

STATES OF JERSEY



Jersey

DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 6th October 2020
by the Minister for External Relations**

STATES GREFFE

REPORT

Background and purpose

Jersey is recognised as a leading centre for international financial services, demonstrating the highest levels of compliance with international standards on anti-money laundering (“AML”) and counter terrorist financing (“CFT”).

Jersey was assessed by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (“Moneyval”) in 2015. The Moneyval assessment team rated Jersey’s compliance with the Financial Action Task Force’s International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation (the “FATF Recommendations”). A report published in May 2016 detailed the findings of the Moneyval assessment team. The Island achieved an impressive rating following the 2015 assessment and the report published by the assessment team made a number of recommendations to ensure Jersey maintained its leading position.

In July 2020, the States debated and adopted [P.69/2020](#), the [Financial Services \(Disclosure and Provision of Information\) Jersey Law 202-](#) (the “Law”). The Law places a number of requirements of the FATF Recommendations on a statutory footing and provides the framework upon which further Regulations and Orders may be introduced to supplement the Law.

The Draft Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 202- (the “Draft Regulations”) set out the operational framework underpinning the principles of the Law. This will help to demonstrate Jersey’s compliance with Recommendation 24 of the FATF Recommendations.

Consultation

On 31st July 2020, the Government of Jersey published a Consultation Paper on the proposed introduction of the Draft Regulations. The Consultation Paper followed an engagement programme, drawing on the expertise and practical experience of leading professionals from local industry and the Jersey Financial Services Commission (the “Commission”).

The Consultation ran from 31st July to 4th September 2020 and was shared directly with industry trade associations and representatives of local businesses, including Jersey Business and Chamber of Commerce. The Consultation and Draft Regulations were also provided to the Jersey Office of the Information Commissioner.

Responses were received from 8 respondents. These responses have been considered in the finalisation of the Draft Regulations.

The Commission has also undertaken a wide-reaching engagement programme, involving one-to-one outreach sessions with trust company businesses and fund services businesses. This outreach has helped to shape guidance, which is currently being developed by the Commission, as required by the Law.

The Draft Regulations

The Draft Regulations set out further requirements in relation to information provision to the Commission. The Draft Regulations specify the detail of the 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. The Draft Regulations permit appeals against decisions of the Commission.

The key features of the Draft Regulations are outlined below.

Information to be made public

To comply with FATF Recommendation 24, basic information about an entity is required to be made publicly available. This includes some information about the directors (or equivalent position). The term applied to those roles under the Law is "significant person". The Draft Regulations therefore permit the making of certain information about an entity's significant persons public.

The Draft Regulations seek to strike a balance between ensuring compliance with international standards while maintaining adequate levels of protection for privacy. The Draft Regulations therefore only permit the Commission to publish a limited amount of information about a significant person. This is narrower than the levels of information the Commission will collect about significant persons. A significant person's full date of birth will not be published and only a correspondence address, rather than a residential address, will be made public. This is a similar approach to that taken by the UK in relation to the register of persons with significant control.

The information fields to be made publicly available are considered appropriate to demonstrate compliance with the FATF Recommendations.

Information relating to minors, company secretaries, and significant persons of share transfer companies will not be made publicly available.

Transitional provisions mean that the Commission shall not make the register of significant persons available for public inspection before 31st May 2021 or, if the Commission has extended the period for submission of annual confirmation statements, until the end of 3 months after that date.

Information relating to companies

Some information about companies is currently collected as part of the annual return process. The annual return is available to download from the company registry website and contains certain information about shareholders of companies. For consistency and to maintain current levels of transparency, some of this information will continue to be provided to the Commission under the Draft Regulations. At its discretion, the Commission may make this information public.

Annual confirmation statement fees

The Law replaces the traditional annual return with an annual confirmation statement. At present, the various laws used for the creation of entities in the jurisdiction permit the charging of fees for annual returns or for annual administration fees to be charged by the Commission. In addition, each of these pieces of legislation specify that an amount of that total annual fee is payable by the Commission to the Treasurer. The Draft Regulations repeal the existing annual fee provisions and additional annual fee provisions and increase the current amount paid by the Commission to the Treasurer by £30 to £145. This is not an additional charge for entities, but an increase in the amount of the total fee payable to the Treasurer by the Commission.

Applications to make certain information unavailable for public inspection

While the default position in meeting international standards is that basic information (including information about an entity's directors or equivalent position) should be available for public inspection, it is appropriate that safeguards are in place to protect against disclosure of information in certain circumstances. The Draft Regulations

provide that a nominated person may make an application to make information about a person unavailable for public inspection where –

- (a) there is serious risk to the person or someone they live with or are related to of violence or intimidation or of physical or mental harm;
- (b) there is serious risk of damage to property;
- (c) the information relates to an individual who lacks capacity to manage their own affairs; or
- (d) there are other exceptional circumstances.

The Draft Regulations set out the process to be followed by a person who seeks to prevent disclosure of information on the public register. Information subject to an application shall not be made publicly available until after the determination of the application (or appeal under Regulation 7). The Commission may publish guidance on applications to make certain information unavailable for public inspection.

Appeals

The Draft Regulations provide the mechanism for appeal to the Royal Court against a decision of the Commission, made either under the Law or the Draft Regulations. Appeals must be made within 28 days of notification of the Commission's decisions and may be made on the grounds that the decision was unreasonable, having regard to all the circumstances.

Consequential amendments

The [Companies \(Jersey\) Law 1991](#) (the "Companies Law") is amended to prohibit the issuance of bearer shares by a company. This addresses a specific recommendation of the Moneyval assessment team.

Consequential and transitional provisions provide for the change from an annual return to an annual confirmation statement. This is achieved through repealing existing provisions relating to annual returns and annual fees.

Consequential amendments are also made to the Companies Law to ensure that the status quo is maintained in relation to the transition from annual returns to annual confirmation statements for cell companies. Cells of cell companies are not required to submit an annual return where the cell company includes the information on behalf of the cell. The provision is amended to reference the annual confirmation statement.

Transitional provisions

Under the Law, foundations are required to provide an abridged copy of their regulations at the point of incorporation. This reflects the requirement of FATF Recommendation 24, that basic information about an entity, including basic regulating powers, should be recorded by the company registry. The Draft Regulations provide transitional arrangements for existing foundations, entities seeking to continue as foundations in the jurisdiction and mergers of foundations to provide an abridged copy of their regulations to the company registry.

Commencement

It is intended that the Regulations will be brought into force on the same date as the Law.

Financial and manpower implications

There are no financial or manpower implications for the States that should arise from the adoption of these Draft Regulations.

EXPLANATORY NOTE

The Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 202-, if passed, will set out the information kept in the register under Article 2 of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202- which is to be, or may be, made available for public inspection by the Jersey Financial Services Commission (the “Commission”); prescribe the fee payable on provision of an annual confirmation statement; and set out the process by which application may be made to the Commission to make information unavailable for public inspection. The Regulations also provide for appeals against decisions of the Commission and make certain consequential amendments.

Regulation 1 is an interpretation provision.

Regulation 2 specifies what, of that information that is to be held on the register under the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202-, is to be made available for public inspection by the Commission.

Regulation 3 specifies what, of that information that is to be held on the register under the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202-, may be made available for public inspection by the Commission, at the Commission’s discretion.

Regulation 4 prescribes the additional amount that a nominated person for an entity must pay to the Commission when providing an annual confirmation statement.

Regulation 5 sets out the circumstances in which a person may apply to the Commission to make certain information unavailable for public inspection, including who may apply, the type or kind of information which may be made unavailable, and the information required in the application. This Regulation also provides that the Commission may issue guidance, and the actions that the Commission must take on receipt of an application under this Regulation.

Regulation 6 sets out that information subject to an application under Regulation 5 must not be made public until the application is determined, the time for appeal has expired, or any appeal has been determined.

Regulation 7 sets out the right to appeal to the Royal Court against a decision taken by the Commission under Regulation 5.

Regulation 8 makes certain consequential amendments to other enactments.

Regulation 9 repeals certain enactments.

Regulation 10 makes a transitional arrangement, in that the information in *Regulation 2(1)* is not to be made public before 31st May 2021 or before 3 months after the date by which an annual confirmation statement under Paragraph 2 of the Schedule to the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202- must be provided (as specified by the Commission).

Regulation 11 states that the Regulations may be cited as the Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 202-, and that the Regulations come into force on the same day as the date Article 20 of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202- comes into force.



Jersey

DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) REGULATIONS 202-

Contents

Regulation

1	Interpretation.....	11
2	Information in register to be made public	11
3	Information in register that may be made public by the Commission	12
4	Application to make certain information unavailable for public inspection	13
5	Relevant information subject of application or appeal not to be made publicly available.....	14
6	Appeals to Royal Court.....	14
7	Additional amount payable on providing annual confirmation statement .	14
8	Consequential amendments	15
9	Repeals	17
10	Transitional arrangement for information to be made publicly available...	17
11	Citation and commencement.....	17

ENDNOTES **18**

Table of Endnote References.....	18
----------------------------------	----



Jersey

DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) REGULATIONS 202-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Articles 7(1)(b), 8(2)(c) and 20 of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202-¹ –

1 Interpretation

In these Regulations –

“approved form” means a form approved by the Commission;

“organisation” means a body that –

- (a) is equivalent to an entity; but
- (b) is formed under a law other than the law of Jersey;

“Law” means the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202-².

2 Information in register to be made public

- (1) For the purpose of Article 20(1)(b) of the Law, the following information kept in the register under the Law is to be made available for public inspection –
 - (a) in relation to an individual who is a significant person of an entity –
 - (i) the name of the person,
 - (ii) the month and year of the person’s date of birth,
 - (iii) an address for correspondence to the person,
 - (iv) the person’s nationality, and
 - (v) the person’s occupation;
 - (b) in relation to an entity that is a significant person –
 - (i) the type of entity,
 - (ii) the registered name and number of the entity,

- (iii) the address of the registered office or business address of the entity, and
 - (iv) the date on which the entity was incorporated or established and, if applicable, the date on which the entity ceased;
 - (c) in relation to any other organisation that is a significant person –
 - (i) the type of organisation,
 - (ii) the registered name and number of the organisation,
 - (iii) the jurisdiction within which the organisation is incorporated or established,
 - (iv) the address of the registered office or equivalent of the organisation, and
 - (v) the date on which the organisation was incorporated or established and, if applicable, the date on which the organisation ceased.
- (2) This Regulation does not apply to information in relation to a person who is –
 - (a) under the age of 18 years old;
 - (b) a significant person by virtue only of being a secretary to a company; or
 - (c) a significant person by virtue only of holding a share in a company, ownership of which, by virtue of the articles of association of the company in which the share is held, confers a right of occupation of land in Jersey (as construed in accordance with Article 3(2) of the Taxation (Land Transactions) (Jersey) Law 2009³).

3 Information in register that may be made public by the Commission

For the purpose of Article 20(1)(b) of the Law, the following information kept in the register under the Law in relation to a company may, at the discretion of the Commission, be made available for public inspection –

- (a) the name and address of each member of the company who holds not less than one per cent in nominal value of all the issued shares of a class;
- (b) the number of members who each hold less than one per cent in nominal value of all the issued shares of a class;
- (c) the class and number of shares that are held by each member to which sub-paragraph (a) or (b) applies;
- (d) in relation to a par value company –
 - (i) the nominal share capital of the company,
 - (ii) in respect of each class of share, the number of shares into which the class is divided and the nominal value of each share class, and
 - (iii) the number of shares of each class that have been issued;
- (e) in relation to a company having any guarantor member –
 - (i) the name and address of each guarantor member, and

- (ii) the maximum amount that is guaranteed by each member in that capacity;
- (f) in this Regulation –
 - (i) “member” has the same meaning as in Article 25 of the Companies (Jersey) Law 1991⁴;
 - (ii) “par value company” has the same meaning as in Article 3E of the Companies (Jersey) Law 1991.

4 Application to make certain information unavailable for public inspection

- (1) A nominated person of an entity may apply to the Commission in the approved form to make information in relation to a person (the “subject”) unavailable for public inspection under the Law –
 - (a) if the subject considers that there is a serious risk that the subject, or a person who lives with or is related to the subject, will be subjected to violence, intimidation or physical or mental harm as a result of the information being made available for public inspection;
 - (b) if the subject considers that there is a serious risk of damage or threat to property as a result of the information being made available for public inspection;
 - (c) if the information relates to a subject who lacks capacity to manage their own affairs; or
 - (d) if there are exceptional circumstances that justify the making of the application.
- (2) For the purpose of paragraph (1), the Commission may issue and publish guidance in relation to applications made under this Regulation, including guidance on what does or does not constitute exceptional circumstances.
- (3) A person who is not a nominated person of an entity may apply to the Commission under paragraph (1) if there are exceptional circumstances that justify the making of an application other than by a nominated person.
- (4) For the purposes of paragraph (3), the Commission may issue and publish guidance on what does or does not constitute exceptional circumstances.
- (5) The application must contain the following –
 - (a) a statement of the grounds on which the application is made and any related evidence to support the grounds on which the application is made;
 - (b) the name and any former name of the subject;
 - (c) an address for correspondence in respect of the application;
 - (d) the information that the subject intends to be made unavailable for public inspection (the “relevant information”);
 - (e) the name and registered number of the entity in relation to which the subject is connected.
- (6) The Commission must, as soon as reasonably practicable after receiving an application –

- (a) grant the application in relation to some or all of the relevant information; or
 - (b) refuse the application.
- (7) The Commission must, as soon as reasonably practicable after making a decision, send to the address provided for correspondence in the application –
- (a) written notice of the decision;
 - (b) details of the relevant information that will be made unavailable for public inspection as a result of the decision; and
 - (c) if the application is refused in relation to some or all of the relevant information, the reasons for the decision and notice of the subject’s right of appeal under Regulation 6.
- (8) If an application is granted, the Commission must ensure that the relevant information specified as being unavailable for public inspection in the notice of the decision is unavailable for public inspection.
- (9) In this Regulation “lack of capacity” has the same meaning as in Article 4 of the Capacity and Self-Determination (Jersey) Law 2016⁵.

5 Relevant information subject of application or appeal not to be made publicly available

Despite any other provision in these Regulations, the Commission must not make available for public inspection any relevant information referred to in Regulation 4(5)(d) –

- (a) before the application relating to that information is determined;
- (b) if the application is refused, before the period of 28 days referred to in Regulation 6(1) has ended; and
- (c) if the applicant appeals to the Court under Regulation 6, before that appeal has been determined.

6 Appeals to Royal Court

- (1) A person may, within 28 days of receiving notice of a decision of the Commission under the Law or these Regulations, appeal to the Royal Court against the decision on the ground that the decision was unreasonable having regard to all the circumstances of the case.
- (2) On hearing an appeal under paragraph (1), the Royal Court may –
- (a) confirm, reverse or vary a decision of the Commission; and
 - (b) make such order as to the costs of the appeal as it thinks appropriate.

7 Additional amount payable on providing annual confirmation statement

The additional amount required to be paid, under Article 7(1)(b) of the Law, on providing an annual confirmation statement to the Commission, is £145.

8 Consequential amendments

- (1) In the Companies (Jersey) Law 1991⁶ –
 - (a) in Article 1 (interpretation), the definition “annual return” is deleted;
 - (b) in Article 34 (nature and numbering of shares), after paragraph (2) there is inserted –

“(3) A company must not issue bearer shares.”;
 - (c) in Article 46(1) (declaration), “or Article 71(3)” is deleted;
 - (d) in Article 58A(8) (Treasury shares), sub-paragraph (b) is deleted;
 - (e) Article 71 (annual return) is deleted;
 - (f) for Article 72(c)(ii) and (iii) there is substituted –
 - “(ii) in any other case, to any person shown as a member of the company in the register of members or other publicly available document at the person’s address entered in that register or document, or
 - (iii) if there is no such person, to any person identified as a subscriber in the company’s memorandum at the person’s address shown in the memorandum.”;
 - (g) in Article 78 (disqualification orders), after paragraph (4) there is inserted –

“(5) On the making of an order against a person under this Article, the registrar may record the person’s disqualification in a form approved by the Commission.”;
 - (h) for Article 127YE there is substituted –

“127YE Annual confirmation statement in respect of cells

- (1) Article 5 of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202-⁷ (which requires a company to provide an annual confirmation statement to the Commission) does not apply to a cell of a cell company.
- (2) However, the cell company must verify the information contained in the annual confirmation statement in respect of each cell of the company.
- (3) If a cell company fails to comply with paragraph (2) it commits an offence.
- (4) A cell of a cell company must provide all relevant information to the cell company in sufficient time to enable the cell company to comply with the requirements of paragraph (2) in relation to the cell company.
- (5) If a cell fails to comply with paragraph (4), the cell, and, where the cell is a public company, every officer of the cell who is in default, commits an offence.”;
- (i) in Article 201(2) (fees and charges), “or Article 71 (which relates to the annual return of a company)” is deleted;
- (j) in Article 202(6) (inspection and production of records kept by registrar), sub-paragraph (c) is deleted;

- (k) in Article 205 (registrar's powers to strike company off register), paragraph (2) is deleted;
- (l) in the Schedule –
 - (i) the item relating to Article 71(6) is deleted,
 - (ii) in the item relating to Article 127YE(3), for the text in the second column there is substituted “Cell company failing to provide verification of the information in the annual confirmation statement for cell of the company”.
- (2) In the Companies (General Provisions) (Jersey) Order 2002⁸, Article 6 (annual return) is deleted.
- (3) In the Financial Services (Disclosure and Provision of Information) Law 202⁹ –
 - (a) in Article 1 (interpretation), in the definition “significant person” sub-paragraph (c), for “limited partner” there is substituted “partner”;
 - (b) in Article 5(1), “as of 1st January of the year in which the statement is being provided” is deleted;
 - (c) after paragraph 4(1)(b) of the Schedule there is inserted –
 - “(c) if the entity is a foundation incorporated under the Foundations (Jersey) Law 2009¹⁰, abridged regulations (as defined in that Article 1(1) of Law).”;
 - (d) after paragraph 4(1) of the Schedule there is inserted –
 - “(1A) Despite sub-paragraph (1)(a), the Commission may, by notice published on the website of the Commission, extend the period during which an existing entity must notify the Commission of information that will be contained in the annual confirmation statement.”.
- (4) In the Foundations (Jersey) Law 2009¹¹ –
 - (a) in Article 2(6) (application for the incorporation of a foundation), for “FSC Law” there is substituted “Financial Services Commission (Jersey) Law 1998¹²”;
 - (b) Article 37 (foundation to pay fees and charges) is deleted.
- (5) In the Foundations (Continuance) (Jersey) Regulations 2009¹³ –
 - (a) in Regulation 6(2)(a) after “charter” there is inserted “and abridged regulations”;
 - (b) in Regulation 6(2)(c) after “charter” there is inserted “or abridged regulations”;
 - (c) in Regulation 16(2)(a) after “charter” there is inserted “and abridged regulations”;
 - (d) in Regulation 16(2)(c) after “charter” there is inserted “or abridged regulations”.
- (6) In the Foundations (Mergers) (Jersey) Regulations 2009¹⁴ –
 - (a) in Regulation 7(4)(a) after “charter” there is inserted “and abridged regulations”;

- (b) in Regulations 17(4)(a) after “charter” there is inserted “and abridged regulations”.
- (7) In the Incorporated Limited Partnerships (Jersey) Law 2011¹⁵, Article 26 (annual administration fee) is deleted.
- (8) In the Limited Liability Companies (Jersey) Law 2018¹⁶, Article 49 (annual administration fee) is deleted.
- (9) In the Limited Liability Partnerships (Jersey) Law 2017¹⁷, Article 20 (annual return) is deleted.

9 Repeals

The following Regulations are repealed –

- (a) the Companies (Annual Returns – Additional Charge) (Jersey) Regulations 2008¹⁸;
- (b) the Foundations (Additional Annual Charge) (Jersey) Regulations 2010¹⁹;
- (c) the Incorporated Limited Partnerships (Annual Additional Charge) (Jersey) Regulations 2012²⁰;
- (d) the Separate Limited Partnerships (Annual Additional Charge) (Jersey) Regulations 2012²¹.

10 Transitional arrangement for information to be made publicly available

Despite any other provision in these Regulations, the Commission must not make available for public inspection any information specified in Regulation 2(1) or Regulation 3 –

- (a) before the end of 31st May 2021; or
- (b) if the Commission extends the period for the provision of annual confirmation statements (under Paragraph 2 of the Schedule to the Law), by the date that is 3 months after the end of the period.

11 Citation and commencement

These Regulations may be cited as the Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 202- and come into force on the day Article 20 of the Law comes into force.

ENDNOTES

Table of Endnote References

1	<i>Law currently awaiting Privy Council approval</i>
2	<i>Law currently awaiting Privy Council approval</i>
3	<i>chapter 24.980</i>
4	<i>chapter 13.125</i>
5	<i>chapter 20.040</i>
6	<i>chapter 13.125</i>
7	<i>Law currently awaiting Privy Council approval</i>
8	<i>chapter 13.125.27</i>
9	<i>Law currently awaiting Privy Council approval</i>
10	<i>chapter 13.265</i>
11	<i>chapter 13.265</i>
12	<i>chapter 13.250</i>
13	<i>chapter 13.265.10</i>
14	<i>chapter 13.265.50</i>
15	<i>chapter 13.370</i>
16	<i>L.32/2018</i>
17	<i>chapter 13.475</i>
18	<i>R&O.120/2008 (chapter 13.125.05)</i>
19	<i>R&O.5/2020 (chapter 13.265.03)</i>
20	<i>R&O.128/2012 (chapter 13.370.10)</i>
21	<i>R&O.129/2012 (chapter 13.780.10)</i>