



The Office of the
Policy & Resources
Committee

**TECHNICAL CONSULTATION PAPER
FOR A CENTRAL REGISTRY OF
BENEFICIAL OWNERSHIP OF LEGAL
PERSONS
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Introduction

1. This consultation paper is the second of a series in relation to the transparency of legal persons. The first paper was issued in May 2015 on whether or not a central registry should be established in Guernsey for the registration of information on the beneficial ownership of legal persons (the Registry). This second, technical, paper seeks input on proposals on the overarching shape of the registration framework to be established. It focusses on beneficial ownership and has been drafted so as to allow the proposed shape of the registration framework to be understood easily and to enable the best quality responses to be provided in relation to the proposals. This approach should also facilitate the drafting of legislation that is easy to understand for individuals who are not lawyers or professionals engaged in company administration business, rather than complex legislation that is apparent elsewhere. The registration framework is intended to build upon and develop the existing beneficial ownership information requirements that are in place under commercial legislation governing the creation of legal persons. The paper does not cover other aspects of the framework such as the customer due diligence obligations to which financial services businesses and other businesses are subject, as these are additional to and separate from the requirements that are imposed under commercial legislation.
2. The States of Guernsey is committed to meeting international standards, which include the standards of the Financial Action Task Force (FATF) on transparency of legal persons (and the standards of the OECD in relation to the retention and disclosure of information for tax purposes (which includes beneficial ownership information)). In broad terms, in relation to beneficial ownership, the FATF standards seek to ensure that the authorities of a jurisdiction have timely access to adequate, accurate and current beneficial ownership information. A large number of jurisdictions have been inspired by the FATF standards, G20 initiatives, the EU's fourth money laundering directive or other compelling reasons to establish registries.
3. Guernsey has high standards in relation to transparency. This has been demonstrated on numerous occasions, including the conclusions of the evaluation report published by MoneyVal earlier in 2016, as well as previous evaluation reports of Guernsey's AML/CFT framework, and in OECD peer review assessment reports. In addition, Guernsey is routinely

commended by foreign authorities to whom it provides beneficial ownership information. Guernsey's standards will evolve with the international standards as they continue to be developed. The Chief Minister of the previous States advised publicly in April that Guernsey will enhance the timeliness of its access to information by putting in place a secure, consolidated and locally-accessed register of beneficial ownership information in respect of legal persons (the Register), with provisions in place for timely information exchange between Guernsey and UK law enforcement authorities. Recommendations will be made to the States of Deliberation by the end of 2016 and, at this point, it is envisaged that legislation will be put to the States in the first half of 2017. The recommendations will not include a Register that is publicly accessible as it is not considered that such accessibility would allow Guernsey to demonstrate the information is secure, which is a material domestic concern.

4. The conclusions arising from the responses to this technical consultation paper will inform the policy proposals submitted to the States. In the meantime, responses to the proposals would be welcomed and should be provided to the Policy & Resources Committee and the Committee *for* Economic Development using the contact details below, to enable the two bodies to work together and formulate jointly agreed conclusions.

Legal persons in Guernsey

5. Legal persons in Guernsey can be established as one of four main types, namely:
 - (a) Companies subject to the Companies (Guernsey) Law, 2008 (the Companies Law)
 - (b) Foundations subject to the Foundations (Guernsey) Law, 2012 (the Foundations Law)
 - (c) Limited partnerships subject to the Limited Partnerships (Guernsey) Law, 1995 (the Limited Partnerships Law)
 - (d) Limited liability partnerships subject to the Limited Liability Partnerships (Guernsey) Law, 2013 (the LLP Law).

The current position

6. The commercial legislation governing the creation of some Guernsey legal persons already contains specific obligations relating to the appointment of resident agents with responsibilities in respect of beneficial ownership information.

7. Under the Companies Law and the LLP Law, Guernsey companies and limited liability partnerships must appoint a resident agent who may be either a corporate services provider licensed by the Guernsey Financial Services Commission (GFSC) or a locally resident official (a director in the case of companies and a member in the case of limited liability partnerships). A record of the resident agent must be kept and provided to the Registrar of Companies or Registrar of Limited Liability Partnerships which contains the name of the resident agent and its address (unless the resident agent is a locally resident official who will therefore already be subject to an obligation to provide his or her address). A company or limited liability partnership that fails to comply with these obligations commits a criminal offence and may be struck off. Changes to the recorded details about resident agents must be notified to the Registrar of Companies or Registrar of Limited Liability Partnerships (both situated within the Guernsey Registry) within 14 days, subject to an administrative penalty for breach.
8. The resident agent must take reasonable steps to ascertain the identity of the persons who are the beneficial owners of members' interests. This obligation applies equally to members of both the core and the individual cells of cellular companies. In the case of incorporated cell companies this is because each cell comprises a separate company and the resident agent is deemed to be the resident agent of each of them. In the case of protected cell companies, the fact that the Companies Law specifies that the register of members must distinguish between members of the core and the members of each individual cell means that the obligation of the resident agent to ascertain beneficial ownership can and must be applied to all types of member.
9. Where the resident agent ascertains that a member of a company is not the beneficial owner of that member's interest, it must keep a record of the required details of the beneficial owner in respect of that member. This record must be kept at the registered office of the company or limited liability partnership.
10. The resident agent also has information gathering powers that are exercisable against members on service of a notice. Members who fail to comply with the notice or who provide false or misleading information commit a criminal offence. In addition, if a resident agent believes that a member has failed to comply with the notice or has provided false or misleading information, it must report that to the company and the company may impose restrictions on that member's interest including suspension or cancellation. This is subject to the safeguard that the member may apply to the court for the restriction to be set aside, provided

that the company is given notice. The resident agent must also maintain a record of beneficial ownership at the registered office of the company or limited liability partnership, and make beneficial ownership information available to HM Procureur, the law enforcement agencies or the GFSC if requested for the purposes of criminal or regulatory investigations and proceedings in Guernsey or elsewhere.

11. The effect of the obligations currently in place in commercial legislation is that, although beneficial ownership information is available within the jurisdiction, it is held by individual businesses and there is no central data base; this means that if, during the course of an investigation, the law enforcement agencies or other relevant authorities have reason to believe that several different businesses hold relevant beneficial ownership information, they must make a separate approach to each business. This clearly has the potential to cause delay. In addition, the absence of a central data base means that there is currently no quick way of carrying out a search across all beneficial ownership information to check whether a particular individual or company that is under investigation has an involvement with a Guernsey legal person that has not previously been identified.

Central register

12. It is proposed that Guernsey should establish a Register to facilitate improved speed of access to the necessary information by the authorities. Information on the Register would be confidential and protected by all necessary security measures including encryption of data. Although the information would not be accessible to the public, there would be legal gateways in place to permit access to the information by the Guernsey authorities and to enable the Guernsey authorities, as now, to share beneficial ownership information with foreign competent authorities for specified purposes. It is intended that the specified purposes would mirror those already in place elsewhere in Guernsey law, for example in the Disclosure (Bailiwick of Guernsey) Law, 2007, and should include access or disclosure for the purposes of:
 - (a) the prevention, detection, investigation or prosecution of criminal offences in Guernsey or elsewhere;
 - (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of Guernsey or elsewhere;
 - (c) any civil forfeiture investigations carried out in the Bailiwick or in other jurisdictions that have been designated by Guernsey;
 - (d) the carrying out of any functions of any intelligence service;

- (e) the carrying out of their functions by Guernsey authorities such as the GFSC or the Director of Income Tax and their foreign counterparts;
 - (f) the carrying out of their functions by any other authorities with functions, including registration functions, relating to beneficial ownership and their foreign counterparts; and
 - (g) the implementation of, compliance with or enforcement of international sanctions measures within Guernsey or elsewhere.
13. It is envisaged that the Register would be administered by a Registrar of Beneficial Ownership (the Registrar), who would be given powers to monitor and verify the information provided to him. It is proposed that this would include powers to obtain information from the company, the registered agent and third parties and to have immediate and direct access to the record of beneficial ownership maintained at a legal person's registered office, whether by attendance at the premises or otherwise. As the registration obligation would apply to all companies, monitoring and verification by the Registrar would also help to address comments made by MoneyVal in its recent evaluation report about the need for an oversight process in relation to beneficial ownership information obligations for companies whose directors are not licensed by the GFSC. Further measures to address these comments are proposed below at paragraph 19.
14. Consideration is currently being given as to the form the Register should take and who should be appointed as the Registrar. The answer to these issues will depend on a number of different factors, including:
- (a) the availability of adequate security systems;
 - (b) the extent to which Guernsey can draw on proven technologies such as those in jurisdictions such as Jersey with which Guernsey has close business links;
 - (c) the resources available to administer the Register of Beneficial Ownership of Legal Persons, including monitoring, verification and enforcement processes;
 - (d) whether there should be more than one Registry for beneficial ownership, for example, one for legal persons administered by licensed fiduciaries and another for those that are not;
 - (e) liability for and level of the cost (different outcomes might be suggested depending on whether for example the States of Guernsey or industry is to be made responsible for the cost);
 - (f) the level of duplication involved if legal persons have to provide information to more than one Registry.

Provision of information to the Registrar

15. The intention is to build on the existing beneficial ownership information obligations on resident agents under the Companies Law and the LLP Law by amending slightly the information that a resident agent must include on the record of beneficial ownership (including a statement that no beneficial owner has been identified if that is the case) and adding a requirement for resident agents to provide that information to the Registrar upon incorporation. Existing legal persons would be obliged to provide the same information within time frames specified in transitional provisions. In the event that the decision were to be taken to locate the Registry somewhere other than the Guernsey Registry, there would need to be additional requirements in place to ensure that the different parts of the framework relating to legal persons were properly joined up. This would include an obligation on a legal person to provide the Registrar with details of its resident agent (along the lines of the existing obligation to provide this to the Guernsey Registry), and a mechanism to ensure that the Guernsey Registry is satisfied that a legal person applying for incorporation has submitted the necessary beneficial ownership information to the Registrar. One way to achieve this might be to include a requirement for the person applying to certify that this has been done, which could be cross-checked by the Guernsey Registry. Information would also need to be provided about the objects of the legal person to the Registrar to enable the latter's oversight functions to be exercised.
16. It is proposed that resident agents should be obliged to verify beneficial ownership information to ensure that it is adequate and accurate and should be obliged to keep it up to date. They should also be obliged to notify any changes to the Registrar within 14 days, in line with existing notification obligations for legal persons such as the obligation under the Companies Law to notify the Registrar of Companies of changes of directors or other particulars within 14 days.
17. These obligations are necessary to enable Guernsey to meet international standards that require beneficial ownership information to be adequate, accurate and timely, both for its own purposes and to assist overseas authorities. It is therefore proposed that they should be underpinned by enforcement measures, including administrative and criminal penalties, in addition to the criminal penalties currently in place for resident agents that fail to provide information or provide false or misleading information in respect of beneficial ownership. It is envisaged that these measures would include compliance and information gathering notices (e.g. notices requiring confirmation that the information provided is up to date or requiring a resident agent to obtain and provide further information), and

the applicable penalties would range from warnings or administrative financial penalties for minor infractions to strike-off and the imposition by the court of unlimited fines and sentences of imprisonment for more serious cases. These penalties would therefore apply in similar circumstances to the administrative and criminal penalties already in place for violation of comparable obligations under Guernsey law, for example failure to notify a change in directors under the Companies Law, failure to notify a change in registered particulars under the Limited Partnerships Law and failure to provide information or providing false or misleading information about beneficial ownership under the Companies Law and the LLP Law.

18. The effect of these measures would be that resident agents who no longer wished to act for a particular legal person would have to resign rather than simply ignoring their responsibilities under the legislation to avoid possible criminal liability. Any legal person that failed to replace a resident agent that had resigned would be liable to being struck off under the existing provisions referred to under paragraph 7 above. Consequently all necessary powers would be in place to enforce compliance with the beneficial ownership obligations.
19. It is also proposed that measures should be introduced to ensure that all board members (or equivalent officers) of a legal person are aware of the beneficial ownership of that legal person in order to facilitate compliance with the AML/CFT Proceeds of Crime Regulations and GFSC Handbooks, particularly in respect of directors who hold not more than 6 directorships and so are exempt from the need for a licence from the GFSC. The routine provision to such directors of the information necessary to discharge their AML/CFT obligations and the monitoring of this by the Registrar would be an additional step towards addressing the comments made about this exemption by MoneyVal, as referred to under paragraph 13. The simplest way of achieving this is to require resident agents to provide the legal person and its officers with any information that they provide to the Registrar.

Definition of beneficial ownership

20. “Beneficial owner” is not currently defined in the Companies Law or the LLP Law but the type of details that must be recorded by the resident agent indicate that a beneficial owner may be either an individual or a legal person. In addition, the beneficial ownership of companies is subject to a 10% threshold as, under the Companies (Beneficial Ownership) Regulations, 2008, there is an exemption from the requirement to keep beneficial ownership information in relation to any member who holds less

than 10% of the total voting rights of all the members of the company having a right to vote at general meetings.

21. The new registration framework applicable to legal persons in the UK, which applies to companies and limited liability partnerships, does not refer to beneficial owners but instead refers to persons with significant control. Persons with significant control of a company are individuals who meet one or more of the following conditions (the conditions for limited liability partnerships are slightly different to reflect their different structure):
 - (a) holding more than 25% of its shares;
 - (b) holding more than 25% of its voting rights;
 - (c) holding the right directly or indirectly to appoint or remove a majority of its directors;
 - (d) having the right to exercise or actually exercising significant influence or control over it;
 - (e) having the right to exercise or actually exercising significant influence or control over the activities of the trustees of a trust or members of a firm, where that trust or firm would, if it were an individual, meet the conditions outlined above in respect of the company.
22. A definition of beneficial ownership would assist resident agents in carrying out their obligations; this was also recommended by MoneyVal. It is therefore proposed to introduce a definition of beneficial owner which would be applicable only to the registration requirements and would not affect the definitions or other requirements of the AML/CFT Proceeds of Crime Regulations and GFSC Handbooks, which would remain, as now, distinct from the obligations under commercial legislation.
23. The proposed new definition would incorporate a 25% ownership threshold, which meets international standards but does not go beyond them. It would provide that beneficial owner means a natural person:
 - (a) who meets a 25% ownership threshold according to the same criteria as those in the UK legislation at paragraphs 21(a) and (b) above;
 - (b) who holds the right directly or indirectly to appoint or remove a majority of its directors (again in line with the UK definition); or
 - (c) who otherwise owns or controls the relevant legal person or any underlying legal person or legal arrangement which itself meets the 25% threshold in relation to the legal person in question.

24. The definition would also require individuals with an interest in or who exercise control of underlying structures within a chain of ownership to be identified. These structures could be companies or any other form of legal person such as foundations, and trusts or any other form of legal arrangement such as a firm or partnership. Where 25% of the shares in a company are owned by another legal entity or chain of entities, individuals with an interest in any underlying entity should be identified. It is proposed that an interest is defined by an ownership threshold for underlying entities. Comments are invited on what that threshold should be. Any individual who does not meet the ownership threshold but who exercises control of the underlying entity should also be identified. In the case of a trust which owns 25% of the shares in a company, the trustees, settlors, beneficiaries and any protectors should be identified along with any other individual who is exercising control over the trust.
25. It is further proposed that the ownership thresholds referred to above should be subject to provisions about joint interests and interests held by associates. These would mean that where two or more persons hold a share or similar right jointly, both are treated as holding it, and where shares are held by a number of associated persons, for example members of the same family or persons who have entered into an arrangement to exercise their rights jointly, each person is treated as holding the combined shares or rights of them all.
26. In order to assist resident agents in the discharge of their obligations, it is proposed that their existing information gathering powers against members be extended to enable them to obtain information from third parties who may hold relevant information about ownership. This would be subject to criminal penalties for breach and would mirror the information gathering powers in the new UK registration framework.
27. It is also proposed that provision should be made in legislation for the issuing of statutory guidance and standard beneficial ownership declaration forms that must be completed when submitting information to the Registrar. This would ensure a proper legal basis for these steps in the event that they are considered necessary going forward to assist in the effective implementation of these new requirements.

Information that must be recorded

28. It is proposed that the following details should be entered on the record of beneficial owners and provided to the Registrar:
 - (a) The individual's

- (i) name;
 - (ii) usual residential address (and service address if different);
 - (iii) nationality; and
 - (iv) date of birth;
- (b) the date on which the individual became a beneficial owner of the legal person;
- (c) the basis on which an individual has been identified and verified as a beneficial owner and the information that has been relied on in doing so.

Although a few of these details go beyond those that resident agents are currently required to record under the Companies Law and the LLP Law, it is not envisaged that this would make any significant difference in practice, because the details at sub paragraph (a) above are those already required (other than the reference to a service address) and the proposed additional details comprise information that resident agents would be expected to obtain in order to discharge their existing obligations.

Application to all legal persons

29. In order to ensure that the registration regime captures all forms of legal person that may be established under Guernsey law, it is proposed that the same obligations referred to above should be applied to limited partnerships and foundations. Limited partnerships and foundations are not currently subject to any specific beneficial ownership requirements corresponding to those in the Companies Law and the LLP Law, although they are covered by the beneficial ownership requirements in the AML/CFT Proceeds of Crime Regulations and GFSC Handbooks and new legislation to govern limited partnerships which makes provision for beneficial ownership information is currently under consideration. Under the Foundations Law there is currently an obligation to appoint a resident agent if no foundation officials are licensed fiduciaries or authorised persons as defined under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (the Fiduciaries Law), although the Foundations Law does not confer beneficial ownership obligations on the resident agent. A resident agent under the Foundations Law must be a licensed fiduciary or authorised person, unlike under the Companies Law or the LLP Law which permit an unlicensed locally resident individual official to act as a resident agent. It is proposed that definitions of resident agent and beneficial owner equivalent to those referred to above in the context of the Companies Law and LLP Law should be applied to all legal persons,

modified where necessary to reflect the different characteristics of the type of legal person in question. Again, this would be subject to transitional provisions for existing legal persons.

30. This proposal is subject to the need to consider possible exemptions from the beneficial ownership registration requirements for any legal persons that are already subject to disclosure requirements that ensure adequate transparency of beneficial ownership. There is currently an exemption from the beneficial ownership requirements under the Companies Law for companies listed on a stock exchange recognised by the Registrar of Companies, open-ended and closed-ended investment companies and any other category of company that may be prescribed by regulations. There is a corresponding exemption from the beneficial ownership requirements under the LLP Law for open-ended and closed-ended investment schemes and any other category of limited liability partnership that may be prescribed by regulations. In view of the increased international focus on transparency of beneficial ownership that has arisen since these exemptions were introduced, particularly those exemptions in the Companies Law, it is proposed that these exemptions should be reviewed to decide whether or not it is still appropriate to retain them or whether they require modification. It is further proposed that consideration should be given as to whether there are other categories of legal persons that it would be appropriate to exempt, either from the primary obligation to register beneficial ownership information or from the obligation to look through legal persons in a chain of ownership to identify underlying natural persons with ownership or control. Views are therefore invited on whether the current exemptions are fit for purpose and on any other types of legal person that may be subject to sufficiently robust transparency criteria to warrant exemption from the beneficial ownership information requirements addressed in this paper. From the international AML/CFT perspective, exemptions must be justified from the perspective of risk.

Nominees

31. The FATF standards emphasise that nominee shareholder arrangements must not be misused.
32. This has long been recognised by Guernsey and has therefore been enshrined in the regulation of trust and company service providers (TCSPs) since 2000 under the Fiduciaries Law. The Fiduciaries Law defines as a regulated activity the provision of nominee services, which expressly includes acting as or providing nominee shareholders. Such TCSPs are licensed by the GFSC, as is any subsidiary undertaking these nominee services. In these situations, both the legal owner and the

beneficial owner would be notified to the Registrar under the criteria specified at paragraph 23 above. In order to ensure transparency and understanding by the Registrar it would be important for the fact of each nominee relationship to be notified to the Registrar, to identify on whose behalf the nominee is acting (the nominator) and to state why the nominee relationship has been established.

33. Two further types of nominee shareholding arrangements can also be considered for the purposes of this paper.
34. First, there are individuals who might be shareholders for legal purposes and who are acting on behalf of others for good reason. These examples would be outside the context of Guernsey's regulated sector and could include situations such as that where a parent or guardian is a shareholder of a company but only acting in that capacity for a minor who is not old enough to be responsible for his or her own affairs. This kind of example would also be disclosed to the Registrar under the criteria specified in paragraph 23 above. As above, it would be important for such nominee relationships to be disclosed to the Registrar, to identify on whose behalf such nominees were acting and for the disclosure to the Registrar of Beneficial Ownership to state why the nominee relationship had been established.
35. Second, there are "straw men" who are acting at the behest of others for criminal purposes. The criteria specified above at paragraph 23 (in particular the ability to remove a majority of directors and the overarching obligations to identify persons actually exercising control) and the other proposals in this paper would create a legal framework which makes it very difficult for straw men to be involved with Guernsey legal persons. None has been identified to date. Nevertheless, the Policy & Resources Committee and the Committee *for* Economic Development would welcome receipt of suggestions which would further address the risk of straw men.

Bearer instruments

36. The FATF standards also emphasise the importance of preventing bearer shares and bearer warrants from being misused.
37. Guernsey's legislation for legal persons does not permit the issue of bearer shares as shareholdings in companies and interests held in other legal persons must be registered. However, there are no explicit or implicit provisions in Guernsey law in relation to bearer warrants. In light of this, it is proposed to introduce explicit provisions so that bearer instruments

conferring ownership rights or potential ownership rights cannot be issued by Guernsey legal persons.

Liquidations and striking off

38. It is important that, where a legal person ceases to exist, the records on beneficial ownership are maintained for at least five years from the date of dissolution.
39. Entities subject to the AML/CFT Proceeds of Crime Regulations and GFSC Handbooks are required to keep records for this period under the record keeping requirements of the legislation although it is proposed to ensure that this is clear externally by amending the Proceeds of Crime Regulations to include a specific provision in relation to companies ceasing to exist.
40. For legal persons that are not administered by an entity subject to the AML/CFT Proceeds of Crime Regulations and GFSC Handbooks, it is important to include new legislative requirements for maintenance of records where a legal person has been liquidated or struck off either at its own request or by the Registrar of Companies. This raises some fundamental issues as to who should keep the beneficial ownership information, how it should be kept as not all records would be kept electronically and how the costs of the retention would be paid. The Policy & Resources Committee and the Committee *for* Economic Development would welcome views on these issues.
41. Linked with the above comments, which stem from expectations of the FATF, the OECD has record retention standards for tax purposes where Relevant Entities and Arrangements¹ cease to exist. Compliance with these OECD standards is also being considered in advance of the Peer Review Assessment that Guernsey will undergo during the second quarter of 2017. The OECD's expectations for record retention are, therefore, broader in scope in that Guernsey must evidence that it has in place sufficient legislation to require the maintenance and retention of all ownership, identity, accounting and banking information for a period of at least five years for all Relevant Entities and Arrangements, including in the event that the entity or arrangement has ceased to exist. Guernsey has already been subject to a Peer Review in respect of the general requirement for maintaining and retaining this information (in which

¹ The term "Relevant Entities and Arrangements" includes: (i) a company, foundation, anstalt and any similar structure, (ii) a partnership or other body of persons, (iii) a trust or similar arrangement, (iv) a collective investment fund or scheme, (v) any person holding assets in a fiduciary capacity and (vi) any other entity or arrangement deemed relevant in the case of the specific jurisdiction assessed.

Guernsey was considered to be Compliant in respect of ownership, identity and banking information and Largely Compliant in respect of accounting information. The Largely Compliant rating was due to the fact that the Income Tax (Keeping of Records, etc.) Regulations, 2012 had only recently been amended, and therefore, a monitoring requirement was included in relation to the practical application of the Regulations. The new Terms of Reference for the next round of Peer Reviews will focus particularly on the ability for jurisdictions to obtain this information even when the entity or arrangement has ceased to exist. As a result of the broader scope of these requirements, the issues surrounding who should keep the accounting and banking information, how it should be kept (as not all records would be kept electronically), and how the costs of the retention would be paid also need to be considered, in addition to the considerations regarding beneficial ownership records. The Policy & Resources Committee and the Committee *for* Economic Development would, therefore, also welcome views on these issues.

Creation of legal persons

42. Currently, only licensed fiduciaries are entitled to apply to incorporate legal persons under Guernsey law other than limited partnerships. The establishment of the Registry and the additional layer of requirements linked to this suggest that flexibility should be introduced in relation to the incorporation of legal persons. This would be in line with the outcome of a consultation carried out by the Commerce and Employment Department in 2011 in relation to a number of suggested changes to the Companies Law. Following the consultation, the Commerce and Employment Department recommended that the ability to incorporate a company should be extended to accountants, advocates, and anyone fully licensed under: the Protection of Investors (Bailiwick of Guernsey) Law, 1987; the Banking Supervision (Bailiwick of Guernsey) Law, 1994; the Insurance Business (Bailiwick of Guernsey) Law, 2002; or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (and to HM Procureur in the case of a company that would be wholly owned by the States of Guernsey). This resulted in the introduction into the Companies Law in 2015 of a power to prescribe by regulation other persons, bodies or officers that may apply to incorporate companies.
43. It is proposed that this power should now be exercised to remove the limitation to fiduciaries so that applications for incorporation may be made by additional types of entity which are supervised by the GFSC for the purposes of compliance with the AML/CFT Proceeds of Crime Regulations and GFSC Handbooks, and to extend the approach to be agreed to all forms of legal persons. This would facilitate effective

business practices while at the same time maintaining the application of the same due diligence obligations to the formation of legal persons as now. Comments are sought on which additional types of entity should be permitted to incorporate legal persons and the reasons for which types are considered appropriate.

Commencement

44. The timing for introduction of these new obligations is also being considered. Views are sought on whether all obligations should be introduced at the same time or whether there should be a phased introduction process, for example with some particular forms of legal person being made subject to the obligations earlier than others.

How to provide comments to the consultation

Responses can be made in writing, by post or email, as follows:

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Comments should be made by the close of business on 8 July 2016.