

GPEG's response to the Consultation Paper: The introduction of a Public Private Partnership on Combatting Financial Crime and AML/CFT

Introduction

Guernsey Policy and Economics Group LBG (GPEG) have reviewed in full the Consultation Paper: The introduction of a Public Private Partnership on Combatting Financial Crime and AML/CFT, released by the Bailiwick of Guernsey Financial Intelligence Unit on 30 July 2021. In this paper we present to you our findings.

Initial response to the introduction:

The first paragraph of the consultation paper makes reference to the effectiveness of the JMLIT which is a UK based organisation. It seeks to combine information on combatting financial crime, (CFC) anti-money laundering, (AML) and combatting financial terrorism (CFT) which in itself is admirable. The Financial Intelligence Unit (FIU) sings the praises of the success of the JMLIT and it concludes automatically that it would be good for Guernsey to introduce its own forum for the confidential sharing of information between the public and private sectors. **Where is the evidence?**

The paper goes on to conclude that the new Guernsey partnership (PPP) will be bound to benefit the criminal justice system. This again is a sweeping statement made without any statistics to back it up.



1. Response to the Executive Summary

1.1 This paragraph begins with a sweeping statement that it is increasingly accepted that jurisdictions which have a close co-operation between AML/CFT public authorities and the private sector are more effective in efforts to counter-act the adverse effects of money laundering and terrorist financing, than those who don't. We have no doubt that this is perfectly acceptable when comparing like with like. However, no attempt has been made by the authors of this document to mention comparative jurisdictions in size or in terms of level of problems. It is interesting to note that Jersey which is our nearest competitor does not have a similar regime.

1.2 In this paragraph the authors again seek to support the positive effects of the JMLIT. This paragraph focuses on UK statistics but makes no attempt to offer comparisons with Guernsey.

1.3 This paragraph again continues to sing the praises of the UK model. This is often the case with individuals who have experience of another jurisdiction and continue to want to replicate in Guernsey what they have experienced elsewhere regardless of needs, cost or justification. This paragraph is the first to identify changes will be required to existing legislation in order for this new GIMLIT to proceed. As is quite often the case there is no assessment of how much work this will entail or how much it will cost. An impact assessment is badly needed to be completed before any proposals go forward.

1.4 It is apparent from this paragraph that some analysis was undertaken when considering a comparative model for Guernsey, however, Hong Kong and Singapore were the chosen jurisdictions each with a population of 7,500,000 and 5,700,000 respectively, compared to a 63,000 population in Guernsey. Where is the comparison? Where are the statistics backing the need?

2. Guernsey Integrated Money Laundering and Terrorist Financing Intelligence Task Force or (GIMLIT)

2.1 The authors intention is that the new PPP or GIMLIT would be modelled on the UK and other models in other financial jurisdictions. They state that the PPP arrangement should be based on trust between the parties and that this takes time to build. We would submit that this would probably be an issue in larger jurisdictions however with a population of 63,000 this would not be an issue and in fact there is already evidence that some of the public sector and most of the private sectors are already working together without the need for this additional layer of bureaucracy or compliance. In fact, it should be possible for a more informal liaison between agencies to be set up and compatible.

2.2 This paragraph states the objectives of the GIMLIT as being to prevent, identify and disrupt financial crime, money laundering, terrorist financing and financing of weapons of mass disruption. The author goes on to admit that Guernsey's risk profile is almost entirely only concerned with money laundering. There is no mention of the level of the problem presenting itself in Guernsey versus the other jurisdictions that were studied. The paragraph goes on to explain the intentions of the FIU which is to put in place an operational level of sharing of case -specific information with the private sector and at strategic level build on common understanding of threats, risks and associated systems and controls required to mitigate risk (including the preparation of 'Alerts' outlining typologies, indicators and other allied material relevant to the jurisdiction). There is no information offered to suggest that any problems exist in Guernsey currently requiring this additional level of surveillance. The paragraph goes on to state that the FIU would not share any information regarding a Suspicious Activity Report or (SAR's) with the GIMLIT and that the framework for



information sharing would be different with the GIMLIT. It is obvious that this proposal would result in yet another layer of compliance which the FIU have not proved is an urgent, or even desirable, requirement in this jurisdiction.

2.3 The proposal to create the GIMLIT is to co-opt an individual senior employee from each relevant financial institution (Banking, Trust Funds etc) to be a representative of the GIMLIT. All members would be vetted by the FIU. Public representation would be chosen from agencies such as the Economic and Financial Crime Bureau, the Revenue service, GFSC, Alderney Gambling Commission, each to sign up to an MOU modelled on the UK (yet again!). It is not clear whether these representatives would be paid or volunteer posts or whether it would result in an increased staffing level of the FIU. Without a cost benefit analysis it is unclear who would bear the costs of operating a GMLIT, however, as with the current regime of regulation it is likely to impact both the public and private sectors.

2.4 It is the intention in the proposals that the FIU would request information from GIMLIT on its own behalf and on behalf of agencies both domestic and international, and other PPPs. Each member of GIMLIT would be obliged to search the client data base of his or her employer and provide the FIU and possibly other participants with information it holds. It is not clear whether the FIU would be required to have reasonable evidence of suspicion which clearly is quite worrying! There is nothing in this paragraph to cover client confidentiality, data protection etc. However, the paragraph states that the provision of information to the FIU through the GIMLIT would be voluntary although it is intended that the FIU in any suspicious situation will have the backing of the Disclosure and Terrorism Laws to fall back on and other supporting regulations will still be applicable! This whole process needs to be much more clearly defined.

2.5 No additional comment required.

2.6 This paragraph explains how the FIU would operate. It is not clear what additional powers they would be granted to operate although the next paragraph suggests that their powers would be increased!

2.7 This paragraph confirms that the legislative framework on the provision of information sharing will require amendment for the effectiveness of the GIMLIT to be assured including the confidentiality provisions or restrictions of sharing such information between the relevant authorities and the private sector. This will incur additional cost if nothing else!

3. Existing Powers in Relation to Provision of Information to the FIU

3.1 This paragraph is interesting as it states that there are a range of circumstances in which Guernsey businesses are already subject to the AML/CFT framework to provide information to the FIU. So why do we need a new over-arching body? This is not sufficiently well explained.

3.2 Businesses are already required to report suspicion of money laundering and terrorist financing to the FIU under the Disclosure and Terrorism Laws and the FIU can require businesses to provide additional information, either after a receipt of a report of suspicion, or when a business is identified in a third party's report, under the Disclosure (Bailiwick of Guernsey) Regulations 2007, and corresponding regulations under the Terrorism Law. So why do we need a GIMLIT?



3.3. Also, the FIU can compel any business to provide information to it under the Disclosure (Bailiwick of Guernsey) (Information) Regulations 2019 or in terrorist financing cases, under the equivalent powers and supporting regulations under the Terrorism Law in relation to a report from a domestic or foreign authority (a report for these purposes includes a request for information). *So again why do we need this new body which will cost more to operate, and will incur additional cost to up-grade the laws to give the FIU the necessary powers to do so?*

3.4 This paragraph focuses on individual financial businesses having access to client databases. It goes on to state that they can already reach out to other group members for matches. The FIU can currently use its powers to gain more information via the laws which have already been mentioned. *We would question whether this would be appropriate behaviour in the face of lack of evidence.*

4. Proposed Changes

4.1 Whilst there are no international laws preventing the FIU setting up a GIMLIT there are some local laws preventing the bringing into existence of the concept of GIMLIT. *Additional changes to our local laws would be required to enable this process to take effect. For example, the proposals are to make amendments to the Disclosure law and the Terrorism Law by Ordinance to require individuals to submit information to the FIU, as currently drafted they are not wide enough.*

4.2. This paragraph is particularly worrying as it appears to infer that the FIU is concerned that information requested to be submitted by local firms to group entities in the UK for onward transmission to the JIMLIT and which may not be sufficiently vetted by the FIU who evidently appear to want to control this process more effectively. *There appears to be an underlying desire to take control of this process entirely and a lack of recognition of*

the complicity that currently exists between the private and public sectors.

5. Confidentiality

5.1 This paragraph seeks to strengthen security within the GIMLIT and FIU environment. It is proposed that the Disclosure and Terrorism Laws should be amended along the lines of the confidentiality provisions in the Civil Contingencies (Bailiwick of Guernsey) Law, 2012. These provide that it is an offence for any member of the Civil Contingencies Authority, to unlawfully disclose any information, document or other article to which they have access by virtue of their position. *This is again an example of incurring additional costs by having to amend legislation to bring in line this additional layer of regulation.*

5.2 In line with other models of PPP members of the GIMLIT would be required to enter into a Memorandum of Understanding highlighting the importance of confidentiality.

5.3 This paragraph covers the requirement for all GIMLIT members to be vetted including in regard to any previous convictions. This requirement currently only applies to people working at senior levels in the financial services sector, but only in respect of questions asked by an employer or the Guernsey Financial Services Commission for the purposes of the licensing process. This means that it is not wide enough to cover questions asked by the FIU for the purposes of GIMLIT. It is therefore proposed that the 2006 Ordinance be amended to enable questions to be asked by the FIU about any convictions, whenever incurred, in relation to members of the private sector for the purposes of participation in GIMLIT. *Yet another example of additional legislation to regulate an already overregulated industry.*

Conclusions

- Any regulated business currently operating in Guernsey suspecting suspicious activity is already bound to report to the FIU so why add another layer?
- Guernsey's Finance Industry is heavily regulated and in some peoples' opinion is already unattractive to new business trying to locate here. These proposals will add yet another layer of regulation and cost to an industry struggling to compete with other jurisdictions which are not burdened with such proposals. The additional costs will ultimately be passed on to the client who if they have another less expensive choice will not locate to Guernsey.
- The FIU already has a sufficient power to operate in the current framework given the lack of evidence of any relevant financial crime in Guernsey. We have not been provided with comparative statistics however a quick look at the GFSC website suggests that the level of criminal activities is actually low. Most evidence suggests that firms and individuals who have been fined under the current regime have been guilty of sloppy administration rather than criminal activities.
- The Guernsey finance industry has suffered as a result of the pandemic as has the public sector. Introducing this new process will impact cost wise on both the public and private sectors at a time when the government is trying to save money.
- This document appears to indicate a reliance in the belief that that just because businesses in the private sector have access to client data that they would be automatically empowered to pass on that information to a third party, even if it was the FIU. Without there being concrete evidence of criminal activity we believe that data protection legislation would be a real problem for businesses vis a vie their client information.
- Guernsey has already separated out the role of Money Laundering Reporting Officer and Money Laundering Compliance Officer. Why add yet another role?
- These proposals are basically a nice-to-have idea at a time when neither business nor the public sector can afford it!
- Why does Guernsey always want to be the first to market? Jersey which is the nearest competitor hasn't adopted this idea. Another good reason why Guernsey should not either.
- Finally, this proposal should be viewed against the background of current GFSC regulation, GFSC enforcement, the FIU, the new FCB (with its newly recruited specialist head and 34 proposed new staff), massive private sector expenditure on AML, CFT and compliance, to be supplemented by GIMLIT. All of this without a detailed assessment of any criminal activities taking place in the island.
- Without a cost benefit analysis the proposal should not be allowed to progress further.