

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.

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.