

STATES OF JERSEY



DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) REGULATIONS 202- (P.125/2020): COMMENTS

**Presented to the States on 10th November 2020
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

[P.125/2020](#) ‘Draft Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 202-’ was lodged on 6th October 2020 by the Minister for External Relations.

The Economic and International Affairs Scrutiny Panel received a briefing on the draft Regulations from Government Officials within the Financial Services and Digital Economy team (Office of the Chief Executive) on 21st September 2020, before the proposition was lodged. Prior to the Panel’s briefing, it was provided with the following documents:

1. Draft Financial Services (Disclosure and Provision of Information) (Jersey) Regulations;
2. Draft Financial Services (Disclosure and Provision of Information) (Jersey) Order;
3. Consultation paper on secondary legislation under the Financial Services (Disclosure and Provision of Information) (Jersey) Law.

The Law

In July 2020, the States approved the [Financial Services \(Disclosure and Provision of Information\) \(Jersey\) Law 202- \(P.69/2020\)](#). The Law establishes a number of requirements set out by the Financial Action Task Force (FATF), an inter-Governmental body that sets standards for combating money laundering, terrorist financing and other related threats to the integrity of international financial systems.

The Law places the FATF requirements on a statutory footing and provides the framework for further Regulations and Orders to supplement the Law. In that regard, the Minister lodged the Draft Regulations (P.125/2020) which sets out the operational framework underpinning the principles of the Law.

The Draft Regulations

The purpose of the Draft Regulations is to specify the detail of information to be made public on the register of significant persons (persons holding the role of directors and equivalent positions across the various entity types). The Draft Regulations also provide safeguards and protections for a person’s data through an application process to suppress information from appearing on the public register and permits appeals against decisions of the Commission.

During the briefing, Government Officials provided the Panel with an overview of the purpose of the Draft Regulations. It was noted that the Regulations sought to:

- Provide for what information about an entity’s significant persons shall appear on the public register of significant persons;
- Provide an additional amount to be paid to the Treasurer in respect of annual confirmation fees;

- Set out the application process for preventing information about a significant person from being available for public inspection;
- Set out an appeals process;
- Make consequential amendments (including prohibition on bearer shares);
- Repeal certain provisions of existing legislation; and
- Provide transitional provisions for making public information.

The Panel was advised that a public consultation exercise was undertaken from 31st July to 4th September 2020 inviting views on the draft Regulations. The Government's consultation received 8 responses in total.

The Panel was advised that the Minister's intention was to debate the Draft Regulations on 17th November to ensure that there was sufficient time to bring them into force alongside the Law on 6th January 2021 (dependent on States approval). In that regard, the Minister has also lodged the Appointed Day Act for Law ([P.133/2020](#)) due to be debated on 17th November. If approved by the States, all pieces of legislation, including the Ministerial Order, will come into force on 6th January 2020.

Ministerial Order

During the briefing, Government Officials explained that the main features of the Draft Order were:

- Details of the information required to be provided to the Commission about beneficial owners of entities;
- Details of the information required to be provided to the Commission about significant persons of entities;
- Additional information to be provided to the Commission by companies; and
- Exemptions from compliance with certain provisions of the Law for the Viscount when administering an entity in bankruptcy.

The Panel did not have any concerns about the draft Ministerial Order it was provided with.

Draft Regulations: Panel concerns

The Panel raised a number of queries during the briefing including recording dual nationality of significant persons, reporting on the number of applications made under Regulation 5 (which states that the Commission was responsible for providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services) and Moneyval processes. Government Officials provided the Panel with further clarity on its queries:

- **Dual nationality of significant persons:** Government Officials explained that they had engaged with industry representatives on the Panel's query. Industry reported that although dual nationality is fairly rare, their systems will generally allow them to record both, with the main nationality appearing on the report of the register of directors.

The Government Officials also explained that the intention was to collect a main nationality on the central register of directors. Due diligence requirements will still

apply to service providers and they will need to undertake full “Know Your Customer” (KYC) verification. In addition, under Article 9 of the Law, the Commission (as a local competent authority) may require further information from entities, which could extend to details of dual nationality.

- **Commission to report on applications made under Regulation 5:** Government Officials explained that, under Article 5 of the Financial Services Commission (Jersey) Law 1998 (the “Commission Law”) the Commission is responsible for (1)(b) *providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services*. Therefore, the Minister considers that this provision is sufficient for obtaining details of applications made under Regulation 5.

Article 5 of the Commission Law also provides that the Commission can prepare and submit *recommendations to the Minister for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure*. Government Officials agreed that it would be useful to have reports in relation to applications made under the Regulations and considers that this mechanism will achieve it. The Commission has further confirmed that it will be able to provide this information.

- **Moneyval processes:** The Panel was advised that, during the Moneyval assessment process, Government Officials will engage with the assessors to explain the legislation, mechanisms and processes in place which demonstrate technical compliance with the FATF Recommendations. The assessment report will be based on those discussions.
- **Other:** In providing further clarifications to the Panel’s queries, Government Officials also advised that the amendments made to the Foundations Law to require foundations to provide an abridged copy of their regulations (in order to comply with FATF Recommendation 24) do not extend to existing foundations. This was the intention and so further transitional provisions have been included to provide that existing foundations, entities continuing as foundations and merging foundations also need to provide an abridged version of their regulations to the company registrar.

Conclusion

The Panel would like to thank the Government Officials from within the Financial Services and Digital Economy team for their time and for providing it with early copies of the legislation and for sending additional information following the briefing held on 21st September.

The Panel acknowledges the purpose of the draft Regulations and does not have any further concerns about them.