

STATES OF JERSEY



DRAFT SANCTIONS AND ASSET-FREEZING (AMENDMENT NO. 3) (JERSEY) LAW 202- (P.4/2023): COMMENTS

**Presented to the States on 15th March 2023
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

In February 2023, the Economic and International Affairs Scrutiny Panel (the Panel) received a private briefing from Departmental officers regarding the Draft [Sanctions and Asset-Freezing \(Amendment No.3\) \(Jersey\) Law 202- \(“SAFL”\) \(P.4/2023\)](#) which is due for debate on 21st March 2023.

In order to provide context, officers explained that there are two key pieces of sanctions legislation through which Jersey implements all United Nations sanctions and all autonomous UK sanctions - the Sanctions and Asset-Freezing (Jersey) Law 2019 and the Sanctions and Asset-Freezing (Implementation of External Sanctions) (Jersey) Order 2021.

If approved, P.4/2023 would remove the powers within SAFL to implement European Union (EU) sanctions provisions by Ministerial Order and would further improve SAFL’s compliance with international standards set by the Financial Action Task Force (FATF).

FATF Recommendations and MONEYVAL

FATF is the global money laundering and terrorist financing watchdog. FATF have made 40 Recommendations which have been endorsed by over 200 countries and jurisdictions to combat the misuse of financial systems. They are universally accepted to set the international standard for anti-money laundering (AML) and countering the financing of terrorism (CFT).

Jersey is preparing for an assessment, due in 2023, by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and as such, aims to meet as many of these 40 recommendations as possible. The MONEYVAL assessment will evaluate the Island’s compliance with and effectiveness against the international standards set by the FATF Recommendations.

The Proposed Amendments

During the briefing, officers provided the Panel with a brief description of the proposed amendments which is summarised below.

Licences and Exceptions

Under SAFL, the Minister for External Relations may grant both specific sanctions licences and general licences. A specific sanctions licence is granted by the Minister in response to a licence application to permit an action or actions that would otherwise be prohibited under sanctions legislation (e.g. to pay the basic needs of a Designated Person, such as mortgage payments or legal fees), a general licence is granted by the Minister to permit an act or acts by any person, or by specified persons, that would otherwise be prohibited by sanctions legislation.

Article 19 of the draft Law would amend Article 3 of SAFL to provide that the Minister can by Order give automatic effect to UK sanctions General Licences in full, but subject to any adaptations or modifications that the Minister may specify.

Terrorist Asset-Freeze Designations

The amendments to Articles 20 and 22 of SAFL that would be made, respectively, by Articles 23 and 24 of the draft Law are required to clarify Jersey's compliance with these requirements of the FATF standards. Articles 37 and 38 of the draft Law make similar Amendments to Articles 45A (Request from or to another country for a terrorism designation) and 45B (Request to UN for a terrorism designation), respectively.

Presently, under SAFL, a final terrorism asset-freeze designation expires after 12 months unless it is renewed. This provision does not fully comply with United Nations Security Council Resolution 1373 (2001) or FATF Recommendation 6, which do not allow for an automatic expiration date. Article 25 of the draft Law replaces Article 23 of SAFL to provide that there is no automatic expiration after 12 months.

Implementation of UN Asset-Freezing Designations

The amendment made by Article 27 of the draft Law to Article 29 of SAFL would provide that a new UN asset-freeze made under a new UN sanctions regime that had not yet been implemented in Jersey, would apply automatically and immediately on an interim basis for a period of 90 days. This would allow sufficient time for the UK to have implemented the new UN sanctions regime through regulations and for those regulations to be implemented by Order in Jersey.

Reporting Obligations and the Minister's powers to require information

FATF Recommendations 6 and 7 state that countries should require financial institutions to report frozen assets and 'actions taken in compliance' with sanctions prohibitions to the competent authority (in Jersey this is the Minister). Article 29 of the draft Law would amend Article 32 (Reporting Obligations) of SAFL to make clearer this requirement.

Extra-territorial extent

Article 36 of the draft Law would amend Article 45 of SAFL so that its provisions apply to conduct that happens outside of Jersey if that person is an individual ordinarily resident in Jersey, regardless of whether they are also a UK national.

Requests for UN asset-freezing designation and requests for assistance with UN de-listing

Under SAFL, the Minister may propose to the UN (via the UK) that a person be designated for the purpose of a terrorism asset-freeze. Article 38 of the draft Law would amend Article 45B of SAFL to provide that the Minister may propose an asset-freeze designation under any UN sanctions regime, regardless of whether it concerns terrorism.

Separately, Article 35 of the draft Law would amend Article 43A of SAFL to provide that a person designated for the purpose of an asset-freeze by the UN, may request the Minister uses his best endeavours to secure that the person ceases to be a UN-listed person.

Regulation making power

The draft Law would also introduce a new regulation making power to provide that the States may amend any provision of SAFL to implement a provision related to sanctions in any enactment of the UK, a UN sanctions resolution, or a standard promoted by the FATF or any other international body.

Panel Concerns

During the briefing, the Panel asked about the contingency plans should the Minister not be available for the signing of any urgent sanctions that arise and was informed that all responsibility would be automatically delegated to the Chief Minister or the Assistant Minister for External Relations. The Panel also asked if there were any concerns on sovereignty issues as the proposed amendments referred to the UK/UN and not specifically for Crown Dependencies. It was informed that Jersey had an international legal obligation to implement UN sanctions.

Consultation with Industry

During the briefing, the Panel asked about the consultation process undertaken and was advised that there had been no engagement with industry stakeholders prior to the amendments being drafted. It was informed that industry stakeholders would be briefed the day prior to lodging, with a view to them providing comments. The Panel asked whether the timing of the consultation would impact the lodging of the amendments should industry leaders raise questions or concerns. The Panel was informed that the proposed amendments were not considered contentious, and as the changes were necessary to comply with international standards, it was unlikely there would be any concerns from industry.

Prior to lodging the amendments, the Government shared the proposed draft Law and Proposition with Jersey Finance who circulated it to industry leaders via their Industry Insight newsletter¹. A Financial Sanctions notice was also published in the Jersey Gazette, informing the public and email subscribers in industry of the proposed amendments, inviting any comments or questions to be shared with the Financial Sanctions Implementation Unit. The Panel was informed that no feedback had been received by Government following its consultation.

In order to be satisfied that a thorough consultation had been carried out, the Panel wrote to the following stakeholders:

- Jersey Bankers Association
- Jersey Law Society
- Jersey Finance
- Jersey Financial Services Commission

¹ The Industry Insight newsletter is sent out electronically to 170 member firms who had subscribed to receive it. (This covers staff at all levels and across all sectors of the Financial Services industry.) The communication reaches across all Financial Services sectors (including legal, banking, accounting, funds, trusts, IM, fintech). – email from Jersey Finance 21.02.23

The Panel received feedback from 3 of the key stakeholders who were generally supportive of the proposed amendments. However, a few concerns were raised on the following matters:

- **Manpower issues** - One submission did raise a concern around manpower issues stating that the proposed amendments may create too great a misalignment to the UK regime which would likely incur significant implications at both a financial level as well as the manpower required. The respondent explained that as this was a specialist subject, the required capability to build the technical framework to support it was lacking within the Jersey market.
- **Deviation from UK regime** - Concern was also raised regarding some of the wording to the proposed amendment to the licencing regime ‘*subject to any adaptations or modifications that the Minister may specify*’ and it was highlighted that this may allow deviation from the UK regime which may carry considerable consequence at an operational level. Concern was also raised regarding the proposed approach to the implementation of UN Asset-Freezing Designations and it was questioned what penalties an institution would incur in the event the UK experienced unforeseen delays that surpassed the 90 day timeframe.
- **Lack of consultation** - One respondent raised concerns about the lack of consultation with industry. Although it was acknowledged that there was some urgency to making legislative changes to assist with meeting FATF Recommendations, not allowing an appropriate period for consultation with industry was viewed as unhelpful.

Conclusion

The Panel is supportive of the proposed amendments in principle and understands the importance of implementing the various pieces of legislation in a timely manner prior to the MONEYVAL assessment. The Panel also understands that under specific procedures set universally by the FATF and specifically for Jersey by MONEYVAL, submissions of written documents for Jersey are required by the end of April giving a 6-month lead in time to the evaluation².

However, the Panel would like to make the following points.

1. The Panel is unable to comment on the concerns raised by industry regarding any potential consequences of any deviation from the UK regime as it has not had sufficient time to look into this area in any detail.

² International evaluations are carried out under specific procedures set universally by the FATF and specifically for Jersey, by MONEYVAL. This requires the submission of written documentation for Jersey by the end of April. In line with standard procedure, jurisdictions aim to complete all legislative passage by the time of the submission of written material as otherwise the evaluation team has less time to consider the legislation. This can disadvantage a country in an evaluation. There are also issues arising from effectiveness demonstration where legislation is passed closer to the on-site period. Where legislation is considered uncontroversial (which is usually the case when transposing international standards on AML/CFT) it is the policy of the Government to not delay legislation and it should be put before the States ASAP, especially where relevant to the evaluation.

2. Ideally, the Panel would have wished to see a full consultation process undertaken by Government prior to the lodging of the proposed amendments which it believes could have addressed some of the concerns raised by its own short call for evidence.
3. The Panel believes that consultation is vital for proposed changes in any sector to fully understand the impact on industry and to take any issues raised into account. This matter will be raised with the Minister for External Relations, particularly in relation to the upcoming MONEYVAL assessment.