

## **Beneficial Ownership of Jersey Companies and a Register of Directors**

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Jersey has a leading global position in respect of transparency of beneficial ownership information of Jersey companies. With a longstanding central register of beneficial ownership information, Jersey has had significant experience in collecting, verifying and holding beneficial ownership information on Jersey companies.

Jersey has been positively assessed by the IMF in this regard and the World Bank in the StAR project report "The Puppet Masters" uses the Jersey regime as a "model" as to the provision of beneficial ownership information. Jersey is fully committed to the global fight against money laundering, terrorist financing, corruption, tax evasion and other crimes.

In February 2014 the Chief Minister's Department consulted more generally on a review of transparency of beneficial ownership of companies. This consultation was launched following the commitment made by the UK and the G8 in 2013 to improve the transparency of ownership and control of legal persons and legal arrangements and the Action Plan published by Jersey at that time.

The current consultation, whilst drawing on questions and response from the previous consultation, moves to consult upon implementation of two key areas where it is felt that Jersey can enhance its leading position to further demonstrate its full commitment to international standards.

These areas are:

- i) Automatic updating (post incorporation) of the Companies Registry by Trust and Company Service Providers ("TCSP") upon change of beneficial ownership and control over the 25% threshold; and
- ii) The introduction of a central Register of Directors.

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**Date published:**

**10 March 2016**

**Closing date:**

**7 April 2016**

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**How we will use your information**

The information you provide will be processed for the purpose of consultation. The Chief Minister's Department will use your information in accordance with the Data Protection (Jersey) Law 2005 and the Freedom of Information (Jersey) Law 2011. Please note that we may quote or publish responses to this consultation but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

**Who should respond and ways to respond**

The Government of Jersey is interested in receiving responses from individuals or businesses that have an interest in the Jersey register of beneficial ownership of companies and partnerships or those who have an interest in the introduction of a Register of Directors for Jersey.

Responses should be submitted **by e-mail** to:

**George Pearmain**

Lead Policy Adviser, Private Wealth and Financial Crime, Financial Services Unit, Chief Minister's Department

**Email:** [g.pearmain@gov.je](mailto:g.pearmain@gov.je)

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

**William Byrne**

Head of Technical, Jersey Finance Limited

**Email:** [william.byrne@jerseyfinance.je](mailto:william.byrne@jerseyfinance.je)

Responses sent to Jersey Finance will be shared with Government unless the respondent indicates that they wish to remain anonymous. Please indicate clearly on your response if this is the case.

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This consultation paper has been sent to the Public Consultation Register.

**Feedback on this consultation**

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact [Communications.Unit@gov.je](mailto:Communications.Unit@gov.je)

## Part 1: Automatic updating of the Companies Registry upon change of beneficial ownership

- 1.1 Jersey stated in a 2013 Action Plan that it is fully committed to implementing the revised Financial Action Task Force (“FATF”) Recommendations in order to improve the transparency of the ownership and control of legal persons and legal arrangements. FATF Recommendation 24 is concerned with legal persons (i.e. companies, foundations, limited liability partnerships and other types of legal persons).
- 1.2 Recommendation 24 states:  
*“Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.”*
- 1.3 Meeting this requirement as to the information required is therefore a three-limb test: the information collected must be adequate, accurate and timely.
- 1.4 Through the process of international assessment, it has been confirmed that a central register, such as the Jersey register, is a model that will comply with FATF Recommendation 24. This consultation seeks to introduce Government policy to enhance the central register and therefore provide further benefit to law enforcement agencies and tax authorities who may request information from the register.

### Adequate and Accurate Information

- 1.5 Jersey has no difficulty in fulfilling the requirements that the information be adequate and accurate. Currently, beneficial ownership information is required to be disclosed to the Jersey Financial Services Commission Companies Registry (the “Companies Registry”) at the time of incorporation of a company or partnership, and the Companies Registry holds this information in a central register.
- 1.6 The Companies Registry is staffed by experts. It not only calls for information on beneficial ownership on incorporation but also carries out independent checks and ultimately has the power to refuse an incorporation and refer the matter to the Royal Court pursuant to Article 8 of the Companies (Jersey) Law 1991 (the “Companies Law”) when

the activities or the beneficial owners are considered 'sensitive' and it would not be in the public interest to incorporate. The Jersey Financial Services Commission (the "Commission") that houses the Companies Registry has a long-standing statutory duty and guiding principles to have regard to and protect the integrity of Jersey in commercial and financial matters before agreeing to incorporate a company.

- 1.7 It is also important to note that the licensing and active supervision of TCSPs – with requirements to ensure that information on the beneficial ownership of the companies they administer is adequate, accurate and current – is the first line of defence in ensuring that the information provided on beneficial ownership and control of companies and partnerships is adequate and accurate.

#### Timely Information

- 1.8 Currently, upon incorporation, the Commission applies a 10% threshold in respect of "ultimate beneficial owners". This is applied by virtue of Article 2 of the Control of Borrowing (Jersey) Order 1958 ("COBO") that prevents a body corporate incorporated in Jersey issuing shares or admitting any person to membership otherwise than by reason of the transfer of shares without the consent of the Commission. The Commission may, depending on other information obtained during the course of its assessment and evaluation of an application, ask for more information. This may mean 100% ownership is asked to be disclosed upon incorporation, if deemed necessary.
- 1.9 Under Article 2 and 10 of COBO, each consent, issued to a company not incorporated by a TCSP, is conditioned such that where any other shareholder or partner is to take a general threshold of 25% or more interest in the company or partnership subject to registration, it must request prior approval from the Commission before that person can acquire such an interest. The AML/CFT Handbook<sup>1</sup> published by the Commission confirms that a general threshold of 25% is considered to indicate a material controlling ownership interest in capital.
- 1.10 COBO ensures that the Companies Registry will collect information on ultimate beneficial owners with a material interest of 10% upon incorporation. Consent from the Commission is then required before a change of ultimate beneficial ownership of 25% occurs in respect of local residents. It is to the current requirement that up to date records

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<sup>1</sup> <http://www.jerseyfsc.org/anti-money-laundering/regulated-financial-services-businesses/aml-cft-handbook.aspx>

of beneficial ownership and control are maintained at all times by the TCSPs.

- 1.11 At present, information can still be obtained by the Commission through their supervision of the TCSP. This consultation therefore proposes a change to ensure that the central registry is updated automatically upon change in beneficial ownership and control information over the 25% threshold when a change meets or exceeds the threshold.
- 1.12 It has been outlined above that the TCSP is required to keep up to date records of beneficial ownership and control and ensure these are maintained at all times. As the information on beneficial ownership and control over 25% must already be held by the TCSPs, this proposed policy simply requires that the information already captured is to be updated to the central registry in a timely manner.

#### Global movement in transparency of beneficial ownership information

- 1.13 In recognising the global movement to implement the 2012 FATF Recommendations and the interpretation of FATF Recommendation 24 through mutual evaluations carried out by the FATF and the FATF Style Regional Bodies such as MONEYVAL, the Government of Jersey recognises that currently, there is a growing need to improve ability to capture beneficial ownership information in the central register.
- 1.14 The rationale for this move is to: ensure that information in the central register is as current as is reasonably possible; and thereby to allow for law enforcement and tax authorities to have access, upon request, to the most up to date information to assist them in the worldwide fight against financial crime.
- 1.15 It is also of note that the 4<sup>th</sup> Anti-Money Laundering Directive of the European Union<sup>2</sup> (the "4MLD") requires that adequate, accurate and current information on beneficial ownership of corporate entities must be held. The 4MLD provides some optionality as to how member states of the EU may treat third countries (such as Jersey) and therefore, if third countries are not able to demonstrate that they can obtain and hold adequate, accurate and current information on beneficial ownership of companies and partnerships, third countries could be prevented market access to the EU.

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<sup>2</sup> [Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing](#)

- 1.16 The Government of Jersey is therefore proposing to legislate for automatic updating of the central register to ensure that the register has accurate, adequate and current information on beneficial ownership and control, and is seeking views on the way the updating might best be done. For the avoidance of doubt, it is proposed that information would continue to be held on a private basis, with access being granted to law enforcement and tax authorities upon request.

Relevant background information on 'FinTech' solutions to automatic updating

- 1.17 It should also be noted that the rapid development of technology should be considered in order to assist in the move towards greater transparency in central registers. In 2015, the Commission commenced a major overhaul of its electronic systems and several projects, including a new platform for the register of companies, are in development. The aim is to automate or streamline processes in registry and regulation to enhance efficiency within both the Commission and the financial services industry.
- 1.18 A key part of this development in technology has been the creation of appropriate application programme interfaces or such similar technological solutions in the Commission's new platform. This will allow for regulated interfaces to develop their own systems allowing secure transmission of information to and from the Commission.
- 1.19 The Companies Law currently requires Jersey companies to keep at their registered office a register of members and their shareholding in accordance with Article 41 of the Companies Law. The majority of TCSPs in Jersey who deal with Company administration hold this information (and information concerning beneficial ownership and control) on a secure electronic database which could have the potential to be securely linked to the Commission central registry by adopting appropriate technological solutions.
- 1.20 If, after consultation, the Government of Jersey determines that a move to automatic updating of beneficial ownership and control information is in the best interests of Jersey, it is intended that the Commission would look to work with the regulated community in order to develop effective technological solutions between systems so that resource efficiencies can be found in communicating information to the Commission, whilst, at the same time, achieving a leading global position in terms of timely access to information.

- 1.21 This development of systems may take some time, however, the Government feels it important to outline in this consultation the aspirational regime that it would wish to see created in Jersey between the Commission and the financial services industry. This is in keeping with the well-established policy of implementing international standards as well as being in keeping with Jersey's digital agenda and a wish to advance FinTech within the Island. No responses on this part of the consultation are specifically requested, however, the Government of Jersey consider it important to outline how these developments may ultimately achieve greater efficiency and reduced costs for TCSPs.
- 1.22 In advance of developing systems as outlined above, it is envisaged that automatic updating could be achieved by paper submissions to the Companies Registry or through a web portal. In these circumstances, the Government of Jersey would like to consider responses as to the period of time, after a change in beneficial ownership and control of a company or partnership that it will be an offence to not have informed the Companies Registry.

### **Questions**

- 1) Do you agree that in order to be in compliance with the 2012 FATF Recommendations, and the 4<sup>th</sup> Anti-Money Laundering Directive of the EU, Jersey should legislate to provide for automatic updating of beneficial ownership information as proposed in this consultation paper to ensure that the central register contains adequate, accurate and current information?**
  
- 2) If automatic updating was introduced, in accordance with the proposal set out in this consultation, what would be a reasonable period within which notification was required to the Companies Registry after the information is changed in the registered office:**
  - a) 7 days
  - b) 14 days
  - c) 28 days
  - d) Other

## Part 2: A central Register of Directors for Jersey

- 2.1 Under Article 83 of the Companies Law every Jersey Company is required to keep at its registered office a register of directors and secretary and that register must be open for reasonable inspection by the registrar of Companies or a member or Director of the Company during business hours, free of charge.
- 2.2 The Directors of a public company may be searched by any member of the public at the registered office upon payment of a fee that does not exceed the published maximum.
- 2.3 FATF Recommendation 24 and the relevant interpretive note thereof<sup>3</sup> states that there is minimum basic information that must be recorded by a company and that the Companies Registry should record all the basic information required. That basic information includes a list of directors of the company.
- 2.4 In order to uphold the commitment made in the 2013 Action Plan, the Government of Jersey is proposing to introduce a Register of Directors to be held in the Companies Registry. Most jurisdictions around the world have had a central register of Directors for some time. It is of note that the British Virgin Islands have recently committed in the BVI Companies (Amendment) Act 2015 that was enacted in the BVI House of Assembly on 21 December 2015 that there will be a requirement for all BVI companies to file a register of directors with the BVI Registrar.
- 2.5 The Government of Jersey proposes that the Register of Directors held at the Companies Registry will be searchable by the public only on the basis of a search against a Company name and not against an individual Director. Only the name(s) of the Director(s) of the Company that is searched will be made public.
- 2.6 The same position as to timescale on automatic updating of beneficial ownership information that is determined as a result of this consultation is also proposed to be applied to automatic updating in the event of a change of Director. The Government of Jersey would seek views on this position in this consultation.

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<sup>3</sup> See: [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)

**Questions**

- 3) Do you agree that in order to be in compliance with the 2012 FATF Recommendations, Jersey should legislate to introduce a central Register of Directors?**
- 4) Should the Register of Directors be held on a public basis allowing searches of Directors only against the Company?**
- 5) Should it be required to automatically update the Register of Directors when a change of Director occurs on the same basis, as to timescale, that is determined for automatic updating of information concerning beneficial ownership?**

**Part 3 - Timeline for implementation**

- 3.1 Any timeline for implementation will only be determined after a policy decision on automatic updating of beneficial ownership information and the introduction of a Register of Directors is made.
- 3.2 Any timeline for implementation will be formed through further consultation with the relevant trade associations. However, it is important to note that the timeline for transposition of 4MLD for EU Member States is that the Directive comes into force on 26 June 2016. Therefore the Government of Jersey would look to implement any policy decision by 26 June 2017 at the latest.

**Summary of Consultation Paper Questions**

**Part 1**

- 1) Do you agree that in order to be in compliance with the 2012 FATF Recommendations, and the 4<sup>th</sup> Anti-Money Laundering Directive of the EU, Jersey should legislate to provide for automatic updating of beneficial ownership information as proposed in this consultation paper to ensure that the central register contains adequate, accurate and current information?
  
- 2) If automatic updating was introduced, in accordance with the proposal set out in this consultation paper, what would be a reasonable period within which notification was required to the Companies Registry after the information is changed in the registered office:
  - a) 7 days
  - b) 14 days
  - c) 28 days
  - d) Other

**Part 2**

- 3) Do you agree that in order to be in compliance with the 2012 FATF Recommendations, Jersey should legislate to introduce a central Register of Directors?
  
- 4) Should the Register of Directors be held on a public basis allowing searches of Directors only against the Company?
  
- 5) Should it be required to automatically update the Register of Directors when a change of Director occurs on the same basis, as to timescale, that is determined for automatic updating of information concerning beneficial ownership?

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