

# Guernsey

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*Anti-Money Laundering: International Law and Practice.*

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## 1 Background

### 1.1 Introduction

The *Bailiwick of Guernsey's* finance industry is the *Bailiwick's* largest employer and primary generator of income. It enjoys a good international reputation as a modern, well-regulated jurisdiction. To ensure this continues, *Guernsey* has enacted very comprehensive anti-money laundering legislation.

### 1.2 The Bailiwick

The *Bailiwick* consists of *Guernsey*, *Alderney* and *Sark*, and several smaller islands. Of these, *Guernsey* is the largest. The majority of the offshore financial business is conducted in *Guernsey*. The *Bailiwick* has an unusual constitutional status, most particularly with regard to the *European Community*. The islands are dependencies of the British Crown but not part of the *United Kingdom*. Whilst the British Crown bears ultimate responsibility for the good government of the *Bailiwick*, *Guernsey*, *Alderney* and *Sark* all have their own elected governments. The *UK* government is responsible for the *Bailiwick's* international relations and for its defense, but does not seek to bind the constituent islands of the *Bailiwick* to international treaties without their prior consent. Although *Guernsey* is neither a separate Member State nor an Associate Member of the *European Community*, Article 1 of Protocol No 3 placed the *Channel Islands* within the *Common Customs Area* and *Common External Tariff* of the *European Community*. *Guernsey* ensures that it develops its procedures and regulations consistent with the *European Community* in the area of trade. It also co-ordinates its legislation in matters of immigration.

## 2 Money laundering legislation

### 2.1 Point of reference

The *Bailiwick's* anti-money laundering regime comprises various laws, regulations and guidance notes, which are set out in chronological order for the sake of convenience. A good point of reference is the *Guernsey Financial Services Commission's* website: [www.gfsc.gg](http://www.gfsc.gg)

### 2.2 Primary legislation

The Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law 1991  
 The Money Laundering (Disclosure of Information) (Guernsey) Law 1995  
 The Money Laundering (Disclosure of Information) (Alderney) Law 1998  
 The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999  
 The Drug Trafficking (Bailiwick of Guernsey) Law 2000  
 The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law 2001  
 The Terrorism (United Nations Measures) (Channel Islands) Order 2001  
 The Money Laundering (Disclosure of Information) (Sark) Law 2001  
 The Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002  
 The Terrorism and Crime (Bailiwick of Guernsey) Law 2002

## 2.3 Secondary legislation

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance 1999

The Drug Trafficking (Bailiwick of Guernsey) Law (Enforcement of External Forfeiture Orders) Ordinance 2000

The Drug Trafficking (Bailiwick of Guernsey) Law (Designated Countries and Territories) Ordinance 2000

The Royal Court (International Co-operation) Rules 2002

The Drug Trafficking (Designated Countries and Territories) (Amendment) Ordinance 2002

The Criminal Justice (Proceeds of Crime) (Enforcement of Overseas Confiscation Orders) (Amendment) Ordinance 2002

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations 2002

## 2.4 Codes of Practice/Guidance Notes

The Guernsey Financial Services Commission Codes of Practice for Corporate Service Providers, Trust Service Providers and Company Directors 2001

The Guernsey Financial Services Commission Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism 2002

# 3 Money laundering and terrorist fund related offences

## 3.1 Applicable legislation

Money laundering ('ML') offences are created by the *Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999* ('the 1999 Criminal Justice Law'), *Drug Trafficking (Bailiwick of Guernsey) Law 2000* ('the 2000 Drug Trafficking Law') and *Terrorism and Crime (Bailiwick of Guernsey) Law 2002* ('the 2002 Terrorism and Crime Law'). Terrorism related offences are created by the *Terrorism (United Nations Measures) (Channel Islands) Order 2001* and *Terrorism and Crime (Bailiwick of Guernsey) Law 2002*. The specific offences and selected defenses are set out in more detail below:

## 3.2 The Criminal Justice (Proceeds of Crime) Bailiwick of Guernsey Law 1999

The *1999 Criminal Justice Law* creates three offences in relation to the proceeds of **criminal conduct**:

### 3.2.1 Concealing or transferring the proceeds of criminal conduct

Under s. 38, a person is guilty of this offence if he:

- i. conceals or disguises any property which is, in whole or in part directly or indirectly represents, their own or another's proceeds of **criminal conduct**; or
- ii. converts or transfers that property or removes it from the *Bailiwick*,

for the purpose of avoiding the prosecution of themselves or another for **criminal conduct** or the making or enforcement in their case, or the case of another, of a **confiscation order**.

### 3.2.2 Assisting another person to retain the proceeds of criminal conduct

Under s. 39, a person is guilty of this offence if he enters into or is otherwise concerned in an arrangement whereby:

- i. the retention or control by or on behalf of another (called in this Law ‘A’) of A’s proceeds of **criminal conduct** is facilitated (whether by concealment, removal from the *Bailiwick*, transfer to nominees or otherwise); or
- ii. A’s proceeds of **criminal conduct**: are used to secure that funds are placed at A’s disposal; or are used for A’s benefit to acquire property by way of investment,

knowing or suspecting that A is or has been engaged in **criminal conduct** or has benefited from **criminal conduct**.

### 3.2.3 Acquisition, possession or use of the proceeds of criminal conduct

Under s. 40, a person is guilty of an offence if, knowing that any property is, in whole or in part directly or indirectly represents, another’s proceeds of **criminal conduct**, he acquires or uses that property or otherwise has possession of it. It is a defence to show that the person who either acquired the property or had possession of it has given adequate (valuable) consideration.

## 3.3 Criminal conduct

**Criminal conduct**’ is defined as any conduct, other than drug trafficking (which is covered by the *2000 Drug Trafficking Law*), which constitutes a criminal offence under the laws of the *Bailiwick* and is triable on indictment or which would constitute such an offence if it were to take place in the *Bailiwick*. Thus, it is irrelevant whether the conduct is criminal in the jurisdiction in which it was committed.

## 3.4 Offence under ss. 39 or 40 of the 1999 Criminal Justice Law

A person will not commit an offence, notwithstanding that his conduct would otherwise constitute an offence under ss. 39 or 40 of the *1999 Criminal Justice Law*, if: (a) he discloses his knowledge or suspicion to a police officer before he does the relevant act; and (b) the act is done with the consent of the police officer; or (c) the **disclosure** is made after he does the act, but is made on his own initiative and as soon as it is reasonable for them to make it. An employee may instead make the **disclosure** to the appropriate person under his employer’s internal reporting procedures (as required by the *2002 Regulations* and the *Guernsey Financial Services Commission* (**‘the GFSC’**) *Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism 2002* (**‘the Guidance Notes’**)).

## 3.5 The Drug Trafficking (Bailiwick of Guernsey) Law 2000

The *2000 Drug Trafficking Law* creates three offences in connection with the proceeds of drug trafficking:

- Concealing or transferring the proceeds of drug trafficking (s. 57);
- Assisting another person to retain the benefit of drug trafficking (s. 58); and
- Acquisition, possession or use of the proceeds of drug trafficking (s. 59).

These offences are substantively the same as the equivalent offences under the *1999 Criminal Justice Law*, save that they solely relate to the proceeds of drug trafficking.

### 3.6 The Terrorism (United Nations Measures) (Channel Islands) Order 2001

The *Terrorism (United Nations Measures) (Channel Islands) Order 2001* creates five offences in relation to **terrorist funds**:

#### 3.6.1 Collection of funds

Under *Article 4*, it is an offence to knowingly or with reasonable cause to suspect solicit, receive or provide funds for the purpose of **terrorism**.

#### 3.6.2 Making funds available

Under *Article 5*, it is an offence to make funds available to **terrorists**, persons or entities owned or controlled by **terrorists**, or persons or entities acting on their behalf, without a **license** granted by **HM Procureur** (the *Guernsey* equivalent of HM Attorney General).

#### 3.6.3 Breach of freezing order

Under *Article 6*, it is an offence to make funds available in breach of a **freezing order** granted by **HM Procureur**.

#### 3.6.4 Facilitation offences

Under *Article 7*, it is an offence knowingly to facilitate the commission of any of the above offences.

#### 3.6.5 Offences in connection with licenses

Under *Article 8*, it is an offence: (a) knowingly or recklessly to supply false information for the purpose of obtaining a **license**; or (b) having obtained a **license**, to act in breach of any conditions attached thereto.

### 3.7 The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002

The *2002 Terrorism and Crime Law* creates five offences in connection with **terrorist funds**:

#### 3.7.1 Fund raising

Under s. 8, it is an offence to receive or provide, or invite another to provide, money or other property for the purposes of **terrorism**. A person is required to intend (in the case of receiving or inviting another to provide) or know (in the case of providing), or have reasonable cause to suspect, that the property will or may be used for such a purpose.

#### 3.7.2 Use and possession

Under s. 9, it is an offence to possess money or other property for the purposes of **terrorism**. A person is required to intend or have reasonable cause to suspect that the property should or may be used for such a purpose.

### 3.7.3 Funding arrangements

Under *s. 10*, it is an offence to enter into or become concerned in an arrangement as a result of which money or other property is or is to be made available to another for the purposes of **terrorism**. A person is required to know or have reasonable cause to suspect that the property will or may be used for such a purpose.

### 3.7.4 Money laundering

Under *s. 11*, it is an offence to enter into or become concerned in an arrangement which facilitates the retention or control of **terrorist property** by or on behalf of another. A person is required to know or have reasonable cause to suspect that the arrangement related to **terrorist property**.

### 3.7.5 Breach of freezing order

Under *Schedule 4 paragraph 7*, it is an offence to fail to comply with a **freezing order** made by the *States Advisory and Finance Committee* or to engage in an activity knowing or intending that it will enable or facilitate the commission by another of such offence. It is a defense if a person proves that they did not know and had no reasonable cause to suppose that they were in breach of such prohibition.

## 3.8 Disclosure of suspicion

A person will not commit an offence, notwithstanding that his conduct would otherwise constitute any of the above offences under the *2002 Terrorism and Crime Law*, if: (a) they are acting with the consent of a police officer; or (b) after becoming involved in a transaction relating to money or other property, they disclose their suspicion or belief that the money or other property is **terrorist property** to a police officer. An employee may instead make the **disclosure** under his employer's internal reporting procedures.

## 3.9 The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations 2002

The *2002 Regulations* were issued pursuant to the *1999 Criminal Justice Law*. They relate solely to financial services businesses. 'Financial services businesses' (singularly, '**FSB**') include businesses providing a wide range of financial and credit services. However, the *2002 Regulations* do not cover circumstances where such services are provided by lawyers, accountants and actuaries and are incidental to the provision of legal, accounting or actuarial services.

### 3.10 Key features of the 2002 Regulations

The key features of the *2002 Regulations* are that they require any person carrying on an **FSB** in the *Bailiwick* to:

- establish and maintain identification, record keeping and internal reporting procedures in relation to the **FSB**;
- ensure that employees whose duties relate to financial services business are aware of the above procedures and the relevant laws; and



- provide key staff, i.e. all those who deal with customers/clients or their transactions, with comprehensive training in the relevant laws, their personal obligations under the laws, and the anti-ML and anti-financing of **terrorism** policies and procedures in place in the **FSB**.

### 3.11 The Guernsey Financial Services Commission Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism 2002

The *Guidance Notes* were issued by the *GFSC* to assist financial services businesses to comply with the requirements of the relevant laws. The *Guidance Notes* state that the court may take account of the *Guidance Notes* in any proceedings brought under the relevant laws or in determining whether a person has complied with the requirements of the *2002 Regulations*, and that they are a statement of the standard expected by the *GFSC* of all *FSBs* in the *Bailiwick*. Compliance is therefore essential.

### 3.12 The Duty of Vigilance/Internal Reporting Procedures

*FSBs* should be constantly vigilant in deterring criminals from making use of them for the purpose of ML. The duty of **vigilance** consists mainly of the following five elements, which are dealt with in greater detail below:

- Verification
- Recognition of suspicious customers/transactions
- Reporting of suspicion
- Keeping of records, and
- Training.

Each *FSB* must have in place systems which enables it to:

- determine (or receive confirmation of) the true identity of customers requesting their services
- recognize and report suspicious transaction to the *Financial Intelligence Service* ('*FIS*')
- keep records for the prescribed period of time
- train key staff
- liaise closely with the *FIS* and the *GFSC* on matters concerning **vigilance** policy and systems and
- ensure that internal audit and compliance departments regularly monitor the implementation and operation of **vigilance** systems.

*FSBs* must appoint a money laundering reporting officer ('*MLRO*'). The *MLRO* should be a senior member of staff with the necessary responsibility to ensure compliance with the *Guidance Notes* and who has responsibility for **vigilance** policy and for dealing with reports of suspicious transactions.

*FSBs* should ensure that 'key staff' know to whom their suspicions of **criminal conduct** should be reported and that there is a clear procedure for reporting such suspicions without delay to

the *MLRO*. It is for the *MLRO* to investigate the suspicious transaction. If, following that investigation, the *MLRO* remains suspicious, it should promptly submit a report to the *FIS*.

### 3.13 Verification (know your customer)

An *FSB* should establish to its reasonable satisfaction that every person whose identity needs to be verified actually exists (save for a small number of exceptions). Guidance is given as to the application of this principle to individuals, partnerships, companies (including corporate trustees), other institutions and intermediaries. However, the exact standard of **due diligence** will depend on the exact nature of the relationship and the *Guidance Notes* do not specify what constitutes sufficient evidence of identity.

### 3.14 Recognition of suspicious customers/transactions

A suspicious transaction will often be one which is inconsistent with a customer's known legitimate business or activities, or with the normal business for that type of financial services product. It follows, therefore, that the *FSB* should know enough about the customer's business to recognize that a transaction, or a series of transactions, is unusual.

### 3.15 Keeping of records

*FSBs* should:

- retain each original customer verification document for at least 6 years after the day on which a business relationship or one-off transaction ceases or, where customer activity is dormant, 6 years from the last transaction and
- retain each original customer document that is not a customer verification document, or a complete certified copy for at least 6 years after the day on which all activities taking place in the course of the dealings in question were completed.

Where the *FIS* is carrying out an investigation in respect of a customer or transaction, it may request an *FSB* to keep records beyond the usual retention period. If an *FSB* is aware of such an investigation but has not received a request from the *FIS* that records be retained, it should nevertheless not, without the prior approval of the *FIS*, destroy any relevant records, even though 6 years may have elapsed.

### 3.16 Training

*FSBs* have a duty to ensure that both existing and new 'key staff' receive comprehensive training in:

- the relevant laws
- **vigilance** policy (including related systems)
- the recognition and handling of suspicious transactions and
- the personal obligations of all key staff under the relevant laws.

### 3.17 The Guernsey Financial Services Commission Codes of Practice for Corporate Service Providers, Trust Service Providers and Company Directors (1 April 2001)

The *Codes of Practice* state that providers of corporate services and trust services, and company directors should comply with the *2002 Regulations and Guidance Notes*.

### 3.18 Civil remedies

Running alongside the criminal sanctions available under the legislation exists an extensive civil armory. The *Guernsey* courts have embraced and developed the remedies available under *English* law. These include **freezing orders**, restraining orders, and orders for **disclosure**. *Norwich Pharmacal* orders are available when a third party has innocently been caught up in the affairs of an alleged wrongdoer. The Royal Court can, in appropriate circumstances, impose a constructive trust. In short, there is a fully developed and mature civil procedure to ensure that a party's civil rights are fully respected.

## 4 Disclosure/tipping off offences

### 4.1 The Criminal Justice (Proceeds of Crime) Bailiwick of Guernsey Law 1999

The *1999 Criminal Justice Law* creates two key **disclosure** offences:

#### 4.1.1 Tipping off

Under s. 41, a person is guilty of this offence if he knows or suspects that:

- i. a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into ML (as defined) or
- ii. a **disclosure** under ss. 39 or 40 of the *1999 Criminal Justice Law* has been made to a police officer or pursuant to an employer's internal reporting procedures

and he discloses to any other person information or any other matter which is likely to prejudice that investigation or any investigation which might be conducted following the **disclosure**.

#### 4.1.2 Prejudicing an investigation

Where, under the *1999 Criminal Justice Law*:

- i. a production order has been made or has been applied for and has not been refused or
- ii. a warrant has been issued

under s. 47, a person is guilty of an offence if, knowing or suspecting that the investigation is taking place, he makes any **disclosure** which is likely to prejudice the investigation.

### 4.2 Disclosure

It is a defense to a charge of prejudicing an investigation if a person had lawful authority or reasonable excuse for making the **disclosure**. Further, nothing in ss. 41 and 47 makes it an

offence for a professional legal adviser to disclose information in circumstances covered by legal professional privilege.

### 4.3 The Drug Trafficking (Bailiwick of Guernsey) Law 2000

The *2000 Drug Trafficking Law* creates three **disclosure** offences:

- failure to disclose knowledge or suspicion of money laundering (s. 60)
- **tipping off** (s. 61) and
- prejudicing an investigation (s. 66).

### 4.4 Failure to disclose knowledge or suspicion

In the case of failure to disclose knowledge or suspicion of money laundering, if a person comes to know or suspect that another person is engaged in drug trafficking, he commits an offence if he does not disclose this knowledge or suspicion to a police officer or under his employer's internal reporting procedures. However, it is not an offence for a professional legal adviser to fail to disclose any privileged information.

### 4.5 Tipping off

The offences of **tipping off** and prejudicing an investigation are substantively the same as the equivalent offences under the *1999 Criminal Justice Law*, save that they solely relate to the proceeds of drug trafficking.

### 4.6 The Terrorism (United Nations Measures) (Channel Islands) Order 2001

The *Terrorism (United Nations Measures) (Channel Islands) Order 2001* creates two **disclosure** offences:

#### 4.6.1 Failure to disclose knowledge or suspicion of offences

Under *article 9*, it is an offence for an **FSB** to fail to disclose to **HM Procureur** its knowledge or suspicion that a customer/person with whom it has had dealings since the Order came into force is a **terrorist** or has committed a **terrorist** offence.

#### 4.6.2 Failure to comply with a request for information

**HM Procureur** can require any person to provide information or documents to secure compliance with or detect evasion of the Order or equivalent measures in the *UK, Jersey, Isle of Man or British Overseas Territories*. Under *article 10*, it is an offence to:

- i fail to provide such information
- ii knowingly or recklessly provide false information
- iii willfully obstruct the request or
- iv damage, destroy or conceal any document with intent to evade these provisions.

## 4.7 The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002

The *2002 Terrorism and Crime Law* creates nine **disclosure** offences:

### 4.7.1 Disclosure of information likely to prejudice an investigation

Under *s. 40*, it is an offence to prejudice an investigation into **terrorist** offences. The defenses are the same as for the offence of prejudicing an investigation under the *1999 Criminal Justice Law*. However, the mental requirement is different; the person making the **disclosure** likely to prejudice the investigation must know or have reasonable cause to suspect that the investigation is taking place, rather than know or actually suspect.

### 4.7.2 Interfering with relevant material

Under *s. 40*, it is also an offence to interfere with material which is likely to be relevant to an investigation into **terrorist** offences. It is a defense for a person to prove that they had a reasonable excuse for the interference.

### 4.7.3 Failure to disclose information concerning offences in connection with terrorist funds: persons not connected with financial services businesses

Under *s. 12*, any person who, based on information which comes to their attention in the course of a trade, profession, business or employment other than an *FSB*, believes or suspects that an offence in connection with **terrorist funds** has been committed is guilty of an offence if without a reasonable excuse they do not disclose this belief or suspicion and the information on which it is based to a police officer, or under their employer's internal reporting procedures. Actual belief or suspicion is required. **Disclosure** by a professional legal advisor or of privileged information or suspicion or belief based on such information is not required.

### 4.7.4 Failure to disclose information concerning offences in connection with terrorist funds: persons connected with financial services businesses

This offence under *s. 15* is materially the same as the offence under *s. 12* save that it applies to persons connected with *FSBs* and actual belief or suspicion is not required; only reasonable grounds for knowing or suspecting.

### 4.7.5 Failure to disclose information about acts of terrorism

Under *s. 38*, any person in possession of information which he knows or suspects might be of material assistance in preventing an act of **terrorism** or in securing the apprehension, prosecution or conviction of another person in the *Bailiwick* for an offence involving the commission, preparation or instigation of an act of **terrorism** is guilty of an offence if they fail without a reasonable excuse to disclose that information to a police officer.

### 4.7.6 Failure to provide information required under a freezing order

Under *Schedule 4, paragraphs 7 and 8*, a person commits an offence if he fails without reasonable excuse to provide the information or documents sought by a **freezing order** made under the *2002*

*Terrorism and Crime Law*, or knowingly or recklessly provides information or documents which are false.

#### 4.7.7 Giving a false or misleading explanation of seized or produced material

An appropriate judicial officer (or police officer in limited circumstances) can require a person to provide an explanation of material seized pursuant to a warrant or produced pursuant to a production order issued under the *2002 Terrorism and Crime Law*. Under *Schedule 5, paragraph 6*, it is an offence to give a false or misleading explanation.

#### 4.7.8 Failure to provide an explanation of material seized pursuant to emergency authorization

This is the same as the above offence, save that it relates to cases of emergency under *Schedule 5, paragraph 7*.

#### 4.7.9 Failure to provide financial information

An appropriate judicial officer can make an order in relation to a **terrorist** investigation which authorizes a police officer to require an *FSB* to provide customer information for the purposes of the investigation. Under *Schedule 6, paragraph 1*, failure to comply with this requirement is an offence. It is a defense for the *FSB* to prove that the information required was not in its possession or that it was not reasonably practicable to comply.

## 5 Account monitoring orders

Under *Schedule 7, paragraph 1* of the *2002 Terrorism and Crime Law*, an appropriate judicial officer may make an account monitoring order for the purposes of a **terrorist** investigation if satisfied that the tracing of **terrorist property** is desirable for the purposes of the investigation and will enhance its effectiveness. This requires the specified *FSB* to provide specified information relating to specified accounts for a specified period of up to 90 days to a police officer.

### 5.1 Disclosure reports

If an *FSB's* MLRO concludes that a **disclosure** should be made, a report should be sent to the *FIS*. If urgent, initial notification should be made by telephone. To the extent permitted by law, *FSBs* should comply with any instructions subsequently received from the *FIS*, including the provision of further requested information. The *FIS* may give the *FSB* written consent to continue operating the financial services product for the client or, in exceptional cases, such consent may not be given. An *FSB* should maintain a register of all reports made to the *FIS*.

A report to the *FIS* will not be disclosed outside the *FIS* and the client is never approached. In the event of a prosecution, the source of the information is protected.

As well as reporting to the *FIS*, where a **disclosure** has been made under the *Money Laundering (Disclosure of Information) Laws for Guernsey 1995, Alderney 1998 or Sark 2001, or 1999 Criminal Justice Law*, the *GFSC* also requires *FSBs* to report to it if: the *FSB* failed to detect the transaction; the transaction may present a significant risk to the reputation of *Guernsey* and/or the

*FSB*; it is suspected that a member of the *FSB*'s staff was involved; or a member of the *FSB*'s staff has been dismissed for a serious breach of ML controls.

## 5.2 Production orders and warrants

Under the *1999 Criminal Justice Law*, *2002 Drug Trafficking Law* and *2002 Terrorism and Crime Law*, a police officer may apply to the court for a production order or warrant for the purposes of an investigation into the type of crime covered by the relevant law. Such orders will typically require an *FSB* to deliver up specified categories of documents or other information. The *Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law 1991* ('*the 1991 Fraud Law*') also provides that **HM Procureur** may issue orders for the production and explanation of material without recourse to the courts.

## 5.3 Disclosure by the authorities of disclosed material

Information obtained under the *1991 Fraud Law* may be disclosed in the interests of justice to any person or body for the purposes of any investigation or prosecution of an offence in the Bailiwick or elsewhere.

Information disclosed to the police pursuant to the *1999 Criminal Justice Law* may not be disclosed by the police or anyone receiving the information from them, save as permitted by statute. In this regard, **disclosure** is permitted within the *Bailiwick* for the purposes of the investigation of crime, or for criminal proceedings, within the *Bailiwick*. **Disclosure** is also permitted for other purposes in the *Bailiwick* to the **GFSC**, **HM Procureur**, a police officer or any other person authorized by **HM Procureur** to obtain that information. **Disclosure** is permitted outside of the *Bailiwick* with the consent of **HM Procureur** for the purposes of the investigation of crime, or for criminal proceedings, outside the *Bailiwick*.

The *2000 Drug Trafficking Law* does not contain equivalent provisions. It does, however, contain provisions for obtaining local evidence for use overseas in connection with criminal investigations and proceedings with respect to drug trafficking. The *Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law 2001* makes equivalent provisions with respect to criminal investigations and prosecutions generally.

Information and/or documentation disclosed pursuant to a request under *the Terrorism (United Nations Measures) (Channel Islands) Order 2001* may be disclosed to the Crown on behalf of the UK government, to the *States of Jersey*, or the government of the *Isle of Man* or any *British Overseas Territories* listed in the *Schedule to the Terrorism (United Nations Measures) (Channel Islands) Order 2001*. It may also be disclosed to the *UN* or the government of any other country for the purpose of monitoring or securing compliance with the Order. In addition, it may be disclosed in connection with proceedings for an offence under the Order in *Jersey* or under equivalent legislation in the *UK*, the *Isle of Man* or any *British Overseas Territory* listed in the *Schedule to the Order*.

## 5.4 Impact of disclosure on civil liability

The effect of the above-mentioned legislation is that a person who makes a **disclosure** to the authorities concerning what they know, believe or suspect to be the proceeds of **criminal conduct**

or **terrorist funds** will not be regarded as having breached any civil prohibition against the **disclosure** of such information (e.g. a banker's duty of confidence to his customer).

## 6 Enforcement

### 6.1 The Courts

The relevant *Guernsey* courts are comprised of the Magistrates' Court, the Royal Court and the Court of Appeal. Further right of appeal lies to the Privy Council. *Alderney* has the Court of Alderney and *Sark* has the Court of the Seneschal. The Royal Court deals with the more serious matters in the *Bailiwick*, including charges on indictment. It has power to make **confiscation, forfeiture, restraint and charging orders** and, upon application by **HM Procureur**, to deal with requests for assistance from prosecution and investigatory authorities overseas.

### 6.2 The Financial Intelligence Service

The *FIS* is a joint customs and police body. It is the central point within the *Bailiwick* for the gathering, collating, evaluation and dissemination of all financial crime intelligence, including **disclosure** reports, and bears responsibility for the investigation of any person suspected of ML.

### 6.3 The Guernsey Financial Services Commission

The *GFSC* was established in 1988 by the *Financial Services Commission (Bailiwick of Guernsey) Law 1987* and regulates finance business in *Guernsey*. The *GFSC*'s primary stated objective is 'to regulate and supervise financial services in *Guernsey*, with integrity and efficiency, and in so doing help to uphold the international reputation of *Guernsey* as a finance centre.'

The *GFSC* does not exercise an enforcement function and is unable to specifically punish *FSBs* for failure to comply with ML obligations. It is, however, entitled to take such failure into consideration in the exercise of its regulatory and supervisory functions and, particularly, in the exercise of its judgment as to whether the directors and managers are fit and proper persons. Therefore, if an *FSB* does not reach the standards set by the *Guidance Notes*, it is at risk of having its **license** to carry on business within the *Bailiwick* revoked.

### 6.4 The Law Officers of the Crown

**HM Procureur**, whose position is equivalent to Attorney-General, and **HM Comptroller**, whose position is equivalent to Solicitor-General, are appointed by the Crown. They are legal advisors to the Crown and the *Bailiwick's* legislatures. The Chambers of the **Law Officers** are concerned with all aspects of the administration of justice. The **Law Officers** bring and supervise all prosecutions in the *Bailiwick* and it is to the **Law Officers** that requests will be made from other jurisdictions for assistance.

## 7 Restraint and confiscation

- The *1999 Criminal Justice* and *2000 Drug Trafficking Laws* contain provisions for **confiscation, restraint and charging orders**.



- When a convicted defendant appears for sentencing, the court can make a **confiscation order** if it decides that the defendant has benefited from **criminal conduct**. This need not be the conduct for which he or she has been convicted.
- A **restraint** or **charging order** may be made by the court in order to enforce a **confiscation order**. Restraint orders prohibit any person from dealing with property named in the order (subject to any specified exceptions). A **charging order** can either be a realty charging order or personalty charging order and secures payment to the Crown of all or part of the amount which the defendant has been, or may be, ordered to pay under a **confiscation order**.
- The court may also make **restraint** or **confiscation orders** to enforce **confiscation orders** made in countries or territories designated in an Ordinance issued by the *States of Guernsey*. To be enforceable in the *Bailiwick*, such orders must be registered in the *Bailiwick* by the court.
- Under the *Terrorism (United Nations Measures) (Channel Islands) Order 2001*, HM **Procureur** can freeze funds which he has reasonable grounds to suspect are **terrorist funds** without the need to obtain a court order.
- The *2002 Terrorism and Crime Law* also contains provisions for **forfeiture**, **restraint** and **freezing orders**. The court can make a **forfeiture order** against a person convicted of an offence in connection with **terrorist funds**. The distinction between **confiscation** and **forfeiture orders** is that the former operates *in personam* against the defendant and the latter operates *in rem* against the property to be forfeited.
- A **restraint order** under the *2002 Terrorism and Crime Law* is materially the same as a **restraint order** under the *1999 Criminal Justice* and *2000 Drug Trafficking Laws*. A **freezing order** is an order made by the *States of Guernsey Treasury and Resources Department*, which prohibits persons from making funds available to or for the benefit of a person, or persons specified in the order. It is typically used to restrain funds held by an **FSB** on behalf of the defendant.
- Finally, an immigration or police officer may seize and detain cash if they have reasonable grounds for suspecting that it is **terrorist** cash. The court may order the forfeiture of all or part of the cash if the cash or part is **terrorist** cash. There are also provisions dealing with tracing and mixing property and appeals against forfeiture.

## Abbreviations

FIS	Financial Intelligence Service
FSB	Financial Services Business
GFSC	Guernsey Financial Services Commission
ML	Money Laundering
MLRO	Money Laundering Reporting Officer

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## Relevant Addresses

### Financial Intelligence Service

Hospital Lane  
St Peter Port  
Guernsey  
Channel Islands  
GY1 2QN

### The Law Officers of the Crown

PO Box 96  
St James Chambers  
St Peter Port  
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### Guernsey Financial Services Commission

PO Box 128  
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[www.gfsc.gg](http://www.gfsc.gg)

**David Stokes** is a graduate of Oxford University. He qualified as a chartered accountant in 1974 and from 1985 until his retirement in 2002 was a partner in PricewaterhouseCoopers and its predecessor firms, specializing in business restructuring. He has extensive international experience, having been based at various times in his career in Europe, Asia and South America. He is particularly experienced in financial advisory work and corporate change management. Resident in Cyprus since 2002, he is now a consultant to Andreas Neocleous & Co, the leading Cyprus-based international law firm, specializing in business advice.

### **Firm's profile**

**Andreas Neocleous & Co.** is the largest law firm in Cyprus and the Eastern Mediterranean. Its goal is to offer a world-class service to international clients in all areas of the law, providing individually-tailored business solutions to protect and promote their interests. With offices in Moscow, Bucharest, Kiev, Prague and Brussels the firm has an international outlook and long experience in advising clients wishing to invest in the dynamic economies of Central and Eastern Europe.