COLLAS CRILL

New rules around the disclosure of beneficial ownership in Jersey: what you need to know

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The appropriate level of disclosure of the beneficial ownership of entities has been one of the most hotly debated topics of recent times as leading jurisdictions across the globe have grappled with competing desires to protect the privacy of investors and business owners, and offer the level of transparency expected in a modern financial system.

On 14 July 2020 the States of Jersey passed the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202- (the **Law**). It is now awaiting formal approval from the Privy Council. The Law is aimed at addressing Recommendation 24 of the International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation (the **Report**) published by the Financial Action Task Force (**FATF**), which requires jurisdictions to '*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.*'

This article outlines key considerations for Jersey entities in ensuring that they comply with the Law.

Applicability

The Law is intended to be broad in its scope and will expressly capture the following Jersey entities:

1. Companies;
2. Foundations;
3. Incorporated Limited Partnerships;
4. Limited Liability Companies;
5. Limited Liability Partnerships; and
6. Separate Limited Partnerships.

Of particular note the Law will apply to Foundations, which currently fall outside the scope of the Control of Borrowing (Jersey) Order 1958 (**COBO**). As a result they have not previously been subject to the requirement to disclose changes in beneficial ownership to the Jersey Financial Services Commission (**JFSC**), which is generally a condition in the consent issued to Jersey entities pursuant to the COBO regime.

Definition of beneficial owner

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The concept of beneficial ownership will be familiar to most people working within the financial services industry and is already a key concept in Jersey's anti-money laundering regime, but until now the statutory description of 'beneficial owner ' has been in the Money Laundering (Jersey) Order 2008 (**MLO**), which applies, broadly, to persons conducting financial services business rather than in a law of general application to entities.

The Law introduces a statutory definition of beneficial owner as '*an individual who ultimately owns or controls [an entity], or the individual on whose behalf a transaction is being conducted by the entity, including an individual who exercises ultimate effective control over the entity.*'

A person is deemed to own, control or have ultimate effective control over a legal person or arrangement under the Law if the '*ownership or control is exercised through a chain of ownership or by means of control other than direct control* '.

The definition is broadly in line with market practice, but provides welcome additional clarity to Jersey's beneficial ownership regime. Article 2(3) of the Law provides that the JFSC must publish appropriate guidance on the application of the definition of beneficial owner under the Law.

Information that is required to be disclosed

The Law requires certain information to be disclosed to the JFSC as part of the process of forming the entity, including:

1. the proposed entity's beneficial owner information;
2. the proposed entity's significant person information; and
3. if the proposed entity has issued shares in the entity to a nominee:
   - the identity of the nominee, and
   - the identity of their nominator.

The Law carves out the requirement to disclose information on a nominee where the entity acting as nominee is regulated in Jersey pursuant to the Financial Services (Jersey) Law 1998 (**FSJL**).

The information must be provided to the JFSC by a 'nominated person ' appointed by the entity in accordance with the Law.

Annual confirmation statement

Entities that are within the scope of the Law must, through their nominated person, file an annual confirmation statement with the JFSC by the end of February each year verifying that the beneficial ownership information, significant person information and any other prescribed information provided to the JFSC in respect of the entity is accurate as of 1 January of that year.

For the purposes of the Law a 'significant person' means:

1. in relation to a foundation, a member of the council of the foundation;

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2. in relation to an incorporated limited partnership or a separate limited partnership, a general partner;
3. in relation to a limited liability partnership a limited partner who is participating in the management of the partnership (who can cause the partnership to take a particular action);
4. in relation to a company, a director, manager or secretary of the company, or any other officer purporting to act in a similar capacity; or
5. in relation to a limited liability company, a manager of the limited liability company or if there is none, the members involved in the management of the limited liability company.

Who can be a 'nominated person'?

The Law specifies who can act as a nominated person on behalf of an entity:

1. a person registered to carry on trust company business under the Financial Services (Jersey) Law 1998 where they are providing a service to act or arrange for another person to act as secretary, alternate, assistant or deputy secretary of a company or a limited liability partnership or to provide a registered office or business address for a company, partnership or foundation;
2. a Jersey resident who acts as a significant person of the entity;
3. a Jersey resident lawyer acting for the relevant entity;
4. a Jersey resident accountant acting for the relevant entity; or
5. a person regulated to carry on fund services business under the FSJL.

The nominated person is permitted to submit to the JFSC the relevant information required under the Law. The Law also expressly authorises the nominated person to provide information to the JFSC under the 'relevant entity legislation' (such as the Companies (Jersey) Law 1991 for entities which are companies).

A nominated person is appointed by the entity, and can be removed by that entity or can resign by providing notice to the entity and to the JFSC. If a nominated person is removed or resigns and there is no other nominated person appointed, the entity must, within 21 days, appoint a new nominated person and notify the JFSC of the appointment.

How does the Law impact on existing entities?

Under a transitional arrangement set out in a schedule to the Law, once the Law comes into force an existing Jersey entity must provide details of its beneficial owners and any nominee shareholders within three months of the Law coming into force, and must also provide details of the entity's nominated person within the same timeframe.

The JFSC may extend the period for the provision of annual confirmation statements by existing Jersey entities, provided that the JFSC's discretion to approve an extension under the transitional provisions expires a year after the Law comes into force.

Register of beneficial ownership

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The Law requires the JFSC to maintain a register of beneficial ownership (the **Register**) for Jersey entities. The register will include details of:

1. an entity's beneficial owners;
2. an entity's significant persons; and
3. information provided to the JFSC as part of an entity's annual confirmation statement.

While the Law gives the States of Jersey the right to specify what information held on the Register can be made public, the full Register will not be publicly available. In particular we are not aware of any current plans to publish information on beneficial ownership held on the Register.

Provision of information to foreign competent authorities

The Law permits the JFSC and other local competent authorities (such as the Joint Financial Crimes Unit of the States Police and the Attorney General) to:

1. facilitate access by a foreign competent authority to information;
2. exchange information with a foreign competent authority on shareholders; and
3. obtain beneficial owner information on behalf of foreign counterparts.

For the purposes of the Law a 'foreign competent authority' means a public authority, excluding self-regulating authorities, exercising functions or having responsibility for anti-money laundering and counter-terrorism measures in a jurisdiction outside of Jersey, and includes but is not limited to:

1. authorities exercising functions with respect to investigating or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing, freezing or confiscating criminal assets;
2. authorities receiving reports on cross-border transportation of currency and bearer-negotiable instruments; and
3. authorities having supervisory or monitoring responsibilities with respect to anti-money laundering and counter-terrorism measures for the purpose of ensuring compliance by financial institutions and designated non-financial business or professions with anti-money laundering and counter-terrorism requirements.

There are various other circumstances in which information collected by the JFSC can be disclosed under the Law, including among others things where it is requested by the police or similar law enforcement agency as part of an ongoing investigation or in connection with ongoing legal proceedings.

Electronic Communications (Jersey) Law 2000

The Law contains an express provision which states that the JFSC is deemed to have consented to the provision of information and/or signatures required under the Law or other enactments, to be provided in electronic form in accordance with the Electronic Communications (Jersey) Law 2000.

Sanctions

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Failure to comply with the Law can lead to an entity being fined and/or struck off by the Registrar of Companies.

If an individual provides false or misleading information to the JFSC, or destroys, conceals or fraudulently alters any information provided to the JFSC they will have committed a criminal offence and will be liable to be fined or imprisoned for up to seven years. Similarly, if an offence is committed by an entity with the '*consent or the connivance*' of a significant person, that significant person may face criminal liability.

Further advice

For specific advice on the Law and how it impacts your business, please get in touch with your usual Collas Crill contact or any of the contacts listed here.

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