

# STATES OF JERSEY



## **DRAFT SANCTIONS AND ASSET-FREEZING (AMENDMENT NO. 2) (JERSEY) LAW 202- (P.53/2022): COMMENTS**

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**Presented to the States on 21st April 2022  
by the Economic and International Affairs Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

### **Introduction**

The Panel has, during the course of its role in Scrutiny, received regular briefings from the Minister for External Relations and Financial Services and the Financial Services Team on upcoming changes to existing legislation. Some of these changes form part of the global standards required by the Financial Action Task Force (FATF) and the implementation of this legislation is key to the upcoming assessment of Jersey's Financial Services, due to take place in 2023 by MONEYVAL.

### **The Amendment**

When the United Kingdom (UK) left the European Union (EU), it introduced new legislation to be able to implement autonomous UK sanctions. To ensure Jersey was able to continue to align with the UK on sanctions, the Minister for External Relations and Financial Services introduced new legislation to be able to implement UK sanctions regulations. The Sanctions and Asset-Freezing (Jersey) Law 2019 and the Sanctions and Asset-Freezing (Implementation of External Sanctions) (Jersey) Order 2021 (the "Jersey Sanctions Order"), which is made under the Sanctions Law, are the Island's key pieces of sanctions legislation, under which it implements all United Nations (UN) sanctions and autonomous UK sanctions.

The purpose of the Amendment is to improve Jersey's compliance with the Technical Compliance (TC) requirements and the FATF Recommendations, either through amendments to existing provisions or by adding new provisions. Other changes, such as expanding the scope of reporting obligations, may also help the Island in demonstrating its effectiveness against Immediate Outcome (IC) 10 and IC 11 by generating information that would provide evidence for effective sanctions implementation in Jersey.

### **Key changes to the Law**

#### *Owned, Held, Controlled, Direction and Indirectly*

The Sanctions Law currently relies on a link to Council Regulation (EC) 2580/2001 for its definitions of "owned", "held", "controlled", "directly" and "indirectly". The draft Law would remove this reference, replacing it with updated and expanded definitions of these terms in a new Article.

#### *Proposals for Terrorist Asset-freeze Designations*

To implement obligations under certain UN Security Council Resolutions, jurisdictions must be able to respond to a request from another jurisdiction to designate a person for a terrorist asset-freeze designation; make a request to another jurisdiction to designate a person for a terrorist asset-freeze designation, and make proposals to the UN for listing and de-listing in respect of certain asset-freeze designations. Whilst this is an area where Jersey is already compliant, the FATF wish to see it as part of the legislation and a new Article will be inserted to meet the FATF requirements.

#### *Civil Immunity*

A new Article would be inserted, which protects persons acting in good faith to comply with a sanction's obligation or prohibition from civil proceedings.

The Panel learned that the UK had recently been criticised in a MONEYVAL Report for not having a specific provision setting this out and this stressed the importance of Jersey meeting the FATF requirements.

#### *Powers to Amend by Ministerial Order*

A power would be added to enable the Minister to amend the definitions contained in certain specific Articles by Order. These replace the existing powers which allow the changes to be made by Regulation. However, the Panel was pleased to note that having these Order making powers would be limited to making changes required to give effect only to UK legislation, UN sanctions resolutions, or standards of the FATF or other international body with the sole purpose of enabling these changes to be made quickly.

#### *Implementation of Exceptions and Grounds for Sanctions Licences*

All UK sanctions regulations contain ‘exceptions and ‘licensing’ provisions. An ‘exception’ provision provides for an exception to an otherwise prohibited action or transaction, without requiring a person to apply for a sanctions licence, whereas a ‘licensing’ provision sets out a ground on which a person can apply for a sanctions licence to permit an otherwise prohibited action or transaction. Amendments to the law would enable the Minister to specify, by Order, that a UK exception to an asset-freezing designation can be relied on by a Jersey person without a sanctions licence, or as a ground for a licence application. The Minister could also specify, by Order, that a licensing ground for an asset-freezing designation contained in one or more UK sanctions Regulations, can be used as the basis for a sanction licence application in Jersey, under the relevant sanctions’ regime. Whilst it is already possible for the Minister to do this in respect of non-asset-freeze prohibitions (e.g., financial services restrictions), these amendments would enable the Minister to do the same in respect of asset-freezing designations. The Panel was informed that an example of non asset freezing would be import/export restrictions.

#### *Meaning of Terrorism and Related Terms*

The draft Law would amend Article 18 of the Sanctions Law to insert a new definition of “involved person”. The amended provisions would set out in more detail what is considered terrorism and terrorist activity for the purposes of an interim or final terrorist asset-freezing designation by the Minister. The Panel was informed that this Amendment, in effect, provides more detail as to such terms as opposed to simply broadening what is already in existence. It includes many types of activity such as promoting and recruiting for terrorism, people trafficking and soliciting funds.

#### *Automatic Terrorist Asset-freeze Designations*

Article 19 would be amended in the Sanctions Law to remove references to a list provided for Council Regulation (EC) 2580/2001, and a list maintained by the UN Counter Terrorism Committee (the “UNCTC”), respectively. The link to Council Regulation (EC) 2580/2001 is no longer required as the same terrorist asset-freeze designations that are implemented under this regulation, are now implemented in Jersey through the link to the UK’s Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019. Similarly, the link to the UNCTC list is not required as no such list is maintained. These provisions are therefore redundant, and their removal would have no material effect on which persons and entities are subject to an asset-freezing designation in Jersey.

### *De-designation Terrorism Asset-freeze by Ministerial Order*

Article 10 of the draft Law would amend Article 19 of the Sanctions Law to remove the power of the Minister to de-designate UN terrorist asset-freeze designations by Order. It is not permitted under international law to de-designate a person who has been listed by the UN for the purpose of an asset-freeze. This power has been replaced and will provide allowance for the Minister to make a proposal, via the UK, to the UN for de-listing.

### *Expanded Reporting Obligations in Respect of Attempts to Breach or Circumvent Sanctions*

The reporting obligations set out in Article 32 of the Sanctions Law would be expanded to make clearer the obligation to report to the Minister any attempts to breach or circumvent sanctions prohibitions. It is a FATF requirement that such attempts are covered by the obligation to report.

### **Memorandum of Understanding (MoU)**

A new Article will be inserted which will require the Minister to publish a statement of procedure for the functions under each of the new Articles starting no later than the end of 2022 and then publishing any subsequent changes. The Minister must also seek to agree a MoU with the UK Government about coordinating the Minister's activities under certain new Articles with the UK's activities, under their equivalent functions. If a memorandum is agreed, the Minister must publish it and any subsequent changes.

### **Current Sanctions and the Ukrainian Crisis**

The Panel asked how these Amendments would affect the current sanctions being undertaken on companies and individuals as a consequence of the crisis in Ukraine. The Panel was informed that these Amendments will have no impact on what is currently ongoing and pre date the Ukrainian crisis. The purpose of these Amendments is to ensure technical compliance with the FATF regulations.

### **Conclusion**

The Panel understands that decisions on asset freezing, and sanctions need to be made swiftly, particularly in the current climate, and it is satisfied that, should the Amendments be adopted, these key change to the Law will allow this to happen. The Panel is pleased that, whilst the Minister will have additional powers by Order, these powers are restrictive and will not deviate from the democratic decision making powers of the States Assembly. The Panel is also pleased to note that terrorism and related terms will become more detailed as opposed to simply broadening what is already in existence and that "terrorist activity" will include a wide range of actions and activities.

The Panel is satisfied with the content of the Proposition and believes it will contribute to the strengthening Jersey's already strict draft sanctions and asset freezing law. It also recognises the work that has gone into this extremely detailed piece of legislation by both the Financial Services officers and the Legislative Drafting team and is supportive of these Amendments.