Financial Services (Disclosure and Provision of Information) (Jersey) Law 20

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Introduction

This briefing looks at the Government of Jersey's introduction new legislation in relation to beneficial ownership and controlling interests requirements. This new legislation, Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 (the **DPI Law**) aims to implement in Jersey the requirements set out by the Financial Action Task Force (the **FATF**), 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.

Secondary legislation for the DPI Law includes the Financial Services (Disclosure and Provision of Information) (Jersey) Order (the **DPI Order**) and the Financial Services (Disclosure and Provision of Information) (Jersey) Regulations (the **DPI Regulations**).

Following a public consultation in 2019, the DPI Law was adopted by the Government of Jersey on 14 July 2020 and is currently awaiting approval from the Privy Council. It is anticipated that the DPI Law will come into force on 6 January 2021, with the DPI Order and DPI Regulations taking effect from that date.

Why the DPI Law?

FATF recently expanded and updated the set of recommendations it published in 2012 to counter newly identified threats in areas such as money laundering and the financing of terrorism. In particular, FATF emphasised the need for its member governments to have clearer transparency requirements and to take a more rigorous approach to fighting corruption, including financial corruption. One of the recommendations (**FATF Recommendation 24**) relates to the transparency and beneficial ownership of legal persons.

The DPI Law therefore seeks to allow the Jersey Financial Services Commission (the **Commission**) to continue to collect and make public certain information it holds to give effect to FATF Recommendation 24. It also gives the Government of Jersey the ability to make regulations which determine additional information which may be made public and support the development of a more modern, and allow for a fully digital, companies registry in Jersey.

What is it?

1. What new requirements is the DPI Law introducing?

The DPI Law includes:

- the requirement to include information in relation to an entity's beneficial owners, significant persons and nominee arrangements in the application to the Commission to register or establish the entity under relevant legislation;
- the requirement for entities to provide an 'annual confirmation statement' (in place of the annual return) to the Commission verifying that such information is accurate as of 1 January in the year in which the statement is provided;
- the requirement for the appointment of a 'nominated person' to provided such information;
- the requirement for abridged regulations in relation to foundations to be filed with the Commission and made publicly available;
- provisions for the Commission to maintain a register of beneficial ownership and significant ownership information;
- provisions to introduce a public register of significant persons (including company directors); and
- consequential amendments to the Companies (Jersey) Law 1991, including a prohibition on the issue of bearer shares.

2. Which Jersey entities does the DPI Law apply to?

The DPI Law captures a broad range of current and future bodies incorporated or established in Jersey, all of which are set out in the definition of "entity". These are:

1. companies;
2. foundations;
3. incorporated limited partnerships;
4. limited liabilities companies;
5. limited liability partnerships; and
6. separate limited partnerships

Certain entities are exempt from providing beneficial owner information, including (i) an entity which is wholly owned by another entity or an organisation (being a body that is equivalent to an entity but which is formed under the laws of a jurisdiction other than Jersey) where the parent entity or organisation is listed on a regulated market; (ii) an entity which is listed on a regulated market; and (iii) an entity which is wholly owned or controlled by another entity which is regulated under the Financial Services (Jersey) Law 1998 (the **FSJ Law**) to carry out certain limited classes of trust company business in respect of the first entity.

3. Who is a beneficial owner?

The DPI Law defines a beneficial owner of an entity in a manner consistent with the concept of beneficial ownership under the Money Laundering (Jersey) Order 2008 as an individual who ultimately owns or controls an entity or an individual on whose behalf a transaction is being conducted by the entity, including an individual who exercises ultimate effective control over the entity. This includes ownership or control through a chain of ownership or control other than direct control.

4. Who is a significant person?

The DPI Law defines significant person very broadly to capture individuals appointed formally and informally by an entity. A significant person includes, among others, a council member of a foundation; a general partner of an incorporated or separate limited partnership; a partner participating in the management of a limited liability partnership; a director or secretary (or any other person purporting to act in a similar capacity) of a company and a manager of a limited liability company.

5. What information must be disclosed to, and will be held by, the Commission?

The DPI Law requires the following information to be provided to the Commission on application to establish an entity and to be updated within 21 days of becoming aware of a change, error or inaccuracy in respect of information previously notified:

1. beneficial owner information, which includes: full name, address for correspondence, residential address, nationality, occupation, gender, date, place and country of birth;

2. significant person information, which (in the case of an individual) includes: full name, nationality, date and place of birth, correspondence address, residential address and occupation; and

3. details of nominee shareholders arrangements (unless the proposed nominee is registered by the Commission under the FSJ Law), which includes the identity of the proposed nominee and the identity of the proposed nominator.

6. Annual confirmation statement

Entities must file an annual confirmation statement with the Commission by the end of February each year verifying that the beneficial ownership information, significant person information and any other prescribed information provided to the Commission in respect of such entity is accurate. The annual confirmation statement replaces the annual return which entities were previously required to submit to the Commission.

7. Who discloses the information?

It is intended that all interactions with the Commission, including the submission of the information and annual confirmation statement referred to above, will be through a "nominated person" appointed by the entity. A nominated person can be a significant person of the entity who is resident in Jersey, a person registered under the FSJL to carry on certain limited classes of trust company business or fund services business, a lawyer or accountant who is regulated by the Commission for the purposes of the Proceeds of Crime (Jersey) Law 1999 and who is resident in Jersey.

What do you need to do?

An existing entity is required to provide details of its beneficial owners, significant persons and any nominee arrangements within three months of the DPI Law coming into force, together with details of the entity's nominated person.

It is anticipated that the DPI Law will have a marginal impact on most entities given Jersey already has a central register of beneficial owners and controllers of entities collated under the terms of the consent issued the entities under the Control of Borrowing (Jersey) Order 1958.

However, a notable change for foundations in particular is that the DPI Law will amend the Foundations (Jersey) Law 2009 so that Jersey foundations will be required to file for public review an abridged version of their regulations along with the foundation's charter which is already available to the public.

Offences

The DPI Law introduces several civil and criminal offences for providing false or misleading information, failing to update information to the Commission within 21 days of a change or error, failing to file an annual confirmation statement, failing to appoint a nominated person and failing to comply with a request to disclose information to the Commission or another local competent authority, among others.

Where an offence is committed by an entity and it is proven to have been committed with the consent of a significant person, that significant person will also be guilty of the same offence.

A range of penalties are introduced including fines, imprisonment, daily default fines for subsequent offences, late-filing fees and striking-off provisions.

Should you have any questions, please reach out to your usual Ogier contact or any member of our team included here.

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