Channel Islands
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THE CHANNEL ISLANDS AND THE EU

FINANCIAL SERVICES

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 not services and as such are treated as "third countries" in financial services regulation. The Islands are part of the Sterling Zone and by virtue of equivalence under the EU's Wire Transfer Regulation are part of the UK's payment and clearing system.

2. 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 – further details can be found on the OECD's website.

The Channel Islands as international financial centres

3. The economies of Guernsey and Jersey are services based. In particular over the past 40 years both Islands have developed into important international financial centres. Financial services firms are major employers in the Islands, with over a quarter of the workforce (19,000 jobs) employed in the sector.

4. The combined level of banking deposits across the Islands in Q3 2015 was around £213 billion and the level of funds was £443 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.

5. There are 30 licensed banks in Guernsey and 33 regulated banks in Jersey in 2015 and both jurisdictions have introduced their own deposit guarantee schemes. Many banking operations are branches or subsidiaries of parent banks based in the EU, including HSBC, BNP Paribas and Deutsche Bank.

6. Although Channel Islands funds invest heavily into the UK, it is understood that much of this flows onwards into mainland Europe. For example there are a number of Channel Islands based infrastructure funds investing in a variety of projects including renewable energy (see text boxes below). The activities of these funds support European policy on energy security and reduction of carbon emissions. Indeed the European Commission frequently quotes that more than a third of UK Private Equity (PE) funds' investment goes to companies elsewhere in the EU. This is supplementing the significant direct investment flows from the Channel Islands' funds into the wider (non UK) European economy.

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7. The wider financial sector of the Channel Islands includes substantial fiduciary and specialist asset management expertise. Both Guernsey and Jersey thus act as "financial entrepôts" and are significant net providers of liquidity and investment funds to the EU economy, directly and indirectly.

8. The Channel Islands' closest trading partner is the United Kingdom. Recent information shows that the majority of investment into UK funds channelled through the Channel Islands is from overseas non-European investors[1]. In the UK, Infrastructure funds based in the Channel Islands (including a hub of renewable energy funds) assist with supporting key UK government objectives by facilitating the construction and management of key infrastructure assets across the UK.

9. Non-European investors contribute approximately half of the Channel Islands investment into assets in Europe. The Channel Islands funds markets facilitate European investors in achieving their goal of obtaining exposure to global alternative assets. Channel Islands expertise in asset management acts as a mechanism to source and facilitate global investors to invest in EU assets.

10. The Islands have strong links with capital markets across the globe and are the home of companies that have been the subject of significant listings on worldwide stock exchanges. Companies incorporated in the Channel Islands have had more successful initial public offerings of non-UK entities than from any other jurisdiction in the world. There are 91 Channel Islands companies among the 3000+ companies listed on the Alternative Investment Market (AIM) of the London Stock Exchange: more than from any jurisdiction except the UK.

11. The Channel Islands Securities Exchange provides a listing facility and a market for companies to raise capital from international investors based on a bespoke trading platform serving the interests both of Channel Islands' business and of issuers of specialist debt, investment funds and other equity securities from around the world.

Independent research into the flow of investment

The nature of capital flows means that it is very difficult to put an accurate figure on the flow of investment. However both Guernsey and Jersey recognise the importance of having as reliable data as possible to demonstrate the true value of its financial services industry to Europe.

In the Capital Economics study of 2013, it was estimated that Jersey facilitates approximately £500 billion of foreign investment into the UK through banks' upstreaming and other investment.

KPMG's 2015 study of Guernsey's fund management industry identified that, of the £220 billion of Guernsey funds under management and administration, around £105 billion is invested into assets in Europe and that over half of this originated from outside of the EU.

[1] KPMG, "International Capital flows, the role of Guernsey's investment funds sector 2015" – 48% of investment into the UK comes from non EU investors.
Capital Economics, "Jersey's Value to Britain", 2013 – 40% of assets held, administered or managed in Jersey come from outside of the EU.

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Channel Islands Funds investment into EU infrastructure projects: Two case studies

Jersey: CVC Capital Partners ('CVC') is one of the world's leading private equity and investment advisory firms. Founded in 1981, the CVC Group today employs some 300 people throughout Europe, Asia and the US. Investment by the CVC Funds in European infrastructure projects include:

- **Abertis** a leading international toll road and telecommunications infrastructure operator (mainly in Spain and France)
- **Delachaux**, France, Rail Infrastructure equipment
- **IDCSalud** the largest group of private hospitals and healthcare centres in Spain,
- **Operador R** is the leading fibre cable network operator in Galicia, Spain, with a fibre optic network stretching over 250,000km.

Guernsey: The renewables infrastructure group (TRIG)
TRIG has a portfolio of fully operational onshore wind and solar energy generation assets in the UK, France and Ireland. The Company intends to acquire further investments in the future in the UK and other Northern European countries (including France, Ireland, Germany and Scandinavia). In 2013 TRIG successfully raised its maximum IPO fundraising target of £300 million. The IPO proceeds are being used to acquire a 100%-owned diversified initial portfolio of fourteen onshore wind farms and four solar photovoltaic parks in the UK, France and Ireland with aggregate generation capacity of 276MW.

Regulation and supervision

12. The Channel Islands have a robust and internationally respected system of financial regulation and share a strong interest in a sustainable, stable regulatory environment both locally and in their key export markets. The **Financial Stability Board** (FSB) is an international body that monitors and makes recommendations about the global financial system. In November 2011 the FSB published the result of its assessment of jurisdictions' adherence to regulatory and supervisory standards on international cooperation and information exchange. Jurisdictions were placed in one of three groups, depending on their level of adherence and Guernsey and Jersey were placed in Group 1, the top group, which consists of those jurisdictions "demonstrating sufficiently strong adherence to the relevant international standards". This Group 1 status was re-confirmed in the 2013 update report published by the FSB.

13. The Islands' own independent regulators – the Guernsey Financial Services Commission (GFSC) and the Jersey Financial Services Commission (JFSC) - enjoy excellent regulatory cooperation with their EU counterparts, including with the European Supervisory Authorities. The regulators are taking an increasing profile in international standards bodies. On that basis, they work with European Institutions directly or in collaboration with the EU counterparts to ensure effective supervision of cross border firms' activities, for example being recognised as "equivalent" under a number of Directives (see below for further detail).

14. Both Guernsey and Jersey recognise the importance of the fast-changing nature of financial services. Innovation in financial services can serve to be both a force of positive change; providing new business opportunities, reducing costs for customers, opening up new markets,

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and helping to keep the sector competitive. On the other hand innovations can create loopholes which can be exploited by criminals if not well regulated. Therefore emerging opportunities in the digital and fin tech area are an area of cautious interest.

15. Guernsey recently developed a financial technology ("Fintech") strategy which details the approach to be taken as new technologies emerge that disrupt traditional financial services in positive and negative ways. Similarly Jersey is very engaged in this area and exploring how best to proceed, particularly exploiting the potential of blockchain technology. In October 2015 Jersey launched a policy which will lead to the regulation of virtual currencies. The guiding principles of the approaches of both Guernsey and Jersey can be summarised as supporting area of Fintech as an area, so as to generate significant economic value while at the same time while managing potential risks associated with the same.

16. The Channel Islands Financial Ombudsman's (CIFO) office was launched in November 2015. CIFO's primary role is to resolve complaints about retail financial services provided in/from Jersey and Guernsey. CIFO has been invited by the European Commission to take part in FIN-NET alongside EU and EEA financial services ombudsmen. FIN-NET is the financial dispute resolution network of national out-of-court complaint schemes that are responsible for handling disputes between consumers and financial services providers.

Reciprocal market access

17. The regulatory environment for financial services radically changed post the global financial crisis of 2008. There was concerted effort at the global (G20) and EU level made to establish a safe responsible and growth enhancing financial sector. Guernsey and Jersey recognised and supported these moves towards greater consistency of international regulation and supervision, and share the political commitment to preventing future crises.

18. At EU level, the response to the 2008 crisis was more than 40 legislative and non-legislative measures proposed by the European Commission to build new rules for the global financial system. Where the EU financial services legislation provides for third country market access, this is typically now done by assessing whether the third country has regulatory and other standards that are similar ('equivalent') to that provided for in the EU legislation. The detailed criteria are typically set out in a Delegated Act (DA) or Implementing Act (IA) - so called 'level 2' legislation.

19. The Channel Islands believe that in order to sustain economic growth in Europe it is important that the EU remains open to foreign investment and avoids creating disproportionate barriers to trade and investment between the EU and the rest of the world as this would risk slowing down the recovery. The 2015 European Commission Green Paper on Capital Markets Union and the subsequent Action Plan stated that a key interest for the EU was to attract investment from all over the world and increase and diversify the sources of funding from investors all over the world. Guernsey and Jersey welcomed this message in their responses to the Commission consultation.

20. Not all EU legislation provides for third country market access. For example the European Long-Term Investment Funds Regulation (ELTIFs) currently limits use of the ELTIF brand to EU domiciled alternative investment funds (AIFs) and AIF managers. The EU Venture Capital

Regulation also currently excludes third country firms from using the EuVECA brand, although this is under consideration and the Commission has sought views in the consultation.

21. The process for third country market access differs directive by directive which makes the decision by third countries to apply for equivalence not straightforward. Guernsey and Jersey continue to assess EU financial services initiatives on a case-by-case basis and seek equivalence only after evaluating the importance of securing EU market access for their financial services industry.

22. There have been a number of EU regulations (on financial services or other areas) that the Islands have voluntarily implemented and have been deemed 'equivalent' or 'adequate' by the EU. These include the Statutory Audit Directive, the Wire Transfer Regulation, and the Capital Requirements Regulation (for banking purposes) through formal Commission decisions. In addition, following consultation with the Commission, Guernsey and Jersey have applied to the European Payments Council for inclusion in the geographic scope of the Single Euro Payment Area (SEPA) cross-border bank payment schemes for transfers, debit card purchases and direct debits in Euros. This will involve the Islands transposing the relevant parts of the EU Payment Services Directive into domestic legislation.

23. In many cases the Channel Islands enact legislation providing reciprocal market access. For example the revised Guernsey investor protection law unilaterally extends market access in Guernsey to EU firms from those EU Member States that have implemented AIFMD. Such example of reciprocal market access is of mutual benefit to the EU's work to develop a true Capital Markets Union in line with the ambitions set out in the Commission's 2015 Green Paper.

The Alternative Investment Fund Managers Directive (AIFMD) established an EU-wide system of authorisation for hedge funds and private equity funds that are actively marketed to professional investors, along with a 'passport' to facilitate cross-border marketing. Guernsey and Jersey were pleased to be among the first jurisdictions whose regulators concluded ESMA negotiated MoUs. The signing of these MoUs with most EU and EEA Member States has enabled Channel Islands financial services firms to maintain market access through the national private placement regimes (NPPR). The directive provides for the potential extension of passporting following an assessment by ESMA. In July 2015 Guernsey and Jersey received positive assessments by ESMA regarding their suitability to be in the first wave of third country regimes to have full access to passporting – the only two jurisdictions to receive an unconditional recommendation from ESMA.

Taxation

24. 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 (0% standard rate of corporate tax, 10% for banks and some other financial services and 20% for individuals and certain companies), underpinned by strong general anti-avoidance rules (GAAR). The Channel Islands therefore 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

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international community, in the development and effective implementation of internationally agreed standards.

25. The standard rate of 0% is based on two key principles. One is the principle on non-discrimination between resident and non-resident owned companies. The other is the principle of tax neutrality combined with transparency. Guernsey and Jersey's role as international finance centres can be described as one of acting as a financial entrepôts in facilitating the investment of funds drawn from the world at large 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.

26. Because Guernsey and Jersey do not have an extensive network of Double Taxation Agreements, there is a need to adopt a tax neutral regime to avoid discouraging these investment flows which 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. 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.

27. The Channel Islands have shown themselves by their actions to be reliable, active and cooperative partners of the EU in the field of tax cooperation. They voluntarily committed in 2003 to the EU's Code of Conduct on Business Taxation and their corporate tax regimes have been assessed as being fully compliant with the Code. They entered into bilateral arrangements with all EU Member States under the EU Savings Directive. From 2016 these have been replaced by automatic exchange of information under the new global standard, the common reporting standard (CRS), of which Guernsey and Jersey are "early adopters". They have joined the OECD/Council of Europe Multilateral Convention on Mutual Assistance in Tax Matters. The Guernsey and Jersey governments are fully supportive of the OECD programme to tackle base erosion and profit shifting (BEPS) and will be ensuring that they continue to remain fully informed on the progress in implementing the Actions making up that programme following the G20 endorsement of the OECD report in G20 in October 2015.

28. In May 2015 the EU Commissioner, Pierre Moscovici, publicly described Guernsey and Jersey as "important partners" of the EU in tax cooperation after meeting with the Chief Ministers of the Islands.

Data protection

29. The protection of personal data, and ensuring that when such data needs to be transferred to another jurisdiction it is done efficiently and securely, is vital for public bodies and for industry in the Islands. Guernsey and Jersey's domestic data protection legislation is based on EU law. Guernsey and Jersey are among a small group of third country jurisdictions that have been officially assessed as meeting current EU data protection standards and granted equivalence ('adequacy') through individual Commission Decisions. The Channel Islands are following closely the ongoing negotiations to revise the EU data protection regime.

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Tackling Financial Crime

30. The Channel Islands recognise the important role they have to play in tackling financial and economic crime, particularly in the areas of anti-money laundering (AML) and countering the financing of terrorism (CFT). The IMF assessed Guernsey's and Jersey's compliance with AML/CFT standards, concluding their legal systems and enforcement were among the strongest in the world.

31. The Islands have also been internationally recognised as leaders in the provision of accurate, adequate and timely information on the beneficial ownership of companies. The Islands joined with the G8, following its Summit in June 2013, in making clear publicly their commitment to further strengthening the procedures already in place on beneficial ownership to prevent the misuse of companies and legal arrangements, and have published action plans.

32. The Islands are committed to compliance with the relevant Recommendations by the Financial Action Task Force (FATF – the international standards setter in this field) on transparency and beneficial ownership of legal persons and legal arrangements. EU AML legislation does not apply to the Channel Islands, as third countries but they are committed to updating domestic legislation in line with the key requirements of the EU's 4th AML Directive that was adopted in 2015, and which implements the latest FATF recommendations into EU law.

33. With respect to trusts and companies, Guernsey and Jersey have 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 investments 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 agreements.

International Sanctions

34. The Channel Islands fully recognise the obligations (domestic and international) that follow from their positions as International Finance Centres and accordingly adopt all EU sanctions and asset freezes voluntarily, to ensure institutions regulated in the Islands cannot be used as a 'back door' from Europe for parking or transferring targeted assets. All EU restrictive measures imposed since January 2011 have been implemented and are administered robustly, while significant attention is paid to the grant of any licences or authorisations, and the Islands' competent authorities communicate proactively with their counterparts in Member States. The close operational cooperation on sanctions is reflected in Guernsey and Jersey being regarded informally by the European External Action Service as "like minded jurisdictions" on sanctions related issues.

Developing countries

35. The Islands recognise the importance of pursuing sustainable business with the developing world. Both Islands have put in place legislation designed to stop creditors, including so-called "Vulture Funds", from pursuing inequitable payments from "heavily indebted poor countries" (as defined by the IMF/World Bank) through the Guernsey and Jersey courts. An independent report in 2014 ("Jersey's value to Africa" by Capital Economics) highlighted the important role

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that the Islands can and are playing by providing a safe and well-regulated business environment which can facilitate access to the investment funds which Africa needs to fulfil its economic potential. They are actively exploring ways of helping developing countries to enhance their revenue raising capacity, working in collaboration with other international partners.

36. Helping countries that have emerged from dictatorship to recover assets illegally hidden abroad during the dictatorship is also priority for the international community. As major international finance centres, Guernsey and Jersey are playing an active part in these international efforts. The Channel Islands were among the founder members of the Camden Asset Recovery Inter-Agency Network (CARIN) in 2004. Guernsey holds the CARIN Presidency in 2015. Channel Islands authorities have assisted in prosecutions affecting jurisdictions as diverse as Brazil, Kenya, Indonesia, Nigeria, Norway, Denmark, South Africa and the United States, resulting in significant restraint of assets or their confiscation and repatriation. Notable examples are Jersey's identification and return of over US$160 million to the Nigerian Government, following investigation into corruption involving General Abacha, and the case of Garnet in Guernsey, which is preventing the transfer of EUR 36m related to Tommy Suharto of Indonesia, and which the Guernsey authorities successfully defended under judicial review.

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