



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

## **Consultation Paper on secondary legislation under the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202-**

### **Summary:**

The Government of Jersey is proposing to introduce legislation to implement requirements set out by the Financial Action Task Force (the “FATF”), the inter-Governmental body that sets standards for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The Financial Services (Disclosure and Provision of Information) (Jersey) Law (the “Law”) was adopted by the States on 14 July 2020 following consultation with industry. The Law provides a framework with further Regulations and Orders to be considered in due course.

Since the adoption of the Law, the Government of Jersey has engaged with industry and the Jersey Financial Services Commission (the “Commission”) on the requirements of secondary legislation made under the Law. Views are now sought on the content of the Draft Financial Services (Disclosure and Provision of Information) (Jersey) Order 202- (the “Draft Order”) and the Draft Financial Services (Disclosure and Provision of Information) (Jersey) Regulations (the “Draft Regulations”).

**Date published:** 30 July 2020

**Closing date:** 4 September 2020

### **Supporting documents attached:**

1. Draft Financial Services (Disclosure and Provision of Information) (Jersey) Order
2. Draft Financial Services (Disclosure and Provision of Information) (Jersey) Regulations

## How we will use your information

The information you provide will be processed in compliance with the Data Protection (Jersey) Law 2018 for the purposes of this consultation. For more information, please read our privacy notice at the end of this document.

The Government of Jersey may quote or publish responses to this consultation including (*send to other interested parties on request, send to the Scrutiny Office, quote in a published report, report in the media, published on [www.gov.je](http://www.gov.je), list on a consultation summary etc.*) but will not publish the names and addresses of individuals without consent. Confidential responses will still be included in any summary of statistical information received and views expressed. Under the Freedom of Information (Jersey) Law 2011, information submitted to this consultation may be released if a Freedom of Information request requires it but no personal data may be released.

Do you give permission for your comments to be quoted?

1. No
2. Yes, anonymously
3. Yes, attributed

Name to attribute comments to:

Organisation to attribute comments to, if applicable:

## Ways to respond

### Helen De La Cour

Lead Policy Adviser | Financial Services | Chief Executive's Office

Email: [H.DeLaCour@gov.je](mailto:H.DeLaCour@gov.je)

Alternatively, Jersey Finance will be collating an industry response and these responses should be sent to:

### Lisa Springate

Head of Legal and Technical | Jersey Finance Limited

Email: [lisa.springate@jerseyfinance.je](mailto:lisa.springate@jerseyfinance.je)

This consultation paper has been sent to the Public Consultation Register. This consultation paper has also been provided directly to:

- Institute of Directors – Jersey Branch
- Jersey Association of Trust Companies
- Jersey Chamber of Commerce
- Jersey Compliance Officers Association
- Jersey Consumer Council
- Jersey Finance Limited

- Jersey Funds Association
- Law Society of Jersey
- Society of Trust and Estate Practitioners (STEP), Jersey Branch
- Jersey Association of Directors and Officers
- Jersey Business
- Jersey Charity Commissioner
- Jersey Society of Chartered and Certified Accountants

## Introduction

1. Jersey is recognised as a leading centre for financial services, adopting the highest levels of compliance with international standards, including those relating to anti-money laundering (“AML”) and counter-terrorist financing (“CFT”). Jersey’s approach must be kept under review to ensure continuing compliance.
2. In January 2020, following consultation with the Commission and industry representatives, the Government of Jersey published a consultation on the Law. Responses to that consultation were considered ahead of lodging of the Law on 2 June 2020. The Law was adopted by the States Assembly on 14 July 2020. Article 27 of the Law was not moved during the debate due to concerns expressed about the prohibition on acting as nominee directors. Government is continuing to liaise with industry to ensure an appropriate method of mitigating any risks relating to nominee directors to achieve compliance with the FATF Recommendations.
3. The intention is to bring the Law into force together with the Draft Order and Draft Regulations on 1 December 2020. This timeframe has been delayed slightly due to the impact of Covid-19, however, Government does not consider that this is detrimental to the Moneyval assessment as it is likely that the assessment has also been delayed due to postponed assessments as a result of restrictions arising from Covid-19.
4. The Law includes Regulation and Order making powers to address a range of matters. Part one of this Consultation Paper considers the Draft Order and Part Two considers the Draft Regulations. Government has shared an early version of the Draft Order and Draft Regulations with the Commission and those involved in the registry workshops. Feedback on those early drafts have helped shaped the content of the Draft Order and Draft Regulations.
5. The main features of the Draft Order are:
  - a. Details of the information required to be provided to the Commission about beneficial owners of entities;
  - b. Details of the information required to be provided to the Commission about significant persons of entities;
  - c. Additional information to be provided to the Commission by companies; and
  - d. Exemptions from compliance with certain provisions of the Law for the Viscount when administering an entity in bankruptcy.
6. The Draft Regulations seek to:
  - a. Provide for what information about an entity’s significant persons shall appear on the public register of significant persons;
  - b. Provide an additional amount to be paid to the Treasurer in respect of annual confirmation fees;
  - c. Set out the application process for preventing information about a significant person from being available for public inspection;
  - d. Set out an appeals process;
  - e. Make consequential amendments (including prohibition on bearer shares);

- f. Repeal certain provisions of existing legislation; and
  - g. Provide transitional provisions for making public information.
7. The Government of Jersey welcomes responses to the questions posed in this consultation, in addition to general comments on the Draft Order and Draft Regulations.

## **PART 1: The Draft Order**

### **A: Beneficial owner information**

8. Under the Law, “beneficial owner information” is to be prescribed by Order. This was to allow sufficient flexibility to react to changing international standards and adapt to changing information requirements. The Government of Jersey has considered with the Commission the information it requires to be able to fulfil its role and analysis of information provision under existing legislation and the Exchange of Notes has been undertaken. Information to be provided in relation to beneficial owners is specified at Article 2 of the Draft Order.
9. Information about beneficial owners will not be made public at this stage. The Government of Jersey issued a joint statement with the governments of the Isle of Man and Guernsey on its proposed approach to beneficial ownership information in 2019. That statement can be found [here](#).
10. The Government of Jersey and the Commission note that the collection of information may cause additional pressures on industry. Workshops are ongoing between the Commission and a number of industry members to ensure that mechanisms are in place to address the information requirements ahead of the in force date. Further, provisions are included in the Law and Draft Regulations to provide existing entities with additional time to submit information until the end of the anticipated period for the first annual confirmation statement. This period may also be extended further during the first year that the Law is in force to remove any additional pressure for entities and service providers.

### **A: Questions**

- i. **Please provide any comments in relation to information required about beneficial owners of entities.**
- ii. **Do you consider any additional information should be provided to the Commission regarding beneficial owners of entities? Please provide details.**

### **B: Significant person information**

11. Significant person is the term adopted in the Law to capture those persons occupying roles equivalent to a director or officer of a company. To comply with the requirements of FATF Recommendation 24, it is intended that a register of significant persons will be established, and this will ultimately be made publicly available.
12. To populate the register, information about a significant person is required to be provided to the Commission. Article 3 of the Draft Order specifies the information intended to be collected about significant persons. Not all of this information is intended to appear on the public part of the register and information that shall appear on the public register is specified in the Draft Regulations.
13. We note that the register of significant persons is a new requirement for industry and acknowledge that the requirements to provide this information will result in additional work for industry.

**B: Questions**

- iii. **Please provide any comments in relation to information require about an entity's significant persons.**

**C: Further information to be provided by companies**

- 14. Additional information is required to be provided in relation to companies, to capture information currently provided in the annual return.

**C: Questions**

- iv. **Please provide any comments in relation to the addition information required in relation to companies.**

**D: Exemptions**

- 15. The Minister may exempt prescribed persons from undertaking specified activities under the Law. There is an additional power to make exemptions under Regulations, which is also invoked, and further details are set out in Part 2 below.
- 16. The exemption provided to the Viscount in the Draft Order is to address the situation where an entity is declared bankrupt and the Viscount is administering the entity.

**D: Questions**

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

## **PART 2: The Draft Regulations**

### **E: Information to be made public**

17. The Law provides that Regulations may specify what information about an entity is to be made public.
18. As previously communicated in the consultation on the Law and the consultation on the implementation of the FATF Recommendations, in order to achieve compliance with FATF Recommendation 24, it is intended that a public register of significant persons will be established in the jurisdiction. It is not intended that all information collected by the Commission about a significant person will be made public. The Draft Regulations specify which of the information collected about a significant person under the Draft Order will appear on the public register of significant persons.
19. Information about an entity that is already in the public domain and displayed on the registry website will continue to be available to the public. This includes information such as the entity's name, registered office/business address and registration number. For companies, this will also include information about its members. This is because this information is currently available to download in the annual return. It is likely that this information will be available to download as part of a "company profile". It is not intended that the annual confirmation statement will be publicly accessible as the statement will confirm the accuracy of privately held information.
20. The public register of significant persons will not contain details of minors, company secretaries or significant persons of share transfer companies.

### **E: Questions**

- vi. **Please provide any comments on the information to be made public about an entity's significant persons.**
- vii. **Please provide any comments on the exemptions from the public register of significant persons.**

### **F: Additional amount to be paid to Treasurer**

21. The relevant entity legislation currently provides that in relation to annual returns and annual fees and additional amount is payable to the Treasurer. That amount is currently £115 of the annual return fee or annual administration charge payable to the Commission.
22. Notwithstanding the increase in annual return fees and annual administration fees, the amount payable to the Treasurer has not increased in some years. It is therefore proposed that this amount increases to £145 from 2021. This will not change the total amount payable by an entity.
23. Following feedback from industry and further consideration of the requirements of FATF Recommendation 24, limited partnerships were removed from the definition of "entity". Government therefore intends to also amend the Limited Partnerships (Annual Additional

Charge) (Jersey) Regulations 2012 to increase the amount payable to £145, so as to align the position with entities.

#### **F: Questions**

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

#### **G: Applications to make certain information unavailable for public inspection**

24. The Draft Regulations provide that applications may be made to prevent disclosure of information about significant persons on the public register. This aims to protect those at risk of harm.
25. Applications are permitted by individuals and should be made to the Commission. It will be possible to make an application to suppress information from the public register where there is a serious risk of violence or intimidation to the applicant or a person who lives with the applicant as a result of the information being published or where there is a serious risk of damage or threat to property. Applications may also be considered in exceptional circumstances.
26. Applications to make information unavailable from the public register will be required to include the following information:
  - a. The statement of the grounds on which the application is made;
  - b. The name and any former name of the applicant;
  - c. An address for correspondence in respect of the application;
  - d. The information sought to be redacted from the register;
  - e. The name and registered number of each entity in relation to which the applicant is a significant person.
27. Upon receipt of an application, the Commission will provide a response within a reasonable period either granting some or all of the application or refusing the application. The Commission's decision will be confirmed in writing to the applicant.
28. During the period in which the application is being considered, the information will be privately held by the Commission.

#### **G: Questions**

- ix. Who should be permitted to make applications to prevent information about significant persons appearing on the public register?**
- x. Do you consider it would be appropriate to include other grounds on which an application can be made? Please provide details.**

#### **H: Appeals**

29. The Draft Regulations provide for appeals against decisions of the Commission made either under the Law or the Draft Regulations. Appeals should be made to the Royal Court and are permitted on the grounds that the decision of the Commission was unreasonable.

30. Information subject to an application or appeal will remain privately held while the application or appeal is in process and for the period of 28 days after an application is refused.

**H: Questions**

- xi. Please provide any comments in respect of appeals.**

**I: Consequential amendments, repeals and transitional arrangements**

31. Article 27 of the Law was not moved during the States debate. Work is ongoing in relation to the precise requirements in relation to nominee directors, however the consequential amendments re-introduce the other provisions of Article 27: a prohibition on issuing bearer shares and an ability for the registrar to maintain a record of disqualified directors.
32. The Law introduces the concept of the annual confirmation statement, intended to replace the annual return and annual fee payable by entities. The Draft Regulations seek to amend and repeal provisions relating to annual returns and fees to remove the potential for duplicate filings and fees.
33. Article 127YE of the Companies Law is amended to ensure the current provision in respect of an annual return of a cell company applies in relation to an annual confirmation statement.
34. The transitional provisions also explain that information collected about a significant person will not be made public until 31 May 2021, or until three months after the period extended by the Commission for the provision of the information.

**I: Questions**

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

**Conclusion**

35. It is intended that the Law will be brought into force on 1 December 2020, with the Draft Order and Draft Regulations taking effect from that date, save for that the public register of significant persons will not become live until 3 months after the final date for collection of information required under the Law

## Summary of questions

Section	Question number	Question
A	i.	Please provide any comments in relation to information required about beneficial owners of entities.
	ii.	Do you consider any additional information should be provided to the Commission regarding beneficial owners of entities? Please provide details.
B	iii.	Please provide any comments in relation to information required about an entity's significant persons.
C	iv.	Please provide any comments in relation to the addition information required in relation to companies.
D	v.	Do you consider that further exemptions should be provided for in the Draft Order? If so, please provide details.
E	vi.	Please provide any comments on the information to be made public about an entity's significant persons.
	vii.	Please provide any comments on the exemptions from the public register of significant persons.
F	viii.	Please provide any comments on the additional annual fee.
G	ix.	Who should be permitted to make applications to prevent information about significant persons appearing on the public register?
	x.	Do you consider it would be appropriate to include other grounds on which an application can be made? Please provide details.
H	xi.	Please provide any comments in respect of appeals.
I	xii.	Please provide any comments in relation to consequential amendments, repeals and transitional arrangements.

## **Data Protection (Jersey) Law 2018 Privacy Notice**

### **How will we use the information about you?**

We will use the information you provide in a manner that conforms to the Data Protection (Jersey) Law 2018.

We will endeavour to keep your information accurate and up to date and not keep it for longer than is necessary. In some instances the law sets the length of time information has to be kept. Please ask to see our retention schedules for more detail about how long we retain your information.

We may not be able to provide you with a service unless we have enough information or your permission to use that information.

We will not pass any personal data on to anyone outside of the States of Jersey, other than those who either process information on our behalf, or because of a legal requirement, and we will only do so, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your personal data.

We will not disclose any information that you provide 'in confidence', to anyone else without your permission, except in the few situations where disclosure is required by law, or where we have good reason to believe that failing to share the information would put someone else at risk. You will be told about this unless there are exceptional reasons not to do so.

We do not process your information overseas using web services that are hosted outside the European Economic Area.

### **Data Sharing**

We may need to pass your information to other States of Jersey (SOJ) departments or organisations to fulfil your request for a service. These departments and organisations are obliged to keep your details securely, and only use your information for the purposes of processing your service request.

We may disclose information to other departments where it is necessary, either to comply with a legal obligation, or where permitted under other legislation. Examples of this include, but are not limited to: where the disclosure is necessary for the purposes of the prevention and/or detection of crime; for the purposes of meeting statutory obligations; or to prevent risk of harm to an individual, etc.

At no time will your information be passed to organisations for marketing or sales purposes or for any commercial use without your prior express consent.

### **Your rights**

#### **You can ask us to stop processing your information**

You have the right to request that we stop processing your personal data in relation to any of our services. However, this may cause delays or prevent us delivering a service to you. Where possible we will seek to comply with your request but we may be required to hold or process information to comply with a legal requirement.

#### **You can withdraw your consent to the processing of your information**

In the few instances when you have given your consent to process your information, you have the right to withdraw your consent to the further processing of your personal data. However, this may

cause delays or prevent us delivering a service to you. We will always seek to comply with your request but we may be required to hold or process your information in order to comply with a legal requirement.

**You can ask us to correct or amend your information**

You have the right to challenge the accuracy of the information we hold about you and request that it is corrected where necessary. We will seek to ensure that corrections are made not only to the data that we hold but also any data held by other organisations/parties that process data on our behalf.

**You request that the processing of your personal data is restricted**

You have the right to request that we restrict the processing of your personal information. You can exercise this right in instances where you believe the information being processed is inaccurate, out of date, or there are no legitimate grounds for the processing. We will always seek to comply with your request but we may be required to continue to process your information in order to comply with a legal requirement.

**You can ask us for a copy of the information we hold about you**

You are legally entitled to request a list of, or a copy of any information that we hold about you. However where our records are not held in a way that easily identifies you, for example a land registry, we may not be able to provide you with a copy of your information, although we will do everything we can to comply with your request.

You can ask us:

- to stop processing your information
- to correct or amend your information
- for a copy of the information we hold about you.

You can also:

- request that the processing of your personal data is restricted
- withdraw your consent to the processing of your information.

You can complain to us about the way your information is being used by contacting us at [dataprotection2018@gov.je](mailto:dataprotection2018@gov.je) alternatively you can complain to the Information Commissioner by emailing [enquiries@dataci.org](mailto:enquiries@dataci.org).

