

Consultation: Obligated Entity Access to Information

14 OCTOBER 2022

Summary:

The Government of Jersey is consulting on the proposal to extend access to the central register of beneficial ownership and control to obliged entities in Jersey for the purpose of client due diligence (“CDD”). Alongside this public consultation paper, the Government is working closely with representatives from the financial services industry to address the technical requirements of the proposal.

Date published:

14 October 2022

Closing date:

7 November 2022

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 (*sent to other interested parties on request, sent to the Scrutiny Office, quoted in a published report, reported in the media, published on www.gov.je, listed 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

Responses may be submitted in writing as follows:

FAO Helen De La Cour

Associate Director | Financial Crime Strategy | Department for the Economy

Email: Economy@gov.je

Subject heading: "Beneficial ownership – Obligated Entities",

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

Responses sent to Jersey Finance will be anonymised before sharing with Government.

Background

1. Jersey is proud to be recognised as a leading centre for financial services internationally, with a strong commitment to full implementation of international standards in terms of anti-money laundering (“AML”) and counter-terrorist financing (“CFT”) with a view to creating an effective financial crime prevention regime.
2. In June 2019, Jersey, together with the Isle of Man and Guernsey announced a series of steps regarding their central registers of beneficial ownership of companies and how the jurisdictions will move towards developing international standards of accessibility and transparency.
3. The second stage of that commitment was *“to enable access to our central registers of beneficial ownership of companies to obliged entities for due diligence purposes as soon as reasonably practicable...before the end of 2022”*.
4. This consultation builds on the political commitment of June 2019 and specifically seeks input from interested parties to enable the implementation of the commitment in respect of access for obliged entities in an innovative manner, with the aim of simplifying and streamlining due diligence processes for legal entities registered in Jersey.

International Developments

5. The Financial Action Task Force (“FATF”) is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards, including standards on beneficial ownership. During 2021, the FATF published a [consultation](#) on proposed revisions to Recommendation 24 (transparency and beneficial ownership of legal persons).
6. In a [public statement](#) issued on 4 March 2022, the FATF confirmed that the amendments to Recommendation 24 and its Interpretative Note had been adopted. These amendments include a requirement that:

“Countries should require their company registry to facilitate timely access by financial institutions, DNFBPs and other countries’ competent authorities to the public information they hold, and, at a minimum to the information referred to in paragraph 4(a) above. Countries should also consider facilitating timely access by financial institutions and DNFBPs to information referred to in paragraph 4(b) above and to beneficial ownership information held pursuant to paragraph 7 above, and could consider facilitating public access to this information.”

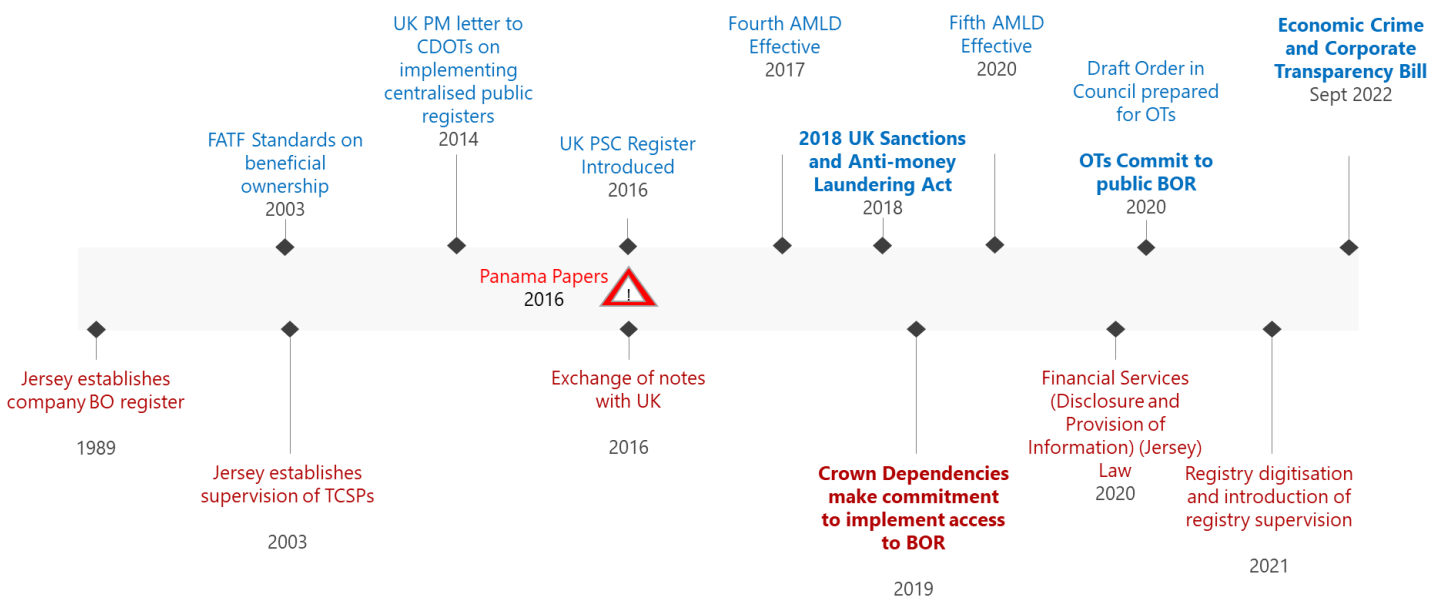
7. The changes built on the FATF [“Best Practices on Beneficial Ownership for Legal Persons”](#) document, published in 2019. This paper highlighted the importance of obliged entities being able to verify and/or monitor the information on beneficial ownership information. It identifies cross-referencing basic and beneficial ownership information provided to an obliged party with information held by the company registry as a means of verifying and monitoring the information.

8. The [Fourth Anti-Money Laundering Directive](#) of the European Parliament and Council (“4AMLD”) marked the start of the EU’s drive towards greater transparency of beneficial ownership information. 4AMLD saw the introduction of central beneficial ownership registers for all corporate and legal entities incorporated within a Member State.
9. On 19 April 2018, the European Parliament adopted the [Fifth Anti-Money Laundering Directive](#) (“5AMLD”) which built on the regulatory regime introduced under 4AMLD. This required the establishment of publicly accessible beneficial ownership registers for companies, trusts and other legal arrangements. To date, there has been approximately a 74% implementation rate of publicly accessible central registries across Member States but there has been no formal reporting on the status of implementation as envisaged by 5AMLD at the time of adoption.

Jersey’s History of Transparency

10. Jersey is proud to be recognised as a leading centre for financial services internationally, with the adoption of the highest levels of compliance with international standards in terms of AML and CFT. Those standards must be kept under review to ensure continuing compliance.

11. Jersey’s timeline on transparency developments, aligned to international standards is set out below:



12. Jersey continues to ensure that the relevant competent authorities have the access they need to adequate accurate and current information regarding legal entities registered and/or incorporated in the jurisdiction. Direct access to the beneficial ownership register for competent authorities is now being extended beyond the scope of the Exchange of Notes agreement. This means that Jersey competent authorities (Financial Intelligence Unit,

Revenue Jersey and the Attorney General’s Department) will be able to instantly and directly access information contained within the central register of beneficial owners and controllers.

13. Jersey stands by its commitment made in 2019 to provide access to the beneficial ownership register for obliged entities for CDD purposes by the end of 2022. To implement this in practice will require a two-stage approach. It is intended that stage two will see further enhancement of the obliged entity access regime throughout 2023 and 2024 and will draw on the learning and experience of stage one, together with developing international best practice.

Proposal: Stage one implementation of access for obliged entities

Information to be made available

14. Government has considered the information that would be useful to obliged entities in conducting CDD and proposes that the following fields of data should be made available during stage one implementation:

- a. Full name
- b. Full date of birth
- c. Country of residence
- d. Nationality
- e. Full extent of beneficial owner or controller information held (eg percentage/nature)
- f. Residential address

15. Government recognises the sensitivity and concerns relating to privacy and potential safety as a result of disclosure of residential addresses and seeks feedback as to whether this field should be excluded in stage one of the implementation while further testing and technical analysis is undertaken.

Question one: Please detail any concerns regarding the proposed data fields to be provided to obliged entities for CDD purposes.

Question two: Do you consider any additional data fields are required for stage one implementation?

Means of access

16. Access will be permitted for obliged entities where CDD is required to be conducted on island.
17. The definition of “obliged entity” will be aligned to the FATF definitions of “[Financial Institution](#)” and “[Designated non-financial businesses and professionals](#)” (“DNFBPs”). To ensure that this accurately reflects Jersey’s sectors, it may be appropriate to supplement the

definition with persons specified in [Schedule 2 Proceeds of Crime \(Jersey\) Law 1999](#), to ensure the definition works for Jersey. This may be delivered in phases depending on operational delivery through the Companies Registry.

18. Access to the beneficial ownership register by obliged entities is proposed to be provided by portal. This will allow monitoring of access and ensure that only authorised persons could access the information held. Authorised persons would be only those individuals authorised to use the portal on behalf of an obliged entity, to access the beneficial ownership register for a legitimate purpose. The portal access would be subject to periodic audit which would prevent against misuse.
19. In addition, the company registry will consider additional security measures, such as multi-factor authentication.
20. Access to the register could be limited to one point of access per registered or licensed entity. This would minimise exposure to the register and limit any potential security breaches. We would welcome feedback on whether this proposal is feasible in practice.
21. To further prevent against unauthorised access, notification of access to the information could be provided directly to the nominated person of the legal entity whose beneficial owner information has been accessed. Alternatively, it may be possible for the nominated person of a legal entity to access the portal at any time to obtain confirmation of when (if ever) the entity's beneficial owner information has been accessed. In addition, Government could consider as part of the necessary legislative amendments, introducing a criminal penalty for unauthorised access to information.
22. Regulation 4 of the Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 2020 (the "Disclosure Regulations") permits applications to prevent disclosure of information currently held on the beneficial ownership register. Government is reviewing these provisions to consider whether they should equally apply to information sought by obliged entities for CDD purposes and welcomes comments from interested parties.
23. It is not proposed to charge fees for the access to information by obliged entities for CDD purposes. Obligated entities will, however, be asked to report any discrepancy between the information they have obtained for CDD purposes through usual practice and the information held in the central register. This is important to enhance the veracity of the information contained on the register.
24. Consideration will be given to any restrictions or limitations on the use of information from the central register for CDD purposes. Information contained on the register is sensitive not only as it relates to individuals but may also be considered sensitive business and competition

information. This is because it is likely that the service provider of the ultimate beneficial owner will be identifiable. Government would welcome any views on how protections may be implemented to prevent against misuse of this information.

25. For this reason, access to the register for CDD will only be permitted for a lawful reason. It will be necessary to clearly define terms such as “potential/prospective client/customer” to prevent against the misuse noted above. Government welcomes views on the lawful reasons for access for CDD purposes and how this can afford the protections required to both individual beneficial owners and businesses.

Question three: Is the proposed definition of obliged entity appropriate? Please provide justification for your answer.

Question four: Is one access per licensed/regulated entity sufficient? Please provide reasons for your answer.

Question five: Would notification of access of beneficial ownership information to the legal person’s nominated person be beneficial to your business? Please provide reasons for your response.

Question six: Do you consider it appropriate to extend the current Regulation 4 application process of the Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 2020 to access requests made by obliged entities? Please provide reasons for your response.

Question seven: Do you consider any additional penalties and/or security provisions necessary to ensure sufficient lines of defence against misuse? Please provide details.

Question eight: What do you consider are the relevant legal grounds for access to the beneficial ownership register for CDD purposes?

Question nine: Are there any additional defined terms that may be necessary to ensure adequate protections to beneficial owners and businesses? Please provide details.

Question ten: What is the likely impact of a requirement of reporting discrepancies for your business?

Legislative framework

26. To permit this access for obliged entities, it will be necessary to implement legislative changes. The Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 provides a framework on which Government seeks to implement stage one of access.
27. As part of stage two delivery, Government intends to embed the provisions in the Proceeds of Crime (Jersey) Law 1999 and the Money Laundering (Jersey) Order 2008. This will align with the developing international standards and allow for validation of CDD information using other reliable sources. Government seeks to ensure that this process is innovative, intuitive and of benefit to industry and welcomes views on how this might best be achieved.

Question eleven: What features of obliged entity access would be most beneficial for use by your business?

Question twelve: Please provide any views on how technology would support the proposal to allow obliged entity access.

Conclusion

Government seeks to ensure that obliged entity access not only aligns to international standards, but that it meets the requirements of the industry in Jersey and supports a more streamlined CDD process. Government welcomes any additional general comments on the proposals to allow obliged entities access to the beneficial ownership register for CDD purposes.

Question thirteen: Please provide any general comments regarding the proposal.

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 Government 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 Government of Jersey 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 alternatively you can complain to the Information Commissioner by emailing enquiries@dataci.org.