

STATES OF JERSEY



DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) LAW 202- (P.69/2020): COMMENTS

**Presented to the States on 6th July 2020
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

[P.69/2020](#) “Draft Financial Services (Disclosure and Provision of Information) (Jersey) Law 202-” was lodged on 1st June 2020 by the Minister for External Relations.

The Economic and International Affairs Scrutiny Panel received two briefings on the draft Law from Government Officials within the Financial Services and Digital Economy team (Office of the Chief Executive). The first briefing was held on 9th March 2020, before the proposition was lodged, and the second briefing was held on 10th June 2020.

The Draft Law

The draft Law seeks to implement requirements set out by the Financial Action Task Force (“FATF”). The FATF is 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. During the briefing sessions, the Government Officials explained that the draft Law would ensure Jersey’s compliance with the requirements of the 2012 Recommendations by FATF in preparation for the next Moneyval assessment (due to the Covid-19 crisis, the next Moneyval assessment is likely to take place in 2022).

In particular, the draft Law seeks to fully meet FATF Recommendation 24 by placing requirements relating to beneficial ownership on a statutory footing [Recommendation 24](#) is as follows:–

FATF Recommendation 24

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. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and Designated Non-Financial Business and Professions (“DNFBP”) undertaking the requirements set out in Recommendations 10 and 22.

Consultation

The Office of the Chief Executive undertook a public consultation exercise from 17th January to 21st February 2020 inviting views on the draft Law. The consultation was provided directly to the following organisations:

- 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

The Panel also wrote to a number of organisations asking for their views on the legislation but did not receive any concerns on the draft Law.

Panel concern: Including the Minister as a local competent authority

During the briefing session held on 10th June, the Panel raised concerns regarding the inclusion of the Minister for External relations within the definition of a local competent authority under the draft Law. The Panel questioned the necessity of including the Minister within the definition and whether there were appropriate safeguards in place to ensure that information would only be obtained for lawful purposes.

The FATF defines a “competent authority” as follows:–

“Competent authorities refers to all public authorities with designated responsibilities for combating money laundering and/or terrorist financing. In particular, this includes the financial intelligence unit; the authorities that have the function of investigating and/or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing/freezing and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency & bearer-negotiable instruments; and authorities that have Anti-Money Laundering/ Combating the Financing of Terrorism (AML/CFT) supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and Designated Non-Financial Business and Professions with Anti-Money Laundering/ Combating the Financing of Terrorism requirements. Self-regulating bodies are not to be regarded as competent authorities.”

The Government Officials explained that under the [Sanctions and Asset-Freezing \(Jersey\) Law 2019](#), the Minister is the authority with responsibility for seizing/freezing and confiscating criminal assets. Furthermore, sanctions and asset freezing are a significant part of the FATF Standards and several Recommendations require countries to have “effective, proportionate, and dissuasive sanctions” for failure to comply with Anti-Money Laundering/ Combating the Financing of Terrorism (“AML/CFT”) requirements.

The Government Officials also explained that, under the [FATF Methodology](#) (paragraph 24.10), competent authorities should have all the powers necessary to obtain timely access to the basic and beneficial ownership information held by the relevant parties – that includes where this is required in order to fulfil a role related to sanctions, which the Minister carries out under the regime in place in Jersey.

Under Article 9, a local competent authority is permitted to require a defined person to provide further information or documents that the authority requires to fulfil its functions under the draft Law.

In terms of safeguards, the Government Officials advised that the Minister is not given any functions, except for Order making powers and a requirement to consult with the Jersey Financial Services Commission in relation to subsequent Regulations. Therefore, the Minister would not be able to access information under Article 9 as he or she would not be fulfilling a function under the draft Law in requesting such information. However, whilst the Minister cannot access information under the draft Law because none of his or her functions permit it, the draft Law does allow for him or her to access information when fulfilling his or her role under other enactments such as the Sanctions Law.

Under the Sanctions Law, the Minister receives reports of information about persons who are “designated” and may also request information about such persons (Article 33). Therefore, in fulfilling his or her role under the Sanctions Law, the Minister has access to information. This is relevant to Article 9 of the draft Law, however, only in the circumstances where a designated person under the Sanctions Law is a defined person under the draft Law or where the Minister requests information about a designated person under the Sanctions Law from a person resident in Jersey, where that person is also a defined person under the draft Law. The practical implication is therefore that the Minister could make use of Article 9 of the Draft Law only in the circumstances where a person is designated under the Sanctions Law and the Minister is fulfilling his or her duties to obtain further information.

The Government Officials also advised that all information collected under the draft Law is held by the Jersey Financial Services Commission, so should the Minister seek to obtain any information under the Law it would be done through a request to the Commission. Requests for information from the Commission by the Minister would be facilitated by the Law Officers’ Department, who will determine that the request is in accordance with the Minister’s functions under the draft Law and the Sanctions Law.

The Panel notes that the definition of local competent authority also includes “Any other person, organisation or office holder prescribed by Regulations”. During the briefing, the Panel asked who might be included under that clause of the legislation. The Government Officials advised that there is currently no intention to introduce Regulations to specify other bodies/persons as a local competent authority, however, should the position change, the Department will liaise with the Panel as well as other stakeholders.

Conclusion

The Panel would like to thank the Government Officials from within the Financial Services and Digital Economy team for the two briefing sessions and for the additional information submitted following the briefing held on 10th June.

The Panel acknowledges the purpose of the draft Law and no longer has any major concerns about it.