

Joint GAT/STEP Response to Consultation on Amendment to the Legal Provisions in relation to Internal Audit, Business Risk Assessment and VASPs (the “Consultation”)

We refer to the Consultation and GAT/STEP’s joint response to the Consultation following a meeting of certain members of the Joint Technical Committee on 11 April 2023

General observations

GAT and STEP understand the rationale and purpose of the proposed revisions to Schedule 3 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “**Law**”) and the GFSC Handbook on Countering Financial Crime and Terrorist Financing and believe them to be reflective of ‘the regulatory direction of travel’ and of previous discussions held between the Commission and the Joint Technical Committee through the GAT/GFSC Liaison Committee. However, in respect of the three specific areas covered by the Consultation, and the proposed wording to be included, we would make the following observations:

Independent audit function

As previously discussed between GAT and the Commission, the rationale for this change is understood and the principle of requiring each FSB to actively consider the implementation of an independent audit function is acknowledged. However, we would make the following observations:

- 1. Impact for the Fiduciary Sector.** We note that paragraph 19 of the amended Chapter 2 states that the decision around whether or not an independent audit function is needed must be made “*having regard to the ML and FT risks, and the size and nature, of the specified business in question*” – this, combined with the factors listed in paragraph 24 (including “*if the firm is operating in a higher risk sector as indicated by the NRA*”) and paragraph 25, would, in our view, lead to the conclusion that, in effect, all fiduciaries will be caught by this requirement simply by virtue of the service they supply. We note that the Commission may regard paragraph 26 as providing some clarification. However, our view is that the fiduciary industry would consider this as the Commission affirming that a lower risk industry business should not simply ignore the requirement to consider rather than affording a fiduciary, for example, to determine that might **not** need an independent audit function. Of course, it may be that the Commission’s intention is for all fiduciaries to have an independent audit function but guidance on the point together with some FAQs would be helpful to clarify the Commission’s view.
- 2. Identity of who can act as the “Internal audit function” – capability/capacity of external third parties.** We note that paragraph 22 suggests that an external auditor (responsible for the financial audit) could be allocated the task of acting as the “internal audit function”. We then separately note that, per paragraph 21, an FSB could use a “*suitably skilled person conversant with the Bailiwick’s AML/CFT framework to test these controls*”. It is our view that a financial auditor would not be, in fact, appropriately “conversant” and that, moreover, audit firms have already informally expressed an unwillingness to undertake this role – to the extent that a ‘Big 4 firm’ or Grant Thornton/BDO were to carry out this function, it would be a different advisory team to the audit team who would be needed to do the work in any event. The Joint Committee does not believe that expecting financial auditors to cover this area, which would be a significant departure from their usual work, is realistic and, moreover, may lead to qualified audits and other similar issues where an auditor couldn’t get the appropriate ‘comfort’.

On this basis, the ‘pool’ of external consultants who can provide the relevant service is perhaps even smaller than the Commission considered. This will, therefore, inevitably push up costs for industry as well as, practically, leaving a dearth of resource on island. We therefore believe that the Commission should consider providing guidance/FAQs which explain how a fiduciary might be able to undertake an ‘independent audit’ using internal staff – we think there is substantial scope for fiduciaries to implement internal safeguards and rigorous periodic checks to fulfil this function. Good licensees with the appropriate compliance mindset should be able to manage this but we believe that guidance/FAQs would be needed to give them comfort that the Commission would not seek to challenge the approach during an onsite.



We should be glad to work with the Commission to assist with the drafting of the relevant FAQs/Guidance if appropriate.

Business Risk Assessment

We believe that these amendments are appropriate and that an expectation that the Guernsey NRA should be reflected in each FSB's BRA is already considered best practice within the fiduciary industry.

VASPs

We have no comments on these amendments.

Submitted on 21/04/2023 on behalf of the Joint GAT STEP Technical Committee by email to policyandresources@gov.gg and AMLCFT@gfsc.gg.