneficial ownership information is provided to the registrar at the time of incorporation and immediately or very soon after any changes to beneficial ownership; and (b) the registrar has a mechanism, which it uses, for verifying beneficial ownership on the register.

The key question at this stage is whether or not Guernsey's framework for the transparency of beneficial ownership should be extended to include a central register of beneficial ownership information and, if it should, who should have access to the register. The feedback from respondents to the question will allow more detailed consultation on transparency to be developed.

In order to facilitate full responses in relation to whether or not there should be a register, stakeholders may wish to consider:

- the costs to the Island of introducing and maintaining a register (and whether or not those costs would be different as between (a) public access to the register; and (b) access to the register by specified types of person such as some or all of: the authorities in Guernsey, entities in Guernsey subject to CDD obligations, the authorities in other jurisdictions,

other persons with a relevant/legitimate interest (and who other persons with a relevant/legitimate interest might be);

- the appropriate location of any register;
- whether there might be any exemptions from registration;
- what information might be held on a register. For example, in relation to natural persons, the information might contain the full name; the month and year of birth; the nationality; the jurisdiction of residence; an address for service; the date on which the beneficial interest in the company was acquired, details of that interest, and how the interest is held; and other information (please specify). For legal persons the information might comprise the name and registration number; the date of incorporation/registration; the place of incorporation; the registered office address; the date on which the beneficial ownership interest was acquired; details of that interest and how the interest is held; other information (please specify); and
- whether, in addition to notification of information to the registry at incorporation, the registry might be notified of changes at the time of the change or at designated fixed intervals such as annually.

APPENDIX 1: FATF CONSIDERATIONS IN RELATION TO REGISTRIES

45. Certainly, a well-resourced and proactive company registry holding beneficial ownership information can be an effective mechanism because it allows competent authorities to access such information from a single source. Company registries often do not collect beneficial ownership information and were traditionally established to facilitate company formation and access to related information for trade purposes. Consequently, most countries seeking to implement the beneficial ownership requirements through an existing company registry may need to substantially change its role, functions and resourcing. Below are some examples of considerations for countries seeking to establish a registry of beneficial ownership.

- (a) Are the registry's statutory objectives sufficiently broad to cover the role of collecting, verifying and maintaining beneficial ownership information? Should the company registry be required to verify beneficial ownership information and should it be given AML/CFT obligations?
- (b) Does the company registry authority have sufficient human and capital resources to enable it to undertake the additional functions of collecting, verifying and maintaining beneficial ownership information? A good understanding and knowledge of corporate law is necessary to determine the beneficial owner of a complicated legal structure.
- (c) Are there mechanisms for ensuring that the beneficial ownership information provided to the registry is accurate and up to date? Are individual applicants who form legal persons required to submit accurate beneficial ownership information to the registry when the legal person is created? Does the registry verify the accuracy of the information it receives using reliable, independent source documents, data or information? For example, could the provision of beneficial ownership information to the company registry be made a condition for incorporation?
- (d) How are changes in the beneficial ownership information monitored and recorded over time? Are legal persons and/or beneficial owners required to provide information to the registry within a defined time period once any changes are made?
- (e) Is there a competent authority with responsibility for enforcing these requirements? Are there effective, appropriate and dissuasive sanctions for failing to comply with these requirements? Are legal persons and/or beneficial owners who fail to comply with disclosure and updating requirements (for example, by failing to disclose, or submitting inaccurate or incomplete information) subject to liability and sanctions?
- (f) Is the information held by the registry available to competent authorities in a timely manner? Does the system allow the registry to be searched using multiple fields? Does the registry provide authorities with direct access through remote login or similar mechanisms? Or do authorities have to request information from the registry?
- (g) Is the information held by the registry subject to limited availability or is it publicly available?

46. Beneficial ownership information may, as required by the FATF standards, be available only to selected competent authorities (including law enforcement), and possibly to financial institutions and DNFBPs. Consideration should be given to how technological advances may allow registries to provide public access (although this may raise and need to be balanced against privacy issues). For example, although this is not required by the FATF

Recommendations, some countries may be able to provide public access to information through a searchable online database which would increase transparency by allowing greater scrutiny of information by, for example, the civil society, and timely access to information by financial institutions, DNFBPs and overseas authorities.

- (h) Are there jurisdictional or constitutional impediments to implementing an effective registry of beneficial ownership? For example, in some countries, state/provincial level authorities have responsibility for creating and regulating legal persons, and there are constitutional impediments that limit the national authorities' jurisdiction to impose beneficial ownership requirements on those authorities. Even where constitutional impediments do not exist, it is challenging to ensure the consistent application of beneficial ownership requirements on all the registries within a provincial/state-based system. Countries facing these challenges must still ensure that their company registries hold basic information, but may need to combine this with other measures to ensure the timely availability of adequate and accurate beneficial ownership information. Another legal impediment for some jurisdictions is whether data protection laws conflict with the sharing of beneficial ownership information as described in (g).

Box 5. Example features – Company registry holds beneficial ownership information

A mechanism which provides for the company registry to hold beneficial ownership (BO) information could include some or all of the following features:

- Companies are required to provide basic and BO information for the company registry upon registration.
- Companies are required to provide basic and BO information both annually and when changes occur to ensure that the information is up-to-date.
- Companies are required to make a declaration regarding the beneficial owner and the ownership structure. This could include the provision of copies of documentation for the verification of identity.
- The company registry authority is required to verify the identity of the beneficial owners.
- Companies that fail to provide BO information are subject to dissuasive administrative sanctions, such as restrictions on incorporation, and such sanctions are applied.
- The provision of false information is subject to proportionate and dissuasive administrative and criminal sanctions for the company. The company's representative could also be held personally liable.
- The company registry authority regularly applies such sanctions when obligations are breached.
- The company registry authority takes a proactive role, including checking of information against other sources (such as shareholder, population or national identity registers), to identify anomalies or inconsistencies.

- Information in the company register is recorded digitally and is searchable. The search function supports searches by multiple fields.
- Competent authorities have access to the company registry online, including full search capability.
- The company registry authority has the capability to identify indicators of misuse or unusual activity (red flags) in the database.
- Basic information on the company is publicly available, BO information could also be made publicly available, or available to financial institutions and DNFBPs.
- The company registry authority may also obtain and hold shareholder information on companies in addition to beneficial ownership information.
- The company registry authority collects information on the board of directors, senior management and the natural person authorized to act on behalf of the company. In addition, directors are required to be natural persons.
- The measures under this mechanism are combined with aspects of mechanism 2 (outlined below) given that the company will be providing information to the registry.

APPENDIX 2: FORMATION AND BASIC INFORMATION REQUIREMENTS FOR GUERNSEY COMPANIES

Under section 134 of the Companies Law, the control of a Guernsey company lies with its directors. Ownership of Guernsey companies is by members, who may be legal or natural persons.

Under section 13, all companies must have at least one founder member. Under section 15, a company must have a memorandum of association which records various matters including company type, details of the founder members and of any shareholdings or guarantees. Section 17 sets out the details which must be provided in support of an application for incorporation, which can only be made by a licensed TCSP. These include the memorandum of association and statements in respect of the founder members, shareholdings and guarantees, the names and addresses of the first directors and resident agents, and the address of the registered office. Under section 30, a company's registered office must be in Guernsey.

The register records all details of companies registered in Guernsey, including the company name (current and previous), the address of the registered office (current and previous), the date of incorporation, the legal form and status of the company, the company purpose, the names and service addresses of its directors, the name of the resident agent, the memorandum and articles of the company, unanimous and special resolutions, and annual returns or validations. This information is held electronically and is publicly available.

Under section 123, a company must keep a register of members at its registered office, which must record the names and addresses of the members, the date on which a person was registered as a member, and the date on which a person ceased to be a member. In the case of a company having a share capital the register must record the shares held by the member, distinguishing each share by its number and where applicable by its class, as well as the amount paid or agreed to be paid on the shares. In the case of a company having guarantee members the register must record the guaranteed amount. Under section 127, the register of members must be open during ordinary business hours for inspection by any member or director without charge, and any other person on payment of a fee. There is an exemption from the public inspection provisions in section 130, which provides that they do not apply in relation to redeemable or non-voting shares. This primarily covers collective investment schemes where the share register is also a client list for the fund manager. In those circumstances the shareholder register is still available to the authorities. Under section 143, a company must keep a register of directors at its registered office. In the case of an individual who is a director, the particulars that must be recorded are his name and any former name, his address (which may be either his usual residential address or his service address), his nationality, his business occupation and his date of birth. Where a director's address in the register of directors is a service address, under section 147 the company must keep a record of his usual residential address. Where a person becomes a director of a company and his address entered in the register is a service address, the company must within a period of 14 days after the date of appointment give notice to the registrar of the director's usual residential address.

Where a director is not an individual, the register must record its corporate or firm name and any former name it has had in the preceding 5 years, its registered office address or principal office, its legal form, the law by which it is governed and the register in which it is entered together with its registration number if applicable. Under section 144, the register of directors must be open during ordinary business hours for inspection by any member or director without charge, and any other person on payment of a fee.