

STATES OF JERSEY



DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) AMENDMENT LAW 202- (P.49/2024) – COMMENTS

**Presented to the States on 5th September 2024
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

The Draft Financial Services (Disclosure and Provision of Information) (Jersey) Amendment Law 202- [\[P.49/2024\]](#) (hereafter referred to as “draft Law”) was lodged *au Greffe* by the Minister for External Relations (hereafter referred to as “the Minister”) on 30th July 2024 and scheduled for debate at the States’ sitting commencing on 10th September 2024.

The Economic and International Affairs Scrutiny Panel (hereafter referred to as “the Panel”), and its previous iterations, have questioned relevant Ministers on topics concerning the draft Law. The Panel received further relevant information during a briefing with Departmental Officers on 5th September 2024 and has therefore agreed to form these comments in order to aid in the Assembly’s considerations.

Beneficial Ownership Information

If adopted the draft Law will amend existing legislation¹ to allow persons who are obliged to perform customer due diligence (“CDD”) to access beneficial ownership information held by the Jersey Financial Services Commission (“JFSC”).²

The Panel is aware that access to beneficial ownership information has been a consideration for some time with the Minister indicating that the Government of Jersey (the “Government”) continues to seek to engage positively and proactively to fully understand the concerns that others might have about the Island’s system. The Minister has highlighted that it is not a new thing for Members of the United Kingdom (“UK”) Parliament to raise these concerns, with the Panel advised that the UK is one of the few countries to pursue a fully public register.³

The Panel understands that, although fully public registers had been the ambition of many previously, including those in the European Union (“EU”), the international direction of travel on transparency of beneficial ownership information was changed following a November 2022 decision by the Court of Justice of the European Union (“CJEU”) on publicly accessible beneficial ownership registers (the “SOVIM Case”). Briefly, this identified that although information pertaining to Ultimate Beneficial Owners related to their professional activities, the information identified individuals and therefore personal data, and making such data available to third parties constitutes data processing.⁴

The Panel understands that although the EU and UK have pursued increased access previously, the FATF recommendations, comprising the International Standards on Combating Money Laundering and The Financing of Terrorism & Proliferation, have not moved beyond mandating the provision of information to competent authorities. The Minister has indicated that this will move forward based on a European standard perspective.⁵

¹ [Financial Services \(Disclosure and Provision of Information\) \(Jersey\) Law 2020 \(the “DPI Law”\)](#)

² [Protection of beneficial ownership information](#)

³ [Transcript - Quarterly Hearing with the Minister for External Relations - 24 July 2024.pdf](#)

⁴ [Magdalena Brewczyńska, ELB Blogpost 54/2022, 15 December 2022](#)

⁵ [Transcript - Quarterly Hearing with the Minister for External Relations - 24 July 2024.pdf](#)

The Panel would highlight that further consideration of access to beneficial ownership registers may be needed and that further engagement with officials in the UK, EU and further afield will be necessary.

Obligations of the Relevant Persons

The draft Law will enable the request by a relevant person or their representative for the disclosure of relevant beneficial owner information kept on the JFSC's register in relation to an entity, for the sole purpose of assisting the relevant person or their representative to fulfil the obligations of the relevant person, specifically Parts 3 and 4, of the [Money Laundering \(Jersey\) Order 2008](#) (the "Money Laundering Order").

The Money Laundering Order provides for procedures relating to customer due diligence procedures ("CDD"), including:⁶

- The application of CDD such as identification and ongoing procedures
- A risk based approach to CDD in which simplified measures may be used for "lower risk" customers and enhanced measures are used for those who are "higher risk"
- Identification of individuals who own or control a customer, e.g. a company
- Ability for a relevant person to place reliance on another person to prevent and detect money laundering (subject to obligations)
- Establishing that documents, data or information that are collected as part of customer due diligence procedures to be retained for a period of at least 5 years after a relationship has been terminated

The Money Laundering Order is supported through guidance and further information issued through a handbook for Anti-money laundering/countering the financing of terrorism/countering proliferation financing.⁷

In its widest sense, money laundering occurs whenever there is any form of relationship or arrangement involving property that represents the proceeds of a crime for which a person is liable on conviction to imprisonment for a term of one or more years.⁸ The definition of money laundering also covers offences that are committed under Articles 15 to 18 of the Terrorism (Jersey) Law 2002, which includes what is commonly referred to as "terrorist financing".

The Minister has highlighted that, ultimately, such provisions and responsibilities are in place to protect individuals globally:⁹

***The Minister for External Relations:** We remind ourselves that at the end of financial crime are individuals. This idea that you could have white collar crime and it was a victimless crime is an idea for the birds. Something like between 80 and 90 per cent - George will correct me - of all crime committed around the globe is to gain financial benefit. If we look at that statistic we see that real people are impacted and hurt and their lives are torn apart by ... in pursuing crime that would give financial benefit to another. You take human trafficking.*

⁶ [MD-TR-2008-0010](#)

⁷ [AML/CFT/CPF Handbook — Jersey Financial Services Commission \(jerseyfsc.org\)](#)

⁸ [MD-TR-2008-0010](#)

⁹ [Transcript - Quarterly Hearing with the Minister for External Relations - 24 July 2024.pdf](#)

Human trafficking you always think is about the people being trafficked, and of course they are the ones at the really tough end, but it is about money. It is about people further up the pyramid seeking to make money. When they have got that money, what are they going to do with it? They want to get it into the financial system. That is why our protections are so important. That is why a good report is important, but it is also a learning process. We can learn from what the assessors are saying about our processes and our systems.

The Panel understands the vital role that CDD has in the protection against money laundering and other criminal activity and is supportive of enabling its operation, whilst noting the balance that is required between sufficient and sensible safeguarding measures and individuals' rights of privacy and ability to carry out business efficiently.

Protections

The Panel has queried the precautions that are in place to ensure that access to the beneficial ownership information is only carried out by persons that are entitled to do so. The Panel notes that the report to the draft Law recognises the sensitive nature of the information being disclosed, and as such the draft Law introduces both a prohibition and offence for using the information for purposes beyond fulfilling obligations set out in the Money Laundering Order.

The report also highlights that the existing Article 10 prohibition for wrongful disclosure of information obtained under the DPI Law will be amended to ensure it applies to the disclosure of information obtained under these new provisions. The proposal will also extend the JFSCs powers of compulsion, to demand information or interview, to persons accessing information under these new provisions.

The Panel understands that practically individuals carrying out CDD duties would be doing so through company systems and within existing corporate procedures. The Panel would anticipate this would include safeguarding in line with data protection responsibilities as discussed later in these Comments. Following the briefing from Departmental Officers, the Panel has asked for more clarification on whistle blowing implications and how individuals carrying out such activities may be protected in a suitable way currently or in the future. The Panel is awaiting that information before or during the debate.

Overall, the Panel acknowledges these precautions and is hopeful that they would deter any misuse of the access to beneficial ownership information.

The Panel notes that earlier versions of the draft Law, namely that included within consultation undertaken by the Government,¹⁰ included provision for applications by an entity to the Commission to prevent beneficial owner information from being disclosed. Following further consideration the Government has recognised that this would be inconsistent with the purpose of CDD, and exclusion of the earlier provision is deemed sensible by the Panel.

¹⁰[https://www.gov.je/sitecollectiondocuments/Industry%20and%20finance/L%20Draft%20Financial%20Services%20Disclosure%20and%20Provision%20of%20Information\)%20Amendment%20Law%202022-.pdf](https://www.gov.je/sitecollectiondocuments/Industry%20and%20finance/L%20Draft%20Financial%20Services%20Disclosure%20and%20Provision%20of%20Information)%20Amendment%20Law%202022-.pdf)

Legitimate Interest Access

The draft Law aims to go some way in meeting Jersey's, and other Crown Dependencies, commitment to increase access to beneficial ownership information. However, the Panel notes that it does not go as far as to deliver "legitimate interest access" and understands that this would be developed and delivered in a "leading timeframe", with a Joint commitment by Guernsey, the Isle of Man and Jersey identifying that proposals for agreement on the definition and implementation would be presented by Quarter 4 2024.¹¹

The Panel understands that this would entail those allowing provision of information to media and civil society organisations who can demonstrate a legitimate interest in accessing relevant information in order to combat financial crime.¹²

The Panel is aware that there is intention for the Government to engage directly with industry through a further consultation process concerning legitimate interest which is expected later this year.¹³ The Panel will continue to scrutinise this topic and believes the Minister should provide clarity of the timeframe of this work programme.

Consultation

The Panel notes that a [consultation on the proposals](#) for obliged entity access to information was performed in November 2022 with a further [consultation on the draft legislation](#) performed through April to June 2024.

The [consultation response paper](#), published on 5th September 2024, indicates that industry was broadly supportive but provided some additional recommendations to ensure effective practical application. The Panel notes that these recommendations have been included in the draft Law, where agreed to by the Government and believes these to be sensible.

Areas that were highlighted by respondents to the consultation that have not been included in the draft Law by the Government include:

- Access to beneficial ownership information should be limited to just Key Persons within the relevant person. This was considered by Government as impractical and not aligned with the current means by which relevant person may fulfil their obligations under the Money Laundering Order.
- Points on the severity of the penalties of attached to the offences created in the draft Law. The Panel notes that these have been reviewed by Government with the consultation response report indicating they maintain consistency with the existing penalties in the DPI Law, and the penalty for the offence in Article 8B (5) is consistent with a similar offence and penalty in Sanctions and Asset-Freezing (Jersey) Law 2019.

¹¹ <https://www.gov.je/News/2023/Pages/JointCommitmentByGuernseyTheIsleOfManAndJerseyRegistersOfBeneficialOwnershipOfCompanies.aspx>

¹² <https://www.jerseyfsc.org/news-and-events/crown-dependencies-publish-commitment-on-access-to-beneficial-ownership-information/>

¹³ [C Consultation Document Central Register of Beneficial Ownership Apr 2024.pdf](#)

- Whether specific provision was necessary to ensure that information was only disclosed with persons registered under Part 3 of the Data Protection Authority (Jersey) Law 2018 (“DPA Law”). The consultation response report indicates that the Government recognises this would be unnecessarily burdensome highlighting that relevant persons would be typically required to register under the Data Protection Law and subject to the provisions of the Data Protection (Jersey) Law 2018 (“Data Protection Law”) and that onward disclosure would then be subject to the provisions of the Data Protection Law.
- How the system could operate with notifications to the entity or the implementation of a consent-based process. The Panel notes that the Government highlights that specifics of the system will be discussed by the JFCS with industry, and that protections will be in place to protect against improper use of data with the JFSC, under the draft Law, to have the necessary powers to query the use of information by persons requesting it.

The Panel is generally in agreement with the exclusion of the suggested provisions, noting the Governmental response.

Conclusion

The Panel understands that the draft Law will allow for greater access to beneficial ownership information enabling persons who are obliged to perform customer due diligence to carry out this function. The Panel agrees that this is a sensible provision in aiding safeguarding against financial crime and money laundering and understands there to be precautions in place to mitigate misuse of the access to the JFSC registry.

Further consideration for proposals of access to beneficial ownership information is anticipated in regards to Legitimate Interest Access, whilst recommendations regarding combating financial crime continue to develop. The Panel has highlighted that further engagement with the UK, EU and other jurisdictions will be necessary.

Noting consultation undertaken, and the Government’s response to suggestions made through that process, the Panel notes there are competing international pressures on the Government of Jersey when it comes to registers of beneficial ownership. The Panel believes this proposition represents an attempt by the Minister to balance privacy and human rights on the one hand and a wider call for transparency internationally on the other.