

**Response to the European Commission Green Paper on Building a Capital Markets Union**

**1. Beyond the five priority areas identified for short term action, what other areas should be prioritised?**

Jersey has been encouraged, since the formation of the new European Commission last year, by the renewed focus on the importance of international investment into Europe.

The Government of Jersey notes that one of the key principles stated in the Summary of the Capital Markets Union Green Paper is that a Capital Markets Union should:

*“help to attract investment from all over the world and increase EU competitiveness”.*

The Government of Jersey also notes that in Lord Hill’s speech entitled “*A new direction for financial services*” at the 13<sup>th</sup> Annual EU Financial Services Conference in Brussels on 26 March 2015, the importance of international investment into Europe was again highlighted as a key objective and a critical element in encouraging long-term inward investment into Europe.

The Government of Jersey, therefore, submits that in addition to the five priority areas identified for short term action, specific priority should also be placed on the following area:

- Creating an environment that attracts international investment into Europe from “third countries”

Jersey’s unique position as an international finance centre dealing with significant international capital flows, and with close geographical, historical, cultural, economic and legal ties to Europe, places the Island in a position to facilitate significant investment into Europe, which would underpin a successful Capital Markets Union.

The ability of Jersey to assist in the development of an effective Capital Markets Union for Europe will, however, be determined in large part by the approach of the European Union towards Jersey as a ‘third country’ provider of capital.

The information below is intended further to advance the importance of developing a Capital Markets Union with appropriate focus on allowing international inward investment into Europe in situations where Jersey believes it can be of significant assistance. The argument for inclusion of this as a priority area is listed below under the following headings:

- 1) Background on Jersey
- 2) Jersey's relationship with Europe
- 3) Europe and "third countries"
- 4) Jersey as an International Finance Centre ("IFC")
- 5) Jersey as facilitator of cross-border finance
- 6) 'Moving Money' – a report on global capital flows and the role of IFCs
- 7) Encourage improved levels of cooperation with Jersey

i) Background on Jersey

Jersey, the largest of the Channel Islands, is an international financial centre offering a sophisticated array of financial services. Jersey is a self-governing British Crown Dependency with its own parliament, government, legal system and jurisprudence. The UK is constitutionally responsible for Jersey's defence and international representation, while the Island has autonomy in relation to its domestic affairs, including taxation and the regulation of its financial services sector. Jersey can negotiate international agreements within the parameters of Letters of Entrustment provided by the UK Government, and enter into such agreements in its own name, albeit that the UK remains ultimately responsible in international law for such agreements.

The financial services industry is a key sector for the Island, with banking, funds, investment services, and trust and company services accounting for approximately half of Jersey's total economic activity. As a substantial proportion of customer relationships are with non-residents, adherence to know-your customer (KYC) rules is an area of robust focus to limit illicit money from foreign criminal activity. Jersey also requires beneficial ownership information to be obtained and held by its company registrar and its regulated trust and company service providers, which can be readily accessed by law enforcement and tax authorities. Island authorities have undertaken successful measures, as recent high profile cases have shown, to prevent the financial services industry being used for the laundering of the proceeds of foreign political corruption.

The very particular nature of Jersey's constitutional relationship with the UK does, however, provide a basis for Jersey to participate directly or indirectly (via the UK) as regards international treaties and conventions.

By way of example, Jersey is not one of the 34 sovereign nations who make up membership of the OECD. However, Jersey is a *de facto* member as a result of the extension of the UK's membership through a Letter of Declaration of 19 July 1990. This obliges Jersey to implement and comply with the decisions of the OECD e.g. the [OECD investment Policy Codes](#), such as [Code of Liberalisation on Capital Movements](#) and the [Code of Liberalisation on Current Invisible Operations](#). There is historical precedent of countries accepting this arrangement as constituting (or being equivalent to) full OECD membership by Jersey particularly where that was key to market entry and business activity.

#### ii) Jersey's relationship with Europe

Jersey has a special relationship with the European Union. In simple terms, the Island is treated as part of the European Union for the purposes of free trade in goods, but otherwise treated as a 'third country'. Jersey's relationship with the European Union was agreed when the UK became a full member. VAT is not applicable in Jersey (as the Island is not part of the European Union tax area) and nationals from the EU and European Economic Area (EEA) are free to come and live and work in Jersey (subject to local housing requirements which apply on a non-discriminatory basis between the nationals of the Member States). The 2011 Census in Jersey indicated that 47% of the Island's population of 97,587 people were born in another European Country.

#### iii) Europe and "third countries"

Jersey welcomes the renewed focus of the Commission in relation to the importance of international investment into Europe. This appears to be a welcome return to the founding principles of the European Union and notably the principles now enshrined in the Treaty of the Functioning of the European Union ("TFEU").

The ability of Jersey to assist in the development of an effective Capital Markets Union for Europe will, however, be determined in large part by the approach of the European Union towards Jersey as a 'third country' provider of capital.

A key factor is ensuring a rigorous and strict application of the principles outlined in Article 63(1) TFEU which provides that, "all restrictions on the free movement of

capital between Member States and between Member States and third countries shall be prohibited”.

This Treaty provision, like others dealing with fundamental freedoms, is couched in clear and unconditional terms and subject only to the derogations set out in Articles 64-66 TFEU. The European Court has variously confirmed that it has direct effect in national law (see joined cases C-163-94, C-165/94 and C-250/94 Criminal proceedings against Sanz de Lera and others [1995] ECR I-4830 at para 41) and that it may be relied upon before national courts, rendering inconsistent national rules inapplicable, irrespective of the category of capital movement in question (source: Case C-101/05 Skatteverket v A [2007] ECR I-11531 at para 21).

The striking feature distinguishing Article 63 from the other fundamental freedoms is that it applies not only to the abolition of all restrictions between Member States but also between Member States and third countries. This freedom, set out in EU law, is consistent with the OECD principles concerning the liberalisation of capital movements (a primary objective of the OECD Convention).

However, the (often fine) distinction between the freedom to provide financial services (which does not extend to third countries) and the freedom of movement of capital (which does extend to third countries) can be a complex one, particularly in cases where both freedoms are invoked and precedence has to be established.

The actions of the European Union when introducing new regulatory requirements (such as MiFID2 or AIFMD) or products (such as the ELTIF) and the actions of individual Member States when, for example, introducing extra limitations or national restrictions on the marketing and provision of financial services, should continue to be carefully monitored to ensure that the effect is not a “*de facto*” breach of freedom of capital as between the EU and third countries.

Jersey is confident that if the Commission places priority on upholding the freedoms enshrined in the TFEU along with renewed focus of the Commission on international investment into Europe, the Island can play a significant and valuable role in the development of a successful Capital Markets Union for Europe.

#### iv) Jersey as an International Finance Centre (“IFC”)

Jersey is a well-respected, internationally compliant and robustly regulated IFC. Jersey has been established as an IFC for more than 50 years and, through its funds industry, banking services, capital market activities and private wealth expertise, is



custodian to approximately £1.2 trillion (€1.7 trillion) of wealth, drawn from and deployed in jurisdictions around the world (source: “*Jersey’s Value to Britain*” by A Evans, R Lund, M Pragnell, 2013: <http://www.jerseyfinance.je/valuetobritain>).

The 12,700 employees of Jersey’s financial services industry, representing around 25% of the Island’s total workforce, offer expertise and experience in a range of financial services and products including international banking, wealth management, trusts and foundations, funds administration, corporate finance and specialised legal and accounting services.

More specifically Jersey provides:

Protection for wealth: Jersey provides a secure and well-regulated jurisdiction with a long history of good governance, political independence and fiscal certainty. Jersey has a high grade AA+ credit rating with Standard & Poor’s.

Legal Certainty and Rule of Law: Jersey provides a familiar legal environment with a robust legislative framework. Jersey’s self-governance and its independent, high-quality judiciary mean that users of the jurisdiction can have confidence both in legislation being kept up-to-date and in any disputes which may arise being resolved robustly, fairly and efficiently. Jersey’s Royal Court is highly regarded and has considered some of the world’s leading trust cases including *Esteem Settlement and the No. 52 Trust (Abacus (CI) Ltd as Trustee)*, *Abdel Rahman v Chase Bank* and *Alhamrani v Alhamrani*.

Access to capital markets: Jersey has strong links with the City of London and other capital markets across the globe. As at 31 December 2014, there were over 110 Jersey companies listed on at least 9 stock exchanges worldwide with a combined market capitalisation of nearly £290 billion (€400 billion). Notable names include Glencore Xstrata (listed in London and Hong Kong), Lydian International Limited (listed in Toronto) and Randgold Resources Limited (listed in London and New York). (source: “*Jersey’s Value to Britain*” by A Evans, R Lund, M Pragnell, 2013. Please also refer to the quarterly statistics published by Jersey Finance - <http://www.jerseyfinance.je/quarterly-reports--and-statistics>)

Six of the FTSE 100 companies are currently Jersey companies, the greatest number from any jurisdiction outside the UK and a further nine Jersey companies are listed on the FTSE 250.

After UK companies, there are more Jersey companies listed on the Alternative Investment Market (AIM) of the London Stock Exchange than from any other

jurisdiction. AIM describes itself as the most successful growth market in the world and has grown to over 3000 companies since its launch in 1995. In its own words, and aligned very much with the premise of this current Green Paper, it “continues to help smaller and growing companies raise the capital they need for expansion”.

Jersey is home to the offshore banking and wealth management arms of some of the largest banking groups either headquartered in or with major capital markets operations in London. Jersey’s trust companies, legal practices and accountancy firms are also closely networked into their counterparts in London.

Expertise and experience: Jersey has a significant number of financial services firms, many of them international, and hosts an impressive and diverse population with a vast depth of knowledge, experience and expertise. There are 27 banks on the Island, all of the major accountancy firms, six first tier legal firms and hundreds of trust and administration companies. As mentioned above, there are over 12,700 finance and legal professionals working in Jersey’s financial industry.

Efficient cross-border investment pooling: As a tax neutral jurisdiction, non-resident individuals and investors are not subject to any additional taxes on capital or wealth which is not originated in Jersey. Jersey’s tax neutrality means that it provides an efficient and cost-effective platform to pool investment from across the globe.

Efficient and robust regulation: Jersey is able to concentrate its resources on effectively regulating specific types of financial sector activity and is committed to adopting and implementing international standards in this area (further information below).

v) Jersey as facilitator of cross-border finance

In spite of the repercussions of the global financial crisis, globalisation of financial services continues. International trade is increasing, as is the mobility of labour, enterprise and capital.

In a world where national boundaries have ever-decreasing significance to people and to businesses, it should come as no surprise that there is demand for services that facilitate efficient and secure cross-border transactions. This is the context within which Jersey, as a premier IFC, operates. IFCs have evolved to meet the needs of global businesses and internationally mobile individuals. These needs

include resolving the complexities of the taxation of cross-border transactions, but are not limited to tax affairs alone.

Currently Jersey's closest trading partner is the United Kingdom. The activities that Jersey undertakes as an IFC have been established as being of net benefit to the UK (source: "*Jersey's Value to Britain*" by A Evans, R Lund, M Pragnell, 2013):

- £1 in every £20 invested by foreign individuals and companies in assets located in Britain reach the UK via Jersey;
- Jersey is a conduit for nearly £500 billion [€694 billion] of foreign investment into the UK, comprising 5% of the entire stock of foreign owned assets; and
- Jersey helps generate around £2.3 billion [€3.2 billion] in UK tax revenues each year and supports an estimated 180,000 UK jobs.

In terms of wider engagement with the EU (excluding the UK) the 2013 report "*Jersey's Value to Britain*" showed that 40% of assets held, administered or managed in Jersey come from the rest of the world and 69% of assets are invested into the EU. This demonstration of the free movement of capital between the EU and Jersey as a 'third country' is evidence, were evidence needed, of the role that Jersey can and does play in the provision of capital investment into Europe. See examples provided in question 3.

"*Jersey's Value to Britain*" report confirmed the truly international nature of Jersey's finance industry, with global capital flowing to the UK and Europe from some of the largest and fastest growing markets in the world. Jersey is shown to act as a fiscally frictionless conduit for global investment flows - a catalysing gateway to western markets for the global investment community.

vi) 'Moving Money' – a report on global capital flows and the role of IFCs

(source: *Moving Money: International Financial Flows, Taxes, and Money Laundering* by Richard Gordon and Andrew P. Morriss. *Hastings International and Comparative Law Review Vol 37, No 1 – Winter 2014*)

The movement of funds through IFCs is seen by some as a problem for the financial system because it puts global finance beyond the control of national governments – escaping their regulations, evading or avoiding their taxes, draining their capital and supporting criminal activity.

“*Moving Money*”, a Report by two world-renowned academics, Professors Andrew Morriss and Richard Gordon, argues that some analysts make incorrect assumptions about money, business, finance and government and propose policies that would lead to a reduction in the global economic growth that has been so beneficial across the world.

“*Moving Money*” identifies two ends of a philosophical debate around IFCs, tax policy, financial regulation and theories about why money moves around the world. The summary of the *Moving Money* report below draws a number of important conclusions as to why IFCs, such as Jersey, are key to the effective functioning of global capital markets.

The “*Moving Money*” report concludes that the global financial network is a complex system that uses different jurisdictions for different purposes. IFCs lubricate trade by facilitating international financial transactions and play an important role in offering innovations and services that cut the costs of these transactions. Overall, it concludes that IFCs play a positive role in helping the wheels of trade turn.

It is for these reasons that Jersey submits that the European Commission should prioritise creating a market that attracts international investment into Europe and allowing “third country” access to appropriately regulated jurisdictions that can demonstrate equivalence with a regulatory regime applied universally across all EU Member States.

#### *Summary of the Moving Money report*

*“Enabling countries to trade with each other leads to the creation of wealth and jobs that would not otherwise be possible.*

*‘Moving Money’, also argues that free trade boosts overall global welfare by shifting resources from less efficient to more efficient uses. Critics fail to recognise the value of international financial flows, which are essential for the free trade that has driven global economic growth.*

*In the report the authors set out their ‘efficient enterprises’ view of global capital flows. In addition to facilitating international trade, they help shift resources from less efficient to more efficient uses. All parties to international transactions benefit according to the economic theory of comparative advantage: if national economics focus on what they do best, everyone is better off – including poorer economies.*



*The global financial network is a complex system that uses different jurisdictions for different purposes. Businesses and individuals buying goods and services use those where they can ensure that their funds are safely and efficiently managed.*

*Increasing financial flows leads to a range of benefits, from generally facilitating trade and investment, to specifically allowing both the reduction of overall risk and the efficient allocation of remaining risks among voluntary parties.*

*Why offshore? As resources move around the world, countries compete for these by providing an attractive environment for labour and capital in pursuit of wealth-creating activities that can fund the provision of public goods and services. This exerts pressure on countries to adopt policies that attract resources, and so generate wealth.*

*These qualities are very often found in the IFCs that have developed highly sophisticated legal and regulatory frameworks. IFCs are well aware that capital flows towards deep, well-functioning capital markets where it can then find its way on to appropriate investments. Investors and firms will often factor in the legal and regulatory framework provided by a jurisdiction when they select potential investment opportunities.*

*It is this system of transferring claims from banks in different jurisdictions that permits governments, firms and individuals to engage in economic activity that is not bound by national borders. It is, in short, what allows a modern global economy to function with considerable less value lost to transaction costs and is therefore a more efficient way of creating wealth. In doing so, it also fosters competition between jurisdictions by rewarding those countries where keeping and transferring claims are the most efficient and the least risky.*

*Since the time of Adam Smith, economists and policymakers have understood the benefits that flow from free and fair trade. Enabling countries to trade with each other leads to the creation of wealth and jobs that would otherwise not be possible. It also boosts overall global welfare by shifting resource from less efficient to more efficient uses. One independent think tank, the Petersen Institute for International Economics, has calculated that Americans alone benefitted from trade liberalisation by nearly \$1.4 trillion in 2012.*

*It is not just rich countries that benefit. In 1998 the head of the World Trade Organisation cited the growth in trade as a cause for the doubling of income in 10 developing countries, with a combined population of 1.5 billion and contributing to overall annual growth in the world economy of 1.9% per year since World War II.*

*Cross-border trade in goods and services is not possible without the international movement of money. This has become especially important now that globalisation has opened up trade channels between all four corners of the globe. There is a huge value in reducing the financial costs of trade transactions. At the heart of this is the goal of reducing or eliminating the obstacles to the free flow of money. Even in the most straightforward exchange of goods or services for cash, the buyer has to make sure the money flows to the country where the manufacturer is based.*

*In the 21<sup>st</sup> century, international trade has become much more fragmented with thousands of interconnecting flows of raw materials, semi manufactured and finished goods as well as financial and business services. Structuring a multinational business involves more than one-off exchanges of goods and services for cash; it also requires more complex transactions that in turn will benefit from ways of reducing the cost of financing cross-border activity. The potential obstacles that modern day traders face fall into three broad categories, currency risks, legal risks and political risks.*

*IFCs lubricate trade by facilitating international financial transactions, playing an important role in offering innovations and services that cut the costs of these transactions.*

*One way IFCs do this is to provide sophisticated financial transactions, such as hedging contracts to deal with the risk of exchange rate movements. More sophisticated financial instruments promote liquidity and allow better management of risks. For example, valuable assets of a joint venture could be owned by a legal entity that is not exposed to the risk of bankruptcy of either joint venture partners. Finally trading partners can choose the law and legal institutions of a jurisdiction other than the home jurisdictions of the contracting parties. Overall it is clear IFCs play a positive role in helping the wheels of trade turn.”*

vii) Encourage improved levels of cooperation with Jersey

The Green Paper notes, ‘the range of different obstacles to the integration and development of EU capital markets, originating in historical, cultural, economic and legal factors, some of which are deep-rooted and difficult to overcome’.

In noting these obstacles, the authors may well have been chiefly directing themselves towards the obstacles present as between European Union Member States. The Government of Jersey would advocate that such considerations might equally apply as between the European Union as a whole and ‘third countries’; this is

particularly the case where those countries are IFCs and where, using the outcomes of international assessment, there may be an opportunity to re-evaluate and move towards the establishment of a more symbiotic and mutually beneficial relationship.

The Government of Jersey would not advocate a Capital Markets Union for Europe where “third country” access is uncontrolled. There is a balance to be struck between permitting appropriate and beneficial “third country” access where appropriate regulatory standards are met and recognised by international bodies. Jersey, as a high quality IFC of substance believes it is suitably qualified in this arena, and we set out below some of the evidence already available to inform the debate.

#### High Regulatory Standards:

Jersey complies with all relevant international standards on financial regulation, AML and tax transparency and information exchange and this compliance is recognised by the relevant international bodies.

Jersey’s membership of international organisations includes, amongst others, the International Organisation of Securities Commissions (IOSCO); the Organisation for Economic Co-operation and Development (OECD); the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

#### ***In respect of anti-money laundering and financial crime:***

- *Jersey made tax evasion a predicated offence in 1999*
- *In 2009 Jersey was rated as one of the best global international finance centres by the International Monetary Fund (IMF)*
- *Jersey is fully aligned with, and is deemed equivalent to, the EU 3<sup>rd</sup> Anti-Money Laundering Directive*
- *Jersey is an active member of MONEYVAL, participates in all plenary discussion and has represented MONEYVAL in FATF forums*
- *Jersey is a member of the Egmont group and the Chief Officer of the States of Jersey Police, Mike Bowron QPM is the current chair of FIN-NET*
- *Jersey has had a recent onsite assessment by MONEYVAL in January 2015 and anticipates its 4<sup>th</sup> round review to be adopted by the MONEYVAL plenary in September 2015*

***In respect of beneficial ownership information:***

- *Jersey has, for some years, maintained a central register of beneficial ownership, a requirement now only being proposed throughout Europe under the auspices of the 4<sup>th</sup> Anti-Money Laundering Directive.*
- *The approach of a central register, combined with the regulation of all trust and company service providers (TCSPs) has been acknowledged as an effective way for law enforcement and tax authorities to obtain adequate, accurate and timely information on beneficial ownership.*
- *Jersey has been cited by the World Bank in the StAR project report “The Puppet Masters” as an exemplar of good practice in capturing, at company registry level, the details of beneficial ownership of companies.*
- *A major academic study entitled “Global Shell Games” (first published as a report and then expanded and re-published as a book), recently undertook the most comprehensive and rigorous testing of anti-money laundering and fighting financial crime defences ever attempted, with results being published in October 2012. (source: [http://www.griffith.edu.au/data/assets/pdf\\_file/0008/454625/Oct2012-Global-Shell-Games-Media-Summary.10Oct12.pdf](http://www.griffith.edu.au/data/assets/pdf_file/0008/454625/Oct2012-Global-Shell-Games-Media-Summary.10Oct12.pdf) and as a book, *Global Shell Games* <http://www.globalshellgames.com/> Cambridge University Press (227 pages)).*
- *Their research demonstrated that Jersey’s application of anti-money laundering laws was 100% effective with no evidence of non-compliance. Jersey was ranked 1st in compliance terms across the list of 60+ jurisdictions for which results were available (only those countries with a sufficient response rate were ranked). EU Member States obtained a variety of rankings e.g. Denmark was ranked alongside Jersey in 1st position; the UK was ranked 43rd.*
- *The authors provide a view of the most appropriate way to establish the beneficial owner of shell companies. Ruling out using strict law enforcement powers and company registries, they conclude that requiring corporate service providers to collect and hold identity documentation on customers forming shell companies according to Know Your Customer (KYC) principles is the only way reliably to establish the real owner of shell companies. This is, and has for some time been, the Jersey model and this major study was a clear endorsement of its effectiveness.*

***In respect of automatic exchange and transparency initiatives:***

- *Jersey was one of the first jurisdictions to be placed on the OECD's white list in 2009 as having implemented internationally agreed tax standards*
- *The results of Jersey's 2011 OECD Peer Review found 'Jersey's practices to date have demonstrated a responsive and cooperative approach'. On 4 August 2014, the OECD issued a Supplementary Peer Review Report on Jersey for the period 2010 – 2012 ranking Jersey as 'largely compliant'*
- *Jersey has agreed 36 tax information exchange agreements and 8 double taxation agreements (source: <http://www.gov.je/SiteCollectionDocuments/Tax%20and%20your%20money/ID%20TIEAsSignedToDate.pdf>);*
- *Jersey has been a full signatory to the EU Savings Tax Directive since it was introduced and moved to mandated automatic exchange of information on 1 January 2015*
- *Jersey signed an intergovernmental agreement with the US in respect of 'US FATCA' on 13 December 2013*
- *Jersey signed an agreement with the UK in respect of 'UK FATCA' on 22 October 2013*
- *In July 2014, Jersey's Chief Minister made a statement concerning the position of Jersey as to tax evasion and abusive tax avoidance. The statement confirmed that Jersey has no interest in accommodating business that deals in tax evasion or abusive tax avoidance (<http://www.gov.je/news/2014/pages/abusivetaxstatement.aspx>)*
- *On 29 October 2014, Jersey joined 50 other members of an 'Early Adopters Group' in Berlin to sign a Multilateral Competent Authority Agreement. This Agreement represents a further step in the implementation of the Common Reporting Standard (CRS), a new, single, global standard for automatic exchange of taxpayer information*

***In respect of regulation governing alternative investment funds:***

- *Jersey has a particularly strong track record in the establishment, governance, management, administration and regulation of funds which invest in long-term, often illiquid assets, often in the EU*
- *Jersey was the first third country to offer a fully compliant opt-in AIFMD regime and has reviewed its legislation to ensure that there are no obstacles for an EU National Competent Authority (NCA) to perform its supervisory duties*
- *Jersey's legislative and regulatory framework is robust and facilitates smooth co-operation between the EU and Jersey authorities*

***In respect of regulation governing Trust and Company Service Providers:***

- *Jersey was significantly involved in the Statement of best practice for Trust and Company Service Providers issued by the Group of International Financial Centre Supervisors (“GIFCS”)*

*(<http://www.gifcs.org/images/gifcstcsstatementbestpractice.pdf> )*

**2. What further steps around the availability and standardisation of SME credit information could support a deeper market in SME and start-up finance and a wider investor base?**

NO COMMENT

**3. What support can be given to ELTIFs to encourage their take up?**

Lord Hill in his speech at the 13<sup>th</sup> Annual European Financial Services Conferences reminded the audience that free movement of capital is one of the four fundamental principles on which the European Union was built. Lord Hill went on to say at that Conference that it is not possible to *“talk about growth and EU competitiveness and not talk about the international picture. Having a vibrant EU market that attracts capital from the outside is essential, as is the ability for businesses to operate globally under coherent regulation”*.

The Government of Jersey notes that the Capital Markets Union project offers an opportunity to encourage more long-term investment and seeks to identify actions that are necessary to achieve making markets work more effectively and efficiently, linking investors to those who need funding at lower cost, both within Member States and cross-border.

Currently, the ELTIFs regulatory framework is narrowly drawn. Whereas Directive 2011/61/EU also provides for a staged third country regime governing non-EU Alternative Investment Fund Managers (AIFMs) and non-EU Alternative Investment Funds (AIFs), the new rules on ELTIFs have a more limited scope. By definition, ELTIFs are EU AIFs that are managed by AIFMs authorised in accordance with Directive 2011/61/EU. Only an EU AIF as defined in Directive 2011/61/EU is eligible to become and authorised ELTIF and only if it is managed by an EU AIFM that has been authorised in accordance with Directive 2011/61/EU.

The Government of Jersey notes the Green Paper's call for views on a possible extension to ELTIFs and advantages currently available for national regimes. From industry feedback received by the Government of Jersey, it is noted that it would be prudent and productive to consider widening the scope of ELTIFs to include non-EU AIFMs and non EU-AIFs, which are nevertheless structured and regulated in accordance with the AIFMD (Directive 2011/61/EU) to be included in the scope of an ELTIF. It is noted that this widening of scope would require further development and utilisation of the ELTIF regime as the regulatory standard for this type of transaction. This would have the advantage of increasing the level of participation in ELTIFs, which would lead to an increased take up of the product and therefore increased investment flowing into the “real economy” of the EU. This would also have the advantage of encouraging greater competition amongst managers and their related service providers in the interests of investors.

Jersey is a recognised leader in global regulation and co-operation as acknowledged by international bodies including the IMF, the World Bank, IOSCO and the OECD. In addition Jersey has a particularly strong track record in the establishment, governance, management, administration and regulation of funds which invest in long-term, often illiquid assets, often in the EU.

Jersey was the first third country to offer a fully compliant opt-in AIFMD regime and has reviewed its legislation to ensure that there are no obstacles for an EU National Competent Authorities to perform its supervisory duties. Jersey's legislative and regulatory framework is robust and facilitates smooth co-operation between the EU and Jersey authorities.

With respect to the pooling of international investments, Jersey provides specialised cross-border banking, wealth management, investment and legal services. In an increasingly global world, there is growing demand for secure and efficient multinational transactions. This is particularly important for individuals and companies who are conducting business globally. Jersey structures are frequently used as conduits of these investments into Europe.

Jersey offers tax neutrality to investors, which means they can pool investments from all over the world including the EU to finance projects globally efficiently and cost effectively. Jersey's robust legal framework and sound judiciary offer protection to investors who might be uncomfortable investing directly into riskier countries. Through strong links with London and other parts of the EU, Jersey has deep access to capital markets for investment in infrastructure, telecommunications networks, machinery, buildings, homes and other physical assets which fosters jobs and growth.

Jersey is an important conduit for Foreign Direct Investment to the EU. For example, the 2013 report “*Jersey’s Value to Britain*” found that Jersey is a conduit for nearly £0.5 trillion (€0.64 trillion) of foreign investment into the UK, comprising 5% of the entire stock of foreign owned assets (as at 2011), vividly highlighting Jersey’s role as an investment gateway to Europe. From industry feedback received by the Government of Jersey, it is noted that Jersey is recognised by investors as having a significant depth and breadth of professional expertise which has been developed for over 50 years. Jersey has a stable political and economic environment with an established infrastructure designed to support the needs of the investment management industry. International organisations with a presence in Jersey include BNP Paribas, Deutsche Bank, JP Morgan Chase, Citibank, Standard Bank, Royal Bank of Canada, State Street, UBS, HSBC and SG Hambros (source: “*Jersey’s Value to Britain*” by A Evans, R Lund, M Pragnell, 2013).

It is for all the above reasons that the Government of Jersey would encourage the Commission to consider extending the ELTIF regime to appropriately regulated “third country” jurisdictions such as Jersey. As currently drawn up the ELTIF regime would appear contrary to the general principles set out in the Green Paper, namely the need to encourage more long term investment into Europe from the international community.

Some examples of Jersey based investment / fund structures providing investment into EU infrastructure are as follows:

**i) CVC Jersey-domiciled European Infrastructure Fund**

Investment in the following European infrastructure projects:

- **Post Danmark (Danish postal service)**
- **Red Eléctrica, a part of the electricity power grid in Spain**
- **IDC/Recoletas, the largest group of private hospitals in Spain**

For more information, please see:

<http://www.cvc.com/media-centre.htmx?tabyear=2005&mediaitem=2771004120801>



ii) **Zouk Capital – renewable energy infrastructure funds**

Zouk use Jersey structures for their renewable energy infrastructure investments in Europe. Zouk build resource-efficient companies and clean infrastructure assets that generate both economic and environmental value. Zouk have been pioneering investors in the clean economy since making its first investment in the sector in 2000. Today Zouk is one of the most established and active managers in the sector. Zouk currently manages €600 million dedicated to generating strong returns for investors while making a genuine environmental impact.

For more information, please see:  
<http://www.zouk.com/infrastructure/investment-strategy>

iii) **RREEF Pan European Infrastructure Fund**

RREEF Pan-European Infrastructure Fund is managed by Deutsche Alternative Asset Management (UK) Limited and administered in Jersey with a Jersey general partner. The Fund has invested in the following EU infrastructure projects:

- A UK ports group, whose assets include Port of Liverpool and Manchester Ship Canal
- Ostregion Motorway (Austria)
- German Autobahn service stations
- A water and sewerage business in the UK
- Port of Lubeck (City of Lubeck, Germany)
- Heathrow Airport Holdings (managing the commercial facilities at the airport, including Heathrow Express)
- Various Spanish liquefied natural gas, renewable energy and wind farm operators
- A Spanish toll road

**iv) Battersea Power Station**

A £1.35 billion syndicated development and land financing deal for Phases 2 and 3 of London's iconic Battersea Power Station. In one of the largest UK real estate transactions in recent history, a Jersey based first tier law firm served as Jersey legal advisors on behalf of a consortium of Asian investors to progress the highly anticipated restoration of the Power Station, which has sat idle and abandoned for more than 30 years. It is estimated the project will create 25,000 jobs.

For more information, please see:

<http://www.mourantozannes.com/news/news/londons-£135-billion-financing-for-the-battersea-power-station-real-estate-investment-earns-mourant-ozannes-one-of-the-deals-of-the-year-2014.aspx>

**v) The Unite Student Accommodation Fund (“USAF”) - a Jersey expert fund**

USAF is an established, leading multi-investor fund set up by Unite in December 2006. The Fund owns a geographically diverse portfolio of 68 student accommodation properties in the UK, comprising 24,577 beds, focused on key university towns and cities and is valued at £1.5 billion.

For more information, please see: <http://www.unite-group.co.uk/investors/usaf>

**vi) Standard Life Investments' UK Shopping Centre Fund (a Jersey Property Unit Trust)**

This is a £4.5b joint venture development with Hammerson in Brent Cross, London, which has £400m allocated towards infrastructure.

**4. Is any action by the EU needed to support the development of private placement markets other than supporting market-led efforts to agree common standards?**

- Yes
- No

**Comments**

NO COMMENT

**5. What further measures could help to increase access to funding and channelling of funds to those who need them?**

NO COMMENT

**6. Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?**

NO COMMENT

**7. Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?**

- Yes
- No

**Comment**

NO COMMENT

**8. Is there value in developing a common EU level accounting standard for small and medium-sized companies listed on MTFs? Should such a**

**standard become a feature of SME Growth Markets? If so, under which conditions?**

NO COMMENT

**9. Are there barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis? If so, how should they be addressed?**

NO COMMENT

**10. What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high growth start-ups?**

NO COMMENT

**11. What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?**

It is noted that the Green Paper considers that reducing costs for setting up funds, and cross border marketing more generally, would lower barriers to entry and create more competition. The feedback received by the Government of Jersey from industry is that they are fully supportive of this position, and consider that the standardisation offered by a common set of rules based around, inter alia, the provisions of the AIFMD should be expected to drive increased competition and encourage the spread of best market practice.

The feedback received by the Government of Jersey from industry is that the costs of operating national private placement regimes under the AIFMD have been proportionate to regulatory costs under existing regimes in respect of those Member States with minimal AIFMD requirements, but have been significant in others where there has been “gold-plating” of the Directive when transposed into national legislation. For example, managers who have sought to market in those Member States which have required the appointment of a depositary where there is a non-EU AIFM have found their investors incurring additional depositary-related costs simply

to provide access to investors in those jurisdictions without obtaining the benefit of the wider passport.

The Government of Jersey also notes from industry feedback that, as reporting obligations and filing forms and requirements differ between different Member States, non-EU AIFMs have found themselves subject to varying additional compliance costs, depending on where and how they are required to file. Industry feedback suggests that the need for non-EU AIFMs to seek and pay for advice in different member states in a non-harmonised post-AIFMD national private placement regimes registration and reporting environment can also prove a relatively significant additional, one-off, marketing cost.

Accordingly, from the feedback the Government of Jersey has received, our industry is of the view that the current objectives of AIFMD are not being fully realised, and significantly more work is required by European Supervisory Authorities (“ESAs”) in order to achieve these objectives. In order to achieve the work required, the Government of Jersey, the financial services regulatory body in Jersey, the Jersey Financial Services Commission, and the industry have raised a concern that the ESAs, specifically ESMA, neither have adequate powers or resources to promote convergence and consistent supervision across the EU to promote the Capital Markets Union. This is a matter that is further addressed in our response to Question 25 of the Green Paper.

It is noted that the Green Paper comments that around 90% of all venture capital fund managers are concentrated in eight Member States. The feedback received by the Government of Jersey from industry is that to the extent that a greater familiarity of the market is achieved through a successful take up of AIFMs and AIFs which are operated in accordance with the AIFMD and other EU regulatory standards, then it would be anticipated that a greater diversification in the numbers of managers across other Member States would be achieved, particularly where best practice in structuring and governance can be disseminated.

## **12. Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets?**

The Government of Jersey has consulted with industry. Industry’s view is that from a Jersey regulatory perspective, the legal and regulatory regimes available for illiquid fund structuring have tended to be neutral as between specific sub-classes of assets. This means that the expertise in different asset classes, whether debt related (including mezzanine, leveraged loan and other specialist debt) or equity related (including buyout, mid-market, venture, real estate related and infrastructure) has been developed from a commercial, rather than a regulatory perspective. Nevertheless, from industry feedback received by the Government of Jersey, it is anticipated that certain types of infrastructure investment opportunities would be

more viable where policy aspects have been clarified enabling managers to take a long term planning perspective when considering such investment opportunities.

**12.1 If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRDIV/CRR and Solvency II?**

NO COMMENT

**13. Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?**

NO COMMENT

**14. Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds?**

NO COMMENT

**14.1 What other changes if any should be made to increase the number of these types of fund?**

The Green Paper makes reference to EuVECA and EuSEF funds. Feedback received by the Government of Jersey from industry is that the scope to further grow these areas of the market are noted, including a potential widening of the range of market participants that would potentially increase the number of these types of funds. However, industry has suggested to the Government of Jersey that the growth, and likelihood of successful take-up of the use of these regimes for venture capital as an asset class would be enhanced if the regulations could be framed in a broad enough manner to allow Jersey based managers to adopt the relevant regimes.

**15. How can the EU further develop private equity and venture capital as an alternative source of finance for the economy?**

NO COMMENT

**15.1 In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?**

The Government of Jersey has consulted with industry who has noted that there is a significant track record of venture funds (as well as related funds, such as funds of venture funds) being structured in Jersey, and the expertise in this area consequently goes back several decades. Industry has informed the Government of Jersey that a number of the most significant European venture houses use Jersey to structure and administer their funds.

The Green Paper makes reference to EuVECA and EuSEF funds. Feedback received by the Government of Jersey from industry is that the scope to further grow these areas of the market are noted, including a potential widening of the range of market participants that would potentially increase the number of these types of funds which are available. However, industry has suggested to the Government of Jersey that the growth of the use of these regimes for venture capital as an asset class would be enhanced if the regulations could be framed in a broad enough manner to allow Jersey based managers to adopt the relevant regimes.

**16. Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?**

NO COMMENT

**17. How can cross border retail participation in UCITS be increased?**

NO COMMENT

**18. How can the ESAs further contribute to ensuring consumer and investor protection?**

NO COMMENT

**19. What policy measures could increase retail investment?**

NO COMMENT

**19.1 What else could be done to empower and protect EU citizens accessing capital markets?**

NO COMMENT

**20. Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?**

NO COMMENT

**21. Are there additional actions in the field of financial services regulation that could be taken ensure that the EU is internationally competitive and an attractive place in which to invest?**

The Government of Jersey is of the view that one of the more important actions that the EU can take is to demonstrate by its actions that it is internationally competitive and an attractive place to invest. The Government of Jersey is of the view that this could possibly be achieved by demonstrating that the EU has a regime which is open to business with the rest of the world by ensuring that there are the minimum possible obstacles to all cross-border business with a clear rationale for those restrictions which it does put in place. This would mean subjecting all inward or outward investment flows to the disciplines of good regulation and supervisory practices affecting such flows. The European Commission's renewed commitment to embedding those disciplines in all EU regulation is warmly welcomed. The feedback received by the Island's financial services regulator, the Jersey Financial Services Commission, is that this should not only extend to the internal market, but also to cross border activity with third countries. Furthermore, the Government of Jersey has received feedback from the Jersey Financial Services Commission that the European Commission should include regulation of third country cross-border business within its promised review of existing regulation, such as regulation concerning UCITS, EuVECA and ELTIFs.

The Government of Jersey would further note that regimes extended to third countries should take account of the likelihood that third countries are bound to consider whether reciprocal regulation would be justified. This implies that, while the EU is currently focussing on encouraging inward investment, the EU should consider having close regard to the benefits of achieving the widest possible scope for



productive outward investment, especially given the overall current account surplus of the EU as a whole. This means that in terms of equivalence and passporting regimes ESAs, the Commission, Council and Parliament need to be meticulous in ensuring that the judgements made are driven by overall substance and not by legalistic interpretations. This may raise questions as to the motives behind decision making, including a risk that protectionism by individual Member States overrides the general aims of a Capital Markets Union. Assessments of third-countries should be transparent, fair and consistent. Third-countries that successfully meet the conditions of equivalence need to be recognised for their efforts. Overall, if the EU is to be seen as an attractive place to invest, it is vital to minimise any suspicion that its treatment of the regulation of all capital flows is anything other than wholly fair.

Jersey, in responding to the recent AIFMD call for evidence, offered the following concrete examples that illustrate how some Member States have set additional standards in implementing this Directive, which either obstruct or block the flow of capital. Our submission did not name the individual jurisdictions that had set these additional standards, because of the delicate dynamics of cross-border regulatory relationships. However, we would welcome the opportunity to discuss our experiences.

*“The key benefit for Jersey’s fund industry is continued market access, via standardised AIFMD marketing/disclosure requirements, to EEA States through the implementation of the baseline requirements as set out in AIFMD. This will also facilitate the continued investment of capital into the EEA. The implementation and harmonisation of these standardised AIFMD marketing and disclosure requirements across all 31 EEA States would be of further benefit. As a minimum, the continuation of National Private Placement Regime (NPPR) is imperative in providing EEA professional investors market access to Jersey AIFMs and Jersey AIFs up until such time as a workable AIFMD passport is made available.*”

*Jersey’s funds’ industry raised the following issues that have created obstacles/barriers to investment, often originating outside of the EU, into certain EEA States:*

- i. the additional non-baseline AIFMD requirements have created a lack of harmonisation of the marketing requirements, such as the requirement to have a depositary where there is a non-EU AIFM;*

- ii. *the NPPR of certain EEA States, who had implemented AIFMD, not being well defined or being unworkable in practice, making other EEA States or non-EU jurisdictions more favourable due to more certain regulatory treatment;*
- iii. *the NPPR of certain EEA States requiring confirmation of compliance by the third country regulator of the non-EEA AIFM and non-EEA AIF with the national law of those EEA States in relation to AIFMD;*
- iv. *the differences in interpretation by different EEA States of key AIFMD terms, such as what is meant by “marketing”;*
- v. *the lack of harmonisation of registration and reporting requirements; and*
- vi. *in relation to the required co-operation agreements the Jersey Financial Services Commission was able to enter into 27 out of 31 co-operation agreements, noting that some EEA States have not yet signed with any third country; and certain EEA States have not yet implemented or were late in the implementation of AIFMD.*

*The Jersey funds industry made the following comments in relation to registering through the NPPR:*

- i. *there were minor initial problems with application or filing processes when trying to register through the NPPR in EEA States;*
- ii. *delays to the closing of AIFs have been caused where the registration processes require the provision of final documentation, rather than the investors having the ability to negotiate the documentation without waiting on further review by the EEA State; and*
- iii. *additional registration requirements, such as requiring regulatory co-operation attestations or statements of regulatory marketing reciprocity required by certain EEA States may potentially delay the registration process. The risk of delays are reduced the better defined these requirements are.*

*The Jersey Fund’s industry also made the following observations:*

1. *Where EEA States have implemented the baseline AIFMD requirements, providing certainty, the costs have been relatively minor. However, AIFMs who have sought to market in those EEA States, which have required the appointment of a depositary where there is a non-EU AIFM have found their investors incurring additional costs*

*simply to provide access to investors in those EEA States without obtaining the benefit of the wider passport.*

2. *Those EEA States with well defined NPPRs, including those EEA States with additional but well defined requirements are being preferred compared to other EEA States where a well-defined means of marketing is yet to be provided. This has led to those EEA States yet to define their NPPR requirements being considered by non-EEA AIFMs, such as Jersey AIFMs, as effectively “closed” for investment to their investors.*
3. *It is noted that due to AIFMD transitional arrangements, late implementation or lack of implementation of AIFMD that the experience of AIFMD NPPR is, at best, based on six months AIFMD activity. However, where NPPR has been available the funds industry has not been deterred from undertaking private placement, particularly where only the baseline AIFMD requirements have been imposed.”*

## **22. What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?**

As noted in the answer to Q21, confidence on the part of foreign investors and intermediaries is in part dependent on the overall structure of EU regulation in relation to third countries. A bias in promoting investment in one direction rather than the other would raise a question about the EU's consistency of approach and the possibility that its approach might change in ways which might undermine confidence in the development of a Capital Markets Union.

If EU firms wish to establish a place of business in Jersey the policy of the jurisdiction is to apply the same regulatory requirements that will apply as they do to Jersey firms. However, in practice, it is the experience of the Jersey Financial Services Commission that they are able to take comfort from the regulatory status of the EU firms. The Jersey Financial Services Commission will be able to co-operate with the respective EU regulators in respect of the fitness, propriety and track record of the principal persons (management body) of such companies. Therefore, in response to the question we are of the view that continued regulatory co-operation will assist in the development of a Capital Markets Union and should be encouraged.

**23. Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?**

Yes

No

**Comment**

NO COMMENT

**24. In your view, are there areas where the single rulebook remains insufficiently developed?**

NO COMMENT

**25. Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a capital markets union?**

In considering this question the Government of Jersey has consulted with the Island's financial services regulator, the Jersey Financial Services Commission. The Jersey Financial Services Commission is of the opinion that the ESAs, specifically ESMA, do not have adequate powers or resources to promote convergence and consistent supervision across the EU to promote the Capital Markets Union.

With regards to powers, Regulation (EU) No 1095/2010, which established the European Securities and Markets Authority (ESMA), gives the new Regulator the objective to advance regulatory convergence and a common supervisory culture; it contains all the elements needed to identify where Member State regimes diverge from EU law. The Regulation also contains a number of soft powers to promote convergence, such as by peer review. However, the enforcement mechanism described in Article 17 (Breach of Union Law) appears to have a flaw. Article 17 enables ESMA to initiate an action against a National Competent Authority (NCA), where the NCA has not applied European Law, regulatory technical standards or

implementing technical standards “... to ensure that a financial market participant satisfies the requirement laid down in those acts,...”. However, this standard is asymmetric; there are no enforcement powers to promote convergence where a NCA sets standards that go beyond the requirements set out in European Law.

Lawmakers may have overlooked the possibility for NCAs to obstruct regulatory convergence and frustrate progress towards the Capital Markets Union, through the imposition of additional standards. To a third country jurisdiction additional requirements could be described as protectionist. We believe that Regulation (EU) No 1095/2010 could be improved with a recital explicitly calling for Member States to pursue a high degree of regulatory harmonisation, consistent with the objective of the single rule book and the Capital Markets Union. Similarly Article 29(1) could be strengthened to elevate ESMA’s role from being ‘active’ to having “an ‘authoritative’ role in building a common Union supervisory culture and consistent supervisory practices ...”, with text supporting the implementation of the single rule book and a referral mechanism to the European Commission where NCAs use regulatory instruments that impede progress towards the development of the Capital Markets Union.

As concerns resources, the Jersey Financial Services Commission is of the opinion that ESMA may not have the necessary resources to execute its statutory duties with the thoroughness that they require. IOSCO’s Principle 2 requires that ‘The Regulator should be operationally independent and accountable in the exercise of its functions and powers’. The Regulator, therefore, needs to be independent from external political interference and have a stable source of funding sufficient to exercise its powers and responsibilities. The adopted EU budget significantly reduced ESMA’s planned resources for 2015 from €38.6m and 147 establishment staff to €33.7m (plus an additional €3.1m from assigned revenues for tasks delegated from NCAs) and 137 establishment staff. The Jersey Financial Services Commission’s further analysis of staffing in the revised budget revealed a one point fall in the average pay grade. In summary, ESMA is trying to deliver on an expanded work programme with a smaller and perhaps lesser skilled staff than was recommended by its Board of Supervisors. The regulatory independence of ESMA should be considered and where necessary strengthened. The convergence work programme has seen a significant reduction in planned resources in areas such as: guidelines, opinions and Q&As, International and European co-operation, peer reviews, breaches of Union Law and mediation and training. The Jersey Financial

Services Commission has indicated that it is, in their view, difficult to reconcile ESMA's budgeted financial resources and number of staff with its objective of promoting convergence, let alone making a contribution to the Capital Markets Union. ESMA and the other ESAs may need larger budgets so that they may meet their statutory objectives.

Lastly, the Government of Jersey, the Jersey Financial Services Commission and industry regret the decision by ESMA to reduce planned expenditure on International and European Co-operation by 28% and staff by 25% to balance the budget authorised by the European Commission. We believe that ESMA can more effectively advance its convergence objective by collecting and utilising the experience of NCAs and third country supervisors. These organisations have a wealth of knowledge on the application of many cross border regimes. Jersey stands ready to share its experience with ESMA in order to support its convergence objective.

In conclusion, we consider that urgent attention needs to be given in the very near future to the powers and resources of the ESAs in order effectively to develop a Capital Markets Union. It is suggested that this should be prioritised as, without this key building block, other objectives of the Green Paper may not be achieved.

**26. Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?**

- Yes
- No

**Comment**

NO COMMENT

**27. What measures could be taken to improve the cross-border flow of collateral?**

NO COMMENT

**27.1 Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?**

Yes

No

Comment

NO COMMENT

**28. What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?**

NO COMMENT

**29. What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?**

NO COMMENT

**30. What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?**

Efficient Capital Markets in the Union call for the avoidance of tax measures that distort investment decisions both within and between Member States and between Member States and third countries. Examples include different bases for determining the taxable profit of corporations and differential treatment in the taxing of capital and/or the return on investment.

**31. How can the EU best support the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets?**

In considering this question, the Government of Jersey has consulted with its digital community (through the Island's digital promotional body, Digital Jersey), the financial services regulator, the Jersey Financial Services Commission and relevant members of the "Fintech" community.

Jersey's digital community have advised the Government of Jersey that they agree with the European Commission's assessment of the Technology and FinTech sector and its potential to transform the European Financial Services sector as indicated in the EU's new Digital Single Market strategy. However, in some instances, European technology firms have struggled to raise capital funding in London and the rest of Europe; as a result they have looked further afield to regions such as the USA and Gulf Cooperation Council (GCC). This is a problem issue for European jobs and business, as both the availability of digital and FinTech services and the IP of innovative technology firms, are transferred outside of the European Union.

Jersey's digital community are of the view that that Europe can develop and grow technology businesses by encouraging collaboration with well-positioned third countries, such as Jersey, and by ensuring third countries can offer technology services, such as FinTech, back into Europe. Specifically, we ask Europe to recognise:

1. That collaboration between European firms and well-positioned third countries, such as Jersey, is important for fostering growth in European FinTech business.
2. Jersey is developing a range of key FinTech services, which will be of benefit to European business and enable business to grow.
3. Europe must react quickly to necessary regulatory and legal changes arising from technological evolution.
4. Europe should champion the potential benefits of investing in Technology.

Further detail on the above points is set out below:

1 – Collaboration between European firms and well-positioned third countries, such as Jersey, is important for fostering growth in European FinTech business. Some of the greatest FinTech advances have come through the collaboration of skilled individuals, companies and incubators between multiple cities in different countries. Both the EU, and well positioned Third Countries, have a vital role to play



in championing cross-border collaboration to continue to foster new working and new technological developments. Jersey's value to Europe is in playing a key role in this cross-border collaboration for FinTech businesses. In conjunction with the development of a single Capital Markets Union and the creation of European Investment Project Pipeline, Jersey will help the European Union make the most of these opportunities.

2 – Jersey is developing a range of key FinTech services, which will be of benefit to EU business and enable EU business to grow. Jersey has the potential to offer European firms a number of innovative FinTech solutions, such as electronic Client Due Diligence and Anti-Money Laundering applications, which could benefit firms operating in European markets. As the sector continues to grow and as Jersey's FinTech sector expands, these opportunities will only increase. European regulation must not restrict access to third countries' products and avoid putting protectionist barriers in place which would prevent Jersey firms from doing business in Europe.

3 – Europe must react quickly to necessary regulatory and legal changes arising from technological evolution. Given the rapidly changing nature of the sector, Europe needs to ensure that it is quick to respond to new opportunities but also to ensure appropriate regulation is in place. Given the dynamic nature of the sector regulation must be light touch and responsive in order to ensure new firms are able to flourish.

4 – Europe should champion the potential benefits of investing in Technology. The Green Paper correctly points out that the uptake of digital technology has been slow. We believe Europe could play the role of championing potential benefits and savings that technology can bring. Jersey would like to form strong collaborative relationships with European FinTech hubs, such as seen in Paris or Berlin, and believe that the EU can play a role in facilitating and developing these relationships, as well as providing a forum for discussion.

**32. Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?**

**[END OF RESPONSE]**



**[The document was submitted as a public response to the European Commission through the online submission process on 13 May 2015 – in due course the response will be published by the European Commission]**