

REGULATORY INTELLIGENCE

COUNTRY UPDATE-Guernsey: AML

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Guernsey is a Channel Island situated in the Bay of Saint Malo and, with the islands of Alderney, Sark, Herm, Jethou and Lihou, it makes up the Bailiwick of Guernsey (also referred to as the Bailiwick). It is currently a "Crown Dependency" of the English Crown, an association which goes back to 1204.

Guernsey has a democratic assembly known as the States of Guernsey; Alderney and Sark have their own parliaments. Guernsey is legislatively independent from the United Kingdom with full capacity to legislate for its internal affairs.

Member of the Financial Action Task Force (FATF)? No.

On FATF blacklist? No.

Member of Egmont? Yes.

Anti-Money Laundering background – overview of country risks

Guernsey is a leading international financial centre with a robust anti-money laundering regulatory structure. It has effective anti-money laundering (AML) and counter-terrorist financing (CTF) systems, successive international evaluation reports having awarded Guernsey very high ratings for its compliance with the FATF Recommendations on Anti-Money Laundering and Countering the Finance of Terrorism.

The most recent report was issued by the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) in 2016 and Guernsey was compliant or largely compliant with 48 out of 49 of the FATF Recommendations, the highest standard of any jurisdiction assessed. The next MONEYVAL assessment is taking place in early 2024.

This regulatory framework is complemented by a compliance culture cultivated by Guernsey's highly skilled professionals, including lawyers, accountants, auditors, insolvency practitioners, and fund managers and administrators.

Key directives/Legislative framework

Guernsey has a suite of legislation to combat money laundering and terrorist financing, the full list of which is featured at the end of this update. The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999 (the Proceeds of Crime Law), as amended, makes provision for money laundering offences to be defined as the proceeds of all crimes.

The Drug Trafficking (Bailiwick of Guernsey) Law 2000 and the Terrorism and Crime (Bailiwick of Guernsey) Law 2002 (the Terrorism Law) do the same for drug trafficking and the laundering of money by and for terrorists respectively.

Schedule 3 to the Proceeds of Crime Law, supported by rules and guidance issued by the GFSC in the Handbook on Countering Financial Crime and Terrorist Financing (the Handbook), require all specified businesses (including financial services businesses, lawyers and accountants and estate agents) inter alia, to undertake risk assessments of their businesses and clients, to evolve AML procedures, to follow good reporting procedures and to train staff.

In addition, Schedule 6 of the Proceeds of Crime Law sets out minimum standards for estate agents and Schedule 7 does so in respect of accountants. Similar provisions are expected to be introduced in respect of lawyers. These provisions are designed to help prevent criminal elements from controlling and/or managing the relevant businesses.

Additional notes: Guernsey's legislation is very much based on that of the United Kingdom, although there are some variations, predominantly in relation to the consent regime and external restraint orders.



Who are the regulators / monitoring authorities?

The Guernsey Financial Services Commission (GFSC) regulates 'specified businesses', which are defined in the Proceeds of Crime Law as including:

- financial services businesses (FSBs), which includes any person or body carrying on or providing services in relation to the business of banking, financial leasing, money services, insurance, investment, asset management or administration, trusteeship, company or trust formation and administration, the establishment of business enterprises or any matter ancillary to any such business;
- "prescribed businesses", which includes lawyers, accountants and estate agents.

The GFSC only regulates law firms for certain defined activities such as conveyancing and mergers and acquisitions, but not for litigation. The Proceeds of Crime Law provides that when deciding whether a specified business has breached any of the regulations, a court must take any rules, instructions and guidance issued by the GFSC into account.

The Guernsey Registry enforces the minimum standards tests referred to above in respect of estate agents and accountants and will do so in respect of lawyers who are not Guernsey Advocates when the relevant provisions come into effect. The Chambre de Discipline, which supervises Guernsey Advocates more generally, will undertake this role in respect of Advocates.

Risk assessments

Guernsey's regulatory framework adopts a risk-based approach to AML and CFT. In 2019, using methodology developed by the International Monetary Fund (IMF), Guernsey published a National Risk Assessment which assessed the money laundering and terrorist financing risks presented by individual sectors and products within the jurisdiction.

Under Schedule 3 to the Proceeds of Crime Law and the Handbook, a specified business must undertake a business risk assessment to assess where its products and services may be exposed to AML and CFT risks, taking account of Guernsey's National Risk Assessment.

A business must also carry out a relationship risk assessment for any business relationship with a client or occasional transaction.

Legal requirements for KYC

Under Schedule 3 to the Proceeds of Crime Law and the Handbook, a specified business is required to undertake particular CDD:

- when establishing a business relationship;
- when carrying out an occasional transaction;
- when the business knows or suspects or has reasonable grounds for knowing or suspecting that:
 - a party to a business relationship is engaged in money laundering or terrorist financing,
 - a party is carrying out a transaction on behalf of a person (including a beneficial owner or underlying principal) who is engaged in money laundering or terrorist funding; or
 - when the professional has doubts about the veracity or adequacy of previously obtained identification data.

In the above instances, the business must undertake the following CDD:

- identify the client and verify its identity using identification data;
- identify any person purporting to act on the client's behalf, and verify this person's identity and authority to act on the client's behalf;
- where relevant, identify the beneficial owner and underlying principal and take reasonable measures to verify their identities using identification data (including, for legal persons or legal arrangements, understanding the client's ownership and control structure);
- determine whether the client is acting on behalf of another person, and if so, take reasonable measures to obtain sufficient identification data to identify and verify the identity of that other person;
- obtain information on the purpose and intended nature of each business relationship and occasional transaction; and
- determine whether the client, beneficial owner or any underlying principal is a politically exposed person (PEP) and, if so, whether they are a foreign PEP, a domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation.

Business may apply simplified due diligence measures to businesses relationships and occasional transactions which have been assessed as being low risk. Examples may include a Bailiwick resident client where the purpose and nature of the relationship is clearly understood by the business.

Enhanced CDD must be carried out where a business relationship or transaction involves a foreign PEP, or is otherwise considered to be high risk (noting warnings and notices from the GFSC), or where the ownership structure involves bearer shares or warrants, or where the client or beneficial owner is connected to a territory which does not properly apply the FATF Recommendations on Money Laundering or supports terrorist activities, or, for FSBs, where the business relationship is a correspondent banking relationship or similar.

A business should also carry out enhanced measures where a business relationship or transaction involves a client who is not resident in the Bailiwick, provision of private banking services, an entity or arrangement being used for personal asset holding purposes, or a legal person with nominee shareholders.

Reporting requirements/obligations



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There are broad AML and CTF reporting requirements in Guernsey extending to both FSBs and non-FSBs and in December 2022 these were extended to also apply to the proliferation of weapons of mass destruction and the financing of such (proliferation). Both FSBs and non-FSBs must have a money laundering reporting officer (MLRO) and, if the business is larger than one person, a deputy to act in their absence (the nominated officer).

Anyone who, due to information which came to them in the course of the business of a FSB, knows or suspects or has reasonable grounds for knowing or suspecting that another person has been engaged in money laundering or proliferation must as soon as possible report their suspicion to a MLRO or nominated officer, a police officer who is a member of the Financial Intelligence Unit (FIU) or another FIU officer (sections 1 and 2 of the Disclosure (Bailiwick of Guernsey) Law, 2007 (the Disclosure Law)).

Similar reporting requirements exist under the Terrorist Law for both FSBs and non-FSBs with respect to terrorist financing. Although lawyers are required to report their knowledge or suspicion to their firm's MLRO or nominated officer, this does not extend to information which comes to a lawyer in circumstances attracting legal professional privilege.

Similarly, anyone who, due to information which came to them in the course of the business of a non-FSB, knows, suspects or has reasonable grounds for knowing or suspecting that another person has been engaged in money laundering or proliferation must as soon as possible report their suspicion to a police officer who is a member of the FIU or another FIU officer (section 3 of the Disclosure Law).

Any reports that another person is or may be engaged in money laundering or terrorist financing or proliferation – suspicious activity reports or SARs – must be sent to the Financial Intelligence Service (FIS), which is a team sitting within the FIU. The FIS is responsible for receiving, requesting, analysing and disseminating SARs from FSBs.

The FIS is tasked with providing evaluated financial intelligence to Bailiwick government departments, international bodies, and regulatory agencies. Until 2021 – when Guernsey established the Economic and Financial Crime Bureau (EFCB) – the FIS was a division of the Guernsey Border Agency. Now it ultimately reports into the Director of the EFCB but remains operationally independent, in order to comply with international standards.

The EFCB was created to improve Guernsey's capacity to investigate money laundering, terrorist financing and other forms of financial crime and has responsibility for its detection and investigation and the preparation of cases to be taken forward by Guernsey's prosecution service.

In November 2022 the States of Guernsey resolved to prepare legislation to introduce a public-private partnership on combatting AML/CFT and other financial crime. It would be a framework for the AML/CFT authorities and the private sector to share information with each other, outside of the SAR regime. The Guernsey Integrated Money Laundering and Terrorist Financing Intelligence Task Force would be similar to the model used in the UK and elsewhere.

Guernsey legislation obliges everyone who enters or leaves the Bailiwick to declare all cash to the value of £10,000 or more. Specified businesses are required under Schedule 3 to the Proceeds of Crime Law to keep proper records, perform ongoing monitoring of business relationships, screen new starters, and provide necessary AML and CTF training to employees and business partners. Failure to do so constitutes an offence.

Recordkeeping period: Five years under the Proceeds of Crime Law. Note that other legislation in Guernsey requires certain records to be kept for at least six years (including records of resolutions passed by members (section 228 of the Companies (Guernsey) Law 2008) and documentation covered by the Income Tax (Keeping of Records etc) Regulations 2006 (as amended)).

Whistle-blowing: There is no legislative protection for AML/CFT whistleblowers in Guernsey, although the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 gives the States of Guernsey the power to make provision in this area by way of Ordinance. In addition, the GFSC operates a telephone hotline which whistleblowers can call to report their concerns.

Offences

Under the Proceeds of Crime Law, there are four primary offences:

1. concealing or transferring proceeds of criminal conduct;
2. assisting another person to retain the proceeds of criminal conduct;
3. acquiring, possessing or using the proceeds of criminal conduct; and
4. tipping off.

Under the Terrorism Law, there are five primary offences:

1. fundraising for the purposes of terrorism;
2. using or possessing money or other property for the purposes of terrorism;
3. entering into or becoming concerned in a funding arrangement for the purposes of terrorism;
4. entering into or becoming concerned in an arrangement facilitating the retention or control of terrorist property (including money) by or on behalf of another person; and
5. failing to disclose knowledge or suspicion of terrorist financing.

In addition, an insurer commits an offence if it insures against payments made in response to terrorist demands.



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There is an additional offence under the Disclosure Law, namely: failing to disclose knowledge or suspicion of money laundering. Furthermore, as stated above, there are additional offences for failing to meet any of the requirements under Schedule 3 to the Proceeds of Crime Law, including: failing to keep records, monitor business relationships and provide employees with necessary training.

Predicate offences

All offences which may be tried on indictment are predicate offences under Guernsey law, therefore any funds obtained by committing such offences are considered to be the proceeds of crime.

Is foreign tax evasion a predicate offence?

Foreign tax evasion may potentially be a predicate offence under Guernsey law if the conduct in the foreign jurisdiction would constitute an indictable offence were it to take place in the Bailiwick.

Penalties

Money laundering

On summary conviction, imprisonment for a term not exceeding 12 months and/or a fine of up to £10,000; on conviction on indictment, imprisonment for a term not exceeding 14 years and/or an unlimited fine.

Terrorist financing

On summary conviction, imprisonment for a term not exceeding six months and/or a fine of up to £10,000; on conviction on indictment, imprisonment for a term not exceeding 14 years and/or an unlimited fine.

Failure to report

On summary conviction, imprisonment for a term not exceeding six months and/or a fine of up to £10,000; on conviction on indictment, imprisonment for a term not exceeding five years and/or an unlimited fine (regarding both money laundering and terrorist financing).

Tipping off

On summary conviction, imprisonment for a term not exceeding six months and/or a fine of up to £10,000; on conviction on indictment, imprisonment for a term not exceeding five years and/or an unlimited fine.

Failure to keep records, monitor business relationships and provide employees with necessary training or any other failure to meet the requirements of Schedule 3 to the Proceeds of Crime Law

On summary conviction, a term of imprisonment not exceeding six months and/or a fine not exceeding £10,000; on conviction on indictment, a term of imprisonment not exceeding a term of five years and/or an unlimited fine.

Confiscation orders

Designated foreign authorities may apply to the Royal Court of Guernsey under the Proceeds of Crime Law to have an external confiscation order enforced in the Bailiwick. The Royal Court will only register and enforce such an order if (a) it is satisfied that the order is at that time in force and not subject to appeal, (b) it is satisfied that where the person against whom the order is made did not appear in the proceedings that he received notice in sufficient time to allow him to defend the proceedings, and (c) it believes that enforcing the order in the Bailiwick would not be contrary to the interests of justice.

The Royal Court will enforce confiscation orders made in a 'designated country', the definition of which was broadened in 2010 to mean any country in the world.

The Magistrate's Court may make a confiscation order where the amount that might be realised is £25,000 or less.

Civil forfeiture orders

In addition to imprisonment and fines, civil forfeiture is possible pursuant to the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, which allows for the seizure and detention of cash, the freezing of bank accounts, and a court order for the forfeiture of these moneys. On November 24, 2021, the States of Guernsey resolved inter alia to extend the type of property liable to be forfeited from only bank accounts / cash to any form of property. At the time of writing, the legislation necessary to make these changes has not yet been published.

Other changes were brought into effect by the Forfeiture of Money, Etc. in Civil Proceedings (Bailiwick Of Guernsey) (Amendment) Ordinance, 2022, notably to: (i) shift the burden of proof onto the owner of the assets in cases where there are reasonable grounds to suspect that the assets are the proceeds of crime; and (ii) introduce a 'summary civil forfeiture' process in cases where the assets have been the subject of 'no consent' for at least one year.

Internal procedures and training

A specified business must implement appropriate procedures and training for all relevant employees, both at an initial and an ongoing basis, covering employees' personal obligations and their potential criminal liability under the law, and the business' policies,



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procedures and controls to forestall, prevent and detect money laundering and terrorist financing, etc. The business is also required to appoint a person of at least management level as its MLRO.

Sanctions

The Bailiwick of Guernsey implements all types of international sanctions, with a particular focus on financial sanctions measures given their relevance to Guernsey's position as an international financial centre. Although the legislation comprising Guernsey's sanctions regime largely reflects that of the United Kingdom, it is separate and independent of the UK sanctions regime.

As a result of Brexit, the UK introduced the Sanctions and Anti-Money Laundering Act 2018 (the SAML Act), under which it both gives effect to UN sanctions and enacts its own autonomous sanctions regimes instead of, as previously, implementing sanctions via EU Regulations.

The Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020 (the 2020 Regulations) give effect in the Bailiwick to sanctions regimes enacted by the UK under the SAML Act. Changes to sanctions measures are automatically effective under the 2020 Regulations. As such, the UK's recent sanctions made against Russia in response to the war in Ukraine have automatic effect in the Bailiwick. Guernsey made amendments to the 2020 Regulations to ensure these sanctions were adapted, with very minor changes, for the Bailiwick's domestic context.

There are separate legislative regimes for travel bans and arms embargoes and related restrictions.

CTF – Countering terrorist finance

The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law 2011 (the Terrorist Assets Law) implements various prohibitions imposed on dealing with parties who are designated by Guernsey's Policy & Resources Committee as being involved in, or linked to parties who are involved in, terrorist activity.

These prohibitions include dealing with funds or economic resources owed, held or controlled by a designated person, and making funds, financial services or economic resources available to a designated person or for the benefit of a designated person, while knowing or having reasonable cause to suspect the funds, financial services or economic resources are being made so available. Since Brexit, prohibitions imposed on dealing with parties designated by the UK and EU are implemented via the SAML Act, which is in turn implemented in Guernsey by the 2020 Regulations.

Similar to money laundering a relevant business (including an FSB, lawyer, accountant and estate agent) is required to inform the Policy & Resources Committee as soon as practicable if, through information coming to it in the course of carrying on its business, it knows or reasonably suspects that a person is, or is linked to, a designated person or has committed an offence under the Terrorist Assets Law. In addition, the Policy & Resources Committee also has various information-gathering and document-production powers.

Anti-bribery and corruption laws

At a Bailiwick level, the Prevention of Corruption (Bailiwick of Guernsey) Law 2003 (the Corruption Law) applies to corrupt transactions involving 'agents', which is defined in the Corruption Law as meaning:

- any person employed by or acting for another party;
- any member of a Bailiwick parliament, a judicial official or court officer in the Bailiwick, or any other public official in the Bailiwick; and
- any member of a government or parliament, any public prosecutor or judge, or any party involved in public administration or regulation of any other country, territory or particular international bodies.

It is an offence under the Corruption Law to accept, obtain or agree to accept/obtain or attempt to obtain a bribe to induce, reward, or otherwise on account of the agent doing any act or making any omission in relation to the agent's office/position/principal's affairs or business. Likewise, it is also an offence under the Corruption Law to give, offer, or agree to give a bribe for the same purpose.

These provisions apply to any such acts done in the Bailiwick, or acts outside the Bailiwick by a Bailiwick resident and British citizen or subject or protected person, which would have constituted an offence in the Bailiwick had it been done there.

In September 2022, the States of Guernsey resolved to create new criminal offences concerning failure by corporate entities to prevent bribery and tax evasion. At the time of writing, the draft legislation has not yet been published.

At an international level, being responsible for Guernsey's international relations, the UK has extended the operation of many international conventions to Guernsey, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption.

Statutes (all as subsequently amended)

- The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.
- The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance 1999.
- The Drug Trafficking (Bailiwick of Guernsey) Law 2000.
- The Terrorism and Crime (Bailiwick of Guernsey) Law 2002.
- The Prevention of Corruption (Bailiwick of Guernsey) Law 2003.
- The Cash Controls (Bailiwick of Guernsey) Law 2007.



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- The Disclosure (Bailiwick of Guernsey) Law 2007.
- The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007.
- The Disclosure (Bailiwick of Guernsey) Regulations 2007.
- The Terrorism and Crime (Bailiwick of Guernsey) Regulations 2007.
- The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law 2008.
- The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law 2011.
- The Sanctions (Bailiwick of Guernsey) Law, 2018.
- The Disclosure (Bailiwick of Guernsey) (Information) Regulations, 2019.
- Terrorism and Crime (Bailiwick of Guernsey) (Information) Regulations, 2019.
- The Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020

The above update is only intended to give a summary and general overview of the Guernsey law on anti-money laundering and anti-terrorist financing. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice.

The country update was kindly provided by [Mourant Ozannes \(Guernsey\) LLP](#)

Complaints Procedure

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