PUBLIC HEARING

COMMITTEE OF INQUIRY INTO MONEY LAUNDERING, TAX AVOIDANCE AND TAX EVASION (PANA)

European Parliament

Tuesday 09.05.2017 – **09:00-12:30**

ALTIERO SPINELLI BUILDING – ROOM **A5G-3**

The hearing will be webstreamed on: **http://www.europarl.europa.eu/ep-live**

COOPERATION IN TAX MATTERS WITH EUROPEAN JURISDICTIONS

Chaired by Dr. Werner Langen

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PUBLIC HEARING
COOPERATION IN TAX MATTERS WITH EUROPEAN JURISDICTIONS

PANEL ONE: MADEIRA

PANEL TWO: GIBRALTAR AND CHANNEL ISLANDS

TUESDAY, 9 MAY 2017

9.00 - 12.30

Room: Altiero Spinelli (ASP) 5G-3

DRAFT PROGRAMME

9:00 - 9:05	Welcome by the PANA Chair

9:05 - 9:15	First panel: Madeira Presentations by speaker (at 7 minutes)

- Rui Gonçalves, Regional Secretary for Finance, Madeira

09:15 - 10:10	Discussion with PANA Members

10:10 - 10:35	Second panel: Gibraltar and Channel Islands Presentations by speakers (at 7 minutes each)

- James Tipping, Finance Director, Gibraltar
- Frank Carreras, Government's Specialist Tax and Administration Adviser, Gibraltar
- Rob Gray, Director of International Tax Policy, Guernsey
- Richard Walker, Director of Financial Crime Policy, Guernsey
- Colin Powell, Adviser on International Affairs to the Chief Minister, Jersey

- George Pearmain, Lead Policy Adviser: Financial Crime, Jersey

10:35 - 12:25 Discussion with PANA Members

12:25 - 12:30 Conclusions by the PANA Chair

PANA

Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion

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CVS OF THE SPEAKERS

Rui Gonçalves

Natural do Caniço, Santa Cruz, é licenciado em Economia pelo Instituto Superior de Economia e Gestão da Universidade Técnica de Lisboa, tendo todo o seu percurso profissional sido desempenhado na administração pública regional.

Em 1994, ingressou nos quadros da Direção Regional de Finanças, da anterior Secretaria Regional do Plano e Finanças, tendo exercido funções naquela Direção Regional, primeiro como técnico superior, depois como diretor de serviços, e, posteriormente, como diretor regional.

Fez parte do grupo de trabalho que elaborou a 1.ª Lei de Finanças das Regiões Autónomas, aprovada em 2008, tendo participado em todas as negociações para a revisão desta lei.

Participou ativamente na proposta de revisão da Lei de Finanças das Regiões Autónomas, aprovada no Parlamento em Março de 2010, bem como na elaboração da proposta técnica da Lei de Meios, aprovada em junho do mesmo ano.

Integrou os trabalhos da comissão paritária mista constituída na sequência da intempérie de fevereiro de 2010.

Participou no processo que culminou, em janeiro de 2005, com a Regionalização dos Serviços de Finanças da Região Autónoma da Madeira e com a criação da Direção Regional dos Assuntos Fiscais, tendo igualmente sido membro das comissões criadas para o apuramento das receitas fiscais próprias das Regiões Autónomas.

Foi o representante da Região Autónoma da Madeira no Conselho Consultivo do Banco de Portugal e fez parte, por inerência, do Conselho de Administração do Fundo de Estabilização Tributária da Região Autónoma da Madeira. Mais recentemente, foi o interlocutor da Região Autónoma da Madeira junto do Governo da República para as questões técnicas relacionadas com o Programa de Ajustamento.

Durante a sua carreira profissional participou, junto do Governo da República, em quase todos os processos que envolveram matérias financeiras.

James Tipping,

Finance Centre Director, HM Government of Gibraltar

James was appointed Finance Centre Director of the Government of Gibraltar in September 1999. As Director, he is responsible for marketing and promotion of financial services, strategic planning including input on the various international initiatives (OECD, IMF, FATF, EU etc.), liaison with the private sector and the regulator and the High Net Worth residence programme. Prior to taking up his current position, Mr Tipping worked for 14 years in international investment banking in London, New York and *S*ão Paolo. He began his career at Samuel Montagu, later becoming a Director of the Global Emerging Markets Division at West Merchant, the investment-banking arm of WestDeutsche LandesBank. He was educated in Gibraltar and at University College, London.

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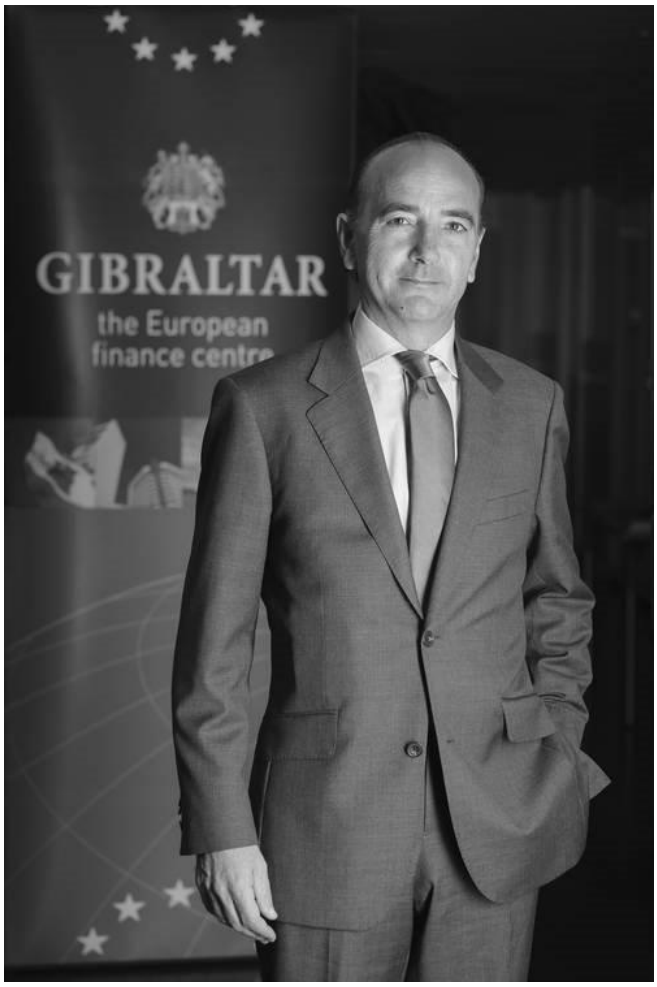

Curriculum Vitae

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Date of birth:	27 July 1957
Place of birth:	Gibraltar
Nationality:	British
Status:	Married

Introduction

I retired from Public Service in November 2016, after having served HM Government of Gibraltar for almost 41 years. I have over 34 years experience in the administration of the Gibraltar Income Tax Act and in August 2006 I was appointed Commissioner of Income Tax. In May 2012, I was appointed Senior Administrator/Assistant Chief Secretary and following my retirement, in February 2017 I was appointed adviser to HM Government of Gibraltar on tax and administration matters.

Education

Educated in Gibraltar and in the United Kingdom and attended the following educational establishments:

- Line Wall Private School
- The Gibraltar Grammar School
- Croydon College

Professional Experience

February 2017 –	Tax and Administration Adviser to the Government of Gibraltar.
May 2012 – November 2016	Senior Administrator/ Assistant Chief Secretary.
August 2006 – November 2016	Commissioner of Income Tax.
February 1987 – July 2006	Held a number of senior positions in the Gibraltar Income Tax Office.
November 1980 – January 1987	Held Middle Management position in the Government of Gibraltar Treasury Department.
January 1976 – October 1980	Held Junior Management position in the Income Tax Office.

Other Positions Currently Held

- President of the Athletic Association of Small States of Europe
- President of the Gibraltar Amateur Athletic Association
- General Secretary of the Gibraltar Pistol Association
- Member of the Public Service Commission
- Member of the Board of Governors of the University of Gibraltar

States of Guernsey

RICHARD WALKER

DIRECTOR OF FINANCIAL CRIME POLICY AT THE STATES OF GUERNSEY POLICY & RESOURCES COMMITTEE

Richard is responsible within the States of Guernsey for coordinating Guernsey's framework for anti-money laundering and countering finance for terrorism (AML/CFT). Prior to this he held senior positions at the Guernsey Financial Services Commission, including responsibility for AML/CFT policy for many years. Richard has been engaged with the work of international bodies on AML/CFT since 2003. This has included:

- representing Guernsey or bodies such as the Group of International Finance Centre Supervisors (GIFCS) and the International Association of Insurance Supervisors (IAIS) at meetings of international AML/CFT bodies such as MONEYVAL and the FATF;
- active involvement with the work of international working groups and committees (such as the FATF working groups which drafted the 2012 FATF Standards and Chairing the IAIS Financial Crime Working Group);
- participation in technical assistance missions on behalf of the IMF, TAIEX and the Council of Europe;
- participation in eleven evaluations of the AML/CFT frameworks of other jurisdictions, including evaluations by MONEYVAL and the FATF; and
- training potential AML/CFT evaluators on behalf of MONEYVAL.

States of Guernsey

ROB GRAY

DIRECTOR OF INTERNATIONAL TAX POLICY AT THE STATES OF GUERNSEY POLICY & RESOURCES COMMITTEE

Rob was born and educated in Birmingham, England.

He worked for the (then) Inland Revenue for 11 years, leaving as an HM Inspector of Taxes in 1985.

Rob joined Guernsey Income Tax Office at the beginning of 1986 as an Inspector.

He was promoted to Assistant Administrator of Income Tax when the then Assistant Administrator was appointed to Administrator, in June 1987.

He became a Member of the Association of Certified Fraud Examiners in 1995.

Rob was promoted to Administrator of Income Tax when the then Administrator retired, in June 2008.

He became the island's first Director of Income Tax in 2009.

Rob retired as Director of Income Tax on 31 December 2015.

He became Director of International Tax Policy on 1 January 2016 with responsibility for negotiating Double Taxation Agreements, Tax Information Exchange Agreements and other international tax related agreements for Guernsey.

He represents Guernsey at the Global Forum (including as a member of the Peer Review Group and AEOI Group) and the BEPS Inclusive Framework (including as a member of the Ad Hoc CbCR Reporting Group), and is an Assessor for the Global Forum Peer Review process.

Rob was the instigator for the Global Forum establishing a formal meeting of Competent Authorities for exchange of information, which has now become an annual event.

COLIN POWELL CBE

INTERNATIONAL AFFAIRS ADVISER TO THE CHIEF MINISTER, GOVERNMENT OF JERSEY

From 1969 to 1999 Colin Powell was Adviser to the States of Jersey on the Island's economic development including as an international finance centre. From 1999 to September 2009 he held the position of Chairman of the Jersey Financial Services Commission, the body responsible for the regulation of all financial services in Jersey. He is currently Adviser on international affairs to the Chief Minister, and in this capacity advises on and participates in the implementation of the various international initiatives on transparency and information exchange.

He represents Jersey on the Global Forum on Transparency and Exchange of Information for Tax Purposes. From 2009 until the end of 2013 he was a vice-chair of the Global Forum Peer Review Group, following which he was appointed and remains a vice-chair of the Global Forum's Working Group on Automatic Exchange of Information.

GEORGE PEARMAIN

LEAD POLICY ADVISER: PRIVATE WEALTH AND FINANCIAL CRIME, GOVERNMENT OF JERSEY

Since 2012, George Pearmain has been a senior civil servant within the Government of Jersey, advising the Chief Minister on the design and implementation of the legislative and policy framework concerning the prevention of financial crime and the Jersey's compliance with international standards in this area. George also advises on areas concerning the private wealth management industry and particularly the law of trusts.

In his current role, he represents the Government of Jersey both on-island to the financial services industry and off-island to officials in foreign governments, regulators and by representing the Government in a variety of international forums such as MONEYVAL (the European FATF regional style body) and the FATF.

George is a lawyer (Jersey Advocate and English Barrister) having previously worked in private practice advising clients on regulatory law, trusts law and general civil and criminal litigation.

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CONTRIBUTIONS

May 2017 – Statement by Gibraltar to the PANA Committee

Your Excellency Mr Chairman and Distinguished Colleagues,

My name is James Tipping and I am the Finance Centre Director for the Government of Gibraltar. I am accompanied by Francis Carreras who is the Deputy Head of the Civil Service.

We thank you for this opportunity to appear before you.

Gibraltar is a fully self-governing and fully self-financing British Overseas Territory to which the Treaties establishing the European Union apply, with only certain exceptions. We are within the EU single market for the purposes of the free movement of persons, the freedom to provide services and the free movement of capital. We are not within the Common Customs Union and we do not have to apply a VAT regime. Our status applies until the United Kingdom formally exits the European Union.

EU Regulations apply directly and EU Directives are transposed by Gibraltar's Parliament. This includes all measures on financial supervision and regulation, direct taxation and anti money laundering. Our corporation tax rate is 10% and we have a maximum effective rate on personal tax of 25%. Our taxation regime is subject to European Union scrutiny.

Our financial services sector consists of three main areas:

Insurance
Banking and Trust and Company Management
Funds

Insurance is by far the largest contributor. They underwrite 20% of motor vehicles in the United Kingdom. 92% of insurance business is passported into the United Kingdom. There are approximately 55 insurance companies regulated in Gibraltar.

There are 14 Banks in Gibraltar. Most of them offer retail services and loans and mortgages to the average customer resident in Gibraltar.

Total deposits at Banks stand at approximately 5,200 million pounds. 70% of these deposits come from Gibraltar clients which include the above mentioned insurance companies. Approximately 10% of deposits (500 million pounds) come from residents of the United Kingdom.

There are circa 68 authorised Trust and Company Management service providers. There are approximately 15,000 Gibraltar Companies (and that is all companies including those that are asset holding, trading or dormant). The current number of 15,000 companies is down from an all time high of 29,000 in 2005.

The funds industry is very nascent with approximately 80 funds in total.

So, with the exception of motor insurance, Gibraltar's financial services sector is small in European terms. However, it is important to our domestic economy where it generates around 20% of our GDP and employs 16% of the workforce.

We are currently planning for a 'worst case' hard Brexit, but with a firm commitment from the United Kingdom Government to maintain and broaden access to their financial markets from

Gibraltar. Thus our financial services economic model will not have to change. Indeed, it brings opportunity as we would be the only territory in Europe with automatic access to the UK in banking, insurance, investment services and any other similar area where cross border directives currently apply.

Gibraltar has, pursuant to bi-lateral tax information exchange agreements, the EU Directive and the Multilateral Convention, around 151 exchange of information mechanisms to the OECD standard with 98 countries and territories around the world.

Gibraltar's OECD 115 page Phase 2 Review report on effectiveness of exchange of information found that we were 'Largely Compliant' (second highest grade) and the same as e.g. the United Kingdom, Germany and the United States of America.

We have been supplying comprehensive tax data under FATCA to the USA since September 2015 and the same under the United Kingdom IGA since September 2016.

Gibraltar will send all EU Member States comprehensive tax information as from September 2017 under the Directive on Administrative Cooperation, as amended to include automatic exchange.

Under the Common Reporting Standard which we committed to in 2014 we will be sending automatic information as from September 2017 to the 'first wave' countries, and the 'second wave' countries as from 2018.

Gibraltar has draconian all crimes anti money laundering legislation deriving from all EU legislation on this subject.

Our legislation, systems and administrative practices have been independently tested by in the past by the FATF and the IMF and we will be reviewed under the Moneyval process in 2018. We have appointed a National Coordinator for AML, published a National Risk Assessment and are reviewing our legislation to ensure compliance with FATF principles in parallel with the 4th AMLD.

The Gibraltar Financial Intelligence Unit is a member of the international Egmont Group of Financial Intelligence Units and shares information systematically and spontaneously with all members. Tax evasion, along with all other serious crime, is a predicate offence for money laundering and subject to suspicious transaction reporting.

Gibraltar is creating a central register of beneficial ownership under the terms of the 4th AMLD. The Directive and the register will come into force on 26th June 2017. If a global standard is agreed on public registers then Gibraltar will also adopt this standard.

Gibraltar has signed up to the new global standard regarding the automatic exchange of central registers of beneficial ownership.

Post Brexit, Gibraltar will continue to apply existing commitments on exchange of information, anti money laundering and financial supervision etc. Going forwards from that date, we will then choose whether to voluntarily apply any new EU legislation or to adopt international standards which have the same effect.

I would like to thank you for your kind attention.

States of Guernsey

HEARING OF EP PANA COMMITTEE ON 9 MAY 2017

INTRODUCTORY STATEMENT BY RICHARD WALKER, DIRECTOR OF FINANCIAL CRIME POLICY, GOVERNMENT OF GUERNSEY

Introduction

My name is Richard Walker; I am the Director of Financial Crime Policy in the Government of Guernsey. My colleague, Rob Gray, is the Government's Director of International Tax Policy.

I have been engaged in international supervisory and anti-money laundering policy in Guernsey for almost twenty years. For all of that time, the policy of successive Governments has been to meet international standards. This is not seen as an option but a responsibility. By way of illustration, Guernsey's parliament voted unanimously to approve the policy on the introduction of a law which will establish a framework for the registration of beneficial ownership information of legal persons and also unanimously approved the law itself.

The Guernsey authorities also strongly believe in the value of engagement with the international community, helping to set standards and participating in global efforts to monitor and enforce standards. For example, I participate in the work of the FATF, MONEYVAL and Egmont. I have also undertaken numerous evaluations of other jurisdictions' AML/CFT standards. My colleague, Rob Gray, represents Guernsey in the OECD's Global Forum, its Peer Review Group and Automatic Exchange of Information Working Group, the BEPS Inclusive Framework and the Country by Country Reporting Group. Rob has also carried out peer reviews for a number of jurisdictions as an assessor for the Global Forum.

Guernsey, the UK and the European Union

Guernsey is a British Crown Dependency. This is different to the status of Overseas Territories such as Gibraltar or the Caribbean territories.

Guernsey does not form part of the UK and is not represented in the UK Parliament. The UK Parliament does not legislate for Guernsey without its consent. It is settled constitutional practice that the UK consults Guernsey before it may bind Guernsey to obligations in international law. By agreement, Guernsey has been included in many important international conventions to which the UK is a party, such as the extension of the Convention on the Organisation for Economic Co-operation and Development to Guernsey in 1990.

Guernsey's relationship with the European Union is specified in Protocol 3 to the UK's 1972 Treaty of Accession to the European Economic Community. Under this Protocol Guernsey is part of the customs territory of the EU and there is free movement of goods between Guernsey and Member States. Guernsey is not part of the single market in financial services and is not required to implement related Directives. Similarly, Guernsey is a third country for the purposes of EU financial crime and tax legislation. However, Guernsey voluntarily chooses to adopt such legislation or equivalent legislation where appropriate, such as our adoption of the Savings Directive.

States of Guernsey

Guernsey's track record and ongoing actions

AML/CFT

Guernsey has a long-standing commitment to implement the standards of the FATF. Financial services businesses (which in Guernsey include trust and company service providers (TCSPs)) have been subject to AML/CFT obligations since 2000 (with some types of business, such as banks, subject to guidance long before that date). Businesses have had many years to embed compliance with the AML/CFT requirements to which they are subject.

The strong success of Guernsey's compliance with the FATF's standards is evidenced from the public reports of independent and international evaluations since 2000 and from the positive comments made in response to bilateral exchanges of beneficial ownership information by Guernsey with other jurisdictions. The most recent evaluation report, published by MONEYVAL in January 2016, further demonstrates the robustness of Guernsey's legal framework for AML/CFT and the implementation of that framework (including in respect of customer due diligence and transparency of beneficial ownership, where Largely Compliant ratings were given).

The 2016 MONEYVAL report stated that financial institutions clearly demonstrated that they are highly knowledgeable of their AML/CFT obligations and that professional TCSPs met by the evaluation team demonstrated a high level of professionalism and good knowledge of their obligations with respect to the identification and verification of beneficial owners. The IMF's report arising from its 2010 evaluation stated that sound measures are in place to ensure that legal persons incorporated in the Bailiwick are transparent and that accurate, adequate and current information concerning beneficial ownership is available to law enforcement and other competent authorities.

Guernsey was one of the first jurisdictions in the world to require TCSPs to be subject to an AML/CFT framework. Guernsey was also one of the first jurisdictions to establish a statutory framework for the prudential and market conduct regulation and supervision of TCSPs in 2001. Guernsey remains one of the few jurisdictions globally to maintain comprehensive frameworks for the prudential regulation and supervision of TCSPs and for AML/CFT by TCSPs. TCSPs are subject to routine, ongoing onsite and offsite supervision for all aspects of their activities. This combination of legislation and monitoring of compliance ensures that only fit and proper TCSPs are established and operate in Guernsey and that AML/CFT standards on customer due diligence and transparency of beneficial ownership are satisfied so that full and verified information on the beneficial ownership of legal persons and legal arrangements is available. Banks and other financial services businesses are also subject to the same AML/CFT standards.

In addition, since 2008 companies have been required to appoint a resident agent to obtain and verify information on their beneficial owners. From the summer of this year, under the legislation referred to in the introduction, resident agents for all types of legal persons will be required to provide beneficial ownership information to a registrar. The registrar will maintain a secure and searchable database. Guernsey's efforts will not stop here. Following the enhancement of the framework for legal persons, the authorities will review how best to meet the revised FATF Standards for transparency of legal arrangements.

Guernsey considers that transparency extends to the exchange of information with other jurisdictions. As consistently indicated in international evaluation reports, Guernsey possesses strong powers to exchange information. Guernsey has been providing foreign authorities with information on beneficial ownership for many years, and is routinely commended by other jurisdictions for the quality and timeliness of the information it provides.

Tax

Tax evasion has long been criminalised and subject to substantial penalties under Guernsey law. It also constitutes a predicate offence for the purposes of Guernsey's anti-money laundering legislation. Guernsey meets every international standard of tax transparency and information exchange, and its politicians have made a clear and unanimous political decision to continue doing so. Guernsey made a commitment to meet the OECD initiative on transparency and effective exchange of information in 2002. It joined the Multilateral Convention on Mutual Administrative Assistance in Tax Matters with effect from June 2014. It is part of the Early Adopter Group of the Common Reporting Standard on automatic exchange of information. It became a BEPS Associate in June 2016 and was in the first wave of signatories of the Multilateral Competent Authority Agreement. Next month Guernsey will be amongst the first signatories of the Multilateral Instrument for BEPS treaty related issues. It has been assessed by the OECD's Global Forum on Tax Transparency and Exchange of Information for Tax Purposes as Largely Compliant with the international standards on exchange of information on request – a rating equal to that of the USA, the UK, Germany and 16 further EU Member States among others.

With reference to the EU, Guernsey voluntarily adopted the EU Savings Directive, moving to full automatic exchange of information from 2011. Guernsey was assessed as being compliant with the principles of the Code of Conduct on Business Taxation in 2012; this assessment was endorsed by ECOFIN.

In addition, Guernsey has 60 bilateral Tax Information Exchange Agreements (including 23 with EU Member States) and 13 bilateral Double Taxation Agreements (including 4 with EU Member States). The other Member States have indicated that they will rely on the Multilateral Convention for Information Exchange.

Panama Papers

With regard to the so-called 'Panama Papers', the law firm from which the Papers were sourced has had no presence in Guernsey. Notwithstanding, Guernsey is not complacent about the content of the papers and established a Panama Papers Working Group. Under the direction of senior politicians, including Guernsey's Chief Minister, this group is investigating whether the Papers indicate any criminality in Guernsey or use of Guernsey for criminal purposes. Guernsey Law Enforcement has confirmed that there is currently no evidence that Guernsey entities have been used for criminal purposes.

Next steps

Guernsey will continue to commit very significant resources to ensure compliance with international standards on transparency of beneficial ownership information as they develop, the exchange of such information with other jurisdictions and to continue to investigate any potential criminality in relation to the Panama Papers.

HEARING OF EP PANA COMMITTEE ON 9 MAY 2017

INTRODUCTORY STATEMENT BY COLIN POWELL, ADVISER ON INTERNATIONAL AFFAIRS TO THE CHIEF MINISTER, THE GOVERNMENT OF JERSEY

Chair, we welcome this opportunity to inform your Committee about how Jersey has tackled and will continue to tackle effectively the international requirements for tax transparency, exchange of information in tax matters and issues relating to anti-money laundering that in your letter of the 4th April 2017 addressed to the Chief Minister you have identified as issues of relevance to your Committee.

I assume your Committee will have before them the answers to the questions that were put to us, the joint letter to you, Chair, from the Chief Ministers of Guernsey and Jersey and the detailed annex to that letter.

Chair, in your letter of the 4th April you state that the purpose of this hearing is to learn about what we have done following the revelations in April 2016 known as the "Panama papers". However, Jersey's reaction cannot be appreciated without first understanding what Jersey had done prior to that date.

Jersey has complied with the OECD standard on Exchange of Information on Request since 2002 both bilaterally and, since 2014, multilaterally through the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. As a result there are now 90 countries, which include all the EU Member States, that can request information from us. In 2014 Jersey was one of the "early adopters" of the Common Reporting Standard on Automatic Exchange of Information and the first delivery of information on financial accounts will be made this year to 52 countries which include all the Member States with the exclusion of Austria with whom information will be exchanged for the first time in 2018. This early commitment to tax transparency and information exchange is also to be found in our early membership of the OECD Inclusive Framework on Base Erosion and Profit Shifting and our commitment to country by country reporting in line with the EU Member States.

This commitment to international tax initiatives is also mirrored in a long standing commitment to anti-money laundering and combatting the financing of terrorism. Jersey has had a central register of beneficial ownership information since 1989, tax evasion was included as a predicate offence in anti-money laundering legislation enacted in 1999 and trust and company service providers have been licensed and regulated since 2000.

Independent confirmation of Jersey's commitment to the international standards on tax matters is to be found in the rating of Jersey as largely compliant by the Global Forum on Transparency and Exchange of Information for Tax Purposes, a rating that matches that of 18 EU Member States including Germany and Italy,

On AML the evidence is to be found in IMF assessments and most recently in an assessment by Moneyval which indicated that of the 49 Financial Action Task Force Recommendations covered 48 were rated as Compliant or Largely Compliant.

However notwithstanding what has been achieved, and internationally recognised as such, Jersey is not resting on its laurels.

- Jersey is committed to further enhancing the existing central register of beneficial ownership information by the more regular up-dating by trust and company service providers of the beneficial ownership information held on the Register.

- In November 2016 Jersey joined with some 50 jurisdictions including all the EU Member States in a commitment to a proposed new initiative on access to beneficial ownership information.

- Jersey continues to play an active role in the OECD Base Erosion and Profit Shifting programme although there is no evidence that Jersey has much if any involvement in profit shifting.

- Jersey is confident that it will not appear on any EU list of non-cooperative jurisdictions. With the support of the OECD, Jersey can satisfy the criteria on tax transparency and base erosion and profit shifting. The criteria on fair taxation should also be met given that Jersey's corporate tax regime has previously been assessed as being compliant with the EU's Code of Conduct on Business Taxation criteria on which it is understood the fair taxation assessment is to be based.

There are also some specific points to make relating to matters your previous hearings have suggested will be of interest to your Committee.

- Whereas there may be jurisdictions where companies can be formed without any obligation to provide details of the ultimate beneficial ownership, if those companies when and wherever formed are to be administered in Jersey the trust and company service providers are required to know who the ultimate beneficial owner is and if they do not do so they run the real risk of being fined or having their licence to operate being withdrawn.

- Jersey's zero rate of corporate tax is not designed to facilitate tax evasion or profit shifting. It provides simplicity and certainty with tax neutrality for multi-jurisdictional investors and the avoidance of double taxation in the absence of Double Taxation Agreements. This has made Jersey attractive for sovereign funds and international investment and has generated capital flows from which many European countries have benefitted in jobs and growth.

- There are many non-tax reasons why Jersey companies are incorporated by non-residents. Those engaged in legitimate investment and business activities wish to take advantage of the Island's political stability, fiscal certainty and neutrality, professional expertise, and flexibility of company laws. Those forming Jersey companies also know

that the ultimate beneficial owner has to be identified and that Jersey is fully transparent in passing information to partner jurisdictions.

- There are many legitimate uses for which trusts are formed - pension funds and individual wealth management – that have nothing at all to do with the management of tax liability, whether legitimate or illegitimate. We have offered to give to interested MEPs a presentation on understanding trusts that we have given to tax officials in a number of Member States. That offer remains on the table.

Jersey is providing all the information being asked of it either on request or automatically. If there is more information required by tax and law enforcement authorities we would be pleased to know of it, and to know when this can be expected to be the subject of a further international standard.

Of paramount importance in our view is the need for the information made available to law enforcement and tax authorities to be adequate, accurate and current. This is of particular importance when providing information on the ultimate beneficial owner or controller of a legal entity or a legal arrangement. This has long been Jersey's prime objective and our leading position in this respect has been internationally recognised. Hopefully Chair it will also be so recognised by your Committee.

We will be pleased to answer any questions arising from this statement or from the answers we have given to the questions previously asked of us.

May 2017

PANA

Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion

European Parliament

PUBLIC HEARING

COOPERATION IN TAX MATTERS WITH EUROPEAN JURISDICTIONS

TUESDAY, 9 MAY 2017

9.00 - 12.30

Room: Altiero Spinelli A5G-3

Brussels

REPLIES TO THE WRITTEN QUESTIONS

Written questions to Madeira

Introductory Note:

Based on article 174º and following articles of the Treaty on the Functioning of the European Union, the European Union develops a policy of economic cohesion and aims, particularly, at reducing the disparity between the levels of development of all regions and the backwardness of the less favourable regions.

Based upon these principles EU ultra-peripheral regions, such as the Autonomous Region of Madeira, benefit from a special treatment, expressly and especially protected in the terms laid down by article 349º of the TFUE.

This norm, as stating that*"…the structural social and economic situation of (…) the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development (…)*", reinforces, in a specific way, the importance and need to adopt special customs, fiscal and State aid policies to enhance the economy and development of such regions.

The Autonomous Regions of Madeira (RAM) is in the terms of the Treaty, fully included in the national territory, not having been excluded, for instance, from the application of certain European Union fiscal rules or from the norms applicable to State aid (contrary to what has happened in relation to other countries), but is allowed under article 349.º of the Treaty to adopt special fiscal measures to diversify the economy of the island.

The regime of Madeira International Business Centre (hereinafter MIBC) is actually provided in articles 33.º, 36.º and 36.A of the Statute of Fiscal Benefits, approved by decree law nr. 215/89, of the 1st of July, and is a global unitary regime comprising three sectors of activity: International Services, the Industrial free trade Zone and the International shipping registry of Madeira.

Since the late 90's the MIBC has been thoroughly discussed and analysed both at the OECD's Forum and at the E.U., not only within the Group of the Code of Conduct but also within the Directorate-General for Competition, Taxation and Transport under the subject of State aid, with all instances concluding for the conformity of the regime both with EU and international standards.

Madeira has never been classified neither by the OECD, neither by the EU as a tax haven or a non cooperative jurisdiction, and it's regime is fully transparent and fully compliant with EU and International standards on taxation.

Questions:

1. **To your knowledge, what is Madeira's relationship with Panama and Mossack Fonseca? Are you aware of any business links between Mossfon or other offshore providers and Madeira?**

As far as we are concerned the sole connection between Madeira and Panama is with the Portuguese community residing in such country. According to the data of the Portuguese Embassy in Panama around 3000 Portuguese live in that country, amongst which families that immigrated from Madeira to Panama already in it's second or third generation.

We are not aware on any relationship with Mossack Fonseca and/or business links between Madeira and such services providers.

By the occasion of "Panamá Papers" some business links between Portuguese companies and individuals linked to Mossfon came on the news, but such information to our awareness was put under verification and investigation of the Portuguese Judicial Entities, such as DCIAP (Departamento Central de Investigação e Ação Penal).

Howsoever, as a matter of principle, we do not foresee as an illegal transaction the establishment of business relations, whether commercial or industrial, with Panama or operators therein located, a country with which Portugal maintains diplomatic relations and with which the former Secretary of State of tax Affairs, Sergio Vasques, has signed, on the 27 August 2010, an agreement towards the avoidance of double taxation containing an exchange of information clause.

2. **As far as you are aware, is it correct that companies registered in Madeira don't need a private person as holder and that companies used as holder can be, and often are, registered in countries like Panama, British Virgin Islands and Luxembourg? If so, why do you think this is the case?**

In Portugal, as in any other EU Member States, companies therein incorporated can have as holders individuals and/ or companies incorporated in the same state, in other member states or in third countries.

It is noteworthy that within the freedoms of movement and establishment which are corollary and fundamental principles of the EU, Portugal could not possible not follow such principles and rules forbidding companies to have as holders other companies or EU individuals.

Hence, both the Portuguese commercial Code and the companies Code allow for companies to have as holders individuals or companies and do not limit or interdict them to be from foreign jurisdictions. Though, upon incorporation and registration of such companies in the public registrar the holders, it's valid existence and full identification must be shown to the registry.

Companies incorporated in Madeira are fully subject to the Portuguese legal framework with no exception, therefore being incorporated under the same legal forms, requirements, and rules as any other Portuguese company.

We believe it is important to stress that the Portuguese Government approved on the late 18 of April a proposal of law, that, by transposing into national law the provisions of articles 30 and 31 of Directive 2015/849 of the European Parliament and of the Council of May, 20, creates a central Registry of Beneficial Owners. Such Central Registry of Beneficial Owners grants, in one hand, a high level of public access to the essential elements of effective beneficiaries, an immediate acknowledgement of the beneficial owners by all the supervisory, surveillance and criminal investigation authorities, and, on the other hand, promotes greater transparency and ensures the full implementation of the obligations laid down in Directive 2015/849.

As from the entering into force of such law, all the documents formalizing the incorporation of commercial companies must contain the identification of the natural persons they hold, albeit indirectly or through a third party, the ownership of the shareholdings or, in any other way, effective control of the company, without prejudice to the other requirements provided for by law, and such information will be recorded on the Central Registry of Beneficial owners.

We, thus, believe the present question will no longer make sense under the EU and the Portuguese legal framework.

3. **Could you please explain the rules on due diligence, know-your-costumer and final beneficial owner principles in Madeira? Are these formalities always required if you want to open a bank account?**

In Portugal, law nr. 25/2008 sets on all the obligations as regards to anti-money laundering and counter Terrorism financing-AML/CTF Policy, which applies not only to financial institutions but also to non financial institutions or services providers such as notaries, lawyers, real state agencies and accountancy and corporate services providers.

Such rules comprise not only the due diligence rules, such as identification of the beneficial owner, conservation of documents, control of activities but also the evaluation of risk and reporting obligations in case of doubt or suspicion of the activity or business to the competent authorities. Indeed, financial and non-financial institutions have a mandatory reporting requirement of all suspicious transactions to the public prosecutor regardless of the threshold amount.

All financial institutions, including insurance companies, must identify their customers, maintain records for a minimum of ten years, and demand written proof from customers regarding the origin and beneficiary of transactions that exceed 12,500 EUR. Non-financial institutions, such as casinos, property dealers, lotteries, and dealers in high-value assets, must also identify customers engaging in large transactions, maintain records, and report suspicious activities to the Office of the Public Prosecutor.

Portugal's Financial Intelligence Unit (FIU), known as the Financial Information Unit, or Unidade de Informação Financeira (UIF), was established in 2002 and operates independently as a department of the Portuguese Judicial Police (Polícia Judiciária). At a national level, the UIF is responsible for gathering, centralizing, processing, and publishing information pertaining to investigations of money laundering and tax crimes. It also facilitates cooperation

and coordination with other judicial and supervising authorities. At the international level, the UIF coordinates with other FIUs.

These rules are fully applicable in Madeira with no restriction either to financial institutions therein located either to non-financial entities, which must comply with this due diligence obligations under penalty of sanctions.

As to the opening of bank accounts in Portugal, all financial entities are obliged to comply with the KYC (know your customer) policies and FAFT-GAFI recommendations, with no exception, as provided in Law nr. 25/2008 and the notice from the Banco de Portugal nr. 5/2013.

Finally we believe it is important to mention that Portugal has been under the scrutiny of GAFI and has always been considered as compliant with FATF-GAFI standards and communications.

4. **Why do you think Madeira is favoured by many companies and high net worth individuals as a financial centre?**

It must be clarified that, contrary to what is reported by some media, Madeira is no financial centre and no financial or insurance activities are, since 2000, allowed to be incorporated, or granted any sort of advantage under MIBC since 2011.

Secondly, we cannot understand from which data or valid source, might arise such presumptions/conclusions on Madeira being favoured by many companies and high net worth individuals.

As of the 31st of December 2016, MIBC had a total of 1505 companies incorporated, which against a total of around 40 000 companies incorporated in Malta, per instance, represents under 5% of the total of companies operating in Malta.

Moreover the most representative companies that MIBC has had licensed moved back in 2011 to other EU countries such as Austria, the Netherlands and Luxembourg, whose total number of companies therein incorporated are quite indicative of the jurisdictions being favoured by companies or high network individuals.

The only regime in force either in Portugal mainland, either in Madeira that might eventually attract high net worth individuals is the Portuguese non habitual residents program introduced in 2009 aiming to attract talent in high value added activities and high net worth individuals and their families to Portugal. Such regime is available to all individuals becoming tax residents in Portugal and the status is granted for a period of 10 Years.

Madeira has no special feature or specificities as regards to the application of this regime.

5. **Could you please explain how intermediaries, such as lawyers, tax advisors and accountants are regulated in Madeira? Is there an official authority to investigate banks or intermediaries involved in practices such as money laundering, tax avoidance or tax evasion in Madeira?**

In Madeira, as in Portugal, lawyers, tax accounts, auditors and banks fall under all the supervision rules applicable, and are, each one at his level subject to Regulatory entities.

The exercise of the profession of Lawyer demands the inscription in the Order of Portuguese lawyers, which regulates the exercise of the profession and imposes disciplinary sanctions as according to "Código Deontológico da Ordem dos Advogados" if any lawyer deviates from it's legal and professional responsibilities.

Tax accounts and Auditors are also obliged to be enrolled in the Portuguese orders of certified Accounts and certified Auditors, which again, establish the rules that govern the exercise of such activities and imposed sanctions to any behaviour against it.

All banks and financial institutions fall under the supervision of Banco de Portugal, the country's Central Bank and an integral part of the European System of Central Banks (ESCB).

Shall any suspicion or information arise involving a lawyer, a tax account, a bank or auditors as being involved in a tax avoidance or a tax evasion operation and/or in a money laundering operation the regulating entities shall immediately report it to the public prosecutor as well as to Portugal's Financial Intelligence Unit.

Such conduct, once proven, will lead to criminal sanctions and in the case of lawyers, auditors or tax accountants to a suspension or compulsory prohibition to further exercise that activity and in the case ok banks to a potential cancelation of the license to operate in Portugal, issued by Banco de Portugal.

Tax avoidance or tax evasion operations as well as aggressive tax planning shall also be reported to the Portuguese tax authorities and to crime investigation entities, as DIAP, in order to be investigated and fall under criminal prosecution where appropriate.

6. **According to researches of Bayrischer Rundfunk, during the past 5 years, almost 800 incorporations were registered at the office building on Avenida Arriaga 73-77. This seems to suggest a letterbox scheme. Could you please give us your appreciation on this? Is there any legal framework in place to stop/prevent letterbox schemes?**

As it is well known, the media research carried out by the Bavarian (BR), the Austrian radio (ORF), the Spanish daily La Vanguardia and the French newspaper Le Monde suffers, from the outset, of inadequacy, impropriety and reductionism, as it was collected under a Scheme - Regime I - whose effects ceased on December 31, 2011.

As according to the public commercial records, at the office building on Avenida Arriaga 73-77, there are currently located the head offices of 180 companies, and there are no records on 800 companies therein located in the past 5 years.

It is noteworthy that such building is an office building with a shopping centre and apartments included, which throughout the years, benefiting from it's central location at Funchal, has served has a preferential location to several companies and activities operating within and out the MIBC.

Even if we were to admit as possible that since 1980, date of the entry into force of MIBC regime, up until know almost 800 companies have had their offices on that building _ please note that in 2000 Madeira had almost 6000 companies licensed to operate within MIBC, having the majority of them their head offices in buildings at the city centre _ we cannot accept as truthful the information that in the past 5 years almost 800 incorporations were registered at that office building.

The numbers referred are easily contradicted by the consultation of the annual evolution of MIBC and the number of companies incorporated in the last 5 years. It is manifestly impossible for almost the totality of companies incorporated to have their headquarters in the same building.

Nonetheless, in order to benefit from MIBC regime companies must perform their activities with real economic substance from Madeira, therefore, in case of letterbox schemes or artificial vehicles such schemes fall under the investigation of the Portuguese competent tax and criminal authorities, that act accordingly to the evidence they encounter, and regularly inspect the compliance of the MIBC companies.

7. **According to your legislation, is it correct that companies who aim to benefit from the low tax rates in Madeira have to create a certain number of new jobs? If so, would it be possible for one person to be hired by several companies and that as long as the person gets a salary from each one of them, every single occupation would count as a new job? Journalists from Bayrischer Rundfunk evaluated data from the Madeira company register and found out that some directors are registered for dozens or even hundreds of companies. One single man was even named as director of more than 300 companies during the last ten years. Do you consider this a loophole? To your knowledge, are there any plans to change the legal framework?**

As previously mentioned, the media research carried out by the Bavarian (BR), the Austrian radio (ORF), the Spanish daily La Vanguardia and the French newspaper Le Monde was collected under a Scheme - Regime I - whose effects ceased on December 31, 2011.

Such regime (regime I included in article 33º of the SFB) admitted the licensing of entities undertaking financial, services, industrial and shipping activities, and was essentially characterized by granting full exemption from corporate tax (IRC), until the 31st of December 2011. To benefit from it, companies did not need to create a certain number of jobs.

As from Regime II, only applicable to entities licensed between 2003 and 2006, also with effects until the end of 2011, the third regime (regime III, included in article 36º of the SFB) and Regime IV (included in article 36.A of the SFB) in order to benefit from MIBC regime companies must, upon incorporation, create and maintain a certain number of jobs in order to benefit from the regime.

In fact, based upon the number of jobs created and maintained the companies are subject to a ceiling of taxable income to which the reduced corporate tax rate is applicable.

In accordance with the general principle of full integration of MIBC into the Portuguese legal order, the integration and interpretation of the concept of a job is interpreted and fulfilled according to the Portuguese law.

Pursuant to Law nr. 7/2009 of February, 12, the Portuguese Labour Code, the labour legal relationship may be created in any of the ways provided for in this legislation, and MIBC does not constitute an exception, in particular by long term contract (Article 147); short-term contracts (Art. 139), telework (art. 165), detachment (art. 7 and 8); Occasional assignment (art. 288), temporary work (art. 172), intermittent job (art.º 157.º) part time (art. 150) service commission or contract with a plurality of employers (article 289º).

8. **Could you please explain how trans-border transfers are controlled and supervised in Madeira?**

Trans-border transfers as well as payments and other operations to and with non residents must be monthly reported to Banco de Portugal as set on Banco de Portugal instruction nr. 27/2012, of September 17, as amended by instructions nrs. 56/2012, of December 28 and 3/2013 of February, 27.

Such reporting is mandatory either to financial institutions, either to non-financial entities with operations with non residents such as transfers, deposits, payments and loans.

Trans-border transfers to tax haven jurisdictions; as such classified in the Portuguese list of tax havens (Ordinance nr. 150/2004, as amended by Ordinances nr. 292/2011 and 345-A/2016), fall under special rules of communication to Banco de Portugal as set in Decree-law nr. 157/2014 and Banco de Portugal notice nr. 8/2016.

Moreover all payments and receipts involving countries, territories and jurisdictions with a privileged tax regime are verified and inspected by the Portuguese Tax Authorities, after the mandatory comunication made by Banco de Portugal.

9.As far as you are aware, who were the taxpayers who made those unscrutinised transfers into offshores in the years 2011-14? And who were the beneficiaries? To your knowledge, what was the justification given for those transfers?

This subject is foremost a matter of State and of the Central Government, not directly concerning Madeira.

I am not aware neither of the identity of the taxpayers, neither of the identity of the beneficiaries involved.

Such information shall, therefore, to this regard, be questioned to the central government.

Nonetheless, note that on the 15 of April, the Portuguese President of the Republic has enacted an amendment to the Portuguese General tax law (Lei Geral Tributária) which obliges tax authorities to disclose and annually publish statistics with the total value and destination

of transfers of money and funds to countries, territories and regions with a privileged tax system.

Furthermore, statistics data as regards to payments to offshores between 2011-2015 were published on April 2016 on the Portuguese Tax Authorities website.

10. **To your knowledge, were cross-border transfers into countries with special tax jurisdictions made in 2015 ever scrutinised, either from the tax angle, or from the AML\FT angle?**

Decree-Law nr. 157/2014, of October 24, stipulates that entities subject to the supervision of Banco de Portugal, based on their consolidated financial situation, and other entities authorized to provide payment services in Portugal must register and communicate to the Banco de Portugal the payment operations provided to entities based in offshore legal systems.

Banco the Portugal, then, quarterly prepares statistics based upon those communications and sends it to the Portuguese Tax Authorities.

We do not dispose on the information required to answer these questions, which shall, hence, be sent to the Portuguese Government or directly to Banco de Portugal or the Portuguese Tax authorities, as the regional authorities are not legally competent in matters concerning operations regarding international relations.

11. **As far as you are aware, was there an order from any State authority to prevent these bank statements from being scrutinised? What exactly happened in the Tax Authority which prevented processing of these data? How many people had access to the data? Could you please explain the internal procedure in the TA after it receives the communications on transfers from the banks?**

In the exercise of my duties as Regional Secretary i am not aware of any order to prevent bank statements from being scrutinised.

These questions shall be addressed to the Portuguese government.

12. **Could you please provide information on who is in charge of ensuring AML\FT controls in Portugal and bank supervision? To your knowledge, why is there no exchange of information between Tax Authorities and Public Prosecutors on AML/ FT controls?**

I am again to believe, i am not the appropriate person to answer these questions, which should be addressed to the Central Government.

Even so, in general terms, note that in Portugal, law nr. 25/2008 sets on all the obligations as regards to anti-money laundering and counter Terrorism financing-AML/CTF Policy, which applies not only to financial institutions but also to non financial institutions or services

providers such as notaries, lawyers, real state agencies and accountancy and corporate services providers.

AML/FT obligations are quite spread in Portugal imposing both to financial and non-financial institutions mandatory reportings in case of suspicious transactions both to its regulatory entities, such as The Portuguese Lawyers order, or the Order of auditors, or the Tax Accounts order, or the Institute of registries and notaries (IRN) in the case of registrars and notaries and to Banco de Portugal in the case of Financial Institutions and to the public prosecutor or to Portugal's Financial intelligence Unit.

To my knowledge there is exchange of information between tax authorities and the public prosecutor on AML controls. Indeed as far as I can tell both these entities work and have been working closely in some cases. (ex. Operação Marquês)

13. Could you please explain why Banco de Portugal is preventing disclosure by the current Government of the entities and banks who operated the cross-border unscrutinised transfers? If they are related to bankrupt BES/GES, why are details not made public?

I am not able to answer this question, which shall be directly addressed to Banco de Portugal.

14. As far as you are aware, has data been published on cross-border transfers made from Madeira into offshore jurisdictions, as ordered by the Vice Minister of TAX Affairs in 2010? If not, could you please explain why not? To your knowledge, have cross-border transfers from Madeira into special tax jurisdictions been controlled for tax purposes or AML/FT by any authority in the Portuguese State? Could you please provide information on who have been the entities ordering such transfers and who have been their beneficiaries as well as their justification and the banks operating them?

In 2010, as ordered by the secretary of state of tax affairs, Sergio Vasques, (allow me to clarify there is not such function of vice minister of tax affairs) statistics data on payments to special tax jurisdictions and data on the Madeira Free Trade Zone were published on the Portuguese Tax authorities website. Such data referred to the year 2009.

Eventual cross-border transfers made from Madeira into offshore jurisdictions fell under the same rules and obligations as in Portugal mainland, meaning that they were reported to Banco de Portugal and to the tax authorities, with no exception, and were under the same scrutiny and control by all the competent authorities.

As far as i am aware tax authorities enhanced a series of tax inspections to the taxpayers identified in such list, back in 2010, as announced by the secretary of State of tax affairs at the time, Sergio Vasques.

Information as regards to the entities ordering such transfers, beneficiaries and banks operating them shall be asked to Banco de Portugal and Portuguese tax authorities.

Written questions to Gibraltar

Response by Gibraltar

The following information is applicable to many of the questions below. Therefore, we are making the following opening statement in respect of the questions and then we proceed to answer each one individually:

Gibraltar is a fully self-governing and fully self-financing British Overseas Territory to which (until the United Kingdom formally exits the European Union) the Treaties establishing the European Union apply, with only certain exceptions. As a generality, we are within the EU single market for the purposes of the free movement of persons, the freedom to provide services and the free movement of capital. We are not within the Common Customs Union and we do not have to apply a VAT regime.

Thus all relevant EU Regulations apply directly to Gibraltar and all relevant EU Directives are transposed by Gibraltar's Parliament. This includes all EU measures on financial supervision and regulation, direct taxation and the fight against money laundering. Gibraltar has a diverse and prosperous economy. Our corporation tax rate is 10% and we have a progressive income tax system with a maximum effective rate on personal tax of 25%. Our taxation regime is subject to European Union scrutiny / signoff and it is applied on a non-discriminatory basis.

We are also attaching a Matrix to this document showing the entire list of tax information exchange mechanisms that we have by country in Alphabetical order.

Gibraltar has, pursuant to the various agreements described in the document above, around 150 exchange of information mechanisms to the OECD standard with over 98 countries and territories around the world; a small number of which are pending their ratification (Gibraltar has ratified all of our agreements).

Gibraltar has been supplying bulk tax data on an automatic basis to the United States of America since September 2015 under the terms of the FATCA Intergovernmental Agreement.

Gibraltar has been supplying bulk tax data on an automatic basis to the United Kingdom since 2016 under the Intergovernmental Agreement.

Gibraltar will supply all EU Member States with bulk tax date on an automatic basis as from September 2017 under the Directive on Administrative Cooperation.

Gibraltar will supply all countries that have signed up to the Common Reporting Standard with bulk tax data on an automatic basis as from September 2017 (first wave countries, and the second wave as from 2018).

Written Questions to Gibraltar

1)

- Could you please describe the legal framework on anti-money laundering, tax avoidance and tax evasion that is in place in Gibraltar? More specifically, has Gibraltar made any changes in its tax system to enforce the tools for efficiently analysing tax related information? Could you please explain the changes that have been made, if any?

Gibraltar has draconian all crimes anti money laundering legislation, systems and administrative practices in place deriving from all European Union legislation on this subject. In addition, we have reviewed FATF best practice, have implemented a National Risk Assessment and are assessing Gibraltar's current legal framework in the context of a forthcoming Moneyval review scheduled for 2018.

Gibraltar also has transposed and put into practice all EU legislation relating to direct taxation.

When it comes to tax avoidance Gibraltar's income tax regime demands that tax advisers / practitioners disclose to the authorities the use of any structures that have been put in place to avoid taxation that would otherwise have been due in Gibraltar.

The Income Tax Department in Gibraltar has also set up an enhanced special investigations unit.

Our legislation, systems and administrative practices have been independently tested in the past by independent reviews from the Financial Action Task Force, the International Monetary Fund and others and we have been found to have a robust arsenal not only just in place but crucially also in practice.

The Gibraltar Financial Intelligence Unit (which is responsible for, inter alia, the receiving and actioning of suspicious transaction reports) is a member of the international Egmont Group of Financial Intelligence Units (since c. 1996) and shares information systematically as well as spontaneously with all members of the Group around the world.

Tax evasion has a 7 year maximum prison sentence in statute and therefore along with all other serious crime (that has a prison sentence of more than 6 months), is a predicate offence for money laundering and subject to suspicious transaction reporting. For the avoidance of doubt, tax evasion is a predicate offence whether carried out in Gibraltar or elsewhere.

The FATF recently revised their 40 anti-money laundering principles and has urged countries around the world to ensure that their legislation and administrative practices match the new standards. Gibraltar is no exception and is well advanced on legislative drafting to put these new standards (as well as the future 4th anti money laundering directive) into effect. Gibraltar will be peer reviewed (in the same way as large countries such as the United Kingdom and the United States) on the introduction and effectiveness of the new standards in due course.

In 2015, Gibraltar asked to be reviewed on its anti-money laundering compliance by Moneyval and this was agreed. From that date forward, Gibraltar has been participating in all Moneyval meetings.

2)

- To your knowledge, have there been any changes in Gibraltar's legislation regarding the fight against tax evasion via a tax credit system? If so, could you please explain which changes have been made? (The question on tax credit system has to do with a clarification on whether Gibraltar has a tax credit system for low incomes or a system where some credits can reduce taxes directly (not depending on general tax rates).

We do not have a tax credit system that applies to corporations that might reduce the amount of corporation tax payable.

As regards individuals and income tax there are two tax credits available in Gibraltar to benefit the average income taxpayer. Both of these are available to individuals under the Allowance Based System. The first, which every taxpayer is eligible for, is equal to the higher of £300 or 2% of the tax payable and the other, which is available for individuals aged 60 and over is £4,000 provided the individual is not in receipt of pension or annuity income in excess of £6,000.

3)

- Could you please explain how intermediaries, such as banks, lawyers, tax advisors and accountants are regulated in Gibraltar? Is there an official authority to investigate intermediaries involved in practices such as money laundering, tax avoidance or tax evasion in Gibraltar? If so, how long after the Panama Papers revelations was the authority commissioned to investigate? To your knowledge, did it do any other assessments prior to the Panama Papers revelations?

Each and every piece of EU legislation on financial supervision and regulation applies to Gibraltar. Therefore all financial services firms covered by EU law are regulated by the financial services supervisory authority (being the Financial Services Commission, an independent body established by the Gibraltar Parliament.) These firms include but are not limited to eg banks, insurance companies, auditors / accountants , money transmission services, bureaux de change, investment services firms, E-Money firms etc. The regulator also authorises and supervises Trust and Company Service Providers. This sector has been regulated in Gibraltar since 1989. Financial services firms are also specifically supervised by the regulator in terms of compliance with AML procedures. Tax advice, as in most

countries, is generally given by accountants or lawyers. The legal profession in Gibraltar is regulated by the disciplinary committee of the Bar Council and an enhanced regulatory framework is in the process of being put in place.

Tax evasion is a serious criminal offence and is also a predicate offence for money laundering and can therefore be investigated by either the Income Tax Department's special investigations unit or by the Royal Gibraltar Police Economic Crime Unit.

As regards an official authority to investigate money laundering we have the following:

- National Co-ordinator Role
    - Statutory appointment to identify and co-ordinate mitigation of money laundering (ML) / terrorist financing (TF) risks. The Attorney General was appointed to this post.
    - Published National Risk Assessment (NRA) of ML Risks in 2016
    - Finalising separate (non-public) TF Risk Assessment and Non-Profit Sector TF Assessment
    - HM Government of Gibraltar will publish a Strategic Response to the three documents above
    - Stakeholder Authorities have put action plans into effect to mitigate the identified risks.
    - NRA to be revised latter part of 2017
- 4MLD Transposition
    - Gibraltar will transpose 4MLD by June 2017
    - Legislative reform will also look at FATF compliance identified through Gap Analysis
- Data Collection
    - New and enhanced initiatives being conducted to collect Financial crime and international co-operation data
    - Data will be used to formulate revision to NRA and regulatory approaches and help identify risks
- Regulatory focus
    - AML/CFT Risk process being introduced by regulators (FSC/OFT and Gaming) which are AML/CFT driven
    - New enforcement powers to be introduced with 4MLD (fines as well as naming and shaming)
- Resourcing & Training
    - Additional training of Financial Investigations and Financial Information Officers at stakeholder authorities being rolled out.
    - Economic Crime Unit set-up and running at Royal Gibraltar Police
    - Enhanced Financial Investigation Unit established at HM Customs
    - GCID/GFIU (Criminal Intelligence and Financial Intelligence Units) Additional permanent resources allocated

- Enforcement
    - Separate financial investigations now conducted for predicate offences by Law Enforcement
    - Separate prosecutions for money laundering already being sought
    - Confiscation of assets being sought

Assessments on anti money laundering were carried out prior to the establishment of the above but the updated coordinated approach has been put in place due mainly to i) keeping up to speed with developing FATF requirements ii) the Moneyval framework. The Panama Papers have not therefore been the main driver for this.

4)

- 4) In April 2016, right after the Panama Papers revelations, the OECD held a meeting in Paris, bringing together senior tax administration officials from countries worldwide to specifically discuss opportunities for obtaining data, information-sharing and exploring mechanisms for co-operation, where Gibraltar apparently was not present. Could you please explain the reasons of Gibraltar's abstention? Did Gibraltar provide any follow-up cooperation to the OECD?

Gibraltar was unable to attend this meeting but we are being extremely proactive in terms of providing cooperation and support to other countries. This is principally via tax information exchange both on request and on an automatic basis as from September 2017 via the EU Directive and the Common Reporting Standard. In addition, the Gibraltar Financial Intelligence Unit has been in a position to assist in respect of requests from other countries and continues to be so. Gibraltar has received and answered a small number of requests for information that arose of a result of the Panama Papers.

It should be noted that Gibraltar only has 15,000 companies registered at Companies House. This includes all types of companies whether eg asset holding, trading or simply dormant. This goes some way towards explaining the small numbers of requests made to Gibraltar resulting from the Panama Papers. In addition, last year the United Kingdom will have received bulk tax data on an automatic basis from Gibraltar and other countries will be waiting for bulk data transfer this September under the EU Directive or the Common Reporting Standard.

5)

- According to the national legislation and without going too much into details, could you please describe the procedure of a company registration in Gibraltar? Could you please inform us how long this procedure approximately takes?

Until 30 October 2014, company legislation in Gibraltar was based on the 1930 Companies Act (that was principally based on the 1929 Companies Act of England and Wales). On 1 November 2014, the Companies Act 2014 came into force and the 1930 Companies Act was repealed.

All EU law relating to companies applies in Gibraltar including the filing of accounts publicly at Companies House. The Gibraltar Companies Act also stipulates the information that must be kept in Gibraltar including copies of underlying records etc so as to comply with the OECD effectiveness in exchange of information.

Persons wishing to establish a company would use the services of a licensed Trust and Company provider that is regulated by the financial services regulator.

The procedure for establishing a company is administratively very straightforward and again from an administrative point of view should not take more than a few days. However, the licensed services provider will not authorise use of the company until full due diligence is carried out, identification of the ultimate beneficial owner, background checks on these, source of funds etc. All of this information has to be maintained in Gibraltar.

In addition, the company will not be able to operate a bank account until it is able to satisfy the bank's full due diligence procedures.

6)

- To your knowledge, in cases of establishment of money laundering and tax evasion, did the responsible persons face any sanctions from public authorities for the activities in offshore structures? Could you please provide us with any examples?

We are aware of several prosecutions for money laundering in recent years including at least one person who had been an authorised individual within a Trust and Company services provider. All such prosecutions led to prison sentences.

7)

- Could you please describe the rules on due diligence, know-your-costumer policy and ultimate beneficial owner principles in Gibraltar? Are these formalities always required, for example, in order to open a bank account?

As per the recital at the beginning of this document, each and every piece of EU legislation on financial supervision, direct taxation and Anti Money Laundering applies in Gibraltar.

This legislation therefore requires all entities specifically caught by the third Anti Money Laundering Directive (as well as Trust and Company service providers; a sector that has been regulated since 1989)

in Gibraltar to do due diligence and full know-your-customer policy on all clients to ensure that they know who the ultimate beneficial owner is or are. This includes checks on, amongst other things, politically exposed persons and the scope will be further widened with the introduction of the 4th Anti Money Laundering Directive and the proposed 5th AMLD when adopted.

When it comes to specific financial services firms such as banks opening accounts for corporate clients and / or individuals, an equally stringent and formal process is involved, including background checks and source of funds on ultimate owners.

As mentioned in the answer to other questions, tax evasion is a serious criminal offence. Financial services firms and all classes of entities caught by the relevant legislation are under an obligation to report individuals to the Gibraltar financial intelligence unit if they suspect that they are not tax declared in their country of residence.

Part of the due diligence and know your customer policy involves documenting the country of residence of ultimate beneficial owners and obtaining their tax identification numbers in their home country. This is to ensure that all firms caught by automatic exchange of information legislation (US FATCA / IGA with the UK / The EU Directive / The Common Reporting Standard) can comply with their obligations to report.

The Financial Services regulator in Gibraltar also issues detailed guidance notes to all firms regulated by them on what is expected so as to be compliant with AML. The regulator also carries out inspection visits.

8)

- The current AML legislation in the EU (and worldwide via FATF standard) requires "obliged entities" to identify the ultimate beneficial owner, and make this information available to competent authorities and financial intelligence units (FIUs). Could you please provide us with information on how Gibraltar complies with this obligation? Are you planning to implement an official record such as the UK's register on beneficial ownership? Is such a record currently being implemented and what is your official position on the matter, especially regarding who can have access to it? In case the list is not public, do you intend to make it public? Would the register be available online?

Each and every piece of EU legislation relating to Anti Money Laundering is in place in Gibraltar and is being enforced. This is in addition to all EU law on financial supervision and direct taxation.

Thus, all entities (including Trust and Company service providers because they have been regulated since 1989) have to identify the ultimate beneficial ownership of all clients that they are dealing with and maintain such information in Gibraltar so that it can, when and if necessary, be disclosed to authorities. This information includes detailed due diligence on, inter alia, Politically Exposed Persons as well as others. These requirements are enforced by inspection visits. As an example, the Financial

Services regulator in Gibraltar carries out onsite visits on all firms that they supervise including anti money laundering checks.

As regards a Central Register of beneficial ownership, Gibraltar is committed to have such a register in place by the 26th June 2017. This is to ensure that we comply with the terms of the 4th Anti Money Laundering Directive which prescribes the establishment of such a register. In parallel with the Directive, Gibraltar also has a commitment with the United Kingdom to establish a register.

This register will be housed within the Finance Centre Department of the Ministry of Financial Services. Premises have been prepared with workstations and relevant hardware and staff allocated. Software has already been developed. The legislation to bring the register into effect is ready to be implemented by regulations and will be introduced imminently.

Neither the EU Directive nor the commitment with the United Kingdom requires a public register. Therefore HM Government of Gibraltar is introducing a private register of companies and other legal entities (as well as trusts specifically captured by the terms of 4 AMLD) which will be accessible as per the terms of the Directive to, law enforcement and tax authorities, obliged entities and persons with a legitimate interest.

HM Government of Gibraltar will adopt a public register when this becomes a global standard. To date, only 4 or 5 Member States have said that they are adopting a public register.

4 AMLD, in addition, caters for the sharing of Member State registers in due course. HM Government of Gibraltar has also, separately, given a commitment to the new OECD global standard of sharing registers with all countries that sign up to this standard.

9)

- Could you please inform us if Gibraltar requires public country-by-country reporting by companies?

  Our laws/regulations do not currently require local filing of a global country-by-country reporting file by large corporate groups. However, country-by-country reporting is a measure contained in Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

  Gibraltar has to apply this Directive by the transposition deadline.

10)

- On 15 January 2017, Philip Hammond gave an interview to a German newspaper on the outcome of the negotiations between the EU and the UK. He said: “if we are forced to be something different, then we will have to become something different” and “If we have no access to the European market, [...] if Britain were to leave the European Union without an agreement on market access, [...] we could be forced to change our economic model and we will have to change our model to regain competitiveness. And you can be sure we will do whatever we have to do. [...] We will change our model [...] and we will be competitively engaged.”
  What is your point of view for this statement? If the UK has less access to the European market, would that change the nature of Gibraltar’s financial activities and if so, could you please explain how? In your opinion, what would be a more favourable outcome for Gibraltar: turning the UK into “something different” with a “changed economic model” “competitively engaged” or keeping financial access to the European market?

Our understanding of the interview referred to above was that the Chancellor of the United Kingdom was referring to a possibility of lowering corporation tax in Britain still further from current levels of under 20% to approximately 15%; as a means or example of maintaining competitiveness without access to eg the single market in financial services going forwards. This does not imply in our view a lowering of standards as a rate of corporation tax is within the right of a sovereign jurisdiction. Indeed, there are a quite a number of EU Member States with rates of corporation tax of 15% or lower.

As regards Gibraltar, when the results of the Brexit referendum were confirmed, HM Government of Gibraltar conducted a study of where Gibraltar financial services businesses were actually carrying out activity with the European Union; particularly in our biggest area which is motor insurance. It turned out that the United Kingdom is our biggest customer for services provided from Gibraltar with an approximate market share of just over 90%.

Therefore, whilst we would prefer to maintain some form of access to the EU single market – as long as no concessions are required on our part that we would find unacceptable – what is critical for us is continued UK access; for which we have a political commitment from the United Kingdom Government. Therefore Gibraltar’s business model will not have to change radically even in the event of what is popularly known as a hard Brexit.

11)

- Could you please describe what the impact of UK’s disassociation from the internal market would be for your jurisdiction regarding tax matters, especially concerning compliance with

the requirements of the EU's Anti-Money Laundering Directive and its subsequent revisions? Could you please describe to what extent does Gibraltar currently comply with the Directive?

Further to the recital at the beginning of this document, Gibraltar complies fully with all EU legislation (whether Directives or regulations) on anti-money laundering; being for example the 3rd Anti Money Laundering Directive.

We are currently ready to transpose the 4th Anti Money Laundering Directive by the deadline date of 26th June 2017 and this will be done on time.

We are also following closely the proposal on the 5th Anti Money Laundering Directive and will transpose this when it is adopted and a transposition deadline is established.

Post the United Kingdom (and therefore Gibraltar) definitively leaving the European Union, HM Government of Gibraltar will continue to apply all existing EU laws on Anti Money Laundering and tax information exchange that are in place.

From that date forwards, HM Government of Gibraltar will face a choice of voluntarily choosing to adopt further examples of EU driven legislation or to adhere to international standards deriving from for example the Financial Action Task Force (FATF); both choices lead to the same result namely adherence with the latest developments in Anti Money Laundering.

12)

- Could you please explain Gibraltar's relationship with the UK, especially regarding the legal framework and the exchange of information in tax matters?

- Could you please provide information on the cooperation between your Government and the British Government on Tax Affairs?

Gibraltar is a British Overseas Territory of the United Kingdom and is a separate and distinct legal jurisdiction. Gibraltar is fully self financing and self governing. However, the United Kingdom retains responsibility for defence and foreign affairs. As well as certain aspects relating to internal security.

The relationship with the United Kingdom in respect of exchange of information in tax matters is essentially the same as with any other country with which Gibraltar has tax information exchange mechanisms in place. Gibraltar has a TIEA with the United Kingdom.

In September 2016, Gibraltar supplied bulk tax data on an automatic basis to the United Kingdom under the terms of the Intergovernmental Agreement. Similar bulk data on an automatic basis will be supplied, commencing September 2017 to i) all Member States of the EU ii) all countries that have implemented the Common Reporting Standard.

Please also see the answer to question 13 below which is also relevant to the United Kingdom.

13)

- Has Gibraltar received any requests for tax information exchange from other Member States? To your knowledge, what is the average response time to these requests? Where there any cases of refusal to provide the information required, and if so, could you please explain what were the reasons for it?

Yes Gibraltar, from time to time, receives requests for tax information exchange from Member States of the European Union as well as other countries around the world such as, for example, the USA and Australia.

The requests for tax information can be via one of three distinct mechanisms (all of which are OECD equivalent) at the choice of the Member State:

1) A bi-lateral tax information exchange agreement (TIEA) if there is one in place
2) The Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation
3) The OECD and Council of Europe Convention on Mutual Administrative Assistance in Tax Matters which was extended to Gibraltar with effect from 1 March 2014, providing for tax information exchange between Gibraltar and all countries and territories that have ratified the Convention.

As a generality, most Member States that are active in making requests use a TIEA. One Member State in particular uses the Directive. We have received one request from a Member State via the Multilateral Convention.

We have received approximately 155 requests for tax information from 10 Member States under TIEAs since 2010. Virtually all of these have been responded to within 90 days.

We have received circa 90 requests under the EU Directive from 5 Member States since 2013 to date. Approximately 20 are currently pending being answered. The overall average response time is approximately 120 days.

Our target response time is within 90 days for a TIEA and our target response time is within 180 days where the Directive is being used; clearly we would wish to respond as soon as possible regardless of the legal mechanism that is being utilised by the requesting State.

As regards a refusal to answer a request for information, this can only occur when the requesting State has not provided enough information to justify the information sought in the context of the legal mechanism being used. The requesting country may not have provided any evidence linking a particular individual or entity to a bank account in Gibraltar.

A refusal by Gibraltar to answer information is very rare and has only happened on a handful of occasions in the context of a total of circa 270 requests sent to us since 2009 from all countries including Member States. This would have been on the basis that they were not specific enough and did not meet the criteria.

You will be aware, that the OECD uses a review procedure (applicable to large and small countries alike) to ensure not only that the jurisdiction being examined has the necessary legal framework in

place but more importantly to ascertain how effective that jurisdiction is being in the practice of receiving and answering or declining requests for information; this is called a Phase 2 review.

The 115 page Phase 2 Review report on Gibraltar found that we were Compliant (top grade) in 7 out of the 10 essential elements examined and Largely Compliant (second highest grade) in the remaining 3. Our overall rating was Largely Compliant; the same as eg the United Kingdom, Germany and the United States of America.

Gibraltar has, pursuant to the various agreements described above and the Convention, around 150 exchange of information mechanisms to the OECD standard with over 98 countries and territories around the world; a small number of which are pending their ratification (Gibraltar has ratified all of our agreements).

14)

- According to national legislation, could you please explain if there is currently in place a tax benefits system for non-residents in Gibraltar?

Gibraltar does not operate a tax benefits system for non-residents.

However, Gibraltar does have a fiscal regime for high net worth individuals – called Category 2 Status – wishing to become resident in Gibraltar but benefit from a maximum amount of income tax payable which is circa £30,000. This residence programme does not offer citizenship.

There are approximately 320 individuals with Category 2 Status in Gibraltar. Over half of these individuals are British Citizens that have moved from the United Kingdom to take up residence in Gibraltar. The balance are overwhelmingly other EU / EEA or Swiss citizens. There are very few individuals resident in Gibraltar under this programme from other parts of the world.

Individuals applying for this status need to have a house or apartment in Gibraltar for their exclusive use and that of their family, need to supply a bank character reference, a further character reference from a professional such as an accountant, proof of source of funds / wealth etc.

The vast majority of individuals apply via Gibraltar based professionals such as accountants and lawyers who will have carried out their due diligence / know your customer enquiries. More in-depth due diligence is carried out automatically by us on all non EU, non EEA, non Swiss nationals although we reserve the right to also carry this out on a case by case basis on other citizens depending on particular circumstances.

Applicants are advised that the issue of Category 2 status by Gibraltar authorities does not protect them from being tax resident elsewhere if they overstay in a particular country or otherwise create a nexus with a third country.

15)

- Could you provide information on the current state of the European Commission's investigation on tax rulings in Gibraltar? To your knowledge, how many tax rulings are currently into force in Gibraltar and in which sectors?

By decision adopted October 1, 2014, as amended on March 4, 2015, the Commission opened a formal state aid investigation procedure into the practice of tax rulings in Gibraltar (Case SA.34914 (C/2013) — (ex 2013/NN)). The Decision was notified in its final form to the United Kingdom on September 1, 2016 and was published in the Official Journal on October 7, 2016. The Decision is by way of extension to the Commission's previous decision to investigate the tax treatment of interest and royalties under Gibraltar's Income Tax Act 2010.

The Decision on Tax Rulings has been challenged by the Gibraltar Government before the General Court (Case T-783/16). The Gibraltar Government is challenging the Decision on procedural grounds, namely, that if the practice of tax rulings constitutes state aid at all, which is strongly denied, it would be existing aid and not new aid and the adoption of the Decision is therefore unjustified. That case is currently pending before the Court.

At the same time, the Commission is pursuing its administrative investigation into the practice of Tax Rulings. It sent its latest request for further information on 16 February 2017, to which the Gibraltar Government replied on 31 March 2017.

The Gibraltar Government has cooperated, and continues to cooperate, fully with the Commission in its investigation. It has provided voluminous information, including copies of rulings that have been issued.

The Gibraltar Government remains confident that the practice of tax rulings in Gibraltar does not constitute state aid at all.

The full list of tax rulings was published by the EU and details are available on their website. Some of the main headings in respect of the activities/functions include asset holding, property & investment holding, group holding and provision of services (e.g. consultancy/advisory/marketing).

States of Guernsey

Written Questions from the EP PANA Committee to the Channel Islands

Responses from the Government of Guernsey

Introductory note

This note provides answers to the written questions from the members of the PANA Committee sent to the Channel Islands on 26 April 2017, in advance of the hearing on 9 May with representatives from Guernsey and Jersey.

This note should be read in conjunction with the joint letter from the Chief Ministers of Guernsey and Jersey to the Chair of PANA of 10 April and the annex to that letter, both of which are attached.

Guernsey and Jersey have a close relationship with each other and cooperate in many areas, including internationally. This is reflected, for example, in the establishment of the joint government office in Brussels (CIBO). However Guernsey and Jersey are completely separate jurisdictions. Each has its own legal, fiscal and regulatory systems so, although there are many similarities, there are also some differences.

As a Crown Dependency, Guernsey also has a very different relationship with both the UK and the European Union to that of the British Overseas Territories, such as Gibraltar. British Overseas Territories are dependencies of the UK, whereas Guernsey is a dependency of the British Crown. Guernsey also has a different relationship with the EU as clearly set out in the Treaties. However, in light of its relationship with the UK Guernsey will also be affected by the UK exit from the EU in different ways to Gibraltar.

Guernsey welcomes the opportunity to meet with the PANA Committee, as it welcomed the opportunity to meet with the TAXE2 Committee in March 2016. Guernsey is committed to transparency and co-operation on tax and anti-money laundering/combatting of financing of terrorism (AML/CFT) issues. As it clarified to the TAXE2 Committee, Guernsey does not provide fiscal state aid, nor does it give tax rulings of the type that would undermine the tax base of other jurisdictions.

With regard to the so-called 'Panama Papers', Guernsey also welcomes the opportunity to reaffirm that the law firm from which the papers were sourced has had no presence in Guernsey. Notwithstanding, Guernsey is not complacent about the content of the papers, and established a Panama Papers Working Group as part of its Financial Crime Group (which comprises representatives of the operational AML/CFT authorities). This Group is investigating under the direction of Guernsey's Chief Minister and the President of Guernsey's Home Affairs Committee (which is responsible for Guernsey Law Enforcement) whether the Papers indicate any criminality in Guernsey or use of Guernsey for criminal purposes. Law Enforcement has confirmed that there is no evidence that Guernsey entities have been used for criminal purposes.

1. **Question 1: Could you please explain the rules on due diligence, know-your-costumer policy and ultimate beneficial owner principles in the Channel Islands? Are these formalities always required if you want to open a bank account?**

1.1. Guernsey has a long-standing commitment to implement international AML/CFT standards, namely the standards of the Financial Action Task Force (FATF). Financial services businesses have been subject to AML/CFT obligations since 2000 (with some types of business, such as banks, subject to guidance long before that date). Financial services businesses have had many years to embed compliance with the AML/CFT requirements to which they are subject.

1.2. The strong success of Guernsey's compliance with the FATF's standards is evidenced from the public reports of independent and international evaluations since 2000 and from the positive comments made in response to bilateral exchanges of beneficial ownership information by Guernsey with other jurisdictions. The most recent evaluation report, published by the Council of Europe/MONEYVAL in January 2016, further demonstrates the robustness of Guernsey's legal framework for AML/CFT and the implementation of that framework (including in respect of customer due diligence and transparency of beneficial ownership, where Largely Compliant ratings were given).

1.3. The 2016 MONEYVAL report stated that financial institutions clearly demonstrated that they are highly knowledgeable of their AML/CFT obligations, and that professional trust and company service providers (TCSPs) met by the evaluation team demonstrated a high level of professionalism and good knowledge of their obligations with respect to the identification and verification of the beneficial owner. The report also states that information on beneficial ownership of legal persons and legal arrangements is available where TCSPs are involved in the formation, management or administration of these entities. These comments echo statements by the IMF in the report arising from its 2010 evaluation that sound measures are in place to ensure that legal persons incorporated in the Bailiwick are transparent and that accurate, adequate and current information concerning beneficial ownership is available to law enforcement and other competent authorities.

1.4. Most AML/CFT obligations for financial services businesses and prescribed businesses are contained in:

- the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 as amended;
- the Guernsey Financial Services Commission (GFSC) Handbook for Financial Services Businesses on Combatting Financial Crime and Terrorist Financing;
- the Criminal Justice (Proceeds of Crime) (Prescribed Businesses) (Bailiwick of Guernsey) Regulations, 2008 as amended; and
- the GFSC Handbook for Prescribed Businesses on Combatting Financial Crime and Terrorist Financing.

1.5. The financial services businesses regulations and handbook apply to all entities that the FATF describes as financial institutions (such as banks) and also TCSPs. The coverage of the prescribed business regulations and handbook referred to above includes firms of lawyers, accountants and tax advisors (see question 3 below). The GFSC is the AML/CFT supervisor for

financial services businesses and prescribed businesses. The GFSC is independent of government and is established on a statutory basis.

1.6. The two sets of regulations and handbooks are almost identical. They were issued at different times (2007 and 2008 respectively) as the initial focus was on financial services businesses and it was not known to what extent the framework for prescribed businesses, which were brought into the AML/CFT framework for the first time in 2008, might need to be different. It is impossible to use Guernsey's finance sector or the services of a prescribed business without being subject to full customer due diligence (know your customer) and beneficial ownership requirements. Hence, in the language of the question, formalities are always required if a person wishes to open a bank account.

1.7. The starting point is risk. Guernsey was in advance of the FATF in requiring businesses to carry out and document a suitable and sufficient money laundering and terrorist financing "whole of business" risk assessment. In addition, prior to taking on a customer a business must undertake a risk assessment of the prospective relationship or transaction. This risk assessment must be reviewed so that it is kept up to date and, where changes are required to the assessment, make those changes. Policies, procedures and controls must be effective having regard to the assessed risk.

1.8. The regulations and handbooks provide that customers must be identified and that identity must be verified using documents from a reliable and independent source. Any person purporting to act on behalf of the customer must be identified and that identity must be verified. Beneficial owners and any underlying principals must be identified and reasonable measures taken to verify such identity. Measures must be taken to understand the ownership and control structure of legal persons and legal arrangements. A determination must be made as to whether the customer is acting on behalf of another person and, if the customer is so acting, measures must be taken using documents from a reliable and independent source to verify the identity of that person. In addition, information must be obtained on the purpose and intended nature of relationships. A determination must be made as to whether any customer or beneficial owner is a politically exposed person (PEP).

1.9. Enhanced due diligence is required where the risks are greater. These include situations where a customer, beneficial owner or underlying principal is a PEP; correspondent banking relationships or similar relationships are involved; where the customer is established or situated in a jurisdiction which insufficiently applies the FATF Standards; or which the business considers to be high risk as a result of its risk assessment. Enhanced due diligence includes obtaining senior management approval for accepting new customers; establishing source of funds and source of wealth of customers, beneficial owners and underlying principals; carrying out more frequent and more extensive monitoring; and taking other steps such as obtaining additional information to understand the purpose and intended nature of each business relationship. While businesses are required to conduct enhanced due diligence where the customer is considered to be high risk, businesses also conduct additional due diligence and apply additional risk reviews for relationships which are considered to be standard risk.

1.10. Businesses must perform effective and on-going monitoring of relationships. This includes reviewing information (including beneficial ownership information) held to ensure it is kept up to date and relevant.

1.11. Businesses have an obligation to report any suspicion of either money laundering or terrorist financing to Guernsey's Financial Intelligence Unit by way of a STR.

1.12. Information must be maintained by the business for at least five years after a transaction has been performed or at least five years after the expiry of a business relationship in readily retrievable form. This ensures that customer information and documents, including beneficial ownership information and documents, are available to the authorities.

1.13. The above provisions in the regulations are complemented by rules in the GFSC handbooks.

2. Question 2: Could you please provide information on whether there are public beneficial ownership registries and public company registries in Jersey? What are the information disclosure provisions for trusts, foundations and companies in general?

2.1. On 26 April 2017 the States of Guernsey approved the Beneficial Ownership (Guernsey) Law, 2017 which will provide a framework in Guernsey for:

- the establishment of a registrar of beneficial ownership information for legal persons;
- information provided to the registrar by the resident agents of legal persons to be verified by the resident agents (as indicated above, such information is already verified by TCSPs, which are the resident agents for legal persons administered by those TCSPs);
- verification of the information provided to the registrar (by the Guernsey Financial Services Commission in relation to TCSPs as part of its on-going supervision of TCSPs and by the registrar for legal persons not administered by TCSPs);
- penalties for non-compliance by resident agents;
- routine reporting to the States of Guernsey on the effectiveness of the framework.

The draft law will be primary legislation and, therefore, it remains for the UK Privy Council to approve the law so that it can be brought into force in the summer of 2017.

2.2. In general, trusts, foundations and companies are covered by the overarching obligations applicable to TCSPs under the AML/CFT framework to obtain and retain information and make it available to the authorities. In addition, any person who, in the course of business knows, suspects or has reasonable grounds to suspect that a trust, foundation or company is involved in money laundering or terrorist financing must make a STR to Guernsey's Financial Intelligence Unit. This unit has the power to obtain additional information and there are legal gateways in place to permit any information obtained to be provided to other jurisdictions.

2.3. In addition to these general provisions, there is specific provision under Guernsey law for information relating to trusts, foundations and companies, as follows:

- Trusts - under Guernsey trust law, all trustees must keep accurate accounts and records of their trusteeship.
- Foundations - under Guernsey foundation law, all foundations must be registered and only a TCSP can make an application for registration. Information which must be provided in support of the application includes the name and address of the foundation's councillors and any guardian, the address of its registered office (which must be in Guernsey), the purpose of the foundation, and all declarations and other documents filed with the Registrar, are entered onto the register and is available to the authorities.

Every foundation must have an officer who is a TCSP and who is therefore obliged to obtain and record information about the beneficial owners of the foundation and make that information available to the authorities under the AML/CFT framework. As indicated above, the authorities may then make this information available to foreign counterparts.

- Companies - under Guernsey law, all companies must be registered and only a TCSP can make an application for registration. Information that must be provided in support of the application includes the company's objects, its founder members, shareholdings and guarantees, the names and addresses of the directors, its registered office (which must be in Guernsey) and the name and address of the resident agent (who must be a locally resident director or a TCSP). This information is entered on the register and is available to the authorities. Resident agents are obliged to obtain and record information about the beneficial owners of the company and to make that information available to the authorities. Here too, the authorities may then make this information available to foreign counterparts.

3. Question 3: Could you please explain how intermediaries, such as lawyers, tax advisors and accountants are regulated in the Channel Islands? Is there an official authority to investigate banks or intermediaries involved in practices such as money laundering, tax avoidance or tax evasion in the Channel Islands?

3.1. In relation to Guernsey, and as explained above in the response to question 1, lawyers, tax advisors and accountants fall within the scope of Guernsey's "prescribed business" framework and banks fall within the "financial services businesses" framework. Under both frameworks prescribed businesses and financial services businesses are subject to the customer due diligence (know your customer) and transparency of beneficial ownership requirements described in the answer to question 1.

3.2. As explained under question 1, the GFSC is the AML/CFT supervisor for both prescribed businesses and financial services businesses. These businesses are subject to both onsite and offsite supervision.

3.3. All firms supervised for AML/CFT purposes are monitored and risk assessed by the GFSC through the submission of information by businesses on their customer and business profile. This, together with independent information from public and intelligence sources, drives the level of offsite and onsite supervision. The frequency and intensity of the GFSC's AML/CFT supervision of businesses and groups is determined on the basis of:

(a) the financial crime risks and policies, internal controls and procedures associated with the business or group, as identified by the GFSC's assessment of the firm or group's risk profile;

(b) the inherent money laundering/terrorist financing risks present in the jurisdiction; and

(c) the characteristics of the businesses and groups, in particular the diversity and number of businesses and the degree of discretion allowed to them under the risk-based approach.

The GFSC's AML/CFT methodology is weighted towards focusing more supervisory effort on TCSPs and private banking. During onsite visits the GFSC interviews Board Members, the

Money Laundering Reporting Officer, the Compliance Officer and client facing staff and carries out a detailed review of client files across the risk spectrum on a sample basis. As part of the client file reviews, the GFSC tests whether appropriate customer due diligence is held on key parties, looking in particular at the thoroughness of measures applied by the business to establish who is the beneficial owner of a legal person/legal arrangement at the commencement of the relationship with a customer and, subsequently, where beneficial ownership may have changed. Additionally, all financial services business including banks are supervised by the GFSC on the basis of impact and risk for prudential and conduct purposes.

3.4. The Economic Crime Division of the Guernsey Border Agency is the competent authority for investigating potential criminal offences such as money laundering, terrorist financing or tax evasion. The Director of Income Tax is responsible for the non-criminal investigation of cases of domestic tax evasion and avoidance, and for assisting the tax authorities in other jurisdictions in respect of tax evasion occurring there through relevant bilateral or multilateral tax agreements.

4. Question 4: To your knowledge, have the Channel Islands taken any legal steps regarding intermediaries following the Panama Papers revelations?

4.1. Although Guernsey has not had a Mossack Fonseca presence, the AML/CFT authorities have liaised on the implications of the Panama Papers since the release of the Papers. As evidenced in all independent evaluations of Guernsey, Guernsey has a comprehensive AML/CFT legal framework, which is implemented effectively by banks and TCSPs, and which is administered effectively by the AML/CFT authorities. The Guernsey Panama Papers Working Group has not identified any need to enact legislation as a result of the contents of the Papers.

5. Question 5: Could you please inform us if there have been any changes of the system of tax law in the Channel Islands following the Panama Papers revelations?

5.1. As one of the AML/CFT authorities, the Income Tax Office is a very active participant in the AML/CFT framework. As indicated above, the AML/CFT authorities have liaised on the implications of the Panama Papers since the release of the Papers. As evidenced in all independent evaluations of Guernsey, Guernsey has a comprehensive AML/CFT legal framework, which is implemented effectively by banks, TCSPs and intermediaries such as lawyers, tax advisors and accountants, and which is administered effectively by the AML/CFT authorities. Also as evidenced elsewhere in this document, the Guernsey Panama Papers Working Group has not identified any need to enact legislation as a result of the contents of the Papers.

5.2. Fraudulent conduct in relation to tax is subject to strong penalties under income tax legislation dating back to 1976, as was the case with precursor legislation going back may decades before that. Tax evasion has also long been covered by generic dishonesty offences (again subject to strong penalties) under the criminal justice framework. The range of activity captured by these various offences covers all of the different ways in which tax evasion might be committed (eg making a false declaration, failing to make a tax declaration at all, or concealing income or assets).

5.3. In addition, tax evasion has been a predicate offence for money laundering ever since Guernsey introduced money laundering offences in 1999. Money laundering offences under Guernsey law apply to criminal conduct, which is defined as any conduct that constitutes an indictable offence under domestic law (ie an offence capable of being tried in a senior court)

or any conduct overseas that would constitute an indictable offence if it had occurred domestically. This has been applied in tax evasion cases involving the provision of mutual legal assistance and also in the domestic prosecution of money laundering with tax evasion as the predicate offence. This application of the money laundering framework to tax evasion predates the expectation of the FATF in this regard. It was not until 2012 that the FATF Standards included tax evasion in this way.

6. **Question 6: According to the Panama Papers revelations, some banks (e.g. Credit Suisse Channel Islands Ltd., Coutts & Co. Trustees (Jersey) Ltd. and Rothschild Trust Guernsey Ltd.) were involved through their subsidiaries in the Channel Islands. To your knowledge, are there any reasons for that?**

6.1. As with many other jurisdictions conducting international business, as a general point, Guernsey businesses have used and continue to use service providers in a range of other jurisdictions and the pattern of use varies over time. For example, much Guernsey business is conducted on the recommendation of lawyers (often London lawyers), and their preferred different jurisdictions vary depending on factors such as cost, convenience and targeted marketing. All such business is subject to the robust and comprehensive AML/CFT framework referred to above.

7. **Question 7: Do the Channel Islands have a public register of trusts? Are trusts supervised and if so, how?**

7.1. TCSPs have been subject to the AML/CFT framework and all of its obligations since 2000. Guernsey was one of the first jurisdictions in the world to introduce such a framework and did so before the provision of professional trust services formed part of the FATF Recommendations.

7.2. Guernsey was also a pioneering jurisdiction as one of the first jurisdictions in the world to establish a statutory framework for the prudential and market conduct regulation and supervision of TCSPs. The legislation, the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, came into force in 2001.

7.3. Guernsey remains one of the few jurisdictions globally to maintain comprehensive frameworks for the regulation and supervision of TCSPs and for AML/CFT by TCSPs. TCSPs are subject to routine, ongoing onsite and offsite supervision for all aspects of their activities, This combination of legislation and monitoring of compliance ensures that only fit and proper TCSPs are established and operate in Guernsey and that AML/CFT standards are satisfied. This includes AML/CFT standards on the transparency of beneficial ownership of trusts. Full and verified information is available on trusts and their beneficial owners (for these purposes trustees and any other person exercising control, protectors and beneficiaries).

7.4. The large majority of trusts in Guernsey have trustees which are subject to regulation and supervision by regulated trustees. The only trusts that do not have regulated trustees are those where the trustee's services are provided on a purely voluntary basis. In practice, this invariably means trusts where a person is acting in the context of a family or social relationship (eg a parent holding property on behalf of a child, or a person acting as trustee of a trust set up for the purposes of a sports club to which he belongs). Beneficial ownership on these trusts is still obtained in practice, because if the trustee wishes to hold any property or transact in Guernsey on behalf of the trust this involves dealing with a party who is subject to the regulatory and supervisory framework and therefore obliged to carry out customer due

diligence on all persons connected with the trust. (ie a bank or other financial services business in relation to financial assets, and a lawyer and an estate agent in relation to real property).

7.5. Therefore, beneficial ownership information on trusts is available within Guernsey. This is tested by the authorities under the supervisory framework, and it is obtained routinely by the Guernsey authorities and provided to the authorities of other jurisdictions.

7.6. The proven system described above means that, to date, a separate system of registration of trusts has not been considered to be necessary.

7.7. As part of their ongoing work in meeting the FATF Standards, following completion of the registration framework for legal persons specified in the answer to question 2, the AML/CFT authorities in Guernsey will review how best to meet the revised FATF Standards on transparency of legal arrangements.

8. Question 8: According to the national legislation and without going too much into details, could you please describe the procedure of a company registration in the Channel Islands? Could you please inform us how long this procedure normally takes?

8.1. As indicated above, companies are created by being entered on the register of companies following an application for incorporation. Applications may only be made by TCSPs. An application for incorporation must be made in a form prescribed by the Registrar and be accompanied by the memorandum of incorporation (which includes information about the company's objects) statements as to its founder members, shareholdings and guarantees, the names and addresses of the directors, the company's registered office (which must be within the jurisdiction) and the name and address of the resident agent, who must be either a locally resident director or a TCSP. The resident agent is responsible for maintaining a record of the beneficial owners of the company at the registered office. The application must also be accompanied by a statement signed by the applicant, that all the requirements of the legislation in respect of the incorporation of the company have been fulfilled. It is a criminal offence subject to strong penalties to provide false, deceptive or misleading information in support of an application without reasonable excuse.

8.2. The Registrar enters the memorandum of incorporation onto the register and issues a certificate of incorporation giving the company's' registration number and date of incorporation. The certificate is conclusive evidence of incorporation. It is possible for a company to come into existence at a specified later date provided that it is not three months later than the date of the application, in which case the date of incorporation in the certificate will refer to that later date.

8.3. The incorporation process within the registry is carried out online, and is a same-day process as long as all requisite information has been provided. However, overall, the process takes longer as it includes the steps taken by TCSPs to carry out customer due diligence and to comply with any other internal client on-boarding processes they have.

8.4. There are 18,300 live companies on the register.

9. Question 9: Could you please explain the Channel Islands' relationship with the UK, especially regarding the legal framework and exchange of information in tax matters? Is there a close cooperation between your government and the British government on tax affairs?

9.1. Guernsey, Jersey and the Isle of Man are dependencies of the British Crown rather than dependencies of the UK government. This means that they are autonomous in respect of domestic matters but dependent on the UK for certain matters relating to the Crown, namely international relations and defence. In practice the UK Government exercises powers in respect of these matters. As a matter of convention the UK Government generally only acts on behalf of Guernsey with its consent and where this consent is formally registered by the island's authorities.

9.2. Guernsey and the other Crown Dependencies are fiscally independent from the UK, which means that they are responsible for their own administration and have tax sovereignty. Guernsey's government raises revenue through the application of direct and indirect personal and business taxes, and that revenue funds Guernsey's public services. Guernsey does not receive funding from the UK government, nor from the European Union or its other Member States.

9.3. Guernsey's tax sovereignty is a long-standing constitutional principle that dates back to the origins of the Channel Islands' relationship with the English Crown. This principle was described in a series of successive Royal Charters issued by the Crown, in particular by Queen Elizabeth I in 1560.

9.4. In the modern context, Guernsey retains this tax sovereignty to this day, but recognises that taxation has an increasingly developed international element in terms of cooperation and transparency – not just with the UK, but with EU Member States and indeed with the rest of the world. It is for this reason that, whilst the British Crown is ultimately responsible for Guernsey's international agreements, the UK has provided Guernsey with capacity to enter into bilateral and multilateral tax agreements under its own aegis through a process known as "entrustment".

9.5. Guernsey now has Double Tax Agreements (DTAs) with 13 jurisdictions (all of which include information exchange Articles to the OECD Model standard), partial DTAs with 12 jurisdictions, and a wide network of international Taxation Information Exchange Agreements (TIEAS) with 60 jurisdictions. Guernsey also participates in the OECD Convention on Mutual Administrative Assistance in Tax Matters, and previously and voluntarily has chosen to commit to the EU Savings Directive, and most recently became an early adopter of the OECD Common Reporting Standard (CRS).

9.6. Guernsey has a long held track record of working with the UK to prevent tax avoidance. Back in 1927 the States of Guernsey entered into a bilateral agreement with the UK Government relating to the formation of companies in Guernsey. The agreement required Guernsey's Attorney General to review the objectives of any company in its Memorandum of Association to ensure that the purpose was not to avoid UK taxation. This was later replaced with a Control of Borrowing regime to pre-vet company formation in 1959. This antiquated system has been replaced by a robust modern AML/CFT regime, company law and company registry in order to meet international standards. This includes the requirement for TCSPs to obtain and verify beneficial ownership information, which will be held in a central register from July 2017 onwards. There is an agreement with the UK to ensure that the law enforcement authorities in the UK will have access to this data for purposes including helping to tackle tax evasion. This will be in line with the FATF principles.

9.7. In 1952 Guernsey entered into a bilateral Double Taxation Agreement with the UK. This was the island's first such agreement and has been updated from time to time. The last revision

was signed in 6 December 2016 with earlier revisions in 1994, 2009 and 2015. A full renegotiation is currently underway. The revised agreement will take into account the latest international standards arising from the OECD Base Erosion and Profits Shifting (BEPS) programme. In addition, Guernsey entered into a TIEA with the UK in 2009, revising it with a protocol in 2013 to allow for the automatic exchange of information. In 2013 Guernsey entered into a FATCA style intergovernmental agreement with the UK allowing for the automatic exchange of information on tax matters. This has since been replaced by the CRS, because Guernsey and the UK are early adopters of CRS, which means that information exchange with the UK under the CRS will commence this year.

9.8. Guernsey's tax authorities have established a close working relationship with the UK's tax authorities. This information exchange and shared purpose is underpinned by all internationally recognised channels of communication for tax information exchange and cooperation. This enables the authorities in each jurisdiction to combat tax fraud and avoidance.

10. Question 10: On 15 January 2017, Philip Hammond gave an interview to a German newspaper on the outcome of the Brexit agreement. He said: "*if we are forced to be something different, then we will have to become something different*" and "*If we have no access to the European market, [...] if Britain were to leave the European Union without an agreement on market access, [...] we could be forced to change our economic model and we will have to change our model to regain competitiveness. And you can be sure we will do whatever we have to do. [...] We will change our model [...] and we will be competitively engaged*."

1) Do you share this opinion?

10.1. This is a matter for the UK and not the Channel Islands. It would not be appropriate for the Guernsey government to comment on the UK Chancellor's comments or the Government objectives set out in the Prime Minister's Lancaster House speech and the subsequent White Paper.

10.2. The Channel Islands share a special relationship with the EU described in Protocol 3 to the UK Act of Accession to the EEC. This placed the islands inside the customs territory of the EU and requires the islands to treat EU nationals in a non-discriminatory manner. The islands are third countries for all other purposes, including the movement of services and capital

10.3. This relationship will end when the UK leaves the Union in accordance with the process described in Article 50 to the Treaty on European Union. This principle has been recognised in the draft European Council guidelines which states: "*On the date of withdrawal, the Treaties will cease to apply to the United Kingdom, to those of its overseas countries and territories currently associated to the Union, and to territories for whose external relations the United Kingdom is responsible.*"

10.4. Because Guernsey is not part of the UK nor part of the EU it did not have a vote in the UK's referendum, and it would not have been constitutionally appropriate to have done so. In effect the Channel Islands are not leaving the EU; that is a matter for the UK. The islands will be impacted because of the Protocol 3 relationship and its close trading and constitutional relationship with UK.

10.5. It is for these reasons the islands undertook their own contingency planning in the event that the referendum result supported the UK leaving the EU. This planning enabled Guernsey's

parliament to debate its proposals for mitigating the impact of the ending of the Protocol 3 relationship less than a week after the referendum in June 2016. Since then Guernsey has been working closely with the UK Government to ensure that its interests are taken into account.

10.6. The objectives laid out by the UK Government echo the principles laid out in the objectives agreed by the Guernsey parliament in June 2016, namely to respect the right of EU nationals in Guernsey; to maintain the Common Travel Area; to preserve rather than change the existing and long-standing constitutional relationship with the Crown; to maintain free flow of goods with the UK and EU; and to work with the UK in entering into new trading agreements with the EU and the rest of the world.

2) If the UK loses its access to the European market, would it change the nature of your financial activities and if so, how?

10.7. Guernsey maintains a close trading relationship with the UK, in particular in financial services. The financial services industry provides a complementary offering to the services in the City of London. Many businesses provide liquidity into the City and some of that onwards into the EU. The island's fund sector also facilitates over £100 billion per year of capital investment into infrastructure and jobs in non-UK EU Member States (KPMG Report International Capital Flows, 2015).

10.8. The Channel Islands are generally treated as third countries by the EU, separate from the UK. This means that the market access issues which the UK will need to address are separate to the third country access arrangement that the EU has with the Channel Islands. In turn this means that there is no direct impact of Brexit on the island's economy in respect of financial services.

3) In your opinion what would be your more favourable outcome: turning the UK into "*something different*" with a "*changed economic model*" "*competitively engaged*" or keeping financial access to the European market? Please explain.

10.9. This is a matter for the UK and not the Channel Islands. It would not be appropriate for the Guernsey government to comment on the UK Chancellor's comments.

10.10. Guernsey agreed its negotiating objectives last June with one overriding principle, to maintain the status quo in respect of Guernsey whilst recognising the UK's EU relationship will change. In this context the most important principle for Guernsey is to maintain our status as a third country with a complementary offering to the City of London as a finance centre; whether the UK is in the EU or not, and whether it has full market access or not. Given the structure of this relationship and how it functions, it is difficult at this stage to envisage how this will change for Guernsey as a direct consequence of Brexit.

11. Question 11: In your opinion, will the outcome of the negotiations between the EU and the UK have an impact on the Channel Islands regarding tax matters and if so, how?

11.1. Guernsey has a long-standing commitment to implement international tax transparency standards. Each political term, Guernsey's parliament makes that commitment (and it does so unanimously, despite the absence of political whips given it is a consensus and non-party form of parliamentary government).

11.2. Guernsey voluntarily committed to adhering to the Code of Conduct criteria in 2003, and having then participated voluntarily in the process applied to the Member States our corporate tax system was assessed as compliant and non-harmful in December 2012. Our understanding is that Guernsey is one of only three third countries to have undergone such assessment and confirmed as compliant, and this was instrumental in Guernsey also fully meeting the criteria for good tax governance outlined by the EU Commission in 2012. Guernsey's track record and partnership in tax transparency and cooperation was publicly acknowledged and welcomed by Commissioner Moscovici in 2015. In 2016 Commissioner Moscovici very much welcomed the continued active engagement of Guernsey and Jersey in the key international initiatives for fighting tax evasion, fraud and abusive avoidance as important partners of the EU, which he considered reinforced their standing as cooperative jurisdictions.

11.3. The OECD has described Guernsey as one of the world's most transparent and co-operative jurisdictions in practice, and Guernsey's active commitment to international standards on tax transparency, information exchange and fair taxation includes:

- Guernsey is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes and has been rated by the Global Forum for exchange of information as largely compliant;

- Guernsey voluntarily adopted the EU Savings Directive, moving to full automatic exchange of information from 2011;

- In October 2014 Guernsey formally committed to the "early adopters group" in signing a multilateral Competent Authority Agreement as a first step in the implementation of the Common Reporting Standard, with first information exchange in 2017. Guernsey enacted legislation to bring the Common Reporting Standard into effect from 1 January 2016;

- Guernsey joined the Multilateral Convention on Mutual Assistance in Tax Matters with effect from 1 June 2014;

- Guernsey has signed 23 Tax Information Exchange Agreements and four Double Taxation Agreements with Member States. The remaining Member States have indicated that they will rely on the Multilateral Convention for information exchange;

- In June 2017 Guernsey will be a co-signatory to the OECD Multilateral Instrument. Guernsey became a BEPS Associate in June 2016, and has participated in a number of meetings and working groups that are part of the BEPS Inclusive Framework. In October 2016 Guernsey signed the multilateral competent authority agreement for country by country reporting (CbCr) and is a member of the CbCr Reporting Group;

- Guernsey was positively assessed as being compliant with the EU Code of Conduct on Business Taxation in 2012 - an assessment endorsed by ECOFIN;

- Guernsey's view is that once jurisdictions comply with internationally accepted principles of fair tax competition supported by transparency and information exchange, jurisdictions have the right to set their own tax rates according to their own requirements. Guernsey's general zero rate of tax for companies allows us to provide a simple and clear tax regime which encourages real economic activity and employment,

generating income through personal taxation (20 per cent) which in turn funds public services;

- As an international finance centre, Guernsey's economic model is based on providing a supportive environment to pool capital that can then be efficiently invested across asset classes. Such activity is real and has substance, with around a third of our workforce employed in finance and business services.

11.4. In March 2016 Guernsey provided technical evidence to the European Parliament's TAXE2 Committee, emphasising that Guernsey is a jurisdiction that does not make tax rulings of the type that would undermine the tax base of other jurisdictions.

12. Question 12: Will you be fully complying with the requirements of the EU's Anti-Money Laundering Directive and its subsequent revisions? If not, could you please precise to what extent do you currently comply with the Directive?

12.1. The AML/CFT authorities in Guernsey are currently taking forward legislation to comply with the revised FATF Standards. As indicated above, this programme includes the establishment of a centralised registry of beneficial ownership information for legal persons. Guernsey's long standing policy objective has been to comply with international standards and to ensure that we meet those standards comprehensively. Independent, international evaluations over many years evidence the strong success of this objective.

12.2. In some areas Guernsey has standards equivalent to EU standards. The current EU Anti-Money Laundering Directive is in the process of revision and the States of Guernsey is committed to reviewing the final language after it has been approved at all EU political levels. Following the review, a decision will be made on Guernsey's approach to the Directive. This decision will take into account the requirements under the FATF standards and any other relevant international developments.

4 May 2017

ANSWERS BY THE GOVERNMENT OF JERSEY TO WRITTEN QUESTIONS RECEIVED FROM THE EP PANA COMMITTEE

The answers should be read in conjunction with the joint letter from the Chief Ministers of Guernsey and Jersey to the Chair of PANA of 10 April 2017 and the annex to that letter.

1. **Could you please explain the rules on due diligence, know-your-customer policy and ultimate beneficial owner principles in the Channel Islands? Are these formalities always required if you want to open a bank account?**

Answer

Customer Due Diligence (CDD)

Jersey has a comprehensive and detailed regime concerning customer due diligence. In 2015 Jersey was assessed by MONEYVAL and a Report was published containing a detailed analysis of Jersey's compliance with the 2003 FATF Recommendations concerning Customer Due Diligence. Parts 3.1 and 4.1 of the Report specifically relate to customer due diligence obligations for financial institutions and Designated Non-Financial Services Businesses (DNFBPs) e.g. lawyers, accountants and estate agents.

In short summary, the obligation to conduct CDD in Jersey arises predominantly from 3 pieces of legislation:

i. Proceeds of Crime (Jersey) Law 1999
ii. Terrorism (Jersey) Law 2002
iii. Money Laundering (Jersey) Order 2008

The application of the three pieces of legislation in the Jersey regime prescribes that a relevant person (financial institution or DNFBP) must apply identification measures before the establishment of a business relationship and must have policies and procedures in place to ensure CDD is conducted at appropriate times during the continuation of that business relationship.

In reference to the specific reference to opening a bank account. The provision of banking services is regulated in Jersey and is therefore caught by the relevant provisions of the above legislation. CDD must therefore always be completed in full.

Jersey was rated Largely Compliant in the 2015 MONEYVAL Report in the two relevant 2003 FATF Recommendations that deal with CDD requirements (R5 & R12).

Ultimate Beneficial Ownership and Control

Jersey has a comprehensive policy on the identification of ultimate beneficial ownership (UBO) and control of legal entities and legal arrangements. Part 5 of the MONEYVAL Report outlines in detail the policy and its application and confirms that Jersey was rated Largely Compliant in respect of access to beneficial ownership information for legal persons (R.33) and legal arrangements (R.34) in the 2015 Report.

In broad terms the following systems operate in Jersey to obtain, maintain and verify beneficial ownership information for companies, foundations and partnerships, namely:

- Requirement to incorporate through the central Companies Register who conduct independent vetting of information provided to them on incorporation;
- Requirements that are placed on companies, foundations and partnerships to keep information on shareholders, beneficiaries and partner owners at their registered offices and to file annual returns;
- Requirements to obtain the consent of the Jersey financial services regulator, the Jersey Financial Services Commission (JFSC), prior to issuing shares or admitting members.

In respect of legal arrangements, any person who acts "by way of business" in the formation or administration of legal arrangements is caught by the provisions of the relevant legislation listed above and must identify the ultimate beneficial owners and controllers of the legal arrangement. Equally, amendments made shortly after the 2015 MONEYVAL Report now require anyone who acts as trustee of an express trust (even if not by way of business) to abide by the provisions of the Money Laundering (Jersey) Order 2008 in relation to identification of the ultimate beneficial owners and controllers of the express trusts.

The World Bank in their 2011 Report under the Stolen Assets Recovery Initiative (StAR) entitled *"The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It"* recognised at chapter 4.1 that the "The Jersey Model" should be upheld as an example of how access to beneficial ownership and control information can be implemented in a jurisdiction. Jersey's combination of a central register of the UBO with a high level of vetting/evaluation not found elsewhere and regulation of Trust and Company Service Providers (TCSPs) of a standard found in few other jurisdictions has been widely recognised by international organisations and individual jurisdictions as placing Jersey in a leading position in meeting standards of beneficial ownership transparency.

Supervision and Enforcement of CDD

The CDD requirements in the Jersey regime and particularly the requirements to identify the ultimate beneficial owners and controllers of legal entities and legal arrangements are regular topics of thematic examinations by the JFSC. The JFSC regularly review compliance by all regulated entities with the requirements of the regime and have powers to issue civil administrative/regulatory penalties for failure to comply with the regime or to refer the matter to the Attorney General for criminal prosecution.

2. Could you please provide information on whether there are public beneficial ownership registries and public company registries in Jersey? What are the information disclosure provisions for trusts, foundations and companies in general?

Answer

Jersey in common with almost all EU, OECD and G20 Member States does not have a public beneficial ownership register for which there is currently no international standard. However the report published in May 2016 on the assessment by Moneyval of Jersey's compliance with international AML standards includes the following statement - "Jersey's combination of a central register of the UBO [Ultimate Beneficial Owner] with a high level of vetting/evaluation not found elsewhere and regulation of TCSPs of a standard found in few other jurisdictions has been widely recognised by international organisations and individual jurisdictions as placing Jersey in a leading position in meeting standards of beneficial ownership transparency."

Moneyval assessed Jersey's compliance with recommendations on access to beneficial ownership and control information of legal persons and legal arrangements as largely compliant, and the minor recommendations for improvement included in the assessment have been acted upon.

Jersey is committed to further enhancing the existing central register of beneficial ownership information by the more regular up-dating by trust and company service providers of the beneficial ownership information held on the Register, and by creating a central register of Directors for Jersey.

In April 2016 Jersey agreed an Exchange of Notes with the UK which will enable UK law enforcement authorities, who have been able to obtain information within 7 days to their declared satisfaction, to extend the arrangements to within 24 hours and in special cases to within one hour. Jersey has told other jurisdictions including EU Member States that this arrangement could be extended to them, through a bilateral agreement, if so desired and if the international standards of confidentiality and data safeguards are met.

In November 2016 Jersey joined with some 50 jurisdictions including all the EU Member States in a commitment to a proposed new initiative on access to beneficial ownership information. Given its internationally recognised leading position Jersey has offered to participate in the work of the FATF and Global Forum in the development of this initiative and also on ensuring more effective compliance with the present standard.

Jersey is committed to compliance with international standards set by bodies such as the OECD and the FATF. To-date there is not such an international standard for public disclosure of beneficial ownership. With an international standard that has global application there will be a level playing field and a standard that can be expected to balance the benefits of public information against the rights of the individual to privacy and the protection and security of the individual.

The importance of a global approach is referred to in the EP Study on "Tax Evasion, money laundering and tax transparency in the EU Overseas Countries and Territories". To quote "What is important is to have global solutions to the global problem of tax havens. Merely controlling the flow of investment and money to the EU's OCTs would be equivalent to simply shifting the problem elsewhere. Tax evaders and money launderers would find new methods and offshore havens in wealthy countries, such as certain US states and EU Member States, to benefit from such a situation."

In Jersey's view the key requirements for the effective combatting of tax evasion, aggressive tax avoidance or AML worldwide are:

- There must be standards that have global application set by an international standard setter;
- There must be an effective process for the cross border exchange of information both on request and automatic;
- The information to be exchanged for the benefit of law enforcement and tax authorities must be adequate, accurate and current;
- There must be an effective process in place for assessing compliance with the international standards which process is applied on a level playing field basis worldwide.

Of these requirements the one that is of paramount importance is the need for the information made available to law enforcement and tax authorities to be adequate, accurate and current. This is of particular importance when providing information on the ultimate beneficial owner or controller of a legal entity or a legal arrangement. This has long been Jersey's prime objective in serving the interests of law enforcement and tax authorities and our leading position in this respect,that has been internationally recognised. Hopefully it will be so recognised by the PANA Committee.

The detailed provisions in respect of companies, foundations, trusts etc is included in material (see attached Annex 1) that has been provided to the Global Forum on Transparency and Exchange of Information for Tax Purposes in connection with the assessment of Jersey currently being undertaken against the revised terms of reference being applied by the Global Forum in assessing compliance with the international standards on EOIR and in particular those relating to the availability and accessibility of beneficial ownership information.

3. Could you please explain how intermediaries, such as lawyers, tax advisors and accountants are regulated in the Channel Islands? Is there an official authority to investigate banks or intermediaries involved in practices such as money laundering, tax avoidance or tax evasion in the Channel Islands?

Answer

The Jersey Financial Services Commission (JFSC) is the Island's statutorily established financial services regulatory authority.

In addition to the usual types of activities covered by regulation (e.g. banking, asset management, insurance, etc.), it is important to note that in Jersey the provision by way of business of trustee services and company formation activity is also subject to regulation (including authorisation, ongoing supervision and where necessary enforcement action).

The laws which establish the Commission, and the law covering the regulation of "trust company business", are available here:
https://www.jerseylaw.je/laws/revised/Pages/13.250.aspx
https://www.jerseylaw.je/laws/revised/Pages/13.225.aspx

Equally, by virtue of the Proceeds of Crime (Jersey) Law 1999 and the Terrorism (Jersey) Law 2002, DNFBPs (lawyers, accountants and estate agents) are regulated for anti-money laundering and countering the financing of terrorism in Jersey by the JFSC.

The JFSC has a full suite of regulatory powers (ability to obtain information, carry out supervisory visits, etc.) and enforcement powers (including the power to ban individuals from the industry, remove firm's authorisations, levy financial penalties, etc.)

More details of the JFSC's activity can be found in their annual reports, available here:
http://www.jerseyfsc.org/the_commission/general_information/publications/annual_reports.asp

The Commission's Codes of Practice applying to trust company business is available here:
http://www.jerseyfsc.org/pdf/TCB-Code-1-Sept-2016-outsourcing-update-2017.pdf

Examples of the Commission's enforcement activity can be found here:
http://www.jerseyfsc.org/the_commission/general_information/public_statements/public_statements.asp

4. To your knowledge, have the Channel Islands taken any legal steps regarding intermediaries following the Panama Papers revelations?

Answer

There have been no changes in Jersey's regulatory laws as a direct consequence of the publication of the Panama Papers. Jersey already had a long standing regulatory regime which included the regulation of TCSPs and which had been recognised internationally as being ahead of the practice of other jurisdictions. Following the Panama Papers revelations steps were taken to confirm that the regulated entities were meeting their statutory obligations although there had been no evidence presented by the revelations to suggest that they were not doing so. These steps were taken by the JFSC, the islands financial regulator and the JFCU, the Islands Financial Intelligence Unit. They are detailed below:

Action by the JFSC

In respect of the Panama Papers, the JFSC's response falls into three main categories:

1. Self-reporting by firms
In compliance with the Codes of Practice, there is a strong track record of regulated firms contacting the JFSC to discuss issues which may be of regulatory concern. In the case of the Panama Papers a number of firms contacted the JFSC immediately after their publication to report any business links they had with Mossack Fonseca and reviews they were carrying out of client structures.

2. Follow-up on specific cases
The global media highlighted a number of specific links to Jersey in the Panama Papers material. Often in these reports there was no suggestion of any wrong-doing, merely the factual report of a Jersey entity being part of a client structure, or a Jersey firm asking Mossack Fonseca to establish a company. The JFSC investigated a number of these specific cases to determine whether firms had complied with their legal and regulatory requirements.

3. Survey of firms
The JFSC sent a structured information request to relevant regulated firms asking them to confirm (amongst other things) whether they had carried out a review of business links with Mossack Fonseca and whether any issues of concern had been identified. A press release concerning this exercise can be found here: http://www.jerseyfsc.org/the_commission/general_information/press_releases/release351.asp

The JFSC also followed-up Panama Paper related topics as part of its normal day-to-day supervision with firms (e.g. through on-site visits).

The Panama Papers highlighted that some entities based in Jersey had used Mossack Fonseca to establish companies. It is important to note that, irrespective of the location of the client, if a Jersey firm is carrying on regulated activity it must follow Jersey laws and requirements. This importantly includes the requirements relating to CDD and

Beneficial Ownership and Control identification. There are many reasons why clients of firms may wish to establish non-Jersey companies – for example, proximity, familiarity with the other regime, etc.

Mossack Fonseca had a small office in Jersey, although latterly it was not carrying out any regulated activity. As with a number of other Mossack offices, it closed subsequent to the disclosures.

As with all EU financial regulators, the JFSC is subject to information disclosure restrictions which make it a criminal offence to release much regulatory information except in certain circumstances. The JFSC cannot therefore disclose details of its discussions/actions with individual regulated firms. Should any enforcement activity result in a public statement, this will be included on the webpage set out above.

Action by the Joint Financial Crime Unit – Jersey's FIU

The Joint Financial Crimes Unit (JFCU) is composed of officers from the States of Jersey Police and the Jersey Customs and Immigration Service, supported by a team of civilian staff.

The JFCU is divided into 3 sub-units: Financial Intelligence Unit (FIU), Financial Crime Investigation Team, and Drugs Trafficking Confiscation Unit.

Jersey FIU serves as the national centre regarding the receipt and analysis of suspicious activity reports (SARs), terrorist financing, and associated predicate criminality; and for the dissemination of those results. Every SAR is scrutinised upon receipt and subject to an established grading process, with methodical and structured analysis.

The FIU also receives and responds to requests for assistance from overseas FIUs and competent authorities on AML/CFT enquiries, as well as miscellaneous information reports from a variety of sources.

The intelligence assessment seeks to establish if the suspicions prompting submission of a SAR corresponds to a predicate criminal offence, active criminal investigation or prospect of a criminal investigation in Jersey or any relevant jurisdiction. Analysis triggers consideration of the initiation of a domestic criminal investigation and where appropriate referral to domestic law enforcement.

The FIU make no distinction between fiscal and non-fiscal matters, and no de-minimums financial thresholds are applied. The ethos of Jersey FIU is to share as much possible relevant intelligence with FIUs and law enforcement authorities globally regarding fiscal and non-fiscal matters. Significant spontaneous intelligence sharing is employed, and Jersey FIU does not require reciprocal agreements or MOUs for such activity. For example, 1917 spontaneous intelligence disseminations were made in 2014, resulting from 2287 SARs received in that year.

Beneficial ownership detail is exchanged with international counterparts as a matter of routine in the course of intelligence disseminations. It rarely features in isolation, generally forming part of a wider information requirement.

A review of all FIU material derived from SARs and other intelligence featuring Mossack Fonseca from 2004 onwards has been conducted. The review demonstrated that intelligence had been analysed and disseminated appropriately.

The release and publicity of the Mossack Fonseca papers resulted in 4 SARs being received by the FIU. In all cases the material was analysed and disseminated in accordance with standard procedures.

For operational reasons, the FIU do not disclose sensitive case information. Work continues with international FIU partners and law enforcement agencies exchanging relevant information in pursuit of money laundering, terrorist financing and associated predicate criminality. This includes tax evasion and economic crime more broadly.
At present, there is 1 active criminal investigation being conducted by the JFCU – Jersey, in which the use of Mossack Fonseca features. The investigation, originating from SAR-based intelligence, is not consequential to the publication of material.

5. Could you please inform us if there have been any changes of the system of tax law in the Channel Islands following the Panama Papers revelations?

Answer

There have been no changes in Jersey's tax law as a direct consequence of the Panama Papers revelations. Jersey already had the necessary legislation in place to support the Island's general commitment to the international standards on tax transparency and information exchange. This legislation provides for EOIR, AEOI and transparency of beneficial ownership information. However as new standards are established or strengthened the Island's legislation can be expected to be extended in line with Jersey's established policy. As noted in the answer to the second question above, legislation is being enacted to further enhance the quality of the information held on the central business register. In December 2016 the Taxation (Implementation)(International Tax Compliance)(Country by Country Reporting – BEPS) (Jersey) Regulations 2006 were made to provide for compliance with the BEPS requirements on CbCr.

The statement has been made in a report presented to the Committee on the Impact of Schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States that "the idea that only non-cooperative jurisdictions qualify as tax havens disregards that some jurisdictions may only appear cooperative while remaining operatively a tax haven." It is assumed that "remaining operatively as a tax haven" means that "the jurisdiction facilitates offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction". Jersey is confident that it can show that this is not so in its case for the reasons set out in the answer to question 11

In answering this question the opportunity is taken to describe Jersey's corporate tax structure. Jersey's standard corporate tax rate of 0% is based on two key principles. One is the EU Code Group on Business Taxation principle of non-discrimination between resident and non-resident owned companies, The Code Group ruled in 2011 that Jersey's corporate tax measures are not harmful because the zero rate applies to resident and non-resident owned companies and is not lower than the level of taxation

which generally applies. The other is the principle of tax neutrality combined with transparency. As an international finance centre, Jersey acts as a “financial entrepôt” in facilitating the investment of funds drawn from around the world into European financial markets. In the absence of Double Taxation Agreements the zero rate is required to avoid double taxation. It is believed that the return to the investors should be taxed in their home country and the business activity generated by the investment in Europe should be taxed in the jurisdiction where that activity takes place.

Jersey believes that the return to the investors should be taxed in their home country and the business activity generated by the investment in Europe should be taxed in the jurisdiction where that activity takes place. The Jersey authorities recognise that for tax to be levied where it is properly due it is necessary for the countries concerned to have information to help them with their tax assessments. With this in mind Jersey has given its full support for the transparency principles central to the current G20, OECD and EU tax initiatives.

Jersey believes that each jurisdiction should have the right to set its own tax rates according to its own requirements but that each jurisdiction should also comply with internationally accepted principles of fair tax competition supported by transparency and information exchange. As is agreed among the EU Member States, and the OECD in respect of its members, tax sovereignty is a fundamental principle. In this context it has been accepted that a zero or low rate of corporate tax is not in itself a definition of unfair tax competition.

Jersey has a higher corporate tax rate of 10% paid by all those engaged in certain financial services activity. This is comparable to that borne by corporate entities in many other countries either as a published tax rate or an effective tax rate.

6. According to the Panama Papers revelations, some banks (e.g. Credit Suisse Channel Islands Ltd., Coutts & Co. Trustees (Jersey) Ltd. and Rothschild Trust Guernsey Ltd.) were involved through their subsidiaries in the Channel Islands. To your knowledge, are there any reasons for that?

Answer

We are aware that a number of Financial Institutions based in Jersey featured in the top ten list of financial institutions that instructed Mossack Fonseka to form and/or administer legal entities on behalf of their clients. However there was no evidence to suggest that their instructions were other than in connection with legitimate business or that the institutions concerned were not fully aware of the ultimate beneficial owner and of the nature of the business being undertaken as is required of them under Jersey regulatory and AML legislation.

Jersey has been in the forefront in adopting the legislation required for full compliance with the relevant international standards. Jersey has continued and will continue to do so in relation to CRS and BEPS, and the developing standards on beneficial ownership and control, and it has not needed the Panama Papers revelations to show cause for such action.

Jersey has an exceptional reputation globally for private wealth management. Private wealth management inevitably involves the formation and administration of a variety of different legal entities and legal arrangements in order to allow appropriate business activity to be conducted and flexibility for investments. Given the volume of private wealth management conducted in Jersey, the involvement of a financial institutions in Jersey (such as those listed in the question) in instructing Mossack Fonseca to form and administer legal entities and legal arrangements is not surprising.

Equally, from all of the evidence available, it is important to note that a large proportion of business conducted by Mossack Fonseca was legitimate business that did not involve activity that breached criminal or regulatory standards. This point can be made more broadly by reference to a 2006 FATF Paper entitled "The Misuse of Corporate Vehicles, including trust and company service providers" In the Prelude to that paper the following is stated:

"In examining the potential misuse that corporate vehicles may be subject to, it is important to bear in mind that, of the millions of companies that exist, the vast majority engage in legitimate business, and only a small minority are misused. Likewise among the trusts that are set up, the majority serve legitimate purposes, and only a small minority are misused."

For Jersey, it is also important to state that any Financial Institution or DNFBP acting by way of business in or from within Jersey is required to comply with Jersey anti-money laundering and countering the financing of terrorism legislation listed above.

This means that regardless of the jurisdiction of incorporation of a legal entity or formation of a legal arrangement, if it is incorporated through a service provider in Jersey or administered from Jersey our regime in respect of CDD and beneficial ownership will apply. This ensures that Jersey has a single standard which applies across the board and limits the opportunity for jurisdictional arbitrage when considering legal entities and legal arrangements from different jurisdictions.

7. Do the Channel Islands have a public register of trusts? Are trusts supervised and if so, how?

Answer

Jersey in common with EU, OECD and G20 Member States does not have a public register of trusts for which there is no international standard. Also, as evidenced by a ruling by the French Constitutional Court, such a register can be expected to be the subject of legal challenge. However Jersey is able to provide law enforcement and tax authorities with adequate, accurate and current information on the trustees, settlor, beneficiaries, and protectors of a trust.

Jersey has had legislation in place to regulate Trust and Company Service Providers (TCSPs) since 2000 and such persons are required to hold, and keep up to date, beneficial ownership information for all structures administered by the TCSPs. That information is then available to the financial regulator and law enforcement authorities and can be provided to competent authorities in other jurisdictions using gateways

provided for in the legislation, as well as under the Islands' tax and mutual legal assistance (MLA) agreements.

The detailed position on trusts is referred to in Annex 1 to which the answer to question 2 above refers.

Trusts are often described as vehicles designed to hide information from the authorities. However they are no different in this respect than some companies. To quote from a FATF report on the misuse of corporate vehicles – " In examining the potential misuse that corporate vehicles may be subject to, it is important to bear in mind that, of the millions of companies that exist, the vast majority engage in legitimate business, and only a small minority are misused. Likewise among the trusts that are set up, the majority serve legitimate purposes, and only a small minority are misused."

This view is also reflected in the EP Study on "Tax evasion, money laundering and tax transparency in the EU Overseas Countries and Territories" when referring to Houben's analysis on the mandate of the PANA Committee that "there is nothing unlawful about offshores and advising on and assisting in the setting up and management of offshores as such".

For many trusts their position can be equated with the position of an individual, the only difference being that an asset such as a bank account is held by a trustee rather than by a natural person.

The key to information about a trust lies with the trustee. Through the requirements imposed by international standards trustees should know the identities of the settlor and beneficiaries, and should be obliged to provide this information to the authorities if requested to do so. It is therefore the requirements placed on the trustees by the legislation of the jurisdiction in which the trustees are located, and the third party assessment by bodies such as the IMF or the Global Forum as to the effectiveness with which the international standards on transparency and information exchange are being complied with, which should be the focus of attention in deciding whether information requests are likely to be responded to the satisfaction of the requesting authority.

In this context, the interpretative note issued by the Financial Action Task Force (FATF) in respect of Recommendation 25 on transparency and beneficial ownership of legal arrangements, is an important statement. The note states that countries should require trustees of any express trust to hold adequate, accurate and current beneficial ownership information regarding the trust. Also that professional trustees should be required to maintain this information for at least five years after their involvement with the trust ceases.

The Global Forum Peer Review Group has considered the issues arising in ensuring compliance with the requirements relating to the availability and accessibility of information on a trust. The consensus is that, while there are a number of different persons involved in a trust who may be relevant when considering the question of where trust information can be found, it is the trustees that have the greatest obligations placed upon them by common law or statute law and who therefore should be the best source of information.

The position is straightforward when there is a single jurisdiction in which the trust is created, where all the relevant parties to the trust reside and where the trust's assets are located. This will apply to most trusts formed in the USA. The position is much more complex where the relevant law under which the trust is formed, the relevant parties and the assets are dispersed across several jurisdictions. In these cases the position generally is as follows –

- The jurisdiction under whose laws the trust is created may not know a trust has been formed in another jurisdiction. However the law should impose obligations on the trustees so that action can be taken against the trustees by the settlor, the beneficiaries, or the authorities if those obligations are not properly met.
- The jurisdiction of residence of the trustees should be expected to have the power to enforce obligations on the trustees to maintain and produce information when requested. Trustees can be resident in civil and common law jurisdictions. Civil law jurisdictions which have ratified the Hague Convention may well have resident trustees of foreign trusts.
- The jurisdiction where any relevant trust service provider or other professional intermediary is located should be expected to have in place AML or broader regulatory requirements that oblige the service provider to keep relevant information concerning trusts, including identifying the beneficiaries and settlors. In many cases the service provider will act as a corporate trustee in which case they will also be bound by the obligations placed on the trustees.
- The jurisdiction of residence (or place of business) of the settlor and beneficiaries may have information available if the parties to the trust are faced with reporting obligations under tax laws but otherwise may have no way of knowing that their residents are party to a trust settlement. Indeed with discretionary trusts the beneficiaries themselves may not know they are a beneficiary until they receive a distribution from the trustees.
- The jurisdiction where the trust's assets are located may have information because certain types of property may entail registration or filing requirements under commercial law but otherwise will not know of the trust's assets other than through access to the trustees.

It should be clear from the foregoing that the best and most complete source of information about a trust and the parties to the trust will be the trustees and the jurisdiction in which the trustees are resident. Consequently the best position will also be where the jurisdiction in which the trustees are resident has the ability to enforce the relevant obligations on the trustees. Whether this is the case should be apparent from the individual jurisdiction reports arising from the Global Forum's programme of assessments of compliance with the international standards.

Jersey imposes obligations on trustees through Common Law backed by case law, through a Trust Law, through AML provisions applying to professionals providing trust services, and through the regulation of all trust and company service providers.

8. According to the national legislation and without going too much into details, could you please describe the procedure of a company registration in the Channel Islands? Could you please inform us how long this procedure normally takes?

Answer

The Companies Registry in Jersey, based within the JFSC, is responsible for Company and legal entity incorporation and Registration in Jersey. The Director General of the JFSC acts as the Registrar of Companies.

Companies in Jersey can either be formed by local residents or Trust and Company Service Providers (TCSPs). Non- residents are not permitted to incorporate companies without the use of a TCSP. All TCSPs in Jersey are fully regulated by the JFSC to a standard similar to regulation of financial institutions elsewhere (described further above). The TCSP is bound by Jersey anti-money laundering and countering the financing of terrorism regime as outlined in the above questions.

The Companies Registry also conducts independent vetting of information submitted to it during the incorporation of a company. This vetting uses a variety of open source and closed source information to ensure that the information contained on the company is accurate. Jersey considers this to be a critical element of our regime to ensure that the information we hold and exchange with law enforcement and tax authorities on beneficial ownership and control of Jersey entities is accurate and useful to those authorities. The situation of the Companies Registry within the financial regulator also allows for information to be exchanged if, when vetting information provided on a company being incorporated by a TCSP, a discrepancy is found. This allows for "a second line of defence" against inaccurate information being provided to the Registry and allows for issues to be referred into the supervision and enforcement programme.

The Companies Registry offers a range of different times for incorporation or registration of Jersey legal entities – the faster the requested time for incorporation, the higher the fee for incorporation. This is to allow for the variety of activity that occurs in Jersey, from local trading companies (butcher/baker) who do not require expedited incorporation, through to a complex fund vehicle for the investment of pension funds that may require very rapid incorporation to meet investment deadlines.

A processing map of the incorporation process is included at Annex 2 to these questions.

It is also important to note that Jersey has a Sound Business Practice Policy Statement that is operated by the Companies Registry which listed a number of activities that are considered more sensitive to the reputation of Jersey. The operation of the statement means that if a legal entity is incorporated that will carry out a more sensitive activity that could affect the reputation of Jersey – it must be noted upon incorporation and the application for incorporation will receive greater scrutiny by the Registry. Equally, the time to consider applications where the activity carried out is included in the Statement will be longer due to the greater scrutiny required.

9. Could you please explain the Channel Islands' relationship with the UK, especially regarding the legal framework and exchange of information in tax matters? Is there a close cooperation between your government and the British government on tax affairs?

Answer

For over 800 years, two fundamental principles have been at the heart of Jersey's relationship with the United Kingdom: loyalty and autonomy. When Jersey chose to break with Normandy in 1204, it opted to remain loyal to the King of England. The Island is fiercely proud of its record of many centuries of steadfast loyalty to successive Monarchs descended from the Duke of Normandy. And Jersey is just as proud of its fiercely-guarded autonomy from the UK Parliament.

Jersey, like the other Crown Dependencies, is not and has never been part of England or the United Kingdom but is instead a self-governing dependency of the Crown. Jersey has its own directly elected legislative assembly; administrative, fiscal and legal systems and its own courts of law. The UK Parliament by convention does not legislate for the Island without its express consent and any United Kingdom legislation purporting to have effect must be subject to a positive vote from the States of Jersey Assembly before that legislation may be registered and have effect in Jersey law.

In short, the Island is an autonomous jurisdiction in relation to domestic affairs, but the Crown – in practice through Her Majesty's Government – remains formally responsible for the Island's defence and, to some extent, its international affairs.

This combination of fiscal autonomy founded on centuries of custom and usage and the UK's retained ultimate responsibility for international relations arising from the Island's allegiance to the Crown is reflected in the granting by the UK Government of Letters of Entrustment that provide for the Island to negotiate tax agreements in its own right. This is also reflected in a Framework Agreement signed in 2007 by the Jersey and UK Governments which recognises that the UK has no democratic accountability in or for Jersey which is governed by its own democratically elected assembly.
In the context of the UK's constitutional responsibility for Jersey's international relations it was understood that:

- the UK will not act internationally on behalf of Jersey without prior consultation.
- the UK recognises that the interests of Jersey may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity. That is particularly evident in respect of the relationship with the European Union where the UK interests can be expected to be those of an EU member state and the interests of Jersey can be expected to reflect the fact that the UK's membership of the EU only extends to Jersey in certain circumstances set out in Protocol 3 of the UK's Treaty of Accession.

The Framework Agreement also reflects that:

- Jersey has an international identity which is different from that of the UK.

- Both parties commit themselves to open, effective and meaningful dialogue with each other on any issue that may come to affect the constitutional relationship.
- The UK will clearly identify its priorities for delivery of its international obligations and agreements so that these are understood, and can be taken into account, by Jersey in developing its own position.
- The UK and Jersey will work together to resolve or clarify any differences which may arise between their respective interests.

In practice the relationship between Jersey and the UK on international tax matters is little if any different from that between Jersey and the other Member States and between Jersey and other jurisdictions party to the implementation of the current international tax obligations. Thus Jersey has a TIEA with the UK, a historic DTA which is in the process of being replaced with a DTA in accordance with the OECD Model DTA , and will be exchanging information in accordance with the Common Reporting Standard (CRS). Ahead of the CRS in 2013 an IGA was signed with the UK which provided for Automatic Exchange of Information (AEOI) on a par with what Jersey had agreed with the USA in respect of FATCA.

One aspect of the relationship with the UK that is not currently mirrored in the relationships with other jurisdictions is the Exchange of Notes agreed with the UK in April 2016 which will enable UK law enforcement authorities, who have been able to obtain information within 7 days to their declared satisfaction, to obtain information on beneficial ownership within 24 hours and in special cases within one hour. Jersey has told other jurisdictions including EU Member States that it is prepared to enter into discussions on the application of a similar arrangement, through a bilateral agreement, if this is so desired and if the international standards on confidentiality and data safeguards are met.

Jersey applies a good neighbour policy in its relations with the UK as it has also done with the EU. Jersey lent support to the UK Government in the implementation of its voluntary disclosure facility and in a statement issued in July 2014 the Chief Minister said -

> *"We support fair tax competition, and view legitimate tax planning as an appropriate response to operating cross-border. We do not support that which goes beyond legitimate tax planning for commercial purposes nor do we want our service providers to host abusive tax schemes designed to frustrate the will of national parliaments.*
>
> *"The UK has recently committed to introducing new measures to deal with tax advisers who sell contrived and abusive tax avoidance schemes, with the aim of deterring and preventing such schemes. This includes the new High Risk Promoter Scheme and enhancements to their existing Disclosure of Tax Avoidance Scheme (DOTAS) including accelerated payments.*
>
> *"Although it is for the UK Parliament to determine the extent to which UK residents are able to engage in lawful tax avoidance, given that Jersey does not wish to be associated with abusive tax schemes and in the spirit of being a*

good neighbour, we want to support the UK in achieving their ambitions in relation to that which we consider to be unacceptable.

"In parallel with the work the UK has been undertaking, we have been working with industry and the Jersey Financial Services Commission (JFSC) to put in place a package of measures that will embed and reinforce the policy position that Jersey does not welcome abusive tax planning structures. These measures will also provide a framework allowing action to be taken by Government under Jersey's business licensing regime against those who use the jurisdiction to facilitate abusive tax schemes targeted at UK residents.

"With effect from 1st of October 2014, we expect service providers to ensure that they identify if any new business they take on will facilitate the use by their client of a tax avoidance scheme registered under DOTAS, or are of the view that they are involved in a transaction which forms part of a scheme which has a DOTAS reference number, and document this accordingly (including confirmation of compliance with DOTAS reporting requirements) as part of their business take-on procedures.

"We are pleased the JFSC will monitor this as part of its assessment of service providers' compliance with the regulatory requirement to organise and control their affairs effectively and to maintain adequate risk management systems. Jersey Finance will also be consulting members in relation to a proposed issuance of guidance notes expanding on the principles advocated here in relation to abusive tax schemes and we encourage all members to engage with this.

"To assist in the effective implementation of these actions we have been working with HMRC to ensure providers do not contravene HMRC's DOTAS rules and to consider what information would be of assistance in identifying and responding to abusive tax planning schemes with which Jersey may have some involvement. Jersey will work closely with HMRC going forward to identify ways in which we can better collaborate with them on tax information exchange on complex international tax avoidance and structures. "

10. Philip Hammond gave an interview to a German newspaper on the outcome of the Brexit agreement. He said: "if we are forced to be something different, then we will have to become something different" and "If we have no access to the European market, [...] if Britain were to leave the European Union without an agreement on market access, [...] we could be forced to change our economic model and we will have to change our model to regain competitiveness. And you can be sure we will do whatever we have to do. [...] We will change our model [...] and we will be competitively engaged."

1) **Do you share this opinion?**
2) **If the UK loses its access to the European market, would it change the nature of your financial activities and if so, how?**
3) **In your opinion, what would be your more favourable outcome: turning the UK into "*something different*" with a "*changed economic model*" "*competitively engaged*" or keeping financial access to the European market? Please explain.**

Answer

10(1) and 10(3) -Jersey Government does not express opinions on policy decisions/statements made by other governments.

10(2) - The nature of our financial activities will be influenced by whether or not we continue to have access to the European market. Our position is different from that of the UK because we have been a third country for financial services since 1973.

The EU should be aware of the benefits of investment from Jersey: Jersey is a conduit for 188 billion Euros of foreign investment into the EU 27(i.e excluding the UK), and supports up to 88,000 jobs. Capital is attracted to Jersey from the world at large because of its role as a quality international finance centre with tax neutrality. That capital is then passed on to the European financial markets. In effect Jersey acts as a financial warehouse from which Europe benefits. We want this flow of investment to continue to benefit the EU. Thereby Jersey is contributing to meeting the investment needs of the EU to which Vice President Dombrovski referred recently in his opening remarks at the Public Hearing on the Capital Markets Union Mid Term Review.

A major Jersey priority is financial services: this is the largest sector of Jersey's economy and represents nearly all export income and produces around 42% of the Islands Gross Value Added, employing over 13,000 people, and generating the majority of revenue for the government.

Jersey is outside the EU for trade in services and that will not change: Jersey will remain a third country. The relatively limited market access it has already secured through "equivalence" decisions will remain in place unless the EU changes the equivalence rules in their application to third countries generally.

In addition, Jersey's efforts to obtain improved reciprocal market access on the basis of equivalence is already being impacted by Brexit. An expected decision by the European Commission to grant passporting in respect of the Alternative Investment Fund Managers Directive to a number of third country jurisdictions including Jersey has been put on hold. This is despite these jurisdictions being the subject of the

positive technical assessment by ESMA. It is clear that a significant reason for this delay is that it is the EU's wish to consider what read across this might have to the Brexit negotiations on the key issue of UK access to EU financial markets.

11. In your opinion, will the outcome of the negotiations between the EU and the UK have an impact on the Channel Islands regarding tax matters and if so, how?

Answer

We would hope that our relationship with the EU generally and with Member States individually will continue to be based on recognition of our fiscal autonomy and our record of compliance with international standards and good neighbour policy.

Jersey is not in the EU but it recognises that it is part of Europe. Jersey's voluntary participation in support of the EU Directive on the Taxation of Savings Income and in meeting the criteria of the Code Group on Business Taxation are good examples of the good neighbour policy. Another example is Jersey's active cooperation on sanctions implementation. It is also reflected in the setting up of the Channel Islands office in Brussels, ably led by Steve Williams, and in the regular visits made for meetings with the Commission, the European Parliament, the Permanent Representatives and others.

Of particular importance for the Island is its non-inclusion in the proposed list of non-cooperative jurisdictions. Jersey clearly satisfies the requirements on tax transparency and anti-BEPS and Jersey is confident of satisfying the criterion on fair taxation which reads as follows –

> "The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction."

This criterion is to be assessed by reference to the existing criteria of the Code Group on Business Taxation which Jersey was judged against in 2011 when its tax structure/system was found not to be harmful".

Jersey considers it can present strong arguments in support of the view that it does not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. The arguments to be advanced include the following –

- Jersey companies are for the most part engaged in investment and property holding, or the provision of consultancy and other personal services. This is reflected in the nature of the requests for information received from jurisdictions with whom Jersey has a tax information exchange agreement (which, either bilaterally or multilaterally, includes all EU Member States);
- For investment holding companies their real economic activity is the offering of investment and the making of investment decisions both of which are undertaken in Jersey. Evidence of this is to be found in the number of persons employed in the provision of financial, accountancy and legal services;

- The substance of the activities in Jersey is to be seen in the comparisons that can be drawn with other centres providing similar services. Jersey has relatively few incorporated companies (30,000 compared to the many hundred thousand companies formed in Delaware and the BVI). Against this can be set the fact that in Jersey there are over 13000 persons employed in the provision of financial services and 5000 are employed in trust, company and fund administration .
- Jersey has sought to maintain an international reputation as a quality finance centre. To achieve this both the Government and the independent Regulator have pursued a policy of requiring substance. For example, there are no shell banks.
- Jersey has licensed TCSPs since 2000 and has required information on the ultimate beneficial ownership of all companies administered, whether incorporated in Jersey or elsewhere, and licenced institutions are required to know the nature of the business undertaken. Thus, while a Panamanian company might be formed without any requirement to identify the ultimate beneficial owner a Jersey TCSP administering such a company is required to know who the ultimate beneficial owner is.
- Jersey companies can only be formed for non-residents through a licensed TCSP and applications to form companies are independently vetted by the Company Registrar and will not be formed if they are to be engaged in any sensitive activities which include tax evasion and aggressive tax avoidance. It is not possible to form shelf companies.

12. Will you be fully complying with the requirements of the EU's Anti-Money Laundering Directive and its subsequent revisions? If not, could you please precise to what extent do you currently comply with the Directive?

Answer

Jersey pursues a good neighbour policy to the EU and, whilst the Directives of the EU are not binding upon Jersey. In the area of anti-money laundering and countering the financing of terrorism, Jersey has historically implemented the EU Anti-money laundering Directives on a voluntary basis. An example of this is the fact that when evaluated by MONEYVAL in 2015, Jersey was also evaluated against compliance with the 3rd Money Laundering Directive of the EU – details of which can be found at the back of the MONEYVAL Report.

As the members of the Committee will be aware, the 4th AML Directive of the EU is currently still under amendment in Brussels and until the final text of the Directive is agreed, it is not possible for the Government of Jersey to confirm if it will be implementing all the requirements of the Directive. Once the final text of the amended Directive is available, the Government of Jersey are committed to reviewing that text and determining what approach Jersey will take to the Directive. This review will have particular focus on the actions of other 3rd countries to the EU in relation to the Directive and how the final text of the Directive relates to the international standards for AML set by the FATF.

4 May 2017

ANNEX 1

An overview of the laws governing the creation and ongoing regulatory requirements of legal entities and legal arrangements.

LEGAL ENTITIES

The following types of entity are discussed under this heading:

a) Companies
b) Partnerships
c) Foundations
d) Incorporated Associations and Fidéicommis

General

Jersey legal entities are regulated by the Companies (Jersey) Law 1991 (the "Companies Law"), the Limited Liability Partnerships (Jersey) Law 1997 (the "Limited Liability Partnerships Law" or "LLP Law"), the Separate Limited Partnerships (Jersey) Law 2011 (the "Separate Limited Partnerships Law" or "SLP Law"), the Incorporated Limited Partnerships (Jersey) Law 2011 (the "Incorporated Limited Partnerships Law" or "ILP Law") and the Foundations (Jersey) Law 2009 (the "Foundations Law").

Companies, foundations, SLPs, ILPs and LLPs all have a separate legal personality under Jersey law.

Under Jersey law, customary law/general partnerships and limited partnerships (LPs) governed by the Limited Partnership (Jersey) Law 1994 (the "Limited Partnerships Law" or "LP Law") do not have separate legal personality. Customary law/general partnerships are therefore discussed in the section on legal arrangements below. However LPs are discussed in this section as, although a legal arrangement, the legal and regulatory environment applying to them is identical to that applied to the other Jersey partnerships with legal personality.

All Jersey companies, limited partnerships ("LPs"), limited liability partnerships ("LLPs"), incorporated liability partnerships ("ILPs"), separate liability partnerships ("SLPs") and foundations are registered by the Companies Registry.

In addition, the Control of Borrowing (Jersey) Law 1947 (the "Control of Borrowing Law" or "COBL") and the Control of Borrowing (Jersey) Order 1958 (the "COBO"), the Proceeds of Crime (Jersey) Law 1999 ("Proceeds of Crime Law" or "POCL"), the Money Laundering Order (Jersey) 2008 (the "Money Laundering Order" or "MLO"), the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the "Supervisory Bodies Law"), the Financial Services Commission (Jersey) Law 1998 (the "Commission Law") and the Financial Services Commission (Financial Penalties) (Jersey) Order 2015 (the "Civil Penalties Order") are relevant for this section.

The Control of Borrowing Order Regime

The COBO regime is critical to the JFSC collecting information from legal entities on registration/incorporation and during the lifespan of the legal entity, in particular the

JFSC uses this regime in order to collect ultimate beneficial ownership and control information in accordance with, inter alia, the Money Laundering Order.

In short, the JFSC collects information both under the Companies Law (or relevant partnership law) as well as under the COBO regime. Information collected under the COBO regime mainly relates to information relating to ultimate beneficial owners and controllers of companies and partnerships at the time of registration/incorporation and information relating to activity that the legal entity will undertake. This process enables the Companies Registry to "understand the nature of its business, and its ownership and control structure" (a requirement fulfilling FATF Interpretive Note to Recommendation 10 (CDD)). Such information is vetted for accuracy upon registration incorporation and is required to be kept up to date by the JFSC in cases where those legal entities are owned by Jersey residents or by TCSPs, as required under the Money laundering Order and applicable Registry policies and procedures.

The vetting process involves reviewing it against a number of sources such as the consolidated list of persons subject to sanctions legislation in Jersey, WorldCheck, the UK consolidated sanctions list, Ofac, internet and regulatory databases maintained by the JFSC. As part of its work, the JFSC also considers whether a relevant person that is the TCSP has properly applied CDD measures under the Money Laundering Order, (e.g. has it identified whether the proposed beneficial owner of a company is a PEP).

Accordingly, information is available at the premises of the JFSC and:

- the registered office of the company, foundation or partnership (being limited partnerships, limited liability partnerships, separate limited partnerships or incorporated limited partnerships); or
- the office of the TCSP.

The COBO regime works alongside each of the relevant and applicable legal entity laws.

Under the COBO, the prior consent of the JFSC is required to the:

- Issue of shares or securities by a Jersey company;
- Issue of units by a Jersey law unit trust;
- Issue of partnership interests by a Jersey LLP; and
- Issue of partnership interests by a Jersey LP.

In addition, a consent from the JFSC is also required where a non-Jersey company, unit trust, LP or LLP seeks to raise money in Jersey by the issue of shares, units, or partnership interests (Articles 10-11, COBO). There are also provisions requiring JFSC consent where a register is to be held in Jersey of the shares, securities, units or partnership interests of non-Jersey Companies, unit trusts, LPs or LLPs. The COBO also requires the JFSC's consent to be obtained prior to the circulation in Jersey of prospectuses offering shares, securities, units or partnership interests of non-Jersey companies, unit trusts, LPs or LLPs. Before granting consent under COBO, the JFSC will wish to be satisfied that doing so will be in accordance with

protecting the integrity of the Island in commercial and financial matters and be in the best economic interests of the Island.

Except in the case of an investment fund, in order to obtain consent a LP/LLP will be required to provide identity information on the general partner(s), as well as on limited partners, with a 10% or more beneficial interest in the partnership; and a LLP will be required to provide identity information on partners with a 10% or more beneficial interest in the partnership. It is a standard condition imposed by the JFSC when granting permission to LPs and LLPs (under COBO) that no prospectus, offering circular, private placement memorandum or anything of a like nature shall be issued thereafter without the JFSC's prior consent.

In the case of LPs, SLPs, ILPs or LLPs that are investment funds, ownership information on these arrangements will be captured by the obligations under the AML regime which are imposed directly on the mutual fund itself (Schedule 2 of the Proceeds of Crime Law: Part A, item 3); and indirectly by the AML regime obligations imposed on Service Providers such as fund services businesses (Schedule 2 of the Proceeds of Crime Law, Part A, item 4) or others participating in or providing services related to securities issues (Schedule 2 of the Proceeds of Crime Law, Part B, item 7(1)(h)).

Jersey unit trusts which seek to issue units (in Jersey or elsewhere), or foreign unit trusts which seek to raise money in Jersey by the issue of units are subject to the COBO regime pursuant to Article 9 of the COBO. A person must seek the consent of the JFSC and provide information on that unit trust.

To obtain the consent of the JFSC, the applicant must advise the name, address, date of birth and occupation of all persons who will have a 10% or greater beneficial interest in the entity. Consent is indicated by the issuing of a COBO license and may be general or specific, and subject to certain conditions. All COBO licenses include a condition that the prior approval of the JFSC must be obtained prior to any person taking a 25% or more beneficial interest in the licensee. Such approval will require the provision of identifying details of that person (name, address, date of birth and occupation). This condition is waived where the licensee is administered by a provider of company administration services regulated pursuant to Article 2(3) of the Financial Services (Jersey) Law 1998 (the "Financial Services Law"). This waiver is aimed at reducing duplication as the licensee is a client of a person who, under obligations imposed by the Financial Services Law and the Money Laundering Order, is required to apply customer due diligence measures and to identify and verify the identity of the beneficial owner and controller of the customer.

A person who contravenes a requirement imposed under the COBO shall be liable to imprisonment for up to five years, a fine, or both pursuant to Schedule 1 of the Control of Borrowing Law.

Recent Changes to the Beneficial Ownership Regime

Jersey is currently in the process of enhancing its regime concerning availability of beneficial ownership and control information. In order to implement this enhanced policy amendments are required to legislation and the regulatory framework including

amended Guidance, amended Handbooks, re-issuance of COBO consents and re-issuance of Registry forms. It should be noted that the majority of companies incorporated in Jersey are private investment companies, whose ownership changes very rarely.

Below is an outline of the general policy and required amendments to the regime:

On 2 March 2016, the Government published a consultation paper concerning Beneficial Ownership of Jersey Companies and a Register of Directors for Jersey[1]. On 2 November 2016, the Government published its Response Paper[2] to the consultation.

Under the previous regime in Jersey, whilst legal ownership information and beneficial ownership information was obtained by the Companies Registry upon incorporation/registration of a legal entity, if there was a subsequent change to beneficial ownership and control information of a legal entity administered by a TCSP, the TCSP was not required to update the central register or seek prior consent from the JFSC concerning such a change.

The Response Paper outlines a policy whereby the process relating to beneficial ownership information post incorporation will change in that all TCSPs must provide information relating to current beneficial ownership that they hold to the Central Register by 30 June 2017 and thereafter upon change of 25% or more (flexed on a Risk Based Approach), TCSPs will be required to notify the Companies Registry within 21 days of knowledge of a change.

In order to compel TCSPs to provide the Companies Registry with the information required on current beneficial ownership relating to existing legal entities, all legal entities have been issued with a replacement COBO consent requiring each legal entity to submit a C17S form (or equivalent depending on the entity applying) informing the Registry of the current beneficial ownership of such entity. The requirement is simple - the JFSC must be notified "of information identifying each beneficial owner or controller known to the [entity] on the date of such notification". Such submission to be made anytime between 1 January 2017 and 30 June 2017. The entity must thereafter notify the JFSC within 21 days of it having knowledge that: "(a) any individual has become a beneficial owner or controller of the Company; or (b) any individual has ceased to be a beneficial owner or controller of the Company; or (c) any beneficial owner or controller of the Company has changed their identity, in such manner as may be specified by the JFSC."

The scope of this regime covers companies, foundations, LLPs, LPs, ILPs and SLPs.

The Government of Jersey and the United Kingdom entered into a reciprocal enhanced information sharing agreement in this regard in April 2016 (the "Exchange

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1 https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/C%20Beneficial%20Ownership%20of%20Jersey%20Companies%20and%20a%20Register%20of%20Directors%2020160308%20VP.pdf

2 https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/CR%20-%20Beneficial%20Ownership%20of%20Jersey%20Corporate%20and%20Legal%20Entities%20and%20a%20Register%20of%20Directors%20Policy%20Document%2020161101%20VP.pdf

of Notes"). This reciprocal agreement is due to come into force on 30 June 2017. From 30 June 2017, the Government of Jersey will be able to exchange information requested pursuant to the Exchange of Notes on a normal request within 24 hours and in urgent matters, where, for example terrorism financing is expected, within 1 hour. Jersey is willing to consider entering into a similar agreement with other jurisdictions upon request.

The scope of these changes encompasses all legal entities and legal arrangements registered with the Companies Registry.

Under the new regime, information on beneficial ownership of all legal entities in Jersey will be centralised on the central register (due to the enhanced updating requirement) and this will allows requests to be responded to far quicker, making the regime particularly effective for information exchange.

The changes proposed affect where information is held and not whether information is available in the Island. Presently information is held either in the vetted central register or with the TCSP, or both. The changes will ensure that the adequate, accurate and current information presently available can be accessed from one source, the Central Register, thereby ensuring the more speedy access required by law enforcement authorities.

Sound Business Practice Policy

The Sound Business Practice Policy[3] sets principles regarding the activities that the JFSC consider sensitive and issued pursuant to the COBO regime to provide enhanced review where a company is conducting a form of business that is considered sensitive. The Sound Business Practice Policy was formed in consultation with Government authorities and the industry.

The function of administering the COBO regime rests with the JFSC by virtue of Article 6(b) (i) of the Commission Law. Consequently, the JFSC's guiding principles (Article 7 of the Commission Law) are relevant and, in discharging its functions, the JFSC may take into account any matter which it considers appropriate, but shall in particular have regard to:

- the reduction of the risk to the public of financial loss due to dishonesty, incompetence, malpractice or the financial unsoundness of financial service providers;
- the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- the best economic interests of Jersey; and
- the need to counter financial crime both in Jersey and elsewhere.

In addition to the activities listed in the Tables to the Policy, the Policy also states that applicants should also look to ensure that any application is in line with the

[3] https://www.jerseyfsc.org/pdf/SBP-Policy-Nov-2014.pdf

Government statement on abusive tax schemes issued on 29 July 2014[4] and any guidance notes issued by Jersey Finance expanding on the principles advocated in the Government statement. The JFSC and the Registrar will have regard to the Government statement and guidance notes when considering any application.

Individual entities

a) Companies

	Live private companies	Live public companies	Live cell companies	Total
As of 31 December 2014	31,376	725	616	32,717
As of 31 December 2015	31,674	748	641	33,063
As of 31 December 2016	30,765	856	636	32,257

A company will be incorporated under the Companies Law and is recorded in a public register held by the Registrar of Companies (the "Registrar"). This records the company name, date of incorporation, legal form and status, and the address of the registered office. The following are also held by the Registrar and available to the public:

- By virtue of Article 7 of the Companies Law, the name and address of each founder and, with respect to public companies, the name, address, nationality, occupation and date of birth of each director at the time of incorporation.
- By virtue of Article 7 of the Companies Law, a copy of the company's memorandum and articles of association (containing regulating powers);
- By virtue of Article 71 of the Companies Law, the name and address of registered shareholders on 1 January of each year; and
- By virtue of Article 71 of the Companies Law (in the case of a public company, subsidiary of such a company, or company which is deemed to be a public company), the name, address, nationality, occupation and date of birth of every director on 1 January of each year.

Companies may be incorporated with limited or unlimited liability. They may be limited by shares or by guarantee. They may be 'public' companies or 'private' companies. They may issue shares with and without a "par" value.

The Companies Law, amongst other things, sets out how a company shall be formed, incorporated, and operated. It also sets accounting and auditing requirements and sets out the procedure for winding-up a company. The Companies Law also provides for investigatory powers conferred on the Chief Minister, the Attorney General or the JFSC (as applicable) in order to investigate the affairs of a company in appropriate

[4] http://www.jerseyfsc.org/pdf/CMD-Abusive-Tax-Statement-20140729.pdf

circumstances. All companies must prepare annual accounts in accordance with generally accepted accounting principles. Public companies in accordance with Article 105 of the Companies Law must file those accounts with the Registrar (whereupon they may be inspected by a member of the general public).

In exercising its guiding principles set out in Article 7 of the Commission Law and by virtue of its powers conferred to it by the COBL and COBO, the JFSC keeps and publishes a list of sensitive activities, which as a matter of policy, are considered to pose reputational risks to Jersey. Any company wishing to engage in such activities must notify the JFSC in the first instance. This is detailed in the Sound Business Practice Policy of the JFSC issued in November 2014.

In practice where, on an application for the formation of a company, the Registrar is of the opinion that the formation of the company would not be in the public interest, the Registrar must refer the application to the court (Article 8 of the Companies Law) or the JFSC, using its powers under the Control of Borrowing Order, is able to refuse to issue a consent (a COBO consent). Absent consent under the COBO, a body corporate cannot issue any shares (even to the subscribers) and cannot therefore be incorporated. As an alternative to refuse to incorporate, the JFSC may opt to apply conditions to the incorporation. Indeed this has become the norm since it is through this conditioned process that the Registry collects beneficial ownership information upon change of beneficial owner. However, additional and bespoke conditions are also applied (i.e. every COBO consent is issued subject to the condition that the approval of the Commission is sought before any change in beneficial ownership of 25% or more).

Information relating to activities and indeed beneficial ownership is collected by the JFSC on incorporation through the incorporation application forms (C2A or C2B forms).

Table A sets out information collected by the Companies Registry, in respect of Companies as part of the ongoing regulatory requirements of legal entities.

Table A

Legal Entity	Publically available information	Information held by the Registry and/or made accessible to tax authorities (as applicable)
Companies – incorporated under the Companies (Jersey) Law 1991	- Registered office - Company registered number - Memorandum and Articles of association. The memorandum must include the following: • The name of the company; • Whether it is a public or private company; • Whether it is a par value company, a no par value company or a guarantee company; • The full name and address of each founder. The address of the company's registered office on incorporation.[5] Where a company is to be a public company, the statement shall provide particulars with respect to each director in accordance with Article 7 of the Companies Law Each company must provide an annual return that lists the legal owners of the company as at 1 January each year.[6] On an annual basis, public companies must also provide details of their directors to the Registrar. Where basic information changes the	- By virtue of the Control of Borrowing (Jersey) Order 1958, the JFSC requires disclosure of the name, address, date of birth and occupation of each person that is to have a 10% or more beneficial interest in the company (except in the case of an owner that is listed on an IOSCO compliant or regulated market as defined by the Money Laundering (Jersey) Order 2008). - Beneficial owner information is held centrally by Registry and is available to the JFSC and tax authorities. [The Exchange of Notes agreement with UK now means that there is an international commitment to share information via FIU units on non-urgent requests within 24 hours and urgent requests within 1 hour.] Every company must maintain a register of members and, inter alia, enter into it: • The number of shares held by the member; • If the shares are numbered, their numbers; and • If the company has more than one class of shares the class of classes held by the member.[7] A company must also maintain a register of directors in Jersey.[8] The

[5] Please note that Jersey does not have a concept of "registered agent." Instead, it requires each entity to have a registered office in Jersey (Article 7 of the Companies Law).

[6] Companies Law, Article 71.

[7] Companies Law, Article 41.

[8] Companies Law, Article 83.

	Registrar requires notification of that change at the time of change or as part of an annual return.	register may be inspected by any member (shareholder) of the company, any director, and by the Registrar. In addition, public companies (and subsidiaries of public companies) must make the register of directors open to inspection by any person upon payment of the prescribed fee.

NOTE: The general public is able to access legislation via www.jerseylaw.je. Explanatory information is also available on all types, forms and basic features of legal entities and arrangements. Policies and procedures such as Guidance on information to be provided before registration of a legal person is available on the Registry website: www.jerseyfsc.com. This includes: copies of application forms, including guidance such as the Registry Sound Business Practice Policy and the Registry Processing Statement.

Companies are permitted to have a corporate director that: (i) is a company registered and supervised by the JFSC to provide director services pursuant to the Financial Services Law; and (ii) does not itself have any corporate directors. Otherwise, corporate directors are not permitted. "Nominee" directors are not recognised in legislation.

Companies need to keep their register of shareholders/members up to date at all times. Companies need to provide details to the Registrar on an annual basis to update the publically available register. In accordance with Article 45 of the Companies Law, any person on payment of a fee to the company may inspect the register of members.

In the case of a company that is carrying on business regulated by the JFSC, it is the JFSC's policy that all directors should be natural persons. This policy position is set out in the JFSCs three licencing policies for: (i) banking business; (ii) insurance business and (iii) financial service business that require a registration under the Financial Services Law.

Cell companies

The concept of cell companies was first introduced to Jersey in February 2006. In addition to the widely recognised structure of a protected cell company ("PCCs"), Jersey also introduced a completely new concept – the incorporated cell company ("ICC"). They are both allowed under the Companies Law. The key issue which differentiates both types of cell company from traditional (non-cellular) companies is that they provide a flexible corporate vehicle within which assets and liabilities can be ring-fenced, or segregated, so as only to be available to the creditors and shareholders of each particular cell.

In all respects in terms of obligations and record keeping, each PCC is required to comply with the same legal obligations as outlined above in the Companies section.

In an ICC, the cells are each individual companies and able to hold assets in their own name and therefore each such cell has the same record keeping requirements as outlined by the Companies Law.

A PCC is a single legal entity within which there may be established one or more protected cells. Each protected cell, despite having its own memorandum of association, shareholders and directors, as well as being treated for the purposes of the Companies Law as if it were a company, does not have a separate legal identity from the PCC itself. Accordingly, where a cell wishes to contract with another party, it does so through the PCC acting on its behalf.

In order to ensure that creditors and third parties are aware of this position, a director of a PCC is under a duty to ensure counterparties know or ought reasonably to know that the PCC is acting in respect of a particular cell (Article 127YR Companies Law). A director who fails to notify counterparties to a transaction that the PCC is acting in respect of a particular cell and to reflect this accurately in the minutes of the PCC or protected cell is guilty of an offence under Article 127YR(3) of the Companies Law and punishable with a fine. It should be stressed that a director of a cell does not have any duties or liabilities in respect of the cell company in relation to the cell or any other cell of the cell company by virtue of their directorship of a particular cell (Article 127YDA(5)) and, accordingly, is not entitled to any information in respect of the cell company or the cells to which he is not a director (Article 127YDA(6)).

Under Article 127YDA(1) of the Companies Law, a cell of a PCC shall have the same registered office and secretary as the protected cell company. That registered office must be in Jersey.

A cell of a PCC is created on the day specified in the certificate of recognition in relation to the cell as being the date on which the cell was created.

In contrast, an incorporated cell of an ICC is a completely separate legal entity, with the ability to enter into arrangements or contracts and to hold assets and liabilities in its own name. As a result of Article 127YD(1)(b) of the Companies Law, a cell of an incorporated cell company is a company and treated as such for the purpose of the COBO and application of the Money Laundering (Jersey) Order 2008.

Article 2 of the COBO provides that a body corporate incorporated under the law of Jersey shall not, without the consent of the JFSC:

- for any purpose issue any shares; or
- admit any person to membership otherwise than by reason of the issue or transfer of shares.

The JFSC administers the COBO and considers shares issued by a cell of a PCC to be shares that are issued by a constituent part of a body corporate. Accordingly, at the time that an application is made for a cell to be granted a certificate of recognition under the Companies Law (i.e. to be created), the JFSC will request information on any individual who it is known by the applicant at the time will hold an interest of 10% or more of the shares of the cell before giving its consent under the COBO. The COBO

does not limit the factors that the JFSC may consider in making the decision as to whether or not consent will be given in a specific case. In practice, it expressly asks for information on date of birth, occupation, address, and place of birth of shareholders. Guidance to completing the C2A incorporation application form was last revised on 24 March 2015 to incorporate the three tier test concerning beneficial owners and controllers of the AML/CFT Handbook. This is currently being revised so as to incorporate the requirements set out in the enhanced policy on beneficial ownership.

Article 12 of the COBO further provides that the JFSC may grant its consent subject to conditions. In addition to the initial disclosure, the conditions will include the requirement to seek and obtain the JFSC's prior approval to any subsequent changes to the ownership of that cell. If, however, the cell is provided with any services by a registered trust and company services provider, or the combined effect of all changes to the ownership of the cell is that all individuals hold less than 25% of the shares of the cell, prior approval by the JFSC will not generally be needed. The threshold to be applied is on a risk based approach where a TCSP administers the cell in accordance with AML/CFT requirements. Post incorporation, and on change of beneficial ownership, the Registry reviews the position on a case by case basis generally applying a 25% threshold for the reporting obligation to be triggered.

In addition, the PCC and each cell are required to have a registered office in Jersey (which will be the same address). The provision of a registered office or business address for a company by way of business is a regulated activity pursuant to Schedule 2 of the Proceeds of Crime Law. As such, trust and company services providers are subject to the CDD measures of the Money Laundering Order and, pursuant to Articles 2 and 3, are under an obligation to identify and verify the identity of the beneficial owners and controllers of the PCC. In the case of a PCC, the JFSC considers that this will include information on the cell company and all of its constituent parts (the cells).

The provision of a registered office service is covered in the trust company business sector specific section of the AML/CFT Handbook. Paragraph 57 of that section says that (save where a statutory exemption is available) a relevant person that is to provide an address to a company must collect relevant identification information on the persons who are the beneficial owners and controllers of the company before the time that the address is first provided and then subsequent to provision of that address (when there is a change in the persons who are the beneficial owners and controllers of the legal body or where there is a change to information previously provided). As explained above, in the case of a PCC, this will include information on the cell company and all of its constituent parts (the cells).

All records delivered to the Registrar (as distinct from the JFSC) are accessible by the public, including online.

In addition to the beneficial ownership and/or controller information collected in accordance with the requirements outlined in the AML/CFT Handbook, the JFSC (using its powers under COBO) applies a 10% threshold in respect of "ultimate beneficial owners" on incorporation. This policy should be viewed separately to the requirements outlined in the AML/CFT Handbook. The JFSC requires the details of any individuals with a 10% or more interest in the company to be completed on

incorporation. The JFSC's policy in relation to the provision of ultimate beneficial owner details was set, after consultation, prior to the introduction of the amended AML/CFT Codes of Practice in February 2008 and revised most recently in March 2015. The current position is that, inter alia, at the point of incorporation of a Jersey company, up front disclosure of ultimate beneficial owners holding a 10% or more interest is required.

Through the information contained in those records, competent authorities are able to link a legal entity with a specific TCSP, thus locating the party charged with responsibility for ascertaining and assessing beneficial ownership information. In addition, beneficial ownership information will also be provided to the JFSC upon incorporation. With respect to beneficial ownership information maintained by TCSPs, Article 8 of the Supervisory Bodies Law grants the JFSC a wide range of powers to access any information and documentation held by trust and company services providers. Pursuant to the provision, the JFSC may require the production of information, the provision of answers to questions posed, and access to premises. Law enforcement may apply for a court order to access any information and documentation held by the trust and company services provider. The FIU and Comptroller of Taxes may also access information using statutory powers.

b) Partnerships

In addition to companies established pursuant to the Companies Law, Jersey law allows for the registration of LLPs (pursuant to the Limited Liability Partnerships Law) and of ILPs (pursuant to the Incorporated Limited Partnerships Law), SLPs (pursuant to the Separate Limited Partnerships Law) as well as LPs (pursuant to the Limited Partnerships Law).

Limited liability partnerships

In 1997 Jersey enacted a Limited Liability Partnerships Law (with a view to enabling the use of Jersey limited liability structures by professional firms and other partnerships in which the partners take an active management role.

Historically, in order to provide protection to the creditors of Jersey LLPs, the 1997 law required a Jersey LLP to maintain a £5,000,000 bond from a bank or other financial institution, which would pay out on the LLP's insolvency. That requirement proved a barrier to usage and, as a consequence, Jersey LLPs were not previously viewed as an attractive choice of structure and this is why there were so few registered in Jersey.

In 2013, an amendment was made to the LLP Law where the requirement for the £5,000,000 bond was removed. In its place, creditor protection was maintained through the filing by an LLP of an annual solvency statement in a specified form. Withdrawals of LLP property or its value by partners or former partners are (as a general rule) only permitted in circumstances where a solvency statement has been filed in the 12-month period immediately preceding the withdrawal. The solvency statement is a 12-month forward-looking statement, and is similar to the solvency statements already used under the Jersey Companies Law in connection with

distributions. The amendment therefore brings creditor protection for LLPs in line with the provisions that apply to Jersey companies. There are now 26 LLPs registered.

In terms of information on beneficial ownership and control for LLPs, the COBO regime applies and therefore the JFSC hold information on beneficial ownership and control (in the same manner as for Companies) which is capable of being exchanged with tax authorities.

Below is an outline of the LLP regime: -

An LLP in Jersey must have at least two partners (which can include natural persons or corporate or non-corporate bodies) carrying on business with a view to profit. The partners must agree to contribute effort and skill to the LLP business, to share profits and that each partner has an interest in the property of the LLP. There is no requirement for any partners of the LLP to be resident in Jersey but the LLP must be registered and in order for an LLP to create partnership interests, a COBO consent must be obtained from the JFSC.

In an LLP each partner has limited liability and can take part in the management of the LLP. However, an LLP must have at least one "designated partner" who is required under the Limited Liability Partnerships Law to carry out certain administrative functions.

LLPs are registered by submitting a declaration to the Registrar at the JFSC per Article 16 of the Limited Liability Partnerships Law. Amongst other things, the declaration (which is available to the public) must state:

- Its name;
- The address of the registered office of the LLP; and
- The full name and address of each partner (indicating which is to be a designated partner).

The declaration must also set out core details in relation to the LLP, including its name, registered office, intended partners and activities.

As already identified, an LLP is a separate legal person (but not a body corporate) distinct from its partners. Accordingly, an LLP can enter into contracts, own property and sue and be sued in its own name. An LLP is liable for its own debts and losses; in particular, no judgment can be enforced against any LLP property unless that judgment is granted against the LLP (although creditors of a partner may have recourse to that partner's interest in the LLP).

Under the Limited Liability Partnerships Law, an LLP can hold property in its own name, or alternatively property can be held by any person on behalf of the LLP. Subject to the LLP agreement, and as long as there are at least two partners in the LLP, such

property holding arrangements will continue notwithstanding any change in the persons who are partners in the LLP.

A partner (or former partner) in an LLP has limited liability and so will not be liable for the debts or losses of the LLP (including any debt of, or loss caused by the act of, another partner in the LLP), unless the losses are caused by that partner (or former partner). A partner may be liable to return property (including profits) withdrawn by that partner from the LLP in certain situations, including:

a) if the LLP is unable to pay its debts at the time of such withdrawal, or the LLP becomes unable to pay its debts as a result;

b) if the withdrawal was made otherwise than in the ordinary course of affairs of the LLP and the LLP became unable to pay its debts within six months; or

c) if no prescribed "specified solvency statement" is given in the twelve months before the withdrawal, or the specified solvency statement was given without reasonable grounds

Whilst the LLP agreement (if it is in writing) is a private document, the names and addresses of the partners of the LLP must be disclosed to the Registrar on initial registration and by way of an annual declaration (similar to an annual return for a company) in accordance with Article 18(1) of the Limited Liability Partnerships Law and so will be available to the public. The annual declaration must be filed before the end of February of each year and it must state the name and address of every person who, on the 1st January of that year was a partner in the partnership. Failure to submit an annual declaration means that the designated partner is guilty of an offence. No accounts need to be filed in relation to the LLP (unless the Jersey LLP is undertaking certain types of financial service business).

Unless an LLP agreement requires otherwise, it is not necessary for an LLP to appoint an auditor or have its accounts audited. Records must be kept at its registered office. These records include details of the partners, a copy of the registration declaration and other statements delivered to the Registrar (including any specified solvency statements) and a copy of the LLP agreement (if it is in writing). All partners are entitled to inspect the records.

In summary, the Limited Liability Partnership Law deals, amongst other things, with all key matters during the lifecycle of an LLP from registration through to dissolution. Inter alia, it includes provisions relating to the relations of partners with one another and third parties and the liability of the LLP and partners and former partners. Accounting records must be kept that are sufficient to show and explain the partnership's transactions and are such as to disclose with reasonable accuracy the financial position of the partnership. LLPs are owned and managed by their partners.

Limited partnerships

A limited partnership is a partnership between one or more 'general' partners (who manage the partnership) and one or more 'limited' partners (passive investors who have no involvement in the day to day management of the partnership). While general partners have unlimited liability, a limited partner's liability is limited (subject to certain

restrictions) to the difference (if any) between the amount which they have actually contributed to the partnership and the amount they have agreed to contribute to the partnership.

Limited Partnerships are registered with the Registrar under the Limited Partnership (Jersey) Law 1994). The Registrar shall not issue a certificate unless a declaration is signed by each person who, on formation, is to be a general partner. The declaration and certificate issued by the Registrar are publicly available.

In accordance with Article 4 of the Limited Partnership Law, the declaration must include; the name, the intended address of the registered office, the full name and address of each general partner or the place where it is incorporated and its registered or principal office, the term (if any) . Under Article 5 of the Limited Partnership Law, if any change is made or occurs in any of the particulars delivered in the declaration (other than a change in the registered office of the partnership), the nature of the change must be notified to the Registrar within 21 days.

Pursuant to Article 32 of the Limited Partnership Law, a person may inspect a document delivered to the Registrar under the Limited Partnership Law and may require a certificate of the registration of a declaration or a copy certified of any other document or part of any other document delivered to the Registrar under the Limited Partnership Law.

In terms of information on beneficial ownership and control for Limited Partnerships, the COBO regime applies and therefore the JFSC holds information on beneficial ownership and control (in the same manner as for companies) which is capable of being exchanged with tax authorities.

A Jersey limited partnership has the following essential characteristics:

- it does not have its own legal personality separate from its partners;
- it must have at least one limited partner and one general partner who are separate persons;
- a limited partner in a limited partnership has, notwithstanding the nature of his contribution, only the right to demand and receive money in return for his contribution, unless there is a statement to the contrary in the partnership agreement or all the partners in the limited partnership consent to some other manner of returning the contribution;
- a limited partner in a limited partnership has no authority or power to bind the partnership, responsibility for managing the limited partnership rests exclusively with the general partner(s) and limited partnership property must be held by a general partner; no maximum limits on the numbers of partners; no upper limit on the number of limited partners; no requirement that the general partner be Jersey-resident; a general or limited partner may be a corporate body, including

a limited liability company; accounts may be maintained in any currency (including euro);

- partnership contributions can be made in the form of money, property or other services; and
- no requirement on the general partner to make any capital contribution to the partnership.

Following the delivery of a declaration to the Registrar, a limited partnership will be registered under Article 4 of the Limited Partnerships Law and is recorded in a public register held by the Registrar. Inter alia, the declaration (which is available to the public) must state:

- Its name;
- The address of the registered office in Jersey of the limited partnership; and
- The full name and address of each general partner.

Under Article 5, if any change is made or occurs in any of the particulars delivered in the declaration (other than a change in the registered office of the partnership), the nature of the change must be notified to the Registrar within 21 days.

A limited partnership must keep at its registered office the full name and address of each limited partner who is an individual, or in the case of a body corporate, its full name and place where it is incorporated, and its registered or principal office (see Article 8 of the Limited Partnership Law). The same applies to a SLP and ILP (as detailed below). It is an offence to fail to comply with this requirement punishable by:

- In the case of a limited partnership - a fine not exceeding level 2 on the standard scale (£500) and, in the case of a continuing offence to a further fine not exceeding level 1 (£50) on the standard scale for each day on which the offence so continues. With effect from 20 September 2016, these fines have increased to £1,000 for a level 2 and £200 for a level 1 fine.
- In the case of a SLP and ILP – a fine of level 3 on the standard scale (£5,000). This has now been increased with effect from 20 September 2016 to £10,000.

The Limited Partnerships Law, amongst other things, deals with all key matters during the lifecycle of a partnership from registration through to dissolution. Inter alia, it includes provisions dealing with the rights and obligations of the general partner(s) and liability of limited partners. Accounting records must be kept that are sufficient to show and explain the partnership's transactions and are such as to disclose with reasonable accuracy the financial position of the partnership.

The Limited Partnerships Law retains substantially the customary law of partnerships in Jersey but provides for a category of partner known as a 'limited partner'. Limited partnerships are owned by their partners. Generally, management is by just one of the partners, known as the general partner. A limited partner's liability is limited to the amount of his contribution to the partnership, provided he does not take part in the

management of the partnership. A limited partnership must have at least one general partner and one limited partner and must have a partnership agreement.

Separate Limited Partnerships and Incorporated Limited Partnerships

In 2011 two new partnership forms were introduced by the Separate Limited Partnerships (Jersey) Law 2011 and the Incorporated Limited Partnerships (Jersey) Law 2011. Save for certain key differences outlined below, the basic structure of the separate limited partnerships ("SLP") and the incorporated limited partnerships ("ILP") is very similar to the limited partnership, and provisions outlined above apply. However, unlike LPs, SLPs and ILPs both have distinct legal personality (i.e. both SLPs and ILPs are "persons" distinct from their partners). Accordingly, SLPs and ILPs are, for example, able to contract, hold property, sue and be sued purely in their own name. This is in contrast to LPs which may only do so through their general partner. Aside from this additional feature, SLPs operate in essentially the same way as existing LPs. The general partner of an SLP (but not an ILP) is also able to contract, hold property, sue and be sued on behalf of the partnership like a general partner of an LP if this is preferred.

In accordance with Article 4 of the Separate Limited Partnerships Law and Article 4 of the Incorporated Limited Partnerships Law, a declaration on registration must be submitted to the Registrar and this shall include: the name, the intended address, the full name and address of each general partner that is an individual or, in the case of a general partner who is a body corporate, the place where it is incorporated and its registered or principal office, the term for an Separate Limited Partnership (if any) and for an Incorporated Limited Partnership that a partnership agreement has been executed. The declaration and certificate issued by the Registrar are publicly available.

Pursuant to Article 36 of the Separate Limited Partnership Law and Article 29 of the Incorporated Limited Partnership Law, a person may inspect a document delivered to the Registrar and may require a certificate of the registration of a declaration or a copy certified of any other document or part of any other document delivered to the Registrar under the Separate Limited Partnership Law or Incorporated Limited Partnership Law (as applicable)

In terms of information on beneficial ownership and control for SLPs and ILPs, the COBO regime applies and therefore the JFSC holds information on beneficial ownership and control (in the same manner as for Companies) which is capable of being exchanged with tax authorities.

SLPs

An SLP must have at least one general partner and one limited partner. An SLP is required to have a partnership agreement although this will not be publicly available. An SLP may be formed for any lawful purpose. A declaration must be filed with the Jersey Registrar in order to establish the SLP. These are substantially the same requirements as for limited partnerships and it will simply be a matter for the partners to decide to register under the LP Law or the SLP Law, depending on whether they wish the limited partnership to have its own legal personality or not.

The SLP is a "legal person/entity" without being a body corporate and will be able to transact, hold rights, assume obligations and sue and be sued either in its own name or in the name of its general partner. SLPs have unlimited capacity under the SLP law. The ultra vires doctrine does not apply and the SLP can do anything which a natural person can do.

ILPs

ILPs established in Jersey are body corporates whilst retaining core partnership characteristics. Unique features of Jersey ILPs include the following:

a) ILPs have perpetual succession (that is to say that an ILP continues to exist irrespective of the fate of its partners).

b) The dissolution of ILPs is governed by more detailed winding up and insolvency provisions similar to those applicable to Jersey companies.

c) The general partner of an ILP acts as an agent of the limited partnership (rather than as a partner of the partnership) and owes statutory fiduciary duties to the ILP similar to those a director owes to a Jersey company - for example, a general partner of an ILP is required to act honestly and in good faith with a view to the best interests of the ILP. The general partner also owes the usual duties directly to the limited partners of the ILP.

d) The general partner of an ILP is only responsible for the debts and other obligations/liabilities of the ILP after the partnership itself has defaulted. This is in contrast to the position in respect of general partners of LPs and SLPs, which have unconditional unlimited personal liability for the debts and other obligations/liabilities of the partnership (although in practice the unlimited liability of the general partner is usually dealt with by having another LP or a limited liability company as the general partner).

e) Foundations

A foundation will be incorporated under the Foundations Law which entered into force in July 2009. Foundations are neither a company nor a trust but have some similarities to both. They are a distinct and independent legal entity created for a particular purpose and are, in effect, a purpose entity without shareholders and with or without beneficiaries.

However, a foundation resembles a company in that it is a body corporate (albeit one without shareholders) and is governed by a council in accordance with its charter and regulations in much the same way that a company is managed by its board of directors. It is akin to a trust in that a foundation must have one or more objects which may be a purpose (charitable or non-charitable) and/or be for the benefit of one or more beneficiaries. Although it shares these characteristics, and as stated above, it is neither a company nor a trust: it is best described as a distinct legal structure which

has been introduced to serve different purposes. Some of the key features of a Jersey foundation are set out below:

- They appeal to and are readily understood by those from a civil law background.
- They have legal personality and may contract or sue, in their own name.
- There is no segregation of legal and beneficial title, as with a trust.
- The founder can restrict the flow of information regarding the foundation and its property to the beneficiaries.
- They require registration.

A Jersey foundation is capable of exercising all the functions of an incorporated body, save that it cannot directly acquire, hold or dispose of Jersey immovable property, nor engage in commercial trading activities unless such activities are incidental to the attainment of its purpose.

The person who calls for the foundation to be incorporated is known as the “founder” who may be (but does not have to be) a council member and/or a beneficiary under the foundation. However, only a Qualified Person (a “Qualified Person”/”Qualified Member” for the purposes of the Foundations Law is someone who is registered with the JFSC to carry on trust company business) can actually apply for the incorporation of a foundation, although a founder can instruct a Qualified Person to apply on the founder’s behalf.

On incorporation, the Qualified Person submits the charter and a Qualified Person’s certificate to the JFSC for incorporation. The Qualified Person’s certificate must confirm that:

- the Qualified Person will become the Qualified Member on incorporation;
- the Qualified Person is in possession of the regulations and that they have been approved by the Qualified Person and the founder;
- the address stated in the certificate is the correct business address in Jersey of the Qualified Person; and
- a person has been selected to be the guardian of the foundation on incorporation in accordance with the regulations.

The JFSC can refuse incorporation if the proposed objects (which may be charitable and/or non-charitable and/or for the benefit of one or more beneficiaries) are unlawful.

The Foundation is not subject to the COBO regime. However Beneficial Ownership and Control information is required to be held by the Foundation Council and all members of the Council are required, by virtue of the Foundations Law, to ensure the Council holds records, which includes beneficial ownership and control information. As described above, the Qualified Member (who is a member of the Council) must be regulated and supervised by the JFSC, and have a business address in Jersey, which provides the JFSC with supervisory oversight and the ability to obtain information on beneficial ownership and control.

Foundations are recorded in a public register held by the Registrar, which records the foundation's name, date of incorporation and its registration number, and the name and address of the Qualified Member. Under Article 40, the foundation's charter is filed with the Registrar and is open to public inspection. It contains certain required information such as the name of the foundation, its objects, and details of any initial endowment of the foundation. Other information can be included in the charter if desired, but is not required.

The Foundations Law, amongst other things, provides for the incorporation, administration, and winding-up of foundations. The incorporation of a Jersey foundation is an activity regulated under the Financial Services Law, so that only a person who is appropriately licensed under that law can apply for the incorporation of a foundation (as outlined above).

The Foundations Law requires a foundation to have a charter and regulations, explaining the rights of beneficiaries, and the role of the council. Every foundation will have a council to organise its affairs with similar functions and duties to directors of a company.

The foundation's regulations are private. They must provide for the appointment, replacement and remuneration (if any) of its council members, how the council should operate and for the appointment and continuance of a guardian. The regulations may provide for any other matter, for example, in relation to powers, duties, and rights of the council and the beneficiaries. One or more of the members of the council must be a "qualified member". A foundation must have a guardian, charged with taking such steps as are reasonable in all the circumstances to ensure that the council carries out its function.

The founder of a foundation is the person (who may be an individual or a body corporate) who instructs a qualified person to apply for the incorporation of the foundation, regardless of whether or not that person donates any assets to the foundation. A person who donates assets to the foundation after incorporation will not be regarded as a founder, unless the regulations of the foundation provide otherwise.

As already highlighted, the Qualified Member must be a person licensed to act as a council member of foundations under the relevant provisions applying to trust company business pursuant to the Financial Services Law. The business address in Jersey of the Qualified Member will become the business address of the foundation in the Island. Statutory and financial books and records must be maintained at the business address of the foundation and must be sufficient to show and explain the foundation's transactions and disclose with reasonable accuracy its financial position.

In terms of enforcement, the Royal Court of Jersey has been given extensive powers by the Foundations Law to ensure that a foundation complies with all and any

requirements and obligations found in the Foundations Law, its charter or its regulations. Those powers include:

- the power to order amendment of a charter or regulations;
- the power to give directions;
- the power to protect the interest of minors and unborn beneficiaries under a foundation; and
- the power to dismiss and appoint a Qualified Member.

The Royal Court has confirmed that it will construe these statutory powers widely and in a manner which is equivalent to the Court's general supervisory jurisdiction in relation to trusts (see In re. A Limited [2013] JRC 075).

Foundations - set up under the Foundations Law	An application to incorporate a foundation must be accompanied by a copy of the proposed charter. The Charter The charter must state: • the name of the foundation (which must end with the word 'Foundation' or its equivalent in a different language) which must not be misleading or otherwise undesirable; • the lawful object(s) of the foundation; • information regarding winding up, dissolution and the term of the foundation; and • details of the initial endowment (if there is one) and if appropriate a statement that it may be endowed further. The charter may state: • the name(s) of the members of the first council; • any provisions regarding the amendment of the charter; and • anything which must or may appear in the regulations. A foundation must notify the Registrar of any amendment to the charter (excluding subsequent changes to members of the council). The charter and register are publicly available. Regulations (voluntary filing) A foundation may, if it wishes, have regulations regarding its administration and how its objects are to be carried out. There is no requirement to file the regulations in the public register. However, sizeable charitable purpose foundation generally request that

	regulations are placed in the public domain voluntarily or in the alternative, they request to dispense with the separate charter and regulations and simply merge their provisions together into a single publicly available document. The Foundations Law provides that regulations of a foundation must: • establish a council; • provide for the retirement, appointment, removal and remuneration of council members; • set out how decisions are to be made by the council; • set out what decisions (if any) need approval from a separate person and the identity of that person; • include provisions relating to the appointment of a guardian; and • include provisions relating to the retirement, appointment and remuneration of the guardian.

d) Incorporated Associations and Fidéicommis

Fidéicommis and incorporated associations are trusts and associations with legal personality that are permitted to hold immovable property. They are incorporated by an Act of the Royal Court pursuant to the Loi (1862) sur les teneures en fidéicommis et l'incorporation d'associations and recorded in a register held by the Judicial Greffe. The Loi provides for trusts of immovable property falling within 4 categories: i) those for objects of public utility, ii) those for commercial or industrial associations, benevolent and cultural and sporting associations, iii) those for the purpose of furthering the Anglican Church or any other religion, iv) those establishing schools and places of education (Article 1). An association may be incorporated under the same categories i) to iv) above as apply to the creation of trusts ('fidéicommis').

There are approximately 240 incorporated associations registered with the Judicial Greffe, of which all but four have a local focus – one of the four has a part local and part international focus being Durrell Wildlife Conservation Trust. The incorporated associations are established for the same restricted purposes within Article 1 of the Loi (1862) sur les teneures en fidéicommis et l'incorporation d'associations but the vast majority (71%) can be classified as having a purpose of either social services, sport or community projects. The types of bodies included within these three categories include seven bowls clubs, ten local football clubs, the Jersey Consumer Council (a consumer rights advocacy association), the Jersey Sea Cadet Corps (a maritime youth charity), the National Trust for Jersey (a heritage association) and the Jersey Battle of Flowers Association (the organiser of the annual Battle of Flowers parade).

These arrangements were not referred to in previous reports on Jersey as they were not considered to have any tax consequences, being used by local residents for predominantly local charitable activities. As they were specifically referred to for AML purposes in Jersey's Moneyval/FATF report however, they are therefore included in this report for information.

LEGAL ARRANGEMENTS

Two types of legal arrangement are discussed under this heading:

a) Trusts
b) General partnerships/common law partnerships

a) Trusts

Jersey trusts law comprises both the Trusts (Jersey) Law 1984 (the "Trusts Law"), as amended from time to time, and Jersey customary law of trusts. The Trusts Law is not a codification or complete statement of the Jersey law of trusts, and this is expressly provided for at Article 1(2), where it states: "This Law shall not be construed as a codification of laws regarding trusts, trustees and persons interested under trusts." Jersey's trust legislation is supported by a body of case-law from the Island's courts. Foreign trusts are governed by trusts laws from their jurisdictions. They are non-enforceable if they are contrary to Jersey law or if they confer any right or power or impose any obligation the exercise or carrying out of which is contrary to the law of Jersey, or to the extent that the court declares that they are immoral or contrary to public policy or if they apply directly to immovable property situated in Jersey (Article 49).

Trusts are able to be formed in Jersey either by a settlor appointing a trustee acting in a private capacity, often for family or personal arrangements or, alternatively, by appointing a professional trustee (often referred to as a TCSP acting "by way of business". In Jersey, trusts are almost in their entirety administered by TCSPs. TCSPs are required to be licensed, regulated and supervised by the JFSC and are required to comply with the relevant legislation, codes and guidance concerning AML/CFT and particularly obtaining beneficial owner and controller information.

Trusts are not subject to registration requirements under customary law or the Trusts Law. Beneficial ownership or control information is kept by the JFSC to the extent that a trust is involved in the ownership and control of a Jersey legal entity.

A trust may be established under Jersey Law without having a nexus with Jersey, i.e. without Jersey settlor, beneficiary or trustees. In such cases, information would not be available unless the trust was administered in the island.

A trust under Jersey law is a legal arrangement whereby a person (settlor) transfers assets or property to another person (trustee), who holds legal title to those assets not in his own right but (1) for the benefit of another whether or not yet ascertained or in existence or (2) for any purpose which is not for the benefit only of the trustee or (3) for both.

A trust established under Jersey law is administered by the trustee in accordance with the provisions of the trust instrument and the Trusts Law. The performance of a trustee's duties is enforced by the Royal Court of Jersey. A Jersey trust must have at least one trustee, but is not subject to any maximum under the law. A Jersey trust may have non Jersey individuals or entities as trustees and Jersey regulation of that non-resident trustee will only apply if it carries on or solicits business in Jersey.

Jersey courts have jurisdiction in all cases where the trust is a Jersey trust. In the case of a foreign trust, they have jurisdiction in three cases: a) when a trustee of a foreign trust is resident in Jersey (e.g. if it is a company incorporated in Jersey), b) where any trust property of a foreign trust is situated in Jersey or c) when the administration of any trust property of a foreign trust is carried on in Jersey. However, in Jersey, as in England and elsewhere, the court may decline to exercise its jurisdiction through the operation of the doctrine known as forum non conveniens, where it is satisfied that there is some other available forum, having competent jurisdiction, which is the most appropriate forum for the trial of the action.

Jersey trust legislation sets out specific provisions allowing a settlor to have reserved to himself or to grant to a third party certain powers, (which may include the right to amend or revoke the trust terms, to give binding instructions with respect to management of the trust property, to appoint or remove trustees, beneficiaries, enforcers, and protectors, to change the law of the trust) which shall not, of itself, affect the validity of a trust or delay the trust taking effect. Trusts are generally created by a private document to which the settlor and the trustees are the only parties. The trust instrument does not have to be filed with any public body in Jersey. Beneficiaries of a trust may be entitled to certain information regarding the trust. Trustees are required to disclose to beneficiaries any document which relates to, or forms part of the accounts of the trust.

The Jersey courts will make a determination, dependent on the facts of a particular case, as to whether they would grant a beneficiary of a trust the right to see letters of wishes, as trustees are not obliged to disclose to beneficiaries their reasons for exercising their discretionary power.

Trustees are under a duty to treat information relating to the trust confidentially, the principal exception to this duty being if they are subject to an order of the court in Jersey or if they are required to disclose information to authorities pursuant to law.

The instructions from the settlor to the trustee as to the disposition of trust assets are normally contained in a document named the trust instrument. In addition to the trust instrument it is also common for a settlor to indicate to the trustee his wishes as to the management and disposition of the trust fund in a less formal manner - in a letter of wishes - which, although not legally binding, will generally be considered by the trustee to be of persuasive effect when performing his duties.

In addition to these documents are "Trust minutes" whose purpose is to document a meeting of the trustees and the decisions made by the trustees at the meeting. Under Jersey law, trustees are generally also permitted to document decisions by way of written resolutions. There are no prescriptive legal requirements with respect to the form trustees' minutes must take and the content that minutes must include. While

there is no legal form that trust minutes must take, the content of how Trustees minute decisions should have constant reference to the framework of the Trusts Law and obligations placed upon them therein. Trustees are able to implement an approach that they consider appropriate.

Under both the customary law and the Trusts Law, one of the substantive requirements for the creation of a trust is certainty as to the identity of the beneficiaries of the trust. Accordingly, if a person cannot be identified by name or ascertained by reference in one of only two ways, then he or she cannot be a beneficiary of a Jersey trust. In addition, a trustee may commit a breach of trust if he makes a distribution to anyone that is not a beneficiary of the trust. As well as these identification requirements, Article 21(5) of the Trusts Law imposes an express obligation on the trustee to keep accurate accounts and records of his or her trusteeship, including information on the settlor, protector, beneficiaries, persons who are the object of a power, and co-trustees. Equally, records are also required to be kept by a trustee under the Taxation (Accounting Records) (Jersey) Regulations 2013. Failure to keep up to date, full and accurate records could lead to prosecution.

During the process of the MONEYVAL review of Jersey, the authorities looked to quantify the make-up of trusts administered in Jersey at para 1069 of the MONEYVAL report. It was estimated that the TCSP industry in Jersey administers in the region of 75,000 entities[9]. In comparison, the Comptroller of Taxes is aware of approximately 700 trusts that have a settlor or at least one beneficiary of the trust being resident in Jersey, of which around 150 can be said to relate to family arrangements. It can therefore be accurately concluded that the vast majority of the trusts in Jersey involve a professional TCSP and therefore are subject to the full regulatory regime. Despite this conclusion, in 2016, Jersey amended Schedule 2 of the Proceeds of Crime Law to ensure that all trustees are required to comply with the relevant parts of the Money Laundering Order regarding obtaining information on beneficial ownership and control of Jersey trusts.

b) Customary law/general partnerships/general partnerships

General partnership law in Jersey is a matter of customary law and is not governed by a specific statute. As a matter of Jersey customary law, each partner of a customary law/general partnership must know all of the other partners (i.e. beneficial owners), otherwise there cannot be a ‘meeting of minds’ (one of the essential requirements in respect of the creation of a partnership contract). Customary law/general partnerships are owned by their partners. Generally, management is by all of the partners, though this may be delegated to a management committee. The constitution normally consists of a partnership agreement. Customary law/general partnerships in Jersey are typically used by those carrying out local Jersey businesses. They are used in particular by Jersey lawyers and general medical practitioners and, to a lesser extent, by accountants and other Jersey trading businesses.

In order to practice Jersey law, a Jersey lawyer (Jersey Advocate or Solicitor under the Advocates and Solicitors (Jersey) Law 1997) must either be established in

[9] Based on data reported annually to the JFSC: 75,000 entities administered of which estimated 1:2 ratio of trusts to companies.

partnership with other Jersey lawyers or be a sole practitioner. There are approximately 20 law firms in the Island practicing as customary law/general partnerships.

Many general medical practitioners in the Island also practice in a customary law partnership. The insular authorities are aware that there are approximately 20 such partnerships in the Island.

General partnerships are not subject to any registration requirements under customary law with the Registrar. From information held within the Taxes Office from tax returns, the authorities are of the view that there are approximately 250 customary law/general partnerships operating in Jersey.

OTHER RELEVANT LEGISLATION AND CODES OF PRACTICE

Other relevant legislation includes:

- The Control of Borrowing Regime

The COBO regime is critical to the JFSC collecting information on incorporation and during the lifespan of a legal entity, in particular the JFSC uses this regime in order to collect ultimate beneficial ownership and control information in accordance with, inter alia, the Money Laundering Order. More detail is provided in the answer to question 4 of the questionnaire.

- Taxation (Accounting Records) (Jersey) Regulations 2013

The Taxation (Accounting Records) (Jersey) Regulations 2013 (the "Accounting Regulations") require every legal or natural person that is in receipt or possession of any income or of any profits arising from the carrying on of a business or letting of a property is required to make and keep adequate accounting records (Regulation 2(1)). The accounting records must be supported by relevant underlying documentation, such as invoices, receipts, certificates and vouchers (Regulation 3), and all records must be maintained for a minimum period of six years (Regulation 4(1)). These obligations apply regardless of whether the person is required to file a Jersey tax return (Regulation 2(2) and whether the information is held in the Island.

- Control of Housing and Work (Jersey) Law 2012

Any person that carries on a trade, profession or business in Jersey is required to obtain a licence from the States of Jersey's Population Office under Article 25 of the Control of Housing and Work (Jersey) Law 2012 (the "Control of Housing Law"). Licence holders must report every six months to the Population Office on their staffing levels and continued existence.

An application must be made to the Population Office using a prescribed Application for a Business Licence form, which requires details of all ultimate beneficial owners of the person to be identified. Ultimate beneficial ownership is defined in the application form as "a person who has a substantial and active interest in the running of the

undertaking". It is an offence to knowingly or recklessly provide any information that is false or misleading (Article 45). Significant changes in beneficial ownership must be notified to the Population Office within 60 days of the change (Regulation 25(3(b)). A significant change is one where a non-resident acquires an interest of 40% or more in the person (Article 25(4)(b) for companies with share capital and the Control of Housing and Work (Jersey) Law 2012: Guidance – Control Provisions for other entities or arrangements).

- Proceeds of Crime (Jersey) Law 1999

The Proceeds of Crime Law is the main piece of legislation relevant to AML provisions. The Proceeds of Crime Law includes provision for the making of the Money Laundering Order (described below) and provides for the entities who must comply with AML/CFT obligations in Schedule 2. More detail is provided in the answer to question 5.

- Money Laundering (Jersey) Order 2008

The MLO provides for various requirements related to the AML regime including the requirements for Client Due Diligence. More detail is provided in question 5.

- Proceeds of Crime (Supervisory Bodies) (Jersey) Law 1999

The Supervisory Bodies Law makes provision for the supervision of compliance by certain businesses with the AML/CFT regime. In practice the Law appoints the JFSC as the supervisor of AML/CFT for all bodies covered by AML/CFT supervision in Jersey.

- Financial Services Commission (Jersey) Law 1998

The Commission Law establishes the JFSC and sets out the governing framework within which the JFSC must operate. Of particular note are the guiding principles set out in Article 7 of the Commission Law:

"*In exercising any of its functions the Commission may take into account any matter which it considers appropriate, but shall in particular have regard to –*

> *(a) the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;*
> *(b) the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;*
> *(c) the best economic interests of Jersey; and*
> *(d) the need to counter financial crime both in Jersey and elsewhere."*

- Financial Services Commission (Financial Penalties) (Jersey) Order 2015

By virtue of the Civil Penalties Order introduced in 2015, the JFSC has the power to impose civil (financial) penalties for specified registered persons who repeatedly and seriously breach the Codes of Practice. The JFSC may now impose penalties on

registered persons up to the maximum level set out in the Schedule to the Civil Penalties Order applying the appropriate band of penalty, determined according to the nature of the contravention.

Regulated business activities

In Jersey, some activities within the financial services, banking, insurance, and investment fund sectors are regulated and may only be carried on by a licence holder, subject to certain exemptions. Persons who carry on business conducting these activities are referred to herein as "Regulated Businesses". Regulated Businesses are required under the Money Laundering (Jersey) Order to maintain relevant identity and ownership information in respect of their clients, as well as to maintain sufficient client records to enable them to reconstruct transactions.

The following activities are regulated and supervised by the JFSC (Regulated Businesses) when a person acts by way of business and carries on the following:

- deposit-taking;
- insurance business;
- investment business;
- fund services business;
- trust company business (involving the provision of company administration services, trustee or fiduciary services, or provision of services to foundations);
- general insurance mediation business; and
- money service business (bureaux de change and money transmitters)

The phrase "by way of business" is also used to determine inter alia whether a person may be subject to Jersey's AML regime which is described below. While there is no definition in Jersey's statutes on the meaning of "by way of business", this will be broadly interpreted to include any person acting with a view to obtain a reward, fees, or benefits of any kind and, holding himself out as willing to provide such services for one or more companies. The term would also cover "one off" contracts on a self-employed basis.

As at 30 September 2016, Regulated Businesses included collective investment functionaries (13), fund services business (477), AIF services business (76), insurance (335) TCSPs (858), investment licences (86), money services business (38) and banks (30).

Jersey's regulatory regime for Regulated Businesses is overseen by the JFSC which considers initial licence applications and has an ongoing review mechanism which includes powers to require information to be produced and to conduct on-site and off-site examinations of Regulated Businesses. The JFSC also has the power to set licence conditions, issue directions, appoint a manager or revoke the licence of a Regulated Business. These powers are contained in the "four regulatory laws" listed below. The Registry area of the JFSC also manages the various registers which are

required by law to be maintained by a Registrar, for example in respect of companies, limited partnerships and foundations.

Regulated Businesses are governed by one of the four regulatory laws:

- Banking Business (Jersey) Law 1991 (the "Banking Business Law");
- Collective Investment Funds (Jersey) Law 1988 (the "Collective Investment Funds Law");
- Financial Services (Jersey) Law 1998 (the "Financial Services Law"); and
- Insurance Business (Jersey) Law 1996 (the "Insurance Business Law").

These laws are supplemented by orders which create binding obligations as well as Codes of Practice. The regulatory effect of the Codes of Practice is to establish sound principles for the conduct of business and, if the JFSC has reason to believe that a registered person has failed to follow a Code of Practice it may take regulatory action including revoking registration or to issue a public statement. Regulatory action aside, Article 19(3) of the Financial Services Law says that "failure to follow a Code of Practice issued under this Article shall not of itself render any person liable to proceedings of any kind, or invalidate any transaction". However, Article 19(4) of the Financial Services Law provides that: "any Code of Practice issued under this Article shall be admissible in evidence if it appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, and shall be taken into account in determining any such question."

Similar provisions concerning the binding nature of Codes of Practice and their admissibility are included in the other regulatory laws.

Whilst the obligations created by the four regulatory laws, and their accompanying orders vary according to the relevant sector, there are some general themes in respect of the obligations imposed on licenses which are set out below.

Licensing requires that applicants and licensees be "fit and proper" persons with satisfactory competence, financial standing and employees to undertake the proposed business. The JFSC is empowered to issue directions to licensees if, for example, it is of the view that registration requirements are not being satisfied, or that it is in the best interests of a person who has an interest in the conduct of that business. A direction may impose a prohibition or restriction on a license, in respect of a particular transaction or generally in respect of the licensee, and may also require the removal of any principal person involved with the carrying on of the licensed business. The JFSC may also seek a court injunction to prevent a person from committing or continuing to commit a contravention of a license condition or a direction. The JFSC may also publish public notices concerning the licensee, or with the approval of a Court, place a licensee's business under supervision.

Upon application for a license, an applicant must provide the following information to the JFSC:

- name, and address of the licensee's registered office;
- licensee's principal place of business, if different; and

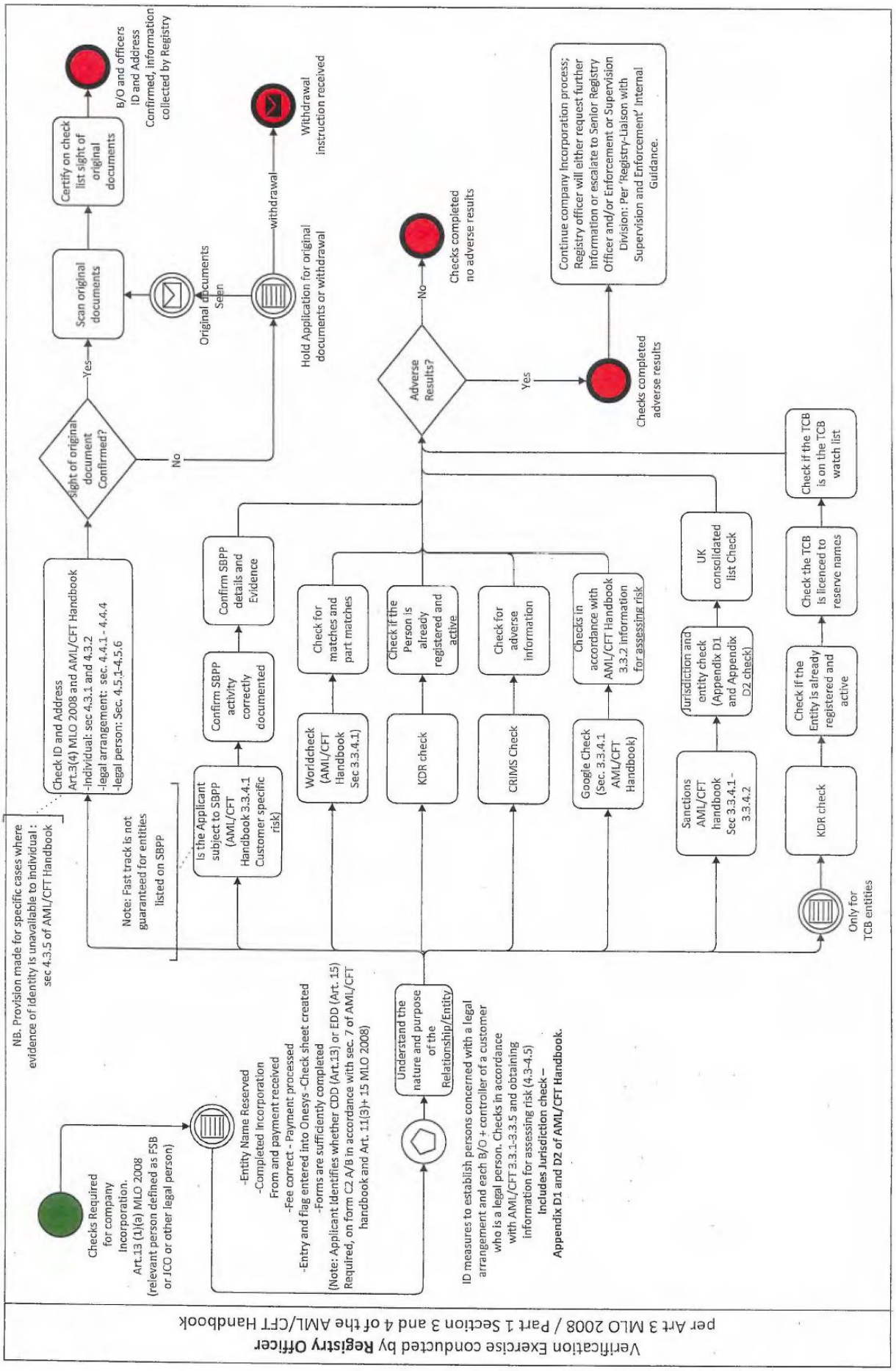
- details of the licensee's ownership structure, including:
  - in respect of a company, identifying any nominee shareholders and setting out a "detailed group ownership structure chart" in all cases where ownership is not by way of direct ownership by natural persons;
  - in respect of licensees owned by a trust, a copy of the trust deed, and identification of the beneficiaries as well as any persons who control or exercise significant influence over the trust.

There is no requirement that the registered office of the licensee is in Jersey, although where the licensee is a Jersey company or partnership, obligations in respect of registered offices under the laws governing those entities will apply – namely that the registered office must be in Jersey. A licensee must seek the consent of the JFSC of a change to a "principal" or "key" person in the licensee's business, as well as changes to shareholdings when certain ownership thresholds are affected (for example, exceeding or falling below a 25%, 33% or 50% holding).

The Codes of Practice issued by the JFSC include specific references to identity and ownership obligations for each licensed industry sector, including concerning trust company businesses (see response to question 29 below), and in respect of banking businesses (see response to question 49 below).

Some activities which would otherwise be governed by the four regulatory laws have been specifically exempted from licensing. These exemptions are set out in the four regulatory laws (see for example, Schedule 2 to the Financial Services Law and Article 3(2) of the Banking Business Law) and may also be exempted by way of an Order made by the Minister for Economic Development, or a Regulation. There are more exemptions in respect of Regulated Businesses than in respect of the anti-money laundering regime. That is, a person providing financial services may not be a Regulated Business but may still be subject to the anti-money laundering regime.

Annex 2 - A processing map of the incorporation process



PANA

Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion

European Parliament

PUBLIC HEARING

COOPERATION IN TAX MATTERS WITH EUROPEAN JURISDICTIONS

TUESDAY, 9 MAY 2017

9.00 - 12.30

Room: Altiero Spinelli A5G-3

Brussels

BACKGROUND DOCUMENTS

Gibraltar Finance
HM Government of Gibraltar

Countries and territories with which Gibraltar has tax-information-exchange arrangements in place to the OECD standard and is able to respond to requests for information

Total number of agreements spanning TIEAs, Directive and Convention: 151

Total number of agreements in force spanning TIEAs, Directive and Convention: 125

Total number of countries with which Gibraltar has an EOI relationship: 98

Total number of countries with which Gibraltar has an EOI relationship in force: 72

17 March 2017

	Bilateral tax information exchange agreement (TIEA)	Council Directive 2011 / 16 / EU on administrative cooperation in the field of taxation	Multilateral Convention on Mutual Administrative Assistance in Tax Matters	Notes (Convention)
Albania			Yes	
Andorra			NiF	Signed 5.11.13
~~Anguilla~~			~~Yes~~[1]	
Argentina			Yes	
Aruba			Yes	
Australia	Yes		Yes	
Austria	Yes	Yes	Yes	
Azerbaijan			Yes	EiF 1.10.04
Barbados			NiF	Signed 28.10.15
Belgium	Yes	Yes	Yes	EiF 1.12.00
Belize			Yes	
~~Bermuda~~			~~Yes~~[1]	
Brazil			Yes	
Bulgaria		Yes	Yes	

Burkina Fasso			NiF	Signed 25.8.16
Cameroon			Yes	
Canada			Yes	
~~Cayman Islands~~			~~Yes~~[1]	
Chile			NiF	Signed 24.10.13
China			Yes	
Colombia			Yes	
Cook Islands			NiF	Signed 28.10.16
Costa Rica			Yes	
Croatia		Yes	Yes	
Curaçao			Yes	
Cyprus		Yes	Yes	
Czech Rep.		Yes	Yes	
Denmark	Yes	Yes	Yes	EiF 1.4.95
Dominican Rep.			Yes	
El Salvador			NiF	Signed 1.6.15
Estonia		Yes	Yes	
Faroes	Yes		Yes	
Finland	Yes	Yes	Yes	EiF 1.4.95
France	Yes	Yes	Yes	EiF 1.9.05
Gabon			NiF	Signed 3.7.14
Georgia			Yes	
Germany	Yes	Yes	Yes	
Ghana			Yes	
Greece	NiF	Yes	Yes	
Greenland	Yes		Yes	
Guatemala			NiF	Signed 3.7.14
Guernsey	Yes		~~Yes~~[1]	
Hungary		Yes	Yes	
Iceland	Yes		Yes	EiF 1.11.96

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India	Yes		Yes	
Indonesia			Yes	
Ireland	Yes	Yes	Yes	
Italy	Yes	Yes	Yes	EiF 1.5.06
~~Isle of Man~~			~~Yes~~[1]	
Israel			NiF	Signed 24.11.15
Jamaica			NiF	Signed 1.6.16
Japan			Yes	
~~Jersey~~			~~Yes~~[1]	
Kazakhstan			Yes	
Kenya			NiF	Signed 8.2.16
Korea			Yes	
Latvia		Yes	Yes	
Liechtenstein			Yes	
Lithuania		Yes	Yes	
Luxembourg		Yes	Yes	
Malaysia			NiF	Signed 25.8.16
Malta	Yes	Yes	Yes	
Mauritius			Yes	
Mexico	Yes		Yes	
Moldova			Yes	
Monaco			Yes	EiF 1.4.17
~~Montserrat~~			~~Yes~~[1]	
Morocco			NiF	Signed 21.5.13
Nauru			Yes	
Netherlands	Yes	Yes	Yes	EiF 1.2.97
New Zealand	Yes		Yes	
Nigeria			Yes	
Niue			NiF	Signed 27.11.15
Norway	Yes		Yes	EiF 1.4.95

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Pakistan			NiF	Signed 14.9.16
Panama			Yes	EiF 1.7.17
Philippines			NiF	Signed 26.9.14
Poland	Yes	Yes	Yes	EiF 1.10.97
Portugal	Yes	Yes	Yes	
Romania		Yes	Yes	
Russia			Yes	
St Kitts and Nevis			NiF	Signed 25.8.16
St Lucia			NiF	Signed 21.11.16
St Vincent & Gren			NiF	Signed 25.8.16
Samoa			NiF	Signed 25.8.16
San Marino			Yes	
Saudi Arabia			Yes	
Senegal			NiF	Signed 4.2.16
Seychelles			Yes	
Singapore			Yes	
Sint Maarten			Yes	
Slovakia		Yes	Yes	
Slovenia		Yes	Yes	
South Africa	Yes		Yes	
Spain		Yes	Yes	
Sweden	Yes	Yes	Yes	EiF 1.4.95
Switzerland			Yes	
Tunisia			Yes	
Turkey	NiF		NiF	Signed 3.11.11
~~Turks & Caicos Is~~			~~Yes~~[1]	
Uganda			NiF	Signed 4.11.15
Ukraine			Yes	EiF 1.7.09
UK	Yes	Yes		EiF 1.5.08
Uruguay			NiF	Signed 1.6.16

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USA	Yes		Yes	EiF 1.4.95
~~Virgin Is, Brit (BVI)~~			~~Yes~~[1]	

EiF = entry into force; NiF = not in force (awaiting return notification triggering entry into force in case of TIEAs; partner country not yet ratified / brought into force in case of Convention).

[1] ***Whilst the British OTs and CDs have had the Convention extended to them by the United Kingdom, there exists legal doubt as regards its applicability between them.***

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States of Guernsey

Government of JERSEY

Dr Werner Langen
The Chair
Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA)
European Parliament
60 Rue Wiertz
Altiero Spinelli 13E105
B-1047 Brussels
Belgium

10 April 2017

Dear Dr Langen,

Thank you for your letters to us of 4 April 2017 inviting us to have an exchange of views with the PANA Committee at its session on 9 May 2017.

Guernsey and Jersey have long sought to strengthen our engagement with the European Parliament on the issues being addressed by the PANA Committee. In May 2015 we met with the Chair of the TAXE 1 Committee and we subsequently made a written submission to that Committee. As you know, in March 2016, our representatives participated in a hearing of the TAXE 2 Committee. Over the past two years we have also taken advantage of our regular visits to Brussels to have a valuable informal exchange of views with MEPs from a range of political groupings and nationalities.

We value this engagement, and we hope that it has been of mutual benefit. We are keen to sustain it and build upon it. We therefore accept your invitation and, as notified already to the Secretariat, we have asked our senior officials responsible for international tax and financial crime policy to represent Guernsey and Jersey at the session. They are:

Guernsey

Rob Gray, Director of International Tax Policy,
Richard Walker, Director of Financial Crime Policy

Jersey

Colin Powell, Adviser on International Affairs to the Chief Minister
George Pearmain, Lead Policy Adviser: Financial Crime

All four officials have extensive experience.

We are annexing as part of this letter a note prepared by the Channel Islands Brussels Office which we hope will be useful background in advance of the Committee's exchange of views with the Guernsey and Jersey representatives. We understand that you will be providing us with a set of questions on which you would wish to have our answers ahead of the hearing and we would be pleased to have these questions as soon as possible.

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No doubt the questions will give a guide to what your Committee will wish to focus on but the following highlights some key points taken from the attached note as evidence of our compliance with the relevant international standards and initiatives –

1. Transparency and exchange of information on request: both Guernsey and Jersey are rated by the Global Forum on Transparency and Exchange of Information for Tax Purposes as largely compliant, a rating shared with amongst others Germany, Italy, the UK and the USA;

2. Automatic Exchange of Information (AEOI) of financial account information: both Guernsey and Jersey were "early adopters" of the Common Reporting Standard on AEOI approved by the OECD Council on 15 July 2014, and passed domestic legislation to bring the standard into effect from 1 January 2016;

3. Fair tax competition: both Guernsey and Jersey have been assessed by the Code of Conduct Group on Business Taxation and their tax systems were found not to be harmful according to the Code criteria;

4. G20/OECD BEPS Standards: both Guernsey and Jersey are committed to the BEPS standards, are part of the BEPS Inclusive Framework, and have taken early action on Country by Country Reporting (BEPS Action 13);

5. AML/CFT standards: both Guernsey and Jersey are active areas of MONEYVAL (the European Regional body of the FATF) and have recently been assessed against the FATF Recommendation. Both jurisdictions were rated in the highest tier of jurisdictions assessed under the last round of assessments against the FATF Recommendations, and particularly so regarding the identification of beneficial owners and controllers of legal persons and legal arrangements.

6. Exchange of Beneficial Ownership information with other jurisdictions: both Guernsey and Jersey have a strong record of exchanging information on beneficial ownership and control of legal persons and legal arrangements with law enforcement and tax authorities in other jurisdictions to their declared satisfaction. In 2016, Guernsey and Jersey signed an 'Exchange of Notes' with the UK Government to enhance beneficial ownership information exchange between Guernsey and Jersey and the United Kingdom, this will come into effect on 30 June 2017 and will provide for information exchange in 24 hours (on a normal request) or 1 hour where the matter is urgent.

We would also draw your attention to the reference in para 12 of the attached note to the quote from Commissioner Moscovici after his meeting with us on 13 January 2016. The Commissioner stated:

> *"I very much welcome the continued active engagement of Guernsey and Jersey in the key international initiatives for fighting tax evasion, fraud and abusive tax avoidance, in which they are important partners of the EU. Their implementation of the Common Reporting Standard on automatic exchange of information from the 1st January, and their support of the BEPS programme, alongside the EU Member States, are particularly noteworthy and reinforce their standing as cooperative jurisdictions."*

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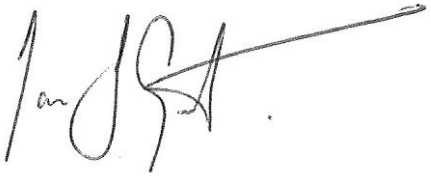
That sense of partnership is certainly how we also see it. The statement also reflects two key principles to which we attach great importance - compliance with relevant international standards and pursuing a good neighbour policy in our relationship with the EU. We hope that the Commissioner's assessment of us as cooperative jurisdictions is one shared by you and the members of your Committee, and we believe that the exchange of views at the hearing on 9 May will help contribute to this understanding.

We understand that letters of invitation to PANA hearings and the replies to those letters (with any annexes) are published on the PANA website.

Yours sincerely,



Deputy Gavin St Pier
Chief Minister
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Senator Ian Gorst
Chief Minister
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States of Guernsey

Government of JERSEY

THE CHANNEL ISLANDS AND THE EUROPEAN UNION

TAX COOPERATION

Executive Summary

"*I very much welcome the continued active engagement of Guernsey and Jersey in the key international initiatives for fighting tax evasion, fraud and abusive tax avoidance, in which they are important partners of the EU [...] and reinforce their standing as cooperative jurisdictions.*" (Pierre Moscovici, EU Commissioner, January 2016)

"*I congratulate Guernsey and Jersey on their efforts toward implementing the BEPS package, and on their important role in advancing greater international tax cooperation and transparency.*" (Angel Gurria, OECD Secretary General, October 2016)

Guernsey and Jersey (the Channel Islands) have been recognised through their actions to be reliable, active and cooperative partners of the EU and of the wider international community. Guernsey and Jersey have:

- Corporate tax policies based on two key principles: non-discrimination between resident and non-resident owned companies; and tax neutrality combined with transparency and information exchange. Both principles are underpinned by strong general anti-avoidance rules (GAAR).

- Voluntarily committed to EU Code of Conduct on Business Taxation since 2003. Their corporate tax regimes were assessed by the Code peer review process. They agreed to change domestic legislation to remove elements identified as harmful by the Code Group to ensure continued compliance with the Code, and were accepted as being Code compliant in 2011/2012. The Code Group thus confirmed that Guernsey and Jersey's tax regimes are not harmful as defined by the Code because the zero rate of corporate tax applies to resident and non-resident companies and because zero is the level of corporate taxation which generally applies.

- Voluntarily entered into equivalent bilateral arrangements with all Member States under the EU Savings Directive (EUSD) in 2004. Committed to the early adoption of the global Common Reporting Standard (CRS) on automatic exchange of information (AEOI), which was implemented into domestic legislation with effect from 1 January 2016 (and supersedes EUSD arrangements following repeal of EUSD).

- Accepted an invitation to join OECD and G20 nations in the Base Erosion and Profit Shifting (BEPS) Inclusive Framework at its inaugural meeting in June 2016. Both are committed to implementing the BEPS minimum standards, and have already introduced into domestic law the OECD standard for country by country reporting (CBCR) by large multinational corporations (BEPS Action 13).

- Been assessed by MONEYVAL, in reports published in 2016, as being amongst the best jurisdictions in the world when measured against international standards for tackling money laundering and terrorist financing.

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- Been internationally recognised as leaders in the provision of accurate, adequate and timely information on the beneficial ownership of companies; and are among those jurisdictions, including all EU Member States, that have committed to the new initiative to develop and implement a new global standard for the automatic exchange of beneficial ownership information.

- Internationally respected systems of financial regulation. Assessed in the top tier by the Financial Stability Board.

- Data protection regimes which the Commission has assessed as meeting EU standards.

Introduction

1. The Channel Islands ("the Islands") consist of the Bailiwicks of Guernsey and Jersey. They are British Crown Dependencies. They are not part of the United Kingdom, but the UK has ultimate responsibility for their external affairs and defence. The Islands enjoy a high degree of autonomy, including their own fiscal and judicial systems, and receive no financial subsidy from the UK or the EU. By virtue of Protocol 3 of the UK's Accession Treaty, the Islands are part of the Customs Union and within the Single Market for the purposes of trade in goods, but are third countries (i.e. outside the EU) in all other respects.

2. The UK referendum in June 2016 means that when the UK leaves the EU, Protocol 3 will no longer apply. However the relationship and the cooperation between the Islands and the EU in areas outside Protocol 3, including tax and financial services, are unaffected by the UK referendum result as the Islands' existing status as third countries is unchanged.

3. The OECD Convention was extended to Guernsey and Jersey in 1990 and they are part of the UK for the purposes of its membership of the OECD. OECD Decisions and Recommendations apply to Guernsey and Jersey to the same extent as they do to the UK unless the contrary is specifically stated in a particular case.

The Channel Islands as international financial centres

4. Both Guernsey and Jersey are significant net providers of liquidity and investment funds to the European economy, as has been demonstrated by various independent studies. For both Islands combined the level of banking deposits is around £207 billion and of funds is around £466 billion. These deposits and funds are drawn into the UK and the rest of Europe largely from the rest of the world and the Islands' marketing efforts are directed at increasing this flow from the Far East, Gulf and other wealth creating countries outside of Europe.

Tax policy in the Channel Islands

5. Public finances around Europe remain under pressure and EU Member States are seeking to maximise tax revenues, including by reducing tax evasion and fraud, and to prevent abusive tax avoidance. The Chief Ministers of Guernsey and Jersey have both made clear that the Islands have no desire or need to harbour abusive schemes and will continue to work with international tax authorities to eliminate them.

6. The Islands have the same need as EU Member States to protect their public finances, which are also totally dependent on direct and indirect taxation regimes designed to meet the domestic economic needs of each jurisdiction. For individuals the standard and maximum rate of income tax is 20%. Since 2008 the standard corporate rate of tax has been 0%, certain financial service activities are taxed at 10% and utilities (e.g. providers of telephone services) and companies deriving income from an interest in local property are taxed at 20% (as are large retailers in Guernsey, from 2016).

7. The tax policy of each Island is underpinned by strong general anti-avoidance rules (GAAR). In addition there are no allowances or exemptions of the sort found in many other countries which have the effect of producing effective rates of corporate tax much lower than the headline rate. With their relatively simple tax structures the Islands also have no call for tax rulings of the kind found in many other jurisdictions.

8. Although it is sometimes argued that the very existence of a standard rate of 0% corporate tax is harmful and contributes to tax avoidance, it should be recalled that the OECD itself has confirmed that "low or no taxation" is not of itself harmful – it is only harmful if it is discriminatory and is combined with lack of transparency and information exchange, neither of which is the case in either Guernsey or Jersey.

9. The standard rate of 0% corporate tax is based on two key principles. One is the Code Group principle of non-discrimination between resident and non-resident owned companies. The other is the principle of tax neutrality combined with transparency. As international finance centres, Guernsey and Jersey act as "financial entrepôts" in facilitating the investment of funds drawn from around the world into European financial markets. The return to the investors should be taxed in their home country and the business activity generated by the investment in Europe should be taxed in the jurisdiction where that activity takes place.

10. Because Guernsey and Jersey do not have many Double Taxation Agreements (DTAs) with EU Member States, there is a need to adopt a tax neutral regime - i.e. one which avoids additional taxation simply because of the use of a fund structure – in order to avoid discouraging these investment flows which in turn contribute to jobs and growth in the EU. The Guernsey and Jersey governments recognise however that for tax to be levied where it is properly due, it is necessary for the countries concerned to have information to help them with their tax assessments.

11. With this in mind Guernsey and Jersey have given their full support for the transparency principles central to the current G20, OECD and EU tax initiatives. The Islands have common cause with the EU in tackling tax evasion, fraud and aggressive tax avoidance and believe these objectives are best achieved by working in partnership, as part of the wider international community, in the development and effective implementation of internationally agreed standards, including those set by the FATF and the OECD.

<u>The Channel Islands as partners of the international community</u>

12. The Islands believe they have shown themselves by their actions to be reliable, active and cooperative partners of the EU and of the wider international community. This idea of partnership was shared by Pierre Moscovici, the EU Commissioner for Economic and Financial Affairs, Taxation and Customs. After meeting with the Chief Ministers of Guernsey and Jersey on 13 January 2016, the Commissioner commented publicly:

"I very much welcome the continued active engagement of Guernsey and Jersey in the key international initiatives for fighting tax evasion, fraud and abusive tax avoidance, in which they are important partners of the EU. Their implementation of the Common Reporting Standard on automatic exchange of information from the 1st January, and their support of the BEPS programme, alongside the EU Member States, are particularly noteworthy and reinforce their standing as cooperative jurisdictions."

The development of cooperation with the EU

13. The cooperation with the EU goes back to 2003 when the Islands voluntarily committed to the EU's Code of Conduct on Business Taxation. The Guernsey and Jersey corporate tax regimes have both been assessed by the Code peer review process (most recently Jersey in 2011, and Guernsey in 2012). The rollback measures to remove the harmful elements identified by the Group were speedily implemented to ensure continuing compliance of the regimes with the Code.

14. In 2004 Guernsey and Jersey voluntarily entered into bilateral arrangements with all Member States under the EU Savings Directive (EUSD) and they each have many Tax Information Exchange Agreements (TIEAs) and Double Taxation Agreements (DTAs) signed. All are in force with the exception of those that are waiting for ratification by the partner jurisdiction, and a small number that have been recently signed.

15. Guernsey and Jersey thus have legal frameworks for exchange of information on request (EOIR) with all Member States, either through a TIEA or DTA or through the Council of Europe/OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Guernsey and Jersey are rated largely compliant by the OECD Global Forum in respect of EOIR (the same rating as the UK and Germany),

Automatic exchange of information

16. Guernsey and Jersey committed in May 2013 to join the initiative of the G5 countries on establishing and piloting an international standard for automatic exchange of information (AEOI) between tax authorities. In late 2013 they signed intergovernmental agreements (IGAs) with the US (under FATCA) and with the UK (based on FATCA). In 2014 they acceded to the Multilateral Convention.

17. Building on the G5 initiative, the Islands joined in the joint statement on 19 March 2014 committing to the early adoption of the global Common Reporting Standard (CRS) on AEOI with the first exchange of information in relation to new accounts and pre-existing individual high value accounts taking place by the end of September 2017. Guernsey and Jersey have been closely involved in progressing this work under the auspices of the OECD. Jersey is a vice-chair of the AEOI working group of the Global Forum on Tax Transparency, of which Guernsey is also a member. Guernsey is also a member of the Peer Review Group of the Global Forum.

18. On 29 October 2014 Guernsey and Jersey were among over 50 jurisdictions to sign the Multilateral Competent Authority Agreement (MCAA) in Berlin as a further step towards implementation of the CRS. Following the repeal of the EUSD by the EU on 10 November 2015, the existing arrangements between the Islands and EU Member States under the EUSD, which are limited to the interest income of individuals, have been replaced by

automatic exchange of information from 2016 under the CRS in respect of a much wider range of entities and financial information.

19. Guernsey and Jersey sent letters to all Member States within one week of the repeal of the EUSD to confirm the suspension of the bilateral EUSD arrangements and to give the required notice of their termination, and to confirm the move to AEOI under the CRS from 1 January 2016 (with first exchange by September 2017, except in the case of Austria which will be one year later). Domestic legislation implementing the CRS was in force in both Islands by the end of 2015. In substance this delivers the same outcome as that achieved by the EU's new agreements on AEOI with Andorra, Liechtenstein, Monaco, San Marino and Switzerland,

20. Guernsey and Jersey have developed active dialogue with the European Parliament on tax issues. The Chief Ministers of Guernsey and Jersey met with the Chair of the European Parliament's special Committee on tax rulings (TAXE 1) in May 2015 and both Islands voluntarily provided written submissions to the Committee. In March 2016 officials from the Islands gave evidence at a hearing of the second special Committee (TAXE 2).

Blacklists

21. Some EU Member States include within their tax legislation a list of third country jurisdictions in regard to whom the Member State applies predefined tax measures or tax policies (e.g. a higher rate of withholding tax or enhanced due diligence procedures by financial institutions). These so-called "national blacklists" are based on assorted criteria – in some cases linked to rates of taxation and in other cases to non-cooperation (itself defined in different ways – most commonly linked to the existence of a TIEA or similar exchange of information instrument).

22. The Commission, in its Recommendation to Member States of December 2012, defined good governance in tax matters by third countries in relation to adherence to international standards of transparency and cooperation, and the absence of harmful tax measures as set out in the EU's Code of Conduct. The Commission recommended that Member States should remove jurisdictions from their national blacklists which meet these good governance standards.

23. With the combination of Agreements for Exchange of Information on Request, support for AEOI as an "early adopter" of the CRS, and general support for international tax initiatives and the EU principles of good governance, Guernsey and Jersey believe there are no grounds for their inclusion in any blacklists of so-called "non-cooperative jurisdictions". They are actively working with those Member States that still include them on their national list to achieve de-listing.

24. The Islands believe that jurisdictions identified by Member States solely on the basis of Controlled Foreign Corporation (CFC) legislation, or the need for enhanced reporting obligations based on tax rates, cannot be regarded as "black listed". This is because most countries which have CFC legislation do not see the need to have a list; and those that do have a list say they have it simply as information for the private sector.

25. On 8 November 2016 EU Finance Ministers (ECOFIN) adopted conclusions on the criteria for establishing a common EU blacklist by the end of 2017 of "non-cooperative" jurisdictions.

These criteria relate to transparency and exchange of information; fair tax competition; and G20/OECD BEPS standards (see paragraph 29 below).

26. Guernsey and Jersey are among over 90 jurisdictions to have received a letter from the EU in January 2017 inviting them to participate in the "screening" of jurisdictions by the EU. Both governments have confirmed their willingness to engage with this screening process and have stated that they are confident of being able to satisfy any objective evaluation against the EU's tax good governance criteria, given their strong record of cooperation and of implementation of international standards.

27. Both islands fully satisfy the tax transparency and anti-BEPS criteria; and fair taxation is to be judged according to the existing Code Group criteria which Guernsey and Jersey have already been assessed as satisfying.

Base erosion and profit shifting (BEPS)

28. The Governments of Guernsey and Jersey have expressed clear and full support for the actions being taken under the BEPS initiative to reach a globally fair and modern international tax system. In 2016 Guernsey and Jersey accepted the OECD's invitation to become BEPS Associates and Members of the newly-established OECD BEPS Inclusive Framework. The purpose of the Inclusive Framework is to ensure the effective implementation of BEPS on a global basis, similar to the role of the Global Forum on international tax transparency.

29. As BEPS Associates, the Islands are able to contribute to the overall development of the BEPS programme through policy dialogue and exchange of information – participating on an equal footing with OECD, G20 and many other countries and jurisdictions, including a significant number of developing countries.

30. BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. The BEPS package provides 15 Actions that will equip governments with the domestic and international instruments needed to tackle BEPS. Countries will have the tools to ensure that profits are taxed where economic activities generating the profits are performed and where value is created. These tools will also give businesses greater certainty by reducing disputes over the application of international tax rules and standardising compliance requirements.

31. The basic proposal that profits should be taxed where the economic activity that generates the profits is carried out, and where value is created, fits well with Jersey and Guernsey's historic policy of requiring regulated financial institutions such as the banks to have a real physical presence and to be of substance.

32. The Islands are watching closely the action being taken by members of the G20, the OECD and the EU to implement BEPS, particularly in respect of those parts of the package of measures developed under the BEPS project which are of greatest relevance for the Islands. The Islands have therefore noted the EU's adoption in July 2016 of the Anti-Tax Avoidance Directive (ATAD).

33. All BEPS Associates are committed to consistent implementation of the BEPS package, including its four minimum standards. Implementation of country by country reporting (CBCR) under Action 13 is one of the four minimum standards. Following industry and public consultations, Guernsey and Jersey have introduced legislation to implement into domestic law the OECD standard for extending the scope of AEOI to exchange of CBCR between tax authorities by large multinational corporations. In the EU this has been implemented through the further amendment to the Administrative Cooperation Directive (DAC4) adopted in May 2016.

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Channel Islands Brussels Office, 10 April 2017

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Government of JERSEY

THE CHANNEL ISLANDS AND THE EUROPEAN UNION

TAX COOPERATION

Executive Summary

"I very much welcome the continued active engagement of Guernsey and Jersey in the key international initiatives for fighting tax evasion, fraud and abusive tax avoidance, in which they are important partners of the EU [...] and reinforce their standing as cooperative jurisdictions." (Pierre Moscovici, EU Commissioner, January 2016)

"I congratulate Guernsey and Jersey on their efforts toward implementing the BEPS package, and on their important role in advancing greater international tax cooperation and transparency." (Angel Gurria, OECD Secretary General, October 2016)

Guernsey and Jersey (the Channel Islands) have been recognised through their actions to be reliable, active and cooperative partners of the EU and of the wider international community. Guernsey and Jersey have:

- Corporate tax policies based on two key principles: non-discrimination between resident and non-resident owned companies; and tax neutrality combined with transparency and information exchange. Both principles are underpinned by strong general anti-avoidance rules (GAAR).

- Voluntarily committed to EU Code of Conduct on Business Taxation since 2003. Their corporate tax regimes were assessed by the Code peer review process. They agreed to change domestic legislation to remove elements identified as harmful by the Code Group to ensure continued compliance with the Code, and were accepted as being Code compliant in 2011/2012. The Code Group thus confirmed that Guernsey and Jersey's tax regimes are not harmful as defined by the Code because the zero rate of corporate tax applies to resident and non-resident companies and because zero is the level of corporate taxation which generally applies.

- Voluntarily entered into equivalent bilateral arrangements with all Member States under the EU Savings Directive (EUSD) in 2004. Committed to the early adoption of the global Common Reporting Standard (CRS) on automatic exchange of information (AEOI), which was implemented into domestic legislation with effect from 1 January 2016 (and supersedes EUSD arrangements following repeal of EUSD).

- Accepted an invitation to join OECD and G20 nations in the Base Erosion and Profit Shifting (BEPS) Inclusive Framework at its inaugural meeting in June 2016. Both are committed to implementing the BEPS minimum standards, and have already introduced into domestic law the OECD standard for country by country reporting (CBCR) by large multinational corporations (BEPS Action 13).

- Been assessed by MONEYVAL, in reports published in 2016, as being amongst the best jurisdictions in the world when measured against international standards for tackling money laundering and terrorist financing.

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- Been internationally recognised as leaders in the provision of accurate, adequate and timely information on the beneficial ownership of companies; and are among those jurisdictions, including all EU Member States, that have committed to the new initiative to develop and implement a new global standard for the automatic exchange of beneficial ownership information.

- Internationally respected systems of financial regulation. Assessed in the top tier by the Financial Stability Board.

- Data protection regimes which the Commission has assessed as meeting EU standards.

Introduction

1. The Channel Islands ("the Islands") consist of the Bailiwicks of Guernsey and Jersey. They are British Crown Dependencies. They are not part of the United Kingdom, but the UK has ultimate responsibility for their external affairs and defence. The Islands enjoy a high degree of autonomy, including their own fiscal and judicial systems, and receive no financial subsidy from the UK or the EU. By virtue of Protocol 3 of the UK's Accession Treaty, the Islands are part of the Customs Union and within the Single Market for the purposes of trade in goods, but are third countries (i.e. outside the EU) in all other respects.

2. The UK referendum in June 2016 means that when the UK leaves the EU, Protocol 3 will no longer apply. However the relationship and the cooperation between the Islands and the EU in areas outside Protocol 3, including tax and financial services, are unaffected by the UK referendum result as the Islands' existing status as third countries is unchanged.

3. The OECD Convention was extended to Guernsey and Jersey in 1990 and they are part of the UK for the purposes of its membership of the OECD. OECD Decisions and Recommendations apply to Guernsey and Jersey to the same extent as they do to the UK unless the contrary is specifically stated in a particular case.

The Channel Islands as international financial centres

4. Both Guernsey and Jersey are significant net providers of liquidity and investment funds to the European economy, as has been demonstrated by various independent studies. For both Islands combined the level of banking deposits is around £207 billion and of funds is around £466 billion. These deposits and funds are drawn into the UK and the rest of Europe largely from the rest of the world and the Islands' marketing efforts are directed at increasing this flow from the Far East, Gulf and other wealth creating countries outside of Europe.

Tax policy in the Channel Islands

5. Public finances around Europe remain under pressure and EU Member States are seeking to maximise tax revenues, including by reducing tax evasion and fraud, and to prevent abusive tax avoidance. The Chief Ministers of Guernsey and Jersey have both made clear that the Islands have no desire or need to harbour abusive schemes and will continue to work with international tax authorities to eliminate them.

6. The Islands have the same need as EU Member States to protect their public finances, which are also totally dependent on direct and indirect taxation regimes designed to meet the domestic economic needs of each jurisdiction. For individuals the standard and maximum rate of income tax is 20%. Since 2008 the standard corporate rate of tax has been 0%, certain financial service activities are taxed at 10% and utilities (e.g. providers of telephone services) and companies deriving income from an interest in local property are taxed at 20% (as are large retailers in Guernsey, from 2016).

7. The tax policy of each Island is underpinned by strong general anti-avoidance rules (GAAR). In addition there are no allowances or exemptions of the sort found in many other countries which have the effect of producing effective rates of corporate tax much lower than the headline rate. With their relatively simple tax structures the Islands also have no call for tax rulings of the kind found in many other jurisdictions.

8. Although it is sometimes argued that the very existence of a standard rate of 0% corporate tax is harmful and contributes to tax avoidance, it should be recalled that the OECD itself has confirmed that "low or no taxation" is not of itself harmful – it is only harmful if it is discriminatory and is combined with lack of transparency and information exchange, neither of which is the case in either Guernsey or Jersey.

9. The standard rate of 0% corporate tax is based on two key principles. One is the Code Group principle of non-discrimination between resident and non-resident owned companies. The other is the principle of tax neutrality combined with transparency. As international finance centres, Guernsey and Jersey act as "financial entrepôts" in facilitating the investment of funds drawn from around the world into European financial markets. The return to the investors should be taxed in their home country and the business activity generated by the investment in Europe should be taxed in the jurisdiction where that activity takes place.

10. Because Guernsey and Jersey do not have many Double Taxation Agreements (DTAs) with EU Member States, there is a need to adopt a tax neutral regime - i.e. one which avoids additional taxation simply because of the use of a fund structure – in order to avoid discouraging these investment flows which in turn contribute to jobs and growth in the EU. The Guernsey and Jersey governments recognise however that for tax to be levied where it is properly due, it is necessary for the countries concerned to have information to help them with their tax assessments.

11. With this in mind Guernsey and Jersey have given their full support for the transparency principles central to the current G20, OECD and EU tax initiatives. The Islands have common cause with the EU in tackling tax evasion, fraud and aggressive tax avoidance and believe these objectives are best achieved by working in partnership, as part of the wider international community, in the development and effective implementation of internationally agreed standards, including those set by the FATF and the OECD.

<u>The Channel Islands as partners of the international community</u>

12. The Islands believe they have shown themselves by their actions to be reliable, active and cooperative partners of the EU and of the wider international community. This idea of partnership was shared by Pierre Moscovici, the EU Commissioner for Economic and Financial Affairs, Taxation and Customs. After meeting with the Chief Ministers of Guernsey and Jersey on 13 January 2016, the Commissioner commented publicly:

"I very much welcome the continued active engagement of Guernsey and Jersey in the key international initiatives for fighting tax evasion, fraud and abusive tax avoidance, in which they are important partners of the EU. Their implementation of the Common Reporting Standard on automatic exchange of information from the 1st January, and their support of the BEPS programme, alongside the EU Member States, are particularly noteworthy and reinforce their standing as cooperative jurisdictions."

The development of cooperation with the EU

13. The cooperation with the EU goes back to 2003 when the Islands voluntarily committed to the EU's Code of Conduct on Business Taxation. The Guernsey and Jersey corporate tax regimes have both been assessed by the Code peer review process (most recently Jersey in 2011, and Guernsey in 2012). The rollback measures to remove the harmful elements identified by the Group were speedily implemented to ensure continuing compliance of the regimes with the Code.

14. In 2004 Guernsey and Jersey voluntarily entered into bilateral arrangements with all Member States under the EU Savings Directive (EUSD) and they each have many Tax Information Exchange Agreements (TIEAs) and Double Taxation Agreements (DTAs) signed. All are in force with the exception of those that are waiting for ratification by the partner jurisdiction, and a small number that have been recently signed.

15. Guernsey and Jersey thus have legal frameworks for exchange of information on request (EOIR) with all Member States, either through a TIEA or DTA or through the Council of Europe/OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Guernsey and Jersey are rated largely compliant by the OECD Global Forum in respect of EOIR (the same rating as the UK and Germany),

Automatic exchange of information

16. Guernsey and Jersey committed in May 2013 to join the initiative of the G5 countries on establishing and piloting an international standard for automatic exchange of information (AEOI) between tax authorities. In late 2013 they signed intergovernmental agreements (IGAs) with the US (under FATCA) and with the UK (based on FATCA). In 2014 they acceded to the Multilateral Convention.

17. Building on the G5 initiative, the Islands joined in the joint statement on 19 March 2014 committing to the early adoption of the global Common Reporting Standard (CRS) on AEOI with the first exchange of information in relation to new accounts and pre-existing individual high value accounts taking place by the end of September 2017. Guernsey and Jersey have been closely involved in progressing this work under the auspices of the OECD. Jersey is a vice-chair of the AEOI working group of the Global Forum on Tax Transparency, of which Guernsey is also a member. Guernsey is also a member of the Peer Review Group of the Global Forum.

18. On 29 October 2014 Guernsey and Jersey were among over 50 jurisdictions to sign the Multilateral Competent Authority Agreement (MCAA) in Berlin as a further step towards implementation of the CRS. Following the repeal of the EUSD by the EU on 10 November 2015, the existing arrangements between the Islands and EU Member States under the EUSD, which are limited to the interest income of individuals, have been replaced by

automatic exchange of information from 2016 under the CRS in respect of a much wider range of entities and financial information.

19. Guernsey and Jersey sent letters to all Member States within one week of the repeal of the EUSD to confirm the suspension of the bilateral EUSD arrangements and to give the required notice of their termination, and to confirm the move to AEOI under the CRS from 1 January 2016 (with first exchange by September 2017, except in the case of Austria which will be one year later). Domestic legislation implementing the CRS was in force in both Islands by the end of 2015. In substance this delivers the same outcome as that achieved by the EU's new agreements on AEOI with Andorra, Liechtenstein, Monaco, San Marino and Switzerland,

20. Guernsey and Jersey have developed active dialogue with the European Parliament on tax issues. The Chief Ministers of Guernsey and Jersey met with the Chair of the European Parliament's special Committee on tax rulings (TAXE 1) in May 2015 and both Islands voluntarily provided written submissions to the Committee. In March 2016 officials from the Islands gave evidence at a hearing of the second special Committee (TAXE 2).

Blacklists

21. Some EU Member States include within their tax legislation a list of third country jurisdictions in regard to whom the Member State applies predefined tax measures or tax policies (e.g. a higher rate of withholding tax or enhanced due diligence procedures by financial institutions). These so-called "national blacklists" are based on assorted criteria – in some cases linked to rates of taxation and in other cases to non-cooperation (itself defined in different ways – most commonly linked to the existence of a TIEA or similar exchange of information instrument).

22. The Commission, in its Recommendation to Member States of December 2012, defined good governance in tax matters by third countries in relation to adherence to international standards of transparency and cooperation, and the absence of harmful tax measures as set out in the EU's Code of Conduct. The Commission recommended that Member States should remove jurisdictions from their national blacklists which meet these good governance standards.

23. With the combination of Agreements for Exchange of Information on Request, support for AEOI as an "early adopter" of the CRS, and general support for international tax initiatives and the EU principles of good governance, Guernsey and Jersey believe there are no grounds for their inclusion in any blacklists of so-called "non-cooperative jurisdictions". They are actively working with those Member States that still include them on their national list to achieve de-listing.

24. The Islands believe that jurisdictions identified by Member States solely on the basis of Controlled Foreign Corporation (CFC) legislation, or the need for enhanced reporting obligations based on tax rates, cannot be regarded as "black listed". This is because most countries which have CFC legislation do not see the need to have a list; and those that do have a list say they have it simply as information for the private sector.

25. On 8 November 2016 EU Finance Ministers (ECOFIN) adopted conclusions on the criteria for establishing a common EU blacklist by the end of 2017 of "non-cooperative" jurisdictions.

These criteria relate to transparency and exchange of information; fair tax competition; and G20/OECD BEPS standards (see paragraph 29 below).

26. Guernsey and Jersey are among over 90 jurisdictions to have received a letter from the EU in January 2017 inviting them to participate in the "screening" of jurisdictions by the EU. Both governments have confirmed their willingness to engage with this screening process and have stated that they are confident of being able to satisfy any objective evaluation against the EU's tax good governance criteria, given their strong record of cooperation and of implementation of international standards.

27. Both islands fully satisfy the tax transparency and anti-BEPS criteria; and fair taxation is to be judged according to the existing Code Group criteria which Guernsey and Jersey have already been assessed as satisfying.

Base erosion and profit shifting (BEPS)

28. The Governments of Guernsey and Jersey have expressed clear and full support for the actions being taken under the BEPS initiative to reach a globally fair and modern international tax system. In 2016 Guernsey and Jersey accepted the OECD's invitation to become BEPS Associates and Members of the newly-established OECD BEPS Inclusive Framework. The purpose of the Inclusive Framework is to ensure the effective implementation of BEPS on a global basis, similar to the role of the Global Forum on international tax transparency.

29. As BEPS Associates, the Islands are able to contribute to the overall development of the BEPS programme through policy dialogue and exchange of information – participating on an equal footing with OECD, G20 and many other countries and jurisdictions, including a significant number of developing countries.

30. BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. The BEPS package provides 15 Actions that will equip governments with the domestic and international instruments needed to tackle BEPS. Countries will have the tools to ensure that profits are taxed where economic activities generating the profits are performed and where value is created. These tools will also give businesses greater certainty by reducing disputes over the application of international tax rules and standardising compliance requirements.

31. The basic proposal that profits should be taxed where the economic activity that generates the profits is carried out, and where value is created, fits well with Jersey and Guernsey's historic policy of requiring regulated financial institutions such as the banks to have a real physical presence and to be of substance.

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