



Consultation Paper: Access to information on Jersey's Central Register of Companies and legal persons

APRIL 2024

Introduction

1. Following a [consultation](#) in October 2022, the Government of Jersey is now seeking views on Draft Legislation (set out as Appendix B of this document) which will enable access to Jersey's central register of beneficial ownership and control for obliged entities, this being persons obliged to conduct customer due diligence ("CDD") in accordance with the [Money Laundering \(Jersey\) Order 2008](#) (the "MLO").

Background

2. Jersey is proud to be recognised as a leading centre for financial services internationally, with a strong commitment to the implementation of international standards for anti-money laundering ("AML"), counter-terrorist financing ("CFT") and counter proliferation financing ("CPF"), with a view to creating an effective regime for preventing financial crime.
3. In 2022, the Government of Jersey issued a high-level [consultation paper](#) on proposals to enable obliged entity access to the central register of beneficial ownership and control. Responses to the consultation were generally supportive of the approach, noting that the implementation of the policy may bring benefits to the industry. A [response paper](#) was published in December 2022.
4. The intention was to implement obliged entity access in 2023, in line with a [2019 commitment](#) on transparency of beneficial ownership and control, however, following decisions in the Court of Justice of the European Union (the "CJEU"), the Government of Jersey together with the Governments of Guernsey and the Isle of Man sought legal advice as to the approach on access to the registers.
5. As a result of those decisions and the advice obtained, a [revised joint commitment](#) was issued in December 2023. This commitment supersedes the 2019 commitment published by the Governments of Guernsey, Jersey and the Isle of Man. The 2023 commitment agreed to:
 - a. Deliver obliged entity access in 2024; and
 - b. Develop and deliver legitimate interest access in a leading timeframe.
6. This consultation now seeks feedback on draft legislation concerning obliged entity access which will meet the requirement of limb (a) of the revised commitment. Limb (b) of the commitment relating to legitimate interest access, whilst briefly discussed, is not directly consulted in this paper.

International Developments

European Union – case law

7. Readers will be cognisant of the CJEU ruling noted above in the cases of *WM and Sovim SA v Luxembourg Business Registers* (C-37/20 and C-601/20) ECLI:EU:C:2022:912.
8. The CJEU acknowledged that combatting money laundering and terrorist financing is a priority matter for public authorities and entities such as financial institutions and that providing some access to beneficial ownership information plays an important role in that. However, the CJEU found that permitting public access of the nature provided under the 5th Anti-Money Laundering Directive ("AMLD5") constituted a serious interference with fundamental rights to respect for a private life and protection of personal data. The court found this breached Article 7 and Article 8 rights under the Charter of Fundamental Rights of the European Union.

9. Having carefully considered the CJEU's ruling, the Government of Jersey is satisfied that it would not be compatible with the international obligations extended to it under the European Convention on Human Rights, including those enshrined in domestic laws, to grant access to the beneficial ownership register to the general public. It is therefore the policy of the Government of Jersey to approach remaining policy issues around transparency and access to the register through initiatives specifically focussed on obliged entity access to the register and the access of those who may have a "legitimate interest".

European Union – legislative response

10. In response to the CJEU decision, access to beneficial ownership information provided by many EU member states registries was withdrawn, often falling back to a position of legitimate interest as provided for in the 4th Anti-Money Laundering Directive. More recently France, whom maintained public access following the CJEU decision, has now limited access to those who can demonstrate legitimate interest. Challenges are however presented through the differing approaches and definitions of legitimate interest, and a desire for a harmonised approach within the EU was pursued through the drafting of the 6th Anti-Money Laundering Directive ("AMLD6").
11. In January 2024, political agreement was reached between the European Council and European Parliament on the AMLD6. AMLD6 includes a requirement to provide access to beneficial ownership information to those that are able to demonstrate a legitimate interest in relation to the prevention and combatting of money laundering, its predicate offences and terrorist financing. See extract of the current [proposed Article 12 text](#) per Appendix A. With a view to creating harmonised application across member states, the proposition also includes the recognition of persons for whom there is a presumption of legitimate interest, these being:
 - a. Journalists and persons acting in the media on matters connected with the prevention of money laundering and terrorist financing ("MLTF").
 - b. Civil society organisations, including academia, connected with the prevention of MLTF.
 - c. Natural and legal persons entering a transaction with a legal entity or arrangement seeking to prevent the transaction linking to MLTF.
 - d. Foreign obliged entities who can demonstrate the need to access the information for the performance of CDD in their respective country.
 - e. Third party counterparts of EU competent authorities.
 - f. Member States public authorities in the context of public procurement.
 - g. Providers of anti-money laundering and counter terrorist financing ("AMLCFT") products, on the basis the products are only extended to obliged entities and competent authorities who demonstrate a need to access the information to discharge their functions.
 - h. Specific authorities relevant to EU schemes, funds and facilities.
12. AMLD6 is close to adoption by the EU, having recently been adopted by the European Parliament on 24th April 2024, however, still requires the anticipated approval by the European Council following which transposition and implementation at a domestic level by Member States is currently proposed within two years. There will also be continued technical work during the implementation phase within the EU, where there will be detailed consideration of how legitimate interest will work in practice whilst achieving a unified approach across the EU. The development of this work will be critical to the Government of Jersey in determining how legitimate interest will work in practice.

International Standards – Financial Action Task Force (“FATF”)

13. The FATF is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards, including standards on beneficial ownership.
14. Amendments to Recommendation 24 of the FATF Recommendations and Interpretive Note were adopted in March 2022, with [revised guidance](#) being published in March 2023. The revised guidance includes a requirement that countries should consider facilitating timely access by FIs and DNFBPs to various forms of basic and beneficial ownership information for compliance with CDD obligations, and support supplementary verification efforts, such as discrepancy reporting, subject to adequate data protection and privacy safeguards.
15. Notably, the guidance also states that countries may consider facilitating public access to basic and beneficial ownership information however, in contemplating the extent and arrangements for public access, countries should take into account data protection rules and other privacy, security, and confidentiality concerns, and consider limiting what basic and beneficial ownership information is made publicly available or applying a tiered approach to information disclosure (basic to detailed information), e.g., based on legitimate interest.
16. In considering both the developments in the EU and the revised Guidance of the FATF, it appears clear to the Government of Jersey that policies around access to information on the register must now be developed with “obliged entities” and “legitimate interest” in mind, as opposed to any further consideration of full public access to the register.

Consultation

17. Having satisfied itself of the legal position on obliged entity access for the purposes of conducting CDD, the Government of Jersey proposes the implementation of access in two stages.
18. Stage one of implementation of obliged entity access will see access being provided to all beneficial owner information maintained under the Disclosure Law and held on the Register, which can then be used to support the CDD process by those applying for access to information on a specific entity. At this stage, there will not be any further obligations to require obliged entities to access the information in the course of conducting CDD or to report discrepancies.
19. It is proposed that access to beneficial ownership information for CDD purposes will be implemented by an amendment (the “Amendment Law”) to the [Financial Services \(Disclosure and Provision of Information\) \(Jersey\) Law 2020](#) (the “Disclosure Law”). The Amendment Law is attached per Appendix B, however it is further noted that a complimentary amendment (the “Amendment Regulations”) to the Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 2020 is being developed and will be consulted on shortly.
20. The Amendment Law provides the Jersey Financial Services Commission (“Commission”) with the power to disclose information to obliged entities, this being relevant persons as defined within the MLO who are in or carrying on business from within Jersey. Access is limited to the genuine purpose of supporting CDD, linking to the exercise of functions under Part 3 of the MLO, this preventing access to beneficial ownership information for business development and speculative purposes. In recognition of the limited purpose for access, the Amendment Law places restrictions on the disclosure of information and processing of information beyond the purpose permitted.
21. To compliment these changes, it is intended that the Amendment Regulations will allow persons to apply to the Commission to prevent disclosure of their information. This will replicate the process already established under Regulation 4 of the [Financial Services \(Disclosure and Provision of Information\) \(Jersey\) Regulations 2020](#) (the “Disclosure Regulations”) and recognises that there may be circumstances in which it is necessary to restrict access to such information to protect individuals from risk of harm.
22. It is anticipated that a further stage will be necessary to integrate the process into the CDD regime in due course, which will be conducted with a view to seeking efficiencies for industry. We anticipate this may require amendment to provisions in the Proceeds of Crime (Jersey) Law 1999 and the MLO, aligning with developing international standards to allow for validation of CDD in line with other reliable sources. The Government of Jersey recognises that at present there may be discrepancies between information disclosed under the Disclosure Law and that captured under the MLO obligations, which could limit the interpretation of the information for full CDD and discrepancy reporting purposes. This is however not subject to these proposed legislative amendments and this consultation.

Operational Approach

23. Government recognises that implementation of the policy will require operational changes at the Commission. Government continues to work closely with the Commission on the operational delivery of the policy, alongside the implementation of the necessary framework.

24. The intention is that the Commission will engage with industry directly with regards to the system and operational delivery in due course and before the end of 2024.

Legitimate interest

25. Limb (b) of the revised commitment was to develop and deliver legitimate interest access in a leading timeframe. The Government of Jersey continues to closely consider developments on an international platform as to how legitimate interest is defined and implemented in practice. The intention is to engage directly with industry through a separate consultation process concerning legitimate interest which is expected later this year.

Conclusion

26. Government welcomes feedback to this consultation on the Draft Legislation and is grateful for the support of the industry in developing the approach to beneficial ownership.

27. Upon consideration of responses, the Draft Legislation will be finalised for lodging in the summer. In line with the revised commitment, the legislation will be in force by the end of 2024.

How to respond to the consultation.

Question: Please provide comments on the Amendment Law attached per Appendix B.

Responses to the question above can be submitted no later than Friday 7 June:

- a. online by going to gov.je/consultations
- b. by email to Economy@gov.je with the subject line FAO Thomas Wright
- c. in writing to
FAO Thomas Wright
Department for the Economy
19-21 Broad Street
St Helier
Jersey
JE2 3RR

Jersey Finance will also be collating an industry response. These responses should be sent by email to Lisa.Springate@jerseyfinance.je or in writing to:

Lisa Springate
Jersey Finance Limited
4th Floor
Sir Walter Raleigh House
48-50 Esplanade
St Helier
Jersey, JE2 3QB

Appendix A

Extracts of Article 12, Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849

Specific access rules to beneficial ownership registers for persons with legitimate interest

1. Member States shall ensure that any natural or legal person that can demonstrate a legitimate interest in relation to the prevention and combating of money laundering, its predicate offences and terrorist financing has access to the following information on beneficial owners of legal entities and legal arrangements held in the interconnected central registers referred to in Article 10, without alerting the entity or arrangement concerned:

- (a) the name;*
- (b) the month and year of birth;*
- (c) the country of residence and nationality or nationalities of the beneficial owner;*
- (d) for beneficial owners of legal entities, the nature and extent of the beneficial interest held;*
- (e) for beneficial owners of express trusts or similar legal arrangements, the nature of their beneficial ownership.*

In addition to the information referred to in the first subparagraph, Member States shall ensure that any natural or legal persons referred to in points (a), (b) and (e) of paragraph 2 has also access to the following information:

- (a) historical data on the beneficial ownership information of the legal entity or arrangement, including of legal entities or legal arrangements that have been dissolved or ceased to exist in the preceding five years;*
- (b) a description of the control or ownership structure.*

Access pursuant to this paragraph shall be granted through electronic means. However, Member States shall ensure that persons who can demonstrate a legitimate interest are also able to access the information in other formats if they are unable to use electronic means.

2. The following natural or legal persons shall be deemed to have a legitimate interest to access the information listed in paragraph 1:

- (a) persons acting for the purpose of journalism, reporting or any other form of expression in the media that are connected with, the prevention or combating of money laundering, its predicate offences or terrorist financing;*
- (b) civil society organisations, including non-governmental organisations and academia, that are connected with the prevention and combating of money laundering, its predicate offences and terrorist financing;*
- (c) natural or legal persons likely to enter into a transaction with a legal entity or legal arrangement and who wish to prevent any link between such a transaction and money laundering, its predicate offences and terrorist financing;*
- (d) entities subject to AML/CFT requirements in third countries, provided they can demonstrate the need to access the information referred to in paragraph 1 in relation to a legal entity or arrangement to perform customer due diligence in respect of a customer or prospective customer pursuant to AML/CFT requirements in those third countries;*

- (e) third country counterparts of Union AML/CFT competent authorities provided they can demonstrate the need to access the information referred to in paragraph 1 in relation to a legal entity or arrangement to perform their tasks under the AML/CFT frameworks of those third countries in the context of a specific case;*
- (f) Member States' authorities in charge of implementing Title I, Chapters II and III of Directive (EU) 2017/1132 of the European Parliament and of the Council⁷⁰, in particular the authorities in charge of the registration of companies in the register referred to in Article 16 of that Directive, and Member States' authorities responsible for scrutinising the legality of conversions, mergers and divisions of limited liability companies pursuant to Title II of that Directive;*
- (g) programme authorities identified by Member States pursuant to Article 71 of Regulation (EU) 2021/1060 of the European Parliament and of the Council, in respect of beneficiaries of Union funds;*
- (h) public authorities implementing the Recovery and Resilience Facility under Regulation (EU) 2021/241 of the European Parliament and of the Council, in respect of beneficiaries under the Facility;*
- (i) Member States' public authorities in the context of public procurement procedures, in respect of the tenderers and operators being awarded the contract under the public procurement procedure;*
- (j) providers of AML/CFT products, to the strict extent that products developed on the basis of the information referred to in paragraph 1 or containing that information are provided only to customers that are obliged entities or competent authorities provided that those providers can demonstrate the need to access the information referred to in paragraph 1 in the context of a contract with an obliged entity or a competent authority and consistent with the right for those obliged entities and competent authorities to access beneficial ownership information pursuant to Article 11.*

In addition to the categories identified under the first subparagraph, Member States shall also ensure that other persons who are able to demonstrate a legitimate interest with respect to the purpose of preventing and combating money laundering, its predicate offences and terrorist financing, are granted access to beneficial ownership information on a case-by-case basis.

Appendix B
Draft Financial Services Amendment – on following pages



Jersey

DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) AMENDMENT LAW 202-

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Jersey

DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) AMENDMENT LAW 202-

A **LAW** to allow the Commission to disclose beneficial owner information to financial services businesses for customer due diligence purposes.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

1 Amendment of Disclosure Law

This Law amends the [Financial Services \(Disclosure and Provision of Information\) \(Jersey\) Law 2020](#).

2 Article 11A inserted

After Article 11 (authority to disclose information) there is inserted –

“11A Disclosure of beneficial owner information

- (1) The Commission may, on the request of a relevant person, disclose to that person beneficial owner information kept in the register in relation to an entity if the disclosure of the beneficial owner information is for the purpose of assisting the relevant person in the exercise of their functions under Part 3 of the [Money Laundering \(Jersey\) Order 2008](#) in relation to that entity.
- (2) A relevant person must not knowingly or recklessly –
 - (a) obtain beneficial owner information kept in the register by providing false or misleading information to the Commission;
 - (b) disclose beneficial owner information obtained under this Article to another person;

- (c) use beneficial owner information obtained under this Article in relation to an entity for any purpose other than the exercise of their functions under Part 3 of the [Money Laundering \(Jersey\) Order 2008](#) in relation to that entity.
- (3) This Article extends to beneficial owner information entered in the register before the commencement of this Article.
- (4) This Article does not apply to beneficial owner information that is prevented from being disclosed under the Regulations.
- (5) In this Article, “relevant person” means a person carrying on a financial services business in or from within Jersey.”.

3 Article 16 (punishment of offences) amended

In Article 16(1), after sub-paragraph (c) there is inserted –

“(ca) Article 11A(2), is [a fine and 2 years’ imprisonment];”.

4 Article 20 (Regulations) amended

In Article 20(1), after sub-paragraph (c) there is inserted –

“(ca) provide for the making of applications by an entity to the Commission to prevent beneficial owner information from being disclosed under Article 11A;”.

5 Citation and commencement

This Law may be cited as the Financial Services (Disclosure and Provision of Information) (Jersey) Amendment Law 202- and comes into force [7 days after it is registered/on a day to be specified by the States by Act].