

Beneficial Ownership of Jersey Corporate and Legal Entities and a Register of Directors

Policy Document

Introductory Statement

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Today, Jersey is regarded as one of the most stable and successful International Finance Centres in the world and, working together responsibly, the Government, the regulator and industry have the ability to continue to drive excellence and innovation in everything we do.

In the Government of Jersey's Financial Services Policy Framework¹, published in April 2014, the Government clearly set out that continuing to be 'Responsible' was one of four core principles upon which a financial services policy for Jersey was based.

As a leading International Finance Centre, Jersey commits to comply with international standards and global initiatives. Jersey is considered a responsible partner to the UK, the EU and other international jurisdictions and aims to be a 'good citizen' internationally. The Government committed to ensure an appropriately regulated financial services industry taking a proportionate risk-based approach in order to uphold our reputation and accountability to our business partners while ensuring that we remain competitive.

Transparency of beneficial ownership of corporate and legal entities has recently been headline news around the world. Events such as the Panama Papers, the London Anti-Corruption Summit and the Bahamas leaks has caused the activities of International Finance Centres to receive global attention. At the same time,

¹<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/P%20Financial%20Services%20Policy%20Framework%2020140402%20LO.pdf>

international standards have continued to develop, in particular those of the Financial Action Task Force (“FATF”) and the Global Forum on Transparency and Exchange of Information for Tax Purposes (the “Global Forum”).

Jersey recognises that beneficial ownership transparency is a critical factor preventing the abuse of the global financial system for laundering the proceeds of crime and the financing of terrorism. Jersey has had a central register of beneficial ownership since 1989, and that is combined with the regulation of Trust and Company Service Providers (“TCSPs”) ensuring oversight of those who form and administer corporate and legal entities in Jersey which together ensures compliance with the international standard of having available adequate, accurate and current beneficial ownership information. This information is exchanged with law enforcement and tax authorities, on request, worldwide.

The framework under which international financial services operates in Jersey is robust and has recently been assessed in respect of international standards by MONEYVAL (the regional body of the FATF for European jurisdictions) and a report was published² earlier this year which included a clear statement on the international recognition of Jersey’s leading position on beneficial ownership transparency. MONEYVAL stated upon release of the report that *“Jersey has a mature and sophisticated regime for tackling money laundering and the financing of terrorism, as well as an internationally-recognised mechanism to ensure transparency of beneficial ownership information”*. In addition to the comments made by MONEYVAL, Jersey’s regime concerning transparency of beneficial ownership has been recognised by the IMF and the World Bank in its project under the Stolen Assets Recovery Initiative (“StAR”) - *“The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It.”*³

Immediately prior to the London Anti-Corruption Summit earlier this year, Jersey signed an agreement with the United Kingdom to enhance exchange of beneficial ownership information between the law enforcement authorities. The agreement also underlines our continued commitment to law enforcement cooperation between the Governments of Jersey and the United Kingdom. Jersey has a long history of

²<https://wcd.coe.int/ViewDoc.jsp?p=&id=2432343&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&direct=true>

³ <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>

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passing accurate beneficial ownership information to UK law enforcement authorities, to the declared satisfaction of those authorities. Jersey already shares information about tax on request with our network of tax information exchange agreements and Jersey is one of the early adopters of the Common Reporting Standard ("CRS") on automatic exchange of information ("AEOI") with first reporting to partner jurisdictions next year.

Against the background of current initiatives seeking to enhance the transparency of beneficial ownership, the Government published on 10 March 2016 an important Consultation Paper (the "Consultation Paper") (linked at ANNEX A) on two important policy positions relating to transparency of corporate and legal entities in Jersey.

These policy areas were:

- a) To further ensure the updating of beneficial ownership information held at the Companies Registry by Jersey corporate and legal entities, where those entities are administered by a TCSP, and the TCSP becomes aware of a change of beneficial ownership;
- b) The introduction of a register of directors for Jersey and whether that register should be held publically or privately.

This policy document outlines the feedback from the consultation and the policy position of the Government of Jersey considering international developments since the Consultation Paper was published on 10 March 2016.

This policy document should be read in conjunction with documents produced by the Jersey Financial Services Commission Companies Registry that outline the implementation plan for this enhanced policy. This is designed to provide a clear roadmap as to the future of beneficial ownership transparency in Jersey.

In that vein, I would like to thank the industry and different organisations who have worked in consultation with Government to determine the policy, namely: the JFSC, the Companies Registry, the Joint Financial Crimes Unit of the States of Jersey Police, the Law Officers' Department and Jersey Finance Limited.

Legislative amendments to implement the policy announced today will be brought to the States Assembly in the first half of 2017 for adoption.

Finally, I wish to stress that the Government see this policy as an enhancement of an already effective functioning system in Jersey – and a reinforcement of the

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existing leading position that has been independently endorsed by international assessors and acknowledged experts.

Our obligations as a responsible International Finance Centre require us to continue to develop our own domestic policies so that we continue to be regarded as one of the most stable, responsible and successful International Finance Centres in the world.

I am confident that this policy fulfils that obligation.



Part A: Consultation Responses

Audience and Background

1. It should be highlighted at the outset of this policy document that the responses to the Consultation Paper and information contained in this policy document **predominantly relates to Jersey corporate and legal entities administered by TCSPs.**
2. In Jersey, all corporate and legal entities formed for non-residents are required to be formed through regulated TCSPs. Whilst the new obligations contained in the policy will be placed on the corporate or legal entity, the relevance of the policy is to TCSPs in that the requirement to provide information to the central registry will be carried out by the TCSP as part of the service they provide to the corporate or legal entity.
3. Corporate and Legal Entities has been interpreted by the Government, in line with FATF requirement and the AML Handbook, to include:
 - Companies registered under the Companies (Jersey) Law 1991;
 - Foundations registered under the Foundations (Jersey) Law 2009;
 - Incorporate Limited Partnerships registered under the Incorporated Limited Partnerships (Jersey) Law 2011;
 - Limited Liability Partnerships registered under the Limited Liability Partnerships (Jersey) Law 1997;
 - Limited Partnerships registered under the Limited Partnerships (Jersey) Law 1994; and
 - Separate Limited Partnerships registered under the Separate Limited Partnerships (Jersey) Law 2011.
4. In this policy document, it should be noted that references to the Companies Registry and the Jersey Financial Services Commission ("JFSC") should be read as interchangeable since the JFSC houses and operates the Companies Registry.
5. Where "Beneficial Ownership" is referred to in this document this should be considered to include "Beneficial Ownership and Control" as defined in the Jersey regime under the Money Laundering (Jersey) Order 2008 and the AML/CFT Handbook.
6. There will be some additional confirmation requirements concerning beneficial ownership for Jersey resident trading corporate and legal entities and information on this will be sent to those corporate and legal entities by the Companies Registry in due course. They are not covered further in this document.

Introduction

7. The Consultation Paper was published on 10 March 2016 and closed on 7 April 2016 (linked at ANNEX A). The consultation was published to the general public on www.gov.je and was promoted by Jersey Finance proactively to the finance industry in the island. In total, 18 responses were received to the consultation, 13 directly to Government and 5 through Jersey Finance Limited.

8. In the responses two trade associations were represented, the Jersey Funds Association (the "JFA") and STEP Jersey. STEP Jersey endorsed the JFA response. A response was also received from IFC Forum, a group that represents financial services firms in International Finance Centres around the world and with a number of member firms in Jersey.

9. A number of key themes emerged from the responses in relation to each of the issues that are summarised below:

Key Themes

Updating of Beneficial Ownership Information

- a) The position of Jersey in relation to the global transparency agenda generally;
- b) Whether updating of information in a central register was required in order to be in compliance with the 2012 FATF Recommendations;
- c) If updating is to be introduced, what should be the "trigger" event for updating;
- d) The requirements imposed upon TCSPs to identify a beneficial ownership change and ensuring consistency across regimes;
- e) The timescale for updating beneficial ownership information upon a change;
- f) The use of technology to achieve more regular updating of the central register;
- g) The timescale for implementation of any change to the provision of beneficial ownership information.

Register of Directors

- a) The requirement to introduce a central register of directors;
- b) Whether a register of directors should be held publically;
- c) The search criteria for a register of directors;
- d) The timescale for updating the central register on a change of director;
- e) The timescale for implementation of a central register of directors.

Summary of responses – updating of beneficial ownership information

10. Respondents in their comments sought to strike a balance between the reputational benefits from Jersey's existing, leading position, what the current international standards call for, and how what was proposed compares with the actions of the island's main competitors.
11. A number of respondents stated that Jersey should continue to rely upon the regulated TCSPs as being a sufficient source for law enforcement authorities to obtain on request timely/current information on beneficial ownership.
12. There was a strong view of all respondents that if Jersey was to move to legislate for more regular updating of the central register, this should not create any further requirements beyond the obligations of the TCSP that are currently contained in legislation and in the AML/CFT Handbook.
13. This also raised the issue of the "trigger" event to update the central registry on a change of beneficial ownership information. Many respondents made the point that often, a TCSP may only know of a change of beneficial ownership when it carries out a compliance review exercise, which the TCSP is required to do under the provisions of the Money Laundering (Jersey) Order 2008 and the AML/CFT Handbook. It may be that whilst in respect of a material interest, such as a shareholding, the TSCP will be immediately informed due to the need to amend the shareholder register, that in respect of a controlling interest, it may not be notified of a change of beneficial ownership information somewhere else in a structure until such a time as it carries out a compliance review exercise.
14. As for the timescale for updating beneficial ownership information after becoming aware of a change, a number of respondents stated that the longest option listed in the Consultation Paper should be adopted (28 days) – although some respondents clearly considered this point in more detail and when they considered other updating requirements in the Companies Law and other legislation relevant to corporate or legal entities they considered that 21 days was a more appropriate time for updating.
15. Respondents welcomed the inclusion of a section on the use of technology for updating beneficial ownership information in the consultation paper – they felt this showed Jersey's Fintech ambitions and that future consultations should reference technology wherever possible. Questions arose over how any smart technology solution would be funded (by industry, Government, Commission) and how it would interrelate with other reporting requirements under the CRS or FATCA. Questions were also raised concerning assurances that the system would have appropriate cyber security control and that the JFSC registry more generally was suitably secure in this regard

considering how important the confidentiality of information in the beneficial ownership database is.

16. Finally, industry considered the implementation timeline (which in the consultation was matched to the implementation date of the 4th Money Laundering Directive of the EU (“4MLD”) – 26 June 2017) may be too soon to ensure they can put in place processes, procedures and a technology solution for updating the Central Register.

Register of Directors

17. It was broadly accepted by most respondents that the FATF requirements as to ‘basic information’ required a register of directors of a company to be held centrally in a jurisdiction. The issue as to whether a register of directors should be held publically was more contentious.
18. The trade association responses were not supportive of the concept of introducing a central register of directors unless the privacy and security of the information could be assured.
19. Respondents correctly pointed out that a combination of R.24 of the FATF Recommendations, paragraph 13 of the interpretive note to R.24 and the FATF Guidance on Transparency of Beneficial Ownership (published Oct 2014) leads to the conclusion that the information on directors should be publically available. However, it was noted that the conclusion is not self-evident from the FATF Recommendations or interpretive notes themselves and it was noted by respondents that many other jurisdictions have not held this information publically.
20. It was felt by respondents that there was sufficient ambiguity and differentiation in jurisdictional implementation at this point in time to propose that the information be collected on a central register but held privately until such a time as it was clear the information should be held publically and this was widely adopted by jurisdictions.
21. Some respondents supported the information being held publically and noted that in some circumstances this might assist Client Due Diligence processes (on verification of directors) and would show Jersey’s commitment to the transparency agenda. Most respondents supported the view that information should only be searchable against company name (and not individual director name) and that a small charge should be made for the information to prevent data mining. This would be similar to the charge for other company documents produced by the registry. Some respondents simply thought that

information on public companies should be publically available and private companies should not be publically available.

22. In terms of updating the register post change of director, the view generally taken was the same position as to updating of beneficial ownership information should be adopted (discussed previously). Some respondents, however, thought that the register of directors should only be updated through the annual return on an annual basis.
23. In terms of implementation timeline there was not great concern on the proposed 2017 implementation date. There was comment that on implementation, there should be "grandfathering" of a period of time (90 days suggested) to ensure all the information is able to be provided to the Companies Registry within an appropriate window.

Part B: Policy position

24. Responses to the consultation have been considered in full by relevant Ministers and these have been considered alongside developments that have occurred since the consultation was published on 10 March. These developments are:
- a) The Exchange of Notes signed on 13 April 2016 with the United Kingdom to enhance beneficial ownership information exchange between Jersey and the United Kingdom (linked at ANNEX B);
 - b) The development of an initiative announced in April/May 2016 to automatically exchange information on beneficial ownership between a number of countries⁴;
 - c) The action being taken by the International Standard Setters (FATF/OECD) at the request of the G20 to enhance the relevant standards on transparency of beneficial ownership information.

⁴ <https://www.gov.uk/government/publications/beneficial-ownership-countries-that-have-pledged-to-exchange-information>

25. Consideration of these matters have caused the Government to determine the following policy positions:

Updating of Beneficial Ownership Information

26. This consultation has been published against the background of the current international initiatives, Jersey's leading position on transparency of beneficial ownership information for the benefit of law enforcement and tax authorities and that the Island has received positive responses from international bodies and individual jurisdictions in recognising Jersey as a reputable jurisdiction committed to the fight against corruption, terrorism and other financial crime.
27. Equally, the pressure on other jurisdictions to meet the same standards has meant that Jersey has not suffered from a loss of business and has attracted business that looks to be associated with a jurisdiction seen to be complying with the international initiatives.
28. The Government has seen nothing in the responses to the consultation to justify departing from a policy of continuing to develop the effectiveness of the central register and regulation of TCSP model to ensure that Jersey provides adequate, accurate and current/timely information to law enforcement and tax officials.
29. At the present time up-to-date information is held by the TCSPs and is obtained by law enforcement and tax authorities on request. Having this information held in a secure central register will enable the same information to be exchanged on request on a quicker timeline, as provided for in the Exchange of Notes agreed with the UK Government in April 2016.
30. The Government is therefore of the view that the main policy question now, for Jersey, must turn to how we ensure that our existing central registry continues to contain timely/current information.
31. The position of the International Standard Setters (FATF/OECD) as to the relevant standards on transparency of beneficial ownership information has also been a relevant to the Government's considerations in this area. When the initiative on automatic exchange of beneficial ownership information was announced earlier this year, there appeared to be potential for amendment to the international standards. The most recent papers by the FATF⁵ and the OECD⁶ to the G20 Finance Ministers now make it clear that the focus is not on revising the standard but on implementation of the existing standard by jurisdictions. The Government is also aware from its own work with the FATF and the OECD that there is no support at this stage to change the

⁵ <http://www.fatf-gafi.org/media/fatf/documents/reports/G20-Beneficial-Ownership-Sept-2016.pdf>

⁶ <http://www.oecd.org/tax/transparency/about-the-global-forum/g20/oecd-secretary-general-tax-report-g20-finance-ministers-october-2016.pdf>

international standard. The Government delayed the publication of this response paper until such a time as this position was clear internationally.

32. The commitment in the Exchange of Notes (linked at ANNEX B) with the United Kingdom enhanced the timescale in which information needs to be exchanged with law enforcement. This is predominantly being done to exchange information from the central register within 24 hours (on a normal request) or within 1 hour (on an urgent request where there is, for example, Terrorism Financing concerns) and this heightens the importance of updating the central register upon a change. The timescales in the Exchange of Notes would not be met if law enforcement have to first confirm beneficial ownership information with a TCSP before exchanging information.
33. Therefore, **the Government has determined that the policy position will be to ensure that where there is a change of beneficial ownership, the central register will be required to be updated.** Underlying this policy position, the following further policy principles will apply:
- A Jersey corporate or legal entity, with a TCSP contracted to act on its behalf, will be required to update the central register within 21 days of knowledge of a change of beneficial ownership. It is acknowledged that TCSPs may only know of a change of beneficial ownership when they carry out a compliance review exercise, which the TCSP is required to do under the provisions of the Money Laundering (Jersey) Order 2008 and the AML/CFT Handbook.
 - The obligation to notify the central registry upon a change of beneficial ownership will not be driven by a fixed percentage or threshold. Rather, the question of whether a change in the ownership and control structure of a corporate or legal entity amounts to a change in beneficial ownership (and hence requires reporting to the registry) will continue to be determined by the TCSPs own internal procedures further to the Risk Based Approach and the guidance contained in the AML/CFT Handbook.
 - In order to ensure that there is a single point in time when the central Register was required to be updated by all corporate and legal entities, there will be a requirement for all Jersey corporate and legal entities to confirm to the Companies Registry between 1 January 2017 and 30 June 2017 their beneficial ownership information. For corporate and legal entities administered by TCSPs, this will be the beneficial ownership information the TCSP holds on the corporate or legal entity determined by their own internal procedures further to the Risk Based Approach and the guidance contained in the AML/CFT Handbook.

- The timescale for implementation is intended to align with the Exchange of Notes signed with the UK Government and therefore the new policy will be fully implemented by 30 June 2017. This is broadly in line with a similar timeline proposed in the Consultation Paper for the implementation of 4MLD. After a Jersey corporate or legal entity has confirmed with the Companies Registry, between 1 January 2017 and 30 June 2017, their beneficial ownership information, the Registrar intends to issue a new consent under the Control of Borrowing (Jersey) Order 1958 that will be conditioned to require updating change of beneficial ownership information to the Registrar within 21 days of knowledge. The requirement will also be contained in draft legislation to be presented to the States for adoption in the first half of 2017.
- The support for the use of technology for updating beneficial ownership information to the central register was welcomed by the Government. It has been determined that a program of outreach will occur in the coming months, led by the Companies Registry, firstly to ensure industry are familiar with the implementation plan for the new policy, but also to discuss options to explore the use of technology for updating beneficial ownership information to the central register. Implementation of technology for updating beneficial ownership information to the central register will come at individual industry firm expense but the Companies Registry will make available appropriate and secure interfaces to ensure reasonable solutions can be developed.
- Security of the beneficial ownership database and any system that seeks to interact with that database is of paramount importance to Jersey and the reputation of the jurisdiction as an International Finance Centre. This is being given significant focus in terms of infrastructure investment by the Companies Registry.

Register of Directors for Jersey

34. The Government is of the view that the interpretation of the international standards requires a register of directors to be held centrally in a jurisdiction. Criterion 24.3 of the 2013 FATF Methodology states that *“Countries should require that all companies created in a country are registered in a company registry, which should record the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers, and a list of directors. This information should be publicly available.”*
35. The Government has therefore determined that **the policy position is that the Government intends to legislate to create a centrally held register of directors in the Companies Registry.** Underlying this policy position, the following further policy principles will apply:
- The Government accept that the issue over whether the register of directors should be made public is one that requires a more finely

balanced decision as there are reasonable arguments on both sides. The Government have therefore determined that at the current point in time, the Register will not be held publically but will be available to law enforcement, and tax authorities, on request. On the same basis as the register of beneficial ownership. The Government intend to keep this position under review as and when making the register of directors publically available becomes a global standard.

- In relation to updating the Register upon a change of Director, the Government propose that the same policy will apply to that which is proposed for updating on beneficial ownership. The company will be required to update the central register within 21 days of a change of Director. This will ensure that the register is kept up to date. The Government did not consider that an annual update alone would achieve this aim.
- The issue as to search criteria is not currently relevant as the register will be held privately, however, if the register was to be held publically in the future, the Government would propose that search was only possible against the Company name.
- The timeline for introducing the register is proposed to be by the middle of 2018. This is due to the timescale whereby this can be accommodated for a systems build within the Companies Registry. A window of 3 months will be opened before the middle of 2018 for Companies to inform the Companies Registry of information on Directors of Companies and more information on this, including exact timelines, will be published by the Companies Registry in due course.

PART C: Next Steps

36. The Government is confident that this policy represents a long term enhanced policy for Jersey on transparency of beneficial ownership information that builds on many years of acknowledged effective policy and an internationally recognised leading position in this area. The ultimate aim of the enhanced policy is to continue to adhere with the developing international standards in this area and to cement Jersey's reputation as a 'Responsible' jurisdiction.
37. The Government and the Companies Registry appreciate that there will be further outreach required to the financial services industry to explain the detail behind the implementation of the policy. It is intended that this will be achieved by the publication of a series of further documents by the Companies Registry and with a series of Government, JFSC and Companies Registry presentations that will occur before the end of 2016.

[END OF DOCUMENT]

ANNEX A:

<http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/C%20Beneficial%20Ownership%20of%20Jersey%20Companies%20and%20a%20Register%20of%20Directors%2020160308%20VP.pdf>

ANNEX B:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518333/Sharing-beneficial-ownership-information-exchange-of-information-between-UK-government-and-the-government-of-Jersey.pdf