

THE CHANNEL ISLANDS AND THE EU: TACKLING FINANCIAL CRIME

Introduction

1. The Channel Islands (“the Islands”) comprise the Bailiwicks of Guernsey and Jersey. The Islands are autonomous British Crown Dependencies with a direct allegiance to the British Crown which goes back over 800 years. They are not part of the UK, are not represented in the UK (Westminster) Parliament and receive no financial subsidy from the UK government. They have their own parliaments and their own legal systems and have full fiscal autonomy.
2. From 1973 to 2020 the formal relationship between the Islands and the EU was governed by Protocol 3 of the UK’s Accession Treaty. Under Protocol 3, the Islands were part of the EU Customs Union and were essentially within the Single Market for the purposes of trade in goods but were “third countries” (i.e. outside the EU) in all other respects. Pursuing a “good neighbour” policy, the Islands built up a close relationship with the EU as third countries in many different fields outside the formal relationship under Protocol 3, including tackling financial crime.

Anti-money laundering (AML) and countering the financing of terrorism (CFT)

3. As specialist finance centres, Guernsey and Jersey recognise the important role they must play in tackling financial and economic crime, particularly as regards AML/CFT. Both have had tax crimes as a predicate offence for AML purposes for more than a decade.
4. Both the Jersey and Guernsey Financial Services Commissions (JFSC and GFSC) supervise businesses for anti-money laundering and countering the financing of terrorism responsibilities. This includes the financial services industry, accountants, lawyers, estate agents, high value goods dealers and non-profit organisations.
5. The robustness of the Islands’ legal framework for AML/CFT and of the implementation of that framework (including in respect of customer due diligence and transparency of beneficial ownership) was evidenced by the most recent Mutual Evaluation reports published by the Council of Europe’s Committee of Experts on the Evaluation of AML Measures and the Financing of Terrorism (MONEYVAL) in 2016 whereby the Islands were rated among the best jurisdictions in the world.
6. The 2016 MONEYVAL evaluations were carried out against the 2003 standards set by FATF. The cycle of assessments against the new 2012 FATF standards has begun and the Islands expect to be next assessed in 2022/2023. A full programme of policy and legislative changes is currently being implemented to reflect these standards. National Risk Assessments (NRA) are underway to identify potential threats. Actions plans will be adopted shortly thereafter.
7. The Islands actively participate in FATF and MONEYVAL plenaries and provide qualified assessors for carrying out mutual evaluation reports of other participating jurisdictions. Additionally, Guernsey’s Financial Investigation Unit (FIU) and Jersey’s Joint Financial Crimes Unit (JFCU) participate in the Egmont Group, a network of 121 Financial Intelligence Units worldwide. Together with their respective Law Officers, they also, participate in the Camden Asset Recovery Inter Agency Network, (CARIN), whose secretariat is hosted by EUROPOL. Officials responsible for financial crime in the Islands regularly engage with the European Commission to maintain and develop cooperation between the Islands and the EU on AML/CFT matters. The Islands are also developing their relationship with the European Banking Authority (EBA), following the EU’s decision to give EBA greater powers with respect to AML/CFT matters, including cooperation with third countries.

Beneficial ownership

8. The Islands are internationally recognised for holding accurate, adequate and timely information on the beneficial ownership information (BOI) of companies. This was confirmed more recently at the OECD Global Forum in 2018 which found both islands “compliant” (the highest rating) as regards the Financial Action Task Force (FATF) standards on the availability of BOI and its international exchange.
9. Trust and Company Service Providers (TCSPs) have been regulated in each island since 2000. TCSPs are subject to routine, ongoing onsite and offsite supervision for all aspects of their activities. The JFSC received top ratings in April 2019 for its trust company regulation following the first evaluation of its kind by the Group of International Finance Centre Supervisors (GIFCS). Guernsey will be reviewed in due course.
10. In Jersey, BOI must be disclosed to the JFSC Companies Registry at the time of incorporation of a company or partnership, and since 1989 this information has been held in a central register. TCSPs are required to update the central registry within 21 days of knowledge of a change of beneficial ownership of a company that they administer.
11. Since 2008 companies in Guernsey have been required to appoint a resident agent to obtain and verify information on their beneficial owners. Since summer 2017, resident agents for all types of legal persons are required to provide BOI to the Guernsey registrar which is held on a central register. Resident agents must report changes in the particulars contained in the record of beneficial owners within 14 days.
12. In 2016 the Islands signed bilateral agreements, referred to as the Exchange of Notes Arrangements, with the UK, to reinforce longstanding law enforcement cooperation on the exchange of BOI of companies. The system was reviewed in 2019 and found to be effective. In the last year, both FSCs have carried out thematic reviews which confirm there are effective controls in place to ensure that accurate and up to date BOI is available and accessible to the Competent Authorities.
13. In December 2018, the Islands committed to work with the EU to ensure reciprocal sharing of company BOI with EU tax and law enforcement authorities. In June 2019, the Islands made a joint policy announcement that they wished to further develop the accessibility and transparency of their BOI company registers in a way that is in line with the principles of the EU fifth Anti-Money Laundering Directive (AMLD 5). This will involve working with the European Commission during 2021 on the interconnection of central registers with the registers in the EU. The EU is due to publish an implementation review of AMLD 5 in January 2022. The Islands have committed to bringing forward legislative proposals to establish public access to BOI of companies held on a central register within 12 months of that review, in line with the principles of AMLD 5.

International Sanctions

14. The Islands voluntarily adopt all UN and (since 1 January 2021) UK sanctions and asset freezes, to ensure Islands regulated institutions cannot be misused. Significant attention is paid during the grant of any licences or authorisations. The Islands’ competent authorities communicate proactively with their international counterparts, including in the EU Member States.

Asset recovery

15. As founder members of the Camden Asset Recovery Inter-Agency Network (CARIN), the Islands help countries that have emerged from dictatorship to recover assets illegally hidden abroad. Channel Islands authorities have assisted in prosecutions affecting Brazil, Kenya, Indonesia, Nigeria, Norway, Denmark, South Africa and the United States, resulting in significant restraint of assets or their confiscation and repatriation.

16. Most recently, Jersey has signed a series of agreements relating to the return of confiscated assets to Kenya. For over a decade, the two governments have worked together to prosecute high-profile financial crime cases, including a corruption case involving the laundering of £3 million. The agreements include:

- a Memorandum of Understanding on Financial Cooperation (between the Governments of Jersey and Kenya); and
- the Framework for Return of Assets from Corruption and Crime to Kenya (FRACCK). This is a first of its kind multilateral framework between the UK, Switzerland, Jersey and Kenya, which commits the partners to, inter alia, returning confiscated assets derived from corruption to Kenya and ensuring returned assets are used to pursue clearly identified development objectives that benefit the people of Kenya.

17. Jersey's innovative approach, which includes financial support for the International Centre for Asset Recovery (ICAR), was recognised by the UN at a conference on good practice in the return of stolen assets in May 2019.

Further information

18. Further information about the public authorities in Guernsey and Jersey and other aspects of Channel Islands cooperation with the EU, including on tax and financial services, is available on the Channel Islands Brussels Office website.

*Channel Islands Brussels Office,
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