



**Consultation response and
policy paper on secondary
legislation under the Financial
Services (Disclosure and
Provision of Information)
(Jersey) Law**

January 2021

Background

On 31 July 2020, the Government of Jersey published a Consultation Paper seeking feedback on secondary legislation under the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202- (the “Law”), namely the Financial Services (Disclosure and Provision of Information (Jersey) Regulations (the “Regulations”) and the Financial Services (Disclosure and Provision of Information (Jersey) Order (the “Order”).

The Regulations and Order seek to supplement the Law by providing the additional detail required to demonstrate compliance with the Financial Action Task Force (“FATF”) International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferations (the “2012 Recommendations”) and in particular, Recommendation 24, ahead of the next Moneyval assessment.

The consultation closed on 4 September 2020. The Government received eight direct responses to the consultation. Of those eight responses, one respondent representing local businesses made no comments on the Order or Regulations but confirmed its support to the proposals and acknowledged that these changes were required to continue to meet international obligations.

Jersey Finance Limited was named as a respondent and received no additional responses from the finance industry. Responses are summarised below, and Government has stated its policy position in relation to questions posed.

Further questions or comments relating to this Consultation Response and Policy Paper may be directed to:

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PART 1: The Order

i. Please provide any comments in relation to information required about beneficial owners of entities.

1. A number of respondents queried the need to collect date of birth information and gender in relation to beneficial owners. This information is currently required under the Exchange of Notes Agreement with the UK. Guidance has previously been issued by the Jersey Financial Services Commission (“Commission”) in respect of information required to be provided on beneficial owners. Government intends to reflect the current requirements in relation to beneficial ownership information collection. This enables the jurisdiction to continue to meet its international obligations and to demonstrate compliance with FATF Recommendation 24.

ii. Do you consider any additional information should be provided to the Commission regarding beneficial owners of entities? Please provide details.

2. Respondents did not consider that any additional information should be prescribed in relation to beneficial owners.

iii. Please provide any comments in relation to information required about an entity’s significant persons.

3. A number of respondents questioned whether it was necessary to provide details of a significant person’s gender, where the significant person is an individual. We note that “gender” is not routinely captured in relation to significant persons and accept that the data field may exceed the requirements for the purposes of demonstrating compliance with international standards. As such, the requirement to provide details of a significant person’s gender to the Commission has been removed from the Order.

iv. Please provide any comments in relation to the additional information required in relation to companies.

4. Government has continued to consider the requirements in relation to companies with the Commission. Some of the data currently collected as part of the annual return process is no longer considered to be relevant and such requirements have been removed from the Order. In addition, the wording has been amended to ensure the data provision requirements reflect the current requirements of the Companies (Jersey) Law 1991 (the “Companies Law”).

v. Do you consider that further exemptions should be provided for in the Draft Order? If so, please provide details.

5. A number of respondents identified existing exemptions from ordinary beneficial ownership requirements that should be replicated in the Regulations and Order. Government acknowledges that some exemptions are appropriate and has set out further details below.

Entities listed on a regulated market

6. Entities listed on a regulated market are currently exempt from having to update beneficial ownership information within 21 days of a change/error/inaccuracy. This is achieved through Article 4(2)(b) of the Law. It was suggested that an entity listed on a regulated market should also be exempt from providing this information under Article 4(1). Government does not agree with this suggestion, as at the point of registration or establishment in the jurisdiction (to which Article 4(1) relates), the entity is not listed on a regulated market. The listing takes place once the entity exists. The levels of transparency and the ability to obtain that information does not exist until the point of listing and so it is inappropriate to extend this exemption.
7. Entities listed on a regulated market are also exempted from requirements to confirm beneficial ownership information in the annual confirmation statement. Instead, entities will be required to confirm that the following information is up to date:
 - a. Its registered office address;
 - b. Confirmation that it is listed on a regulated market;
 - c. A website address where the latest accounts are published;
 - d. Its exchange listing ID.

An entity that is a wholly owned by an entity or organisation listed on a regulated market

8. It was also suggested that an entity that is wholly owned by an entity or organisation listed on a regulated market should be exempted from providing beneficial ownership information to the Commission and from updating that information on change/error/inaccuracy. This again is on the basis that the information is readily available in the public domain.
9. Government notes that this information may also be exempted under FATF Recommendation 10, however, in order to ensure that the Commission and other law enforcement can access that information without delay, we intend to set conditions on the exemption, that the entity must provide the following information to the Commission:
 - a. The name of the entity or organisation which wholly owns it;
 - b. The registered office address of the entity or organisation which wholly owns it;
 - c. The registration number of the entity or organisation which wholly owns it;
 - d. The jurisdiction or incorporation/registration of the entity or organisation which wholly owns it;
 - e. The regulated market on which the entity or organisation which wholly owns it is listed;
 - f. A website address where the latest accounts are published; and
 - g. The exchange listing ID of the entity or organisation which wholly owns it.
10. In the annual confirmation statement, the entity will be required to confirm that a-g is accurate.

State owned entities

11. A number of respondents suggested that an exemption should also extend to entities that are wholly-owned directly or indirectly by a state. Government notes that this is an existing exemption and agrees that it should continue. An amendment has therefore been made to the Order and such entities will be required to provide details of a senior official with responsibility for the entity, as is currently the requirement.

Entities that are owned or controlled by a Jersey incorporated and Commission regulated trust company service provider

12. A final exemption was articulated, which currently exists for entities that are owned or controlled by a Jersey incorporated and Commission regulated entity. This is on the basis that the owning/controlling company has provided its beneficial owner information to the Commission and will be caught by the requirements to update that information under the Law.
13. We therefore intend to exempt entities from the requirements of Articles 4(1)(a), 4(2)(b) and 4(3) and the requirement to confirm beneficial ownership information in Article 5(1), on the basis that it provides:
 - a. The name of the Jersey incorporated and regulated entity;
 - b. The registration number of the Jersey incorporated and regulated entity.

Other

Nominee directors

14. The original policy position was that nominee directors would be prohibited under the Law. This was set out in an earlier consultation response and policy paper in relation to the implementation of FATF Recommendations. After lodging the Law, it was brought to government's attention that without further detail the provision may be problematic and interfere with the ordinary course of business.
15. Government recognises that the term "nominee director" does not sit naturally alongside the provisions of the Companies Law, where the definition of a director is broad and the duties owed by the director are to the company, rather than any appointer or nominator. It is, however, evident from previous assessments that this will be an area of focus for Jersey's Moneyval assessment.
16. Government has been working with representatives of the finance industry to further consider the appropriate approach in relation to "nominee directors". An alternative approach to prohibition, compatible with the FATF Recommendations, is to require nominators of nominee directors to disclose their status to the company registry. Government recognises that nominators should be captured through the definition of "beneficial owner" (which includes controllers), however, in order to satisfy the FATF Recommendation, a connection needs to be made between the nominator and the nominee within the registry system. To facilitate this, when inputting details of directors, a "tick box" will appear to identify if a director is a "nominee director". If yes, the name of the nominator will be

requested. This should correspond with additional information collected on beneficial owners and controllers.

17. To assist in interpretation, a definition of “nominator” and “nominee director” are provided in the Order. Further guidance will also be provided by the Commission.
18. We would like to emphasise that the term “director” is defined in the Companies Law and the provisions of the Order do not reduce the scope of that definition. The Companies Law also sets out the statutory duties of director which apply alongside the common law fiduciary duties. The provisions of the Order do not interfere with the duties of a director under the Companies Law.
19. In addition, any person falling within the definition of a “director” under the Companies Law will be required to disclose their details to the Commission and will appear on the public register of directors.

Companies Law

20. As we have continued to review existing provisions in relation to annual returns, we consider that it would also be appropriate to confirm in the annual confirmation statement that the registered/business address of an entity is accurate. This is additional information to be prescribed in relation to the content of the annual confirmation statement, using the power under Article 5(1) of the Law. Requirements in relation to updating of addresses are included in the relevant entity legislation (as defined under the Law). These existing provisions will continue to apply.
21. For companies, as is currently the case with annual returns, details of the shareholders will be required to be confirmed as accurate. This has been amended to reflect the current provisions of Article 71 Companies Law.

Limited liability partnerships

22. In addition, under the Limited Liability Partnerships (Jersey) Law 2017 (the “LLP Law”) the secretary is required to confirm whether it has received a specified solvency statement from the limited liability partnership (the “LLP”), whether the LLP has provided the secretary with any accounting records or return under Article 11 of the LLP Law, and whether the LLP has indicated that it has provided all the records it is required to provide. Government considers these to be important requirements to ensure that LLPs continue to comply with provisions of the LLP Law. As such, it is intended that these requirements will be replicated as part of the annual confirmation statement.

Prescribed information

23. Information about a nominated person will be required to be provided to the Commission to ensure the Commission knows who is appointed and acting for an entity. This information will be privately held by the Commission. In relation to an individual appointed as a nominated person, the information required to be provided is the name, address and email address. For an entity acting as a nominated person, the information required is the entity name, registered number and entity type. This is necessary to ensure that the Commission knows who is authorised to make submissions and view information privately held (for example

beneficial owner information and for the purpose of the annual confirmation statement) about an entity for which it is appointed.

PART 2: The Regulations

vi. Please provide any comments on the information to be made public about an entity's significant persons.

24. One respondent queried whether it was appropriate to include a significant person's date of birth on the register of significant persons, where the significant person is a natural person. We have consulted with the financial crime team within Government to ascertain the information required to be included in the public register of significant persons in order to demonstrate compliance with the FATF Recommendation.
25. Several respondents noted that the use of the word "entity" in Regulation 2(1)(c) was problematic, due to the definition of "entity" under the Law being confined to Jersey specific vehicles. The provision has therefore been amended to include a specific reference to an organisation, which has been defined in the Regulations.
26. When considering the references in Regulation 2(1)(c), Government also considered it appropriate to amend the reference at paragraph (iii) to registered office. It was noted that not all entities in Jersey have a "registered office" (for example foundations) and therefore that the term may not be applicable in the case of non-Jersey entities. The words "or equivalent" have therefore been inserted to ensure that the appropriate address for non-Jersey entities is captured. For the avoidance of doubt, where a registered office address is available, that is the address required to be provided to the Commission.
27. A number of respondents also commented on the requirement to provide specific information in relation to companies. It is intended that shareholder information be confirmed as accurate in the annual confirmation statement, but not that it is updated within 21 days of a change. Details of members may be published by the Commission. This reflects Government policy that at least the same level of information available now about entities will continue to be available following the implementation of the Law. At present, details of each company's shareholders (owning not less than 1% at 1 January) are provided in the annual return. The annual return can be purchased and downloaded and so this information is available. Further, the Companies Law requires that the register of members is available to other members and to members of the public.
28. Government position is that we shall retain, as a minimum, the current levels of transparency in relation to entities. The Law also provides additional requirements in relation to publication of information about entities. As the annual confirmation statement will not be a public document, the Commission will be provided with the power to make additional information about companies publicly available. This will include the names and addresses of members. The format of this is anticipated to be a company profile which may be downloaded from the registry website. Further protections will be in place to prevent data mining of this information.
29. A concern was expressed by one respondent in relation to the need for market-traded companies to update information about its shareholders. Government acknowledges this concern and considers that this is mitigated against by:

- a. Details relating to shareholders will be captured on application to incorporate through provisions in the Companies Law.
- b. Shareholder information will be required to be updated annually as part of the annual confirmation process, reflecting the current requirements in the annual return.
- c. It is not intended to require an entity to notify the Commission of a change, error or inaccuracy with the shareholder information within 21 days of a change (Article 4(2) and (3) of the Law).

vii. Please provide any comments on the exemptions from the public register of significant persons.

30. One respondent queried whether it was appropriate to extend the exemption provided to share transfer companies to include what were considered to be similar companies which provide a right to directors to use a car parking space connected to the property containing a unit of dwelling accommodation or directors of companies which manage communal areas of the property containing the units of dwelling accommodation. We understand that in relation to these companies, directors are appointed from shareholders. Some of the concerns expressed related to pressure that may be faced by such directors from shareholders of the share transfer companies.
31. We recognise that in some circumstances it may be necessary to protect certain information relating to such directors, however, this may adequately be dealt with through the application process under Regulation 4.
32. Further, under the Companies Law, shareholders are permitted to inspect the register of directors and the register of shareholders and could access this information in any event.
33. The starting point of the FATF Recommendation is that information about company directors and equivalent positions is basic information and that basic information should be publicly available. In order to meet international standards we intend to maintain, as far as appropriate, an open register. The safeguards in Regulation 4, together with the redaction of the day of birth and requirement to display only a correspondence address on the public register of directors, will provide adequate protection for those concerned.

viii. Please provide any comments on the additional annual fee.

34. During the consultation period, Government received a number of questions in relation to the proposed additional fee of £145. For clarity, the position intends to mirror the existing arrangement between the Treasurer and the Commission whereby a total fee is collected by the Commission and a proportion of that fee is paid over by the Commission to the Treasurer.
35. In addition to specifying the additional fee, the Regulations repeal existing provisions relating to annual return/annual administration fees and annual additional fees to ensure that duplicate fees and filing requirements are not placed on entities.

36. By way of example, we have set out the existing position below in relation to companies under the Companies Law, however corresponding provisions are found in each piece of the relevant entity legislation.

37. Article 71(5) Companies Law sets out the requirement to pay the published fee with an annual return:

(5) A company on filing a return required by this Article must pay the published fee and any late filing fee.

38. Article 201 specifies the requirement to pay an additional amount:

(1) The Commission may require the payment to it of published fees in respect of the performance by the registrar of his or her functions under this Law or a charge for the provision by the registrar of any service, advice, or assistance.

(2) When documents are delivered to the registrar in accordance with Article 7 (which relates to the incorporation of a company) or Article 71 (which relates to the annual return of a company) they must be accompanied by such amount (additional to any fee or charge mentioned in paragraph (1)) as the States may determine by Regulations.

(3) The Commission shall pay any additional amount received in accordance with paragraph (2) to the Treasurer of the States.

(4) Where a fee mentioned in paragraph (1) or an amount mentioned in (2) is payable in respect of the performance of a function by the registrar the registrar need take no action until the fee or amount is paid.

(5) Where the fee or additional amount is payable on the receipt by the registrar of a document required to be delivered to the registrar the registrar shall be taken not to have received the document until the fee or additional amount is paid.

39. The Companies (Annual Returns – Additional Charge) (Jersey) Regulations 2008 then provide the detail of the additional amount to be payable to the Treasurer (currently £115 in relation to annual returns).

40. The Law then provides the following:

(1) For the purpose of providing information to the Commission under Articles 4 and 5, a nominated person for an entity is authorised by the entity to provide the information in the approved form and accompanied by –

(a) the fee published by the Commission, in accordance with Article 15 of the FSC Law, in relation to the provision of the information (the “published fee”); and

(b) any additional amount specified by Regulations.

41. Following discussions between the Government and the Commission during 2018, it was agreed that the amount payable by the Commission to the Treasurer in respect of annual fees would increase by £30. This provision formalises that agreement and as the Law transitions from an annual return to an annual confirmation statement, the Regulations make this increase in respect of annual confirmation statements.
42. As noted in the Consultation Paper, amendments are also being made to the Limited Partnerships (Annual Additional Charge) (Jersey) Regulations 2012 to align the position for limited partnerships. The Limited Partnerships (Annual Additional Charge) (Amendment) (Jersey) Regulations 2012 were adopted on 18 November 2020.
- ix. Who should be permitted to make applications to prevent information about significant persons appearing on the public register?**
43. Respondents considered it appropriate to expand the persons who may make applications to prevent information about significant persons from being made public to include persons appointed to represent significant persons, for example their legal advisers. It was also considered appropriate to allow a nominated person to make an application on behalf of a significant person. Government acknowledges these proposals and considers that the appropriate person to make an application is the entity's nominated person.
44. A nominated person may be a significant person (if locally resident) a lawyer, accountant or TCB or FSB. Government considers that this is an appropriate broadening of the category of persons able to make the application, while maintaining the appropriate routes of interaction with the Commission.
45. While it is acknowledged that significant persons are not necessarily direct clients of service providers, service providers routinely provide registered office addresses which comes with the requirement to maintain registers of significant persons. This will include (with some additions) the information that is required to be input into the central register. This information is provided by the entity to the service provider.
46. Furthermore, we anticipate that the majority of these applications will be made either (a) on application to incorporate, or (b) as we transition to the requirements of the Law. Outside of this, we anticipate that there may be mergers and similar scenarios giving rise to the need for applications, however, it is emphasised that outside of these circumstances, an application will be largely redundant as the information will already be in the public domain (as the default position).
47. The application process is intended to be relatively simplistic, with a tick box appearing when the entity's nominated person adds a significant person to the central register, seeking clarification of whether an application is being made under Regulation 4 and prompting the relevant information to be input.
48. For the avoidance of doubt, the policy position is that the register of significant persons is a public register to meet the requirements of FATF Recommendation 24. Applications under

Regulation 4 of the Regulations should only be made where there is a genuine belief that the criteria are met.

49. As an entity may have more than one nominated person appointed, this should cover a variety of persons to make the application, including lawyers and significant persons, but routing the application through the nominated person as the interface between the Commission and the entity.
 50. To assist with situations that may arise in which it is not possible for a nominated person to make the application, an additional provision has been inserted in Regulation 4 to permit applications to be made by persons other than a nominated person in exceptional circumstances.
 51. Applications to prevent information appearing on the public register can be made in relation to a “person”, which is wider than the original drafting which specified “significant person”. This is because it is recognised that it may be appropriate to limit public access to information about entities and members of companies.
 52. It should be noted that an application under the Regulations to prevent information appearing on the public register does not override the requirement to provide information to the Commission and for that information to be kept privately on the central register. Any information required to be provided under the Law, Regulations and Order remains, regardless of whether an application is made to ensure that information is available centrally for the purposes of law enforcement and other obligations. Regulation 5 ensures that any information subject to an application or appeal is not made public until after determination of that application or appeal (and if the application/appeal is successful, the information will not appear on the public register at all).
- x. Do you consider it would be appropriate to include other grounds on which an application can be made? Please provide details.**
53. Respondents provided a number of other examples of where it might be appropriate to allow an application to prevent disclosure of information on the public register. These include:
 - Preventing public disclosure of sensitive personal data relating to a natural person;
 - Preventing disclosure of personal data relating to a natural person who is suffering from a mental incapacity rendering that person unable to manage their own affairs;
 - Safeguarding of national security.
 54. Government anticipates that some of these will be addressed in guidance developed by the Commission under Regulation 4 of the Regulations. In addition, Government considers that those suffering from mental incapacity are a particularly vulnerable category of persons whose data should be protected from public disclosure and an amendment has been made to the Regulations to reflect this.
 55. Government accepts the comment from a number of respondents that the risk of “violence or intimidation” should include the risk to material physical or mental harm and has extended

the provision further. The Commission will issue guidance on applications made under the Regulations.

xi. Please provide any comments in respect of appeals.

56. One respondent considered that an additional layer of appeal might be beneficial to smaller businesses. Government has considered this and noted that other similar legislation only includes a right of appeal to Court. In addition, the grounds on which the Commission may issue guidance have been expanded, which seeks to provide more certainty to users of the Commission.

xii. Please provide any comments in relation to consequential amendments, repeals and transitional arrangements.

Other

Regulation 8(3)(a)

57. One respondent noted an incorrect reference to “limited partner” in the definition of “significant person” for a limited liability partnership. Government agrees with this observation and has used the regulation making power to remove the word “limited”.

Regulation 8(3)(b)

58. When preparing the Law, it was intended that the annual confirmation statement should reflect current practices in respect of the annual return, including the link between the accuracy of the information at 1 January in the year it was made. On reflection with industry representatives and the Commission, this approach has been reconsidered. Instead, it is intended that the annual confirmation statement should confirm that the information is accurate at the time it is made. This therefore permits:

- Entities to make their annual confirmation statement in the relevant period, confirming the information displayed to them is correct at that date, rather than a historical date; and
- Entities to make their annual confirmation statement at any point in a year, however, outside of the relevant period, likely to be subject to a late fee.

59. The words “as of 1st January of the year in which the statement is being provided” have therefore been removed from the Law via Regulation 8(3)(b).

Regulation 8(4)

60. In the Law, the Foundations (Jersey) Law 2009 (the “Foundations Law”) is amended with reference to the “FSC Law”. The Foundations Law does not contain a definition of “FSC Law” and we will rely on the consequential regulation making power within the Law to correct this.

Foundations Law

61. As expressed in the Response and Policy Paper to the Consultation on the Implementation of FATF 2012 Recommendations and as set out in the Law, it is intended that Jersey incorporated foundations are required to file an abridged version of their regulations. The changes made in the Law did not extend to existing Jersey incorporated foundations, notwithstanding this being the intended policy position and the requirement to demonstrate compliance with FATF Recommendation 24. To address this, the Regulations include transitional provisions for existing foundations to file abridged regulations with the company registry.

COBO consents

62. Respondents queried whether the transition to statutory obligations to file and update beneficial ownership information would result in amendments to current COBO consents. It is anticipated that new COBO consents will be reissued during the course of 2021 and in the interim guidance published by the Commission will address the interaction of COBO consents with the new provisions of the Law, Regulations and Order.

63. Limited partnerships are outside the scope of the Law. Limited Partnerships that have been issued with COBO consents containing a requirement to provide and update beneficial ownership information will remain subject to the provisions of those consents.

Collective investment funds

64. For the avoidance of doubt, collective investment funds that fall within the definition of an “entity” under the Law will be required to comply with provisions of the Law, unless an exemption applies.

Conclusion

65. Government would like to take this opportunity to express its thanks to consultation respondents, the Commission and industry representatives for their invaluable input into this process.

66. The Regulations were adopted by the States on 18 November 2020. The States also adopted the Appointed Day Act, bringing the Law into force from 6 January 2021. This is later than originally anticipated and follows discussions with the Commission. It is imperative that industry has access to guidance in advance of the Law coming into force to ensure it is able to prepare for the introduction of new provisions of the legislation.

67. We will continue to work with industry and the Commission in ensuring the Law is fit for purpose following its introduction.

