



Consultation on
the draft 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. In particular, the legislation seeks to fully meet FATF Recommendation 24 by placing requirements relating to beneficial ownership on a statutory footing. The Government has conducted a wide-reaching engagement programme with industry ahead of the publication of this consultation, which has informed the drafting of draft Financial Services (Disclosure and Provision of Information) (Jersey) Law 202- and this consultation now seeks views on the draft legislation.

Date published:

17 January 2020

Closing date:

21 February 2020

Supporting documents attached:

Draft Financial Services (Disclosure and Provision of Information) (Jersey) Law 202- (the “Draft Law”).

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 States 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

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

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Head of Legal and Technical | Jersey Finance Limited

Email: 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

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 anti-money laundering (“AML”) and counter-terrorist financing (“CFT”). Those standards must be kept under review to ensure continuing compliance.

In February 2012, the FATF published its updated International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation¹ (the “2012 Recommendations”). The 2012 Recommendations are intended to specifically strengthen areas which the FATF considers to be higher risk or where implementation should be enhanced. The Recommendations have subsequently been expanded and updated to counter newly identified threats in areas such as the financing of proliferation of weapons of mass destruction, to be clearer on transparency requirements, and to take a more rigorous approach to fighting corruption. The Draft Law is an important part of ensuring Jersey’s AML/CFT framework fully meets the enhanced international AML/CFT standards framework, along with the accompanying Methodology² addressed.

FATF Recommendation 24 relates to the transparency and beneficial ownership of legal persons – ensuring a consistent approach is adopted across entities and taking further steps to ensure up-to-date and accurate information. The Draft Law seeks to maintain the current situation whereby the Commission collects and makes public certain information; however, it also enables the States to make Regulations which determine additional information which may be made public.

The Draft Law includes:

1. A requirement for the basic regulating powers of all entities (eg Memorandum and Articles of Association) to be filed with the company registry and made publicly available. This will specifically require foundations to file regulations;
2. The introduction of the enabling provisions to introduce a public register of directors;
3. The timely updating of information held by the Company Registrar;
4. A requirement that information be provided by a natural person resident in the jurisdiction or by a regulated TCSP;
5. Prevention of the misuse of bearer shares; and
6. Controls on nominee shareholders and directors.

In addition to implementing requirements of FATF Recommendation 24, The Draft Law will support the development of a more modern Registry and includes provisions allow for a fully digital, future-ready companies registry. This will bring benefits to users of the registry including ease of use and fully online systems. In parallel with the work on the Draft Law, the Jersey Financial Services Commission (the “Commission”) is building a new registry system. It is intended that the digital companies registry will be operational from 1 October 2020.

During the course of 2019, the Government of Jersey, alongside the Commission, engaged with a cross-sector of representatives and users of the companies registry to communicate the proposed changes and

¹ FATF, ‘International Standards on Combating Money Laundering and the Financing of Terrorism Proliferation’, updated June 2019 <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

² FATF, ‘Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems’, updated October 2019 <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>

new requirements. Engagement will continue after the publication of this consultation through workshops, presentations, one-to-one meetings and guidance notes.

Furthermore, the Government of Jersey has previously consulted on and issued feedback papers setting out the policy position in relation to a number of requirements introduced in the Draft Law. These include a public register of directors, prohibition on bearer shares and requirements around basic information. The following documents provide further background information in this respect:

1. Consultation³: Beneficial ownership of Jersey companies and a register of directors (2016);
2. Response paper⁴: Beneficial ownership of Jersey companies and a register of directors (2016);
3. Consultation⁵: Implementation of the 2012 FATF Recommendations on Anti-Money Laundering and Countering the Financing of Terrorism – proposed revisions to Jersey’s AML/CFT framework (2018);
4. Government of Jersey beneficial ownership register policy⁶ (2018);
5. Response paper⁷: Implementation of the 2012 FATF Recommendations on Anti-Money Laundering and Countering the Financing of Terrorism – proposed revisions to Jersey’s AML/CFAT framework (2019);
6. Government of Jersey announcement on beneficial ownership registers⁸ (2019).

Following engagement with industry and other interested parties as to the design and content of the proposals, the Draft Law has been prepared and is attached to this Consultation Paper. Feedback on the Draft Law is welcomed, with the key sections highlighted below.

Regulations to be introduced under the Draft Law are being developed and further engagement with interested parties will take place over the coming months. Further details as to the content of Regulations and timeframes for their introduction is set out in the relevant sections below.

Section A: Definitions and Interpretation

An entity is defined in the Draft Law to meet the requirements of the definition of legal persons under FATF Recommendation 24 (defined in the FATF Methodology) and to capture such entities as currently have interaction with the registry. It is intended to capture existing entities and entities that are yet to come into existence.

³ States of Jersey, ‘Beneficial Ownership of Jersey Companies and a Register of Directors’, 10 March 2016 <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/C%20Beneficial%20Ownership%20of%20Jersey%20Companies%20and%20a%20Register%20of%20Directors%2020160308%20VP.pdf>

⁴ States of Jersey, ‘Beneficial Ownership of Jersey Corporate and Legal Entities and a Register of Directors Policy Document’, 2 November 2016 <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/CR%20-%20Beneficial%20Ownership%20of%20Jersey%20Corporate%20and%20Legal%20Entities%20and%20a%20Register%20of%20Directors%20Policy%20Document%2020161101%20VP.pdf>

⁵ Jersey Financial Crime Strategy Group, ‘Implementation of the 2012 FATF Recommendations on Anti-Money Laundering and Countering the Financing of Terrorism – proposed revisions to Jersey’s AML/CFT legal framework’, 27 July 2018 <https://www.gov.je/SiteCollectionDocuments/Industry%20and%20finance/R%20JFCSSG%20Consultation%20on%20Implementation%20of%20the%202012%20FATF%20Recommendations%2020180727%20GP.pdf>

⁶ States of Jersey, ‘Beneficial Ownership Register Policy’, 23 November 2018 <https://www.gov.je/SiteCollectionDocuments/Industry%20and%20finance/Beneficial%20Ownership%20Policy%20TW%2020181123.pdf>

⁷ Government of Jersey, ‘Consultation Response and Policy Paper: Implementation of the 2012 FATF Recommendations on Anti-Money Laundering and Countering the Financing of Terrorism – proposed revisions to Jersey’s AML/CFT legal framework’, 3 June 2019 <https://www.gov.je/SiteCollectionDocuments/Industry%20and%20finance/ID%20Response%20to%20Consultation%20on%20Implementation%20of%20the%202012%20FATF%20Recommendations%20TF.pdf>

⁸ Government of Jersey ‘Beneficial ownership registers’, 19 June 2019 <https://www.gov.je/News/2019/pages/beneficialownership.aspx>

A definition of significant person is introduced to explain who a significant person is in relation to each entity type. The reason for the introduction of this definition is to apply a term across all entity types in order to introduce a register of officers and directors as required by FATF Recommendation 24. The Government of Jersey stated its policy position in relation to the introduction of a public register of directors in the “Consultation Response and Policy Paper: Implementation of the 2012 FATF Recommendations on Anti-Money Laundering and Countering the Financing of Terrorism – proposed revisions to Jersey’s AML/CFT legal framework” (footnote 6).

In relation to the information regarding a significant person that is to be provided to the Commission, Regulations will be issued shortly which will detail the requirements. However, it is anticipated that the required information will be:

- Full name
- Nationality
- Month and year of birth
- Business/correspondence address
- Role in relation to the entity
- Occupation

Further engagement with interested parties will follow in relation to any Regulations to be introduced under the Draft Law.

In due course, and after further engagement with interested parties, the information about an entity’s significant persons will be made available to the public in order to comply with the obligations under FATF Recommendation 24, by way of making Regulations (Article 8).

The Draft Law also defines a beneficial owner (Article 2). This is intended to be applicable to all entities captured by the Draft Law and uses the wording from the FATF definition of beneficial owner to clearly demonstrate Jersey’s compliance with the FATF Recommendations on the gathering of beneficial ownership information.

It is not intended that the definition should differ from that under the Money Laundering (Jersey) Order 2008 and the Commission is permitted under Article 2 to issue guidance. It is anticipated that this provision will be used in order to provide the assistance necessary to the wider industry to understand its obligations under the Draft Law. It is likely that this will involve a refresh of the current guidance found on the Commission’s website and currently being applied by industry. A refresh shall be required in order to confirm that:

- The majority of information to be collected and the means of identifying beneficial owners remains in accordance with current practice; and
- Beneficial ownership requirements now apply to foundations.

Section A: Questions

1. Are there any further bodies that should be included as an “entity” under the Draft Law? If so, please provide details.
2. Please provide any comments in relation to the definition of an entity’s “significant person”.
3. Do you consider any further details should be required by Regulations as “significant person information”? If so, please provide details.

4. Please provide any comments in relation to the definition of beneficial owner.

Section B: Disclosure of Information

The Draft Law requires the following information to be provided (Article 4):

- Beneficial ownership information;
- Significant person information;
- Details of nominee shareholders, unless licensed by the Commission (the nominee and nominator).

This information is in addition to any requirements under existing legislation (Article 3) and must be provided on application to establish an entity in the jurisdiction and within 21 days of a change. The information is to be provided to the Commission by the entity's nominated person (Article 7).

For most entities this will not alter what they must already provide by way of disclosure to the Commission. However, as noted above, foundations are defined as an entity in the Draft Law and information relating to foundations will now be required.

The Draft Law introduces an annual confirmation statement which is required to be filed on behalf of all entities (Article 5). This replaces the annual return requirements. In order to provide for some flexibility during the first year and to allow for any difficulties in filing the first annual confirmation statement, an entity may apply to the Commission for an extension to the filing period (Schedule 1).

Section B: Questions

5. Please provide any comments in the requirements to provide information to the Commission.
6. Please detail any further information that you consider should be provided in the annual confirmation statement.

Section C: Nominated person

The intention is that in future, all interactions with the company registry function of the Commission will be through the nominated person, including any existing requirements which continue (Article 7).

The Draft Law introduces the concept of a nominated person (Article 6), responsible for making filings, including of beneficial ownership information, with the Commission. It is important to understand that an entity's nominated person will have access to what may be considered sensitive information regarding the entity's beneficial owners. This is because information held by the Commission will be displayed back to the nominated person of that entity in order to allow the completion of the annual confirmation statement.

The Draft Law specifies who may be a nominated person (Article 6). A nominated person may be an individual or a corporate entity.

The nominated person concept is in accordance with guidance on the best practice on beneficial ownership issued by FATF which recommends that a jurisdiction should:

- (a) Require companies to authorise at least one natural person resident in the country of incorporation to be accountable to the competent authorities for providing all basic information and available beneficial ownership information and giving further assistance to the authorities as needed; and/or
- (b) Require companies to authorise a DNFBP in the country to be accountable to the competent authorities for providing such information and assistance; and/or

(c) Take other comparable measures which can effectively ensure a company's co-operation.

A nominated person may resign (Article 6(2)) or be removed by the entity (Article 6(3)) and upon the resignation or removal a replacement nominated person must be appointed within 21 days.

Section C: Questions

7. Are there additional persons that should be permitted to act as an entity's nominated person? If so, please provide details.
8. Should a natural person resident in the jurisdiction be required to have a connection with an entity (as a significant person) in order to be its nominated person? If no, please provide further comments.

Section D: Register

The Commission is required to create a register containing information it receives under the Draft Law (Article 8). Information regarding an entity's beneficial owners will not be made public at this stage. Any information that is currently collected under existing legislation and is made available to the public shall continue to be available publicly.

In addition, a foundation's regulations will be required to be filed with the Commission and will be made available to the public, as stated in "Consultation Response and Policy Paper: Implementation of the 2012 FATF Recommendations on Anti-Money Laundering and Countering the Financing of Terrorism – proposed revisions to Jersey's AML/CFT legal framework" (footnote 6). This provision will be included as a consequential amendment (Schedule 2).

The Government of Jersey also details its policy position on a register of directors in that document and Regulations will be introduced to make the information collected in relation to an entity's significant persons available to the public (Article 8(7)). It is anticipated that those Regulations will come into force on 1 January 2021.

Regulations will be introduced to restrict information from being published in the publicly accessible section of the register in prescribed circumstances and for appeals against decisions made by the registrar or Commission under the Draft Law (Article 8(7)). Such Regulations will be introduced to coincide with the publishing of the register of significant persons.

Section D: Questions

9. Please provide any examples of public interest considerations to be taken into account when drafting Regulations under Article 8(7).
10. Do you consider that there are specific circumstances to be included as grounds to permit an application by an entity to suppress information from the publicly accessible section of the register? Please provide details.

Section E: Disclosure and provision of information and destruction of records

It is an offence under the Draft Law for information to be disclosed unless the disclosure is made in accordance with the provisions of the Draft Law (Article 9(1)).

Jersey will continue to provide assistance in relation to matters of AML and CFT on an international level. In order to fulfil its functions under the Draft Law the Commission is able to request and receive information and to enter into agreements and arrangements for the sharing or exchange of information (Article 9(4) and (5)). The Draft Law further requires the Commission to provide assistance to foreign competent authorities in obtaining information it holds about entities (Article 9(6)). This provision is included to address the requirement of paragraph 24.14 of the FATF Methodology (footnote 1).

Section E: Questions

11. Do you consider that there are additional circumstances in which disclosure of information should be permitted? Please provide details.
12. Do you envisage any unintended consequences arising as a result of the provisions of Articles 9 – 12 of the Draft Law? Please provide details.

Section F: Offences

FATF Recommendation 24 requires information held in relation to an entity to be adequate, accurate and up to date. In addition to the requirement to provide and update information, the Draft Law introduces offences for providing false and misleading information (Article 13).

Offences are also introduced for:

- Failing to update information provided to the Commission within 21 days of a change or error (Article 4(3));
- Failing to appoint a nominated person (Article 6(1) and 6(5));
- Failing to comply with a notice to provide further information or documents to the Commission (Article 8(4)); and
- Disclosing information except in accordance with the Draft Law (Article 9(2)).

A range of penalties are permissible for offences under the Draft Law, including fines (Article 15(1)), daily default fines for subsequent offences (Article 15(2)) and strike-off of an entity (Article 15(3)). In relation to the strike-off provisions, a corresponding power for the Royal Court to declare a dissolution void is introduced (Article 19).

In addition, the Commission is permitted to charge late-filing fees (Article 16(1)(c)). These are anticipated to apply in relation to the requirement to update information (Article 4(2)) and the requirement to file an annual confirmation statement (Article 5).

Section F: Questions

13. Please provide any comments in relation to offences under the Draft Law.

Section G: Fees and charges

The Commission is permitted to charge fees for the performance of its functions under the Draft Law, including late filing fees. Any fees payable shall be notified by fees notice published by the Commission.

Section G: Questions

14. Please provide any comments in relation to the ability for the Commission to charge fees.

Section H: Regulations, Orders and Codes of Practice

A Regulation and Order making power is included in the Draft Law in order to set out the more detailed requirements necessary to ensure the Law is effective. Further engagement with interested parties will be undertaken in relation to Regulations and Orders required to ensure the functionality of the Draft Law.

The Commission may issue Codes of Practice in relation to requirements under the Draft Law.

Section H: Questions

15. Do you consider that there are further specific Regulations required in order to make the Draft Law effective? Please provide details.

16. Do you consider any particular aspect of the Draft Law would benefit from a Code of Practice? Please provide details.

Section I: Miscellaneous

The Draft Law also makes provision for:

- Limitation of liability (Article 23);
- Rules of Court (Article 24);
- Customary law (Article 25); and
- Citation and commencement.

The Draft Law will come into force on 1 October 2020.

Section J: Transitional and consequential amendments

In order to facilitate compliance by existing entities with the requirements of the Draft Law, transitional provisions are introduced for existing entities in relation to:

- Filing the first annual confirmation statement (paragraph 2, Schedule 1);
- Appointing a nominated person (paragraph 3, Schedule 1); and
- Provision of information to the Commission (Paragraph 4, Schedule 1).

Consequential amendments will also be introduced in Schedule 2 of the Draft Law. These will primarily address provisions in existing legislation relating to annual return provisions, but will also:

- Prohibit companies from issuing bearer shares;
- Prohibit persons from acting as nominee directors; and
- Require foundations to file a copy of their regulations with the Commission.

The Government of Jersey stated its policy position in relation to the above consequential amendments in its "Consultation Response and Policy Paper: Implementation of the 2012 FATF Recommendations on

Anti-Money Laundering and Countering the Financing of Terrorism – proposed revisions to Jersey’s AML/CFT legal framework”. The Draft Law is the means by which the policy will be implemented.

It is also intended that the Commission will keep and maintain a public list of disqualified directors.

Section J: Questions

17. Please provide any comments in relation to the proposed transitional and consequential amendments.

Section K: Connected matters

The Draft Law places requirements in relation to beneficial ownership currently contained within consents issued to entities under the Control of Borrowing Order (Jersey) (1958) (the “COBO”) on a statutory basis. The Government of Jersey is separately considering the need to amend and update the COBO and the Control of Borrowing (Jersey) Law 1947 (the “COB Law”).

Section K: Questions

18. Please provide any comments in relation to the interaction between the Disclosure of Information Law with the COBO and COB Law.

Conclusion

The Government of Jersey welcomes any comments in response to this Consultation by close of business on 21 February 2020.

Summary of questions

1. Are there any further bodies that should be included as an “entity” under the Draft Law? If so, please provide details.
2. Please provide any comments in relation to the definition of an entity’s “significant person”.
3. Do you consider any further details should be required by Regulations as “significant person information”? If so, please provide details.
4. Please provide any comments in relation to the definition of beneficial owner.
5. Please provide any comments in the requirements to provide information to the Commission.
6. Please detail any further information that you consider should be provided in the annual confirmation statement.
7. Are there additional persons that should be permitted to act as an entity’s nominated person? If so, please provide details.
8. Should a natural person resident in the jurisdiction be required to have a connection with an entity (as a significant person) in order to be its nominated person? If no, please provide further comments.
9. Please provide any examples of public interest considerations to be taken into account when drafting Regulations under Article 8(7).
10. Do you consider that there are specific circumstances to be included as grounds to permit an application by an entity to suppress information from the publicly accessible section of the register? Please provide details.
11. Do you consider that there are additional circumstances in which disclosure of information should be permitted? Please provide details.
12. Do you envisage any unintended consequences arising as a result of the provisions of Articles 9 – 12 of the Draft Law? Please provide details.
13. Please provide any comments in relation to offences under the Draft Law.
14. Please provide any comments in relation to the ability for the Commission to charge fees.
15. Do you consider that there are further specific Regulations required in order to make the Draft Law effective? Please provide details.
16. Do you consider any particular aspect of the Draft Law would benefit from a Code of Practice? Please provide details.
17. Please provide any comments in relation to the proposed transitional and consequential amendments.
18. Please provide any comments in relation to the interaction between the Disclosure of Information Law with the COBO and COB Law.

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



Gouvernement
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