

# STATES OF JERSEY



Jersey

## **DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) AMENDMENT LAW 202-**

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**Lodged au Greffe on 30th July 2024  
by the Minister for External Relations  
Earliest date for debate: 10th September 2024**

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**STATES GREFFE**



Jersey

**DRAFT FINANCIAL SERVICES (DISCLOSURE AND  
PROVISION OF INFORMATION) (JERSEY)  
AMENDMENT LAW 202-**

**European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Assistant Minister for External Relations has made the following statement –

In the view of the Assistant Minister for External Relations, the provisions of the Draft Financial Services (Disclosure and Provision of Information) (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy M.E. Millar of St. John, St. Lawrence and Trinity**

*Assistant Minister for External Relations*

Dated: 30th July 2024

## REPORT

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### Background and purpose

The Draft Financial Services (Disclosure and Provision of Information) (Jersey) Amendment Law 202- (the “Draft Law”) proposes amendment to the [Financial Services \(Disclosure and Provision of Information\) \(Jersey\) Law 2020](#) (the “DPI Law”) to provide for persons who are obliged to perform customer due diligence (“CDD”), under the [Money Laundering \(Jersey\) Order 2008](#) (“MLO”), to access beneficial ownership information held by the Jersey Financial Services Commission (“JFSC”) under the DPI Law.

The proposition is made in pursuit of the [commitment](#) that Jersey, along with the other Crown Dependencies, made on the 13 December 2023 to further enhance the transparency of its centralised register in line with developing international standards.

### Current position

As a responsible jurisdiction and a leading international finance centre, Jersey is committed to continuing its advanced role in combatting financial crime whilst promoting sustainable growth. Whilst a small island, Jersey displays global leadership in areas of tax cooperation, and in combatting money laundering, terrorist financing and proliferation financing.

Jersey was among the first jurisdictions to implement a corporate beneficial ownership register, establishing this in 1989. Since then, the register has been subject to continued policy development and investment to develop it in line with changing international standards, as has recently been verified in Jersey’s MONEYVAL Assessment report, as well as making it fully digital. The information maintained within the register is subject to verification processes to ensure its accuracy and is effectively exchanged with local competent authorities as well as relevant foreign authorities such as the UK law enforcement authorities.

### International development on transparency of beneficial ownership information

Since the 2013 G8 meetings, increased access to information held within corporate registers has been in the focus of many policy makers, resulting in legislation in both the UK and EU, and influencing international standards within the Financial Actions Task Force (“FATF”), the global money laundering and terrorist financing watchdog.

Increased transparency for many up until November 2022 took the form of full public access to beneficial ownership information within the registry, this was reflected in Jersey’s 2019 commitment to increase transparency of the register. The international direction of travel was however changed following the November 2022 decision by the Court of Justice of the European Union (CJEU) on publicly accessible beneficial ownership registers (the SOVIM Case). This ruled that the EU legislation requiring public access was invalid and raised significant and serious issues from the perspective of human rights. Following the approval of the sixth anti-money laundering directive (“AMLD6”) by the European Parliament and Council, the EU has now adopted a position of providing access to those with a legitimate interest in the prevention and combating of money laundering, its predicate offences and terrorist financing. Access within the EU under AMLD6 is specially inclusive of access for persons obliged to perform CDD.

Whilst the EU and UK have pursued increased access, the [FATF recommendations](#), comprising the International Standards on Combating Money Laundering and The Financing of Terrorism & Proliferation, have not moved beyond mandating the provision of information to competent authorities. It is however noteworthy that the guidance to both Recommendations 24 and 25 of

the FATF Recommendations identify that “Countries should consider facilitating access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22”. This effectively endorses an approach of provision of information to persons obliged to perform customer due diligence.

### **Jersey’s 2023 commitment**

In recognition of the significant events and policy shifts towards increased access internationally, Jersey along with the other Crown Dependencies revised its commitment to increase access to ensure a position which carefully considers the fundamental human rights issues and data protection issues. In summary the commitment was to:

1. Deliver obliged entity access during 2024.
2. Develop and deliver legitimate interest access in a leading timeframe.

This proposition is in pursuit of the first commitment, to deliver obliged entity access during 2024.

### **The proposal**

It is proposed that the DPI Law is amended to allow the JFSC to disclose beneficial ownership information maintained within the registry to persons obliged to perform CDD.

Persons gaining access under this provision will be “relevant persons” as is already defined under the MLO upon which obligations to perform CDD are placed. It is further recognised that when meeting their obligations to perform CDD, relevant persons may seek the services of an Anti-Money Laundering Service Provider, as defined in Article 9A of the MLO. The proposition therefore allows for representatives of the relevant person to access beneficial ownership information.

In recognition of the basis for which relevant persons and their representatives will be extended access to beneficial ownership information, the proposition limits the purposes for accessing the information to assisting the fulfilment of obligations under part 3 of the MLO, this essentially being the obligation to perform CDD. For this purpose, it is considered that access to complete beneficial ownership information is necessary, but also consistent with existing MLO obligations, such that all beneficial ownership information as currently defined within Article 2 of the [Financial Services \(Disclosure and Provision of Information\) \(Jersey\) Order 2020](#).

Recognising the sensitive nature of the information being disclosed, the proposition introduces both a prohibition and offence for using the information for purposes beyond fulfilling obligations set out in the MLO Further to this the existing Article 10 prohibition for wrongful disclosure of information obtained under the DPI Law will be amended to ensure it applies to the disclosure of information obtained under these new provisions.

The proposal will extend the JFSCs powers of compulsion, to demand information or interview, to persons accessing information under these new provisions. This is deemed necessary to allow the JFSC to ensure that information accessed from its registry is done so in accordance with DPI Law.

Separately the proposition will amend Article 19 to correct inaccurate internal referencing.

It is intended that the Amendment Law will come into effect seven days after registration.

## **Consultation**

A [consultation on the proposals](#) was performed in November 2022 with a further [consultation on the draft legislation](#) performed through April to June 2024. Feedback and response papers will be published for these, noting industry was broadly supportive but providing some additional recommendations to ensure effective practical application. Where reasonable, these have been considered within the policy development and drafting including providing for anti-money laundering service providers to access information on behalf of their clients.

Government has worked closely with the JFSC through the development of this legislation and will continue to work with the JFSC as they develop the necessary systems alterations to give effect to these provisions.

## **Financial and staffing implications**

There are not additional financial or staffing implications for Government as a result of this proposition.

## **Children's Rights Impact Assessment**

A Children's Rights Impact Assessment (CRIA) screener has been prepared in relation to this proposition and is available to read on the States Assembly website.

## **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### **Human Rights Notes on the Draft Financial Services (Disclosure and Provision of Information) (Jersey) Amendment Law 202-**

These Notes have been prepared in respect of the draft Financial Services (Disclosure and Provision of Information) (Jersey) Amendment Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law amends the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 (the “**2020 Law**”). The 2020 Law is compliant with the ECHR as detailed in the human rights notes published in [Projet \(P.69/2020\)](#).

#### *Nature of the amendments made by the draft Law*

The draft Law permits the Jersey Financial Services Commission (the “**Commission**”) on the request of a relevant person or their representative, to disclose to the requester beneficial owner information kept in the Commission’s register in relation to an entity for the sole purpose of assisting the relevant person or their representative to fulfil the obligations of the relevant person, specifically Parts 3 and 4, of the Money Laundering (Jersey) Order 2008 (the “**Money Laundering Order**”)

The draft Law provides for criminal sanctions where a relevant person or their representative do not adhere to the requirement to use the beneficial owner information provided by the Commission to meet their obligations in Parts 3 and 4 of the Money Laundering Order and use it for another purpose.

The draft Law engages the right to respect for private life in Article 8 of the ECHR, which provides –

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The disclosure of information on beneficial owner may nonetheless be considered to interfere with the rights that an individual has under Article 8(1) of the ECHR to respect his or her private and family life.

However, the disclosure of information about a person’s identity under and in accordance with the draft Law would be compatible with Article 8 of the ECHR because Article 8(1) provides “qualified” rights, and any interference with such rights through the operation of the Law is justified in accordance with the provisions of Article 8(2). Further, the requirements of the draft Law are “in accordance with the law” as they are an amendment to primary legislation which is

sufficiently precise and accessible. It is considered that the potential for the draft Law's interference with any Article 8(1) rights would be necessary in a democratic society because there is a clear and pressing social need for that interference – i.e. adherence to international commitments and standards on beneficial ownership and who can access information and under what circumstances. Thus, the provisions of the draft Law are justifiable as being in the interests of the economic well-being of Jersey and for the prevention of crime in combatting tax evasion, money laundering, corruption, sanctions and terrorist financing.

The draft Law is also compatible with the ECHR because of the safeguards it contains such that the information may only be accessed by a relevant person or their representative to fulfil the obligations of the relevant person under Parts 3 and 4 of the Money Laundering Order in relation to the entity. There are then further restrictions on onward disclosure which attract criminal penalties if they are not complied with.

The draft Law may also engage Article 6 of the ECHR, which provides –

- 1 *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
- 2 *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

Article 6 is an absolute right and may in theory be engaged by draft Article 8C where the Commission may by notice in writing require the requester to provide information or documents that show that the information requested has been used for CDD purposes under the Money Laundering Order and has not been used for any other purpose and to require the requester to attend at times and places specified in a notice to answer questions in those respects. However, the draft Law provides safeguards in that the gathering of information by the Commission is consistent with its supervisory powers and purposes which are set out in accordance with, for example, both the 2020 Law and the Financial Services Commission (Jersey) Law 1998, and the draft Law also makes it clear that where requesters are called to answer questions under the Law, the information provided and received in answering such questions may not be used for the purposes of a trial and so is consistent with the privilege against self-incrimination<sup>1</sup>. Moreover, the offence provision at Article 8C is specifically limited to where the requester does not comply with a notice within the relevant period or at the times and places so specified.

Accordingly, the provisions of the draft Law are considered to be compatible with Articles 8 and 6 of the ECHR.

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<sup>1</sup> A similar provision has also been inserted into Article 9 of the 2020 Law by the draft Law.

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## EXPLANATORY NOTE

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This Law, if passed, will amend the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 (“the Law”).

*Article 2* amends the heading to Part 2 of the Law.

*Article 3* inserts new Articles 8A to 8C into the Law. Article 8A defines terms used in new Articles 8B and 8C.

Article 8B permits the Commission to disclose beneficial owner information kept in the register to a relevant person or their representative who requests the disclosure, for the purpose of assisting them to fulfil the customer due diligence obligations of the relevant person under Part 3 of the Money Laundering Order. Article 8B provides for lawful onward disclosure and use of beneficial owner information obtained under that Article, and for offences of failure to comply.

Article 8C permits the Commission, by notice, to require a person who requests a disclosure under Article 8B to provide evidence that supports their request. Article 8C provides for the offence of failure to comply with a notice.

*Article 4* makes a correction to Article 9 of the Law.

*Article 5* amends Article 16 of the Law to provide for the punishment of offences under Articles 8B and 8C. Unlawful onward disclosure of beneficial owner information obtained under Article 8B is punishable by a fine and 5 years’ imprisonment. Unlawful use of that information is punishable by a fine and 2 years’ imprisonment. Failure to comply with a notice under Article 8C is punishable by a fine and 4 years’ imprisonment.

*Article 6* makes a correction to Article 19 of the Law.

*Article 7* gives the name of the Law and provides for it to come into force 7 days after it is registered.





Jersey

## **DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) AMENDMENT LAW 202-**

### **Contents**

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#### **Article**

1	Amendment of Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020.....	10
2	Heading to Part 2 amended.....	10
3	Articles 8A to 8C inserted .....	10
4	Article 9 (provision of information to local competent authorities) amended .....	12
5	Article 16 (punishment of offences) amended.....	12
6	Article 19 (Royal Court may declare dissolution of entity void) amended.....	12
7	Citation and commencement .....	12



Jersey

## **DRAFT FINANCIAL SERVICES (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) AMENDMENT LAW 202-**

A **LAW** to allow the Commission to disclose beneficial owner information to assist financial services businesses with customer due diligence obligations under the [Money Laundering \(Jersey\) Order 2008](#).

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

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**1 Amendment of [Financial Services \(Disclosure and Provision of Information\) \(Jersey\) Law 2020](#)**

This Law amends the [Financial Services \(Disclosure and Provision of Information\) \(Jersey\) Law 2020](#).

**2 Heading to Part 2 amended**

In the heading to Part 2 (disclosure of information to Commission), there is deleted “to Commission”.

**3 Articles 8A to 8C inserted**

After Article 8 (Commission to maintain register) there is inserted –

**“8A Interpretation of Articles 8B and 8C**

In Articles 8B and 8C –

“Money Laundering Order” means the [Money Laundering \(Jersey\) Order 2008](#);

“relevant person” has the meaning given in Article 1(1) of the Money Laundering Order;

“representative”, in relation to a relevant person, means –

- (a) an anti-money laundering services provider appointed by the relevant person under Article 9A(1) of the Money Laundering Order;
- (b) a person who is appointed to assist the relevant person to comply with the requirements of the relevant person under Part 3 of the Money Laundering Order;

“requester” means a relevant person or their representative who requests a disclosure of beneficial owner information under Article 8B(1);

“use” does not include making a lawful disclosure under Article 8B(2).

### **8B Disclosure and use of beneficial owner information**

- (1) The Commission may, on the request of a relevant person or their representative, disclose to the requester beneficial owner information kept in the register in relation to an entity for the purpose of assisting the relevant person or their representative to fulfil the obligations of the relevant person under Part 3 of the Money Laundering Order in relation to the entity.
- (2) A person must not disclose beneficial owner information obtained under this Article to another person unless the disclosure is made –
  - (a) to a local competent authority;
  - (b) under Article 16(7), 17C(4) or 22A(c) of the Money Laundering Order; or
  - (c) with other lawful excuse.
- (3) A person who fails to comply with paragraph (2) commits an offence.
- (4) A person must not use beneficial owner information obtained under this Article in relation to an entity for any purpose other than fulfilling the obligations of a relevant person under the Money Laundering Order in relation to that entity.
- (5) A person who fails to comply with paragraph (4) commits an offence.
- (6) This Article extends to beneficial owner information entered in the register before the commencement of this Article.

### **8C Relevant person to provide information to Commission**

- (1) The Commission may, by notice in writing, require a requester to provide, in a format and within a period specified in the notice, information or documents that show that –
  - (a) the beneficial owner information was requested by the relevant person or their representative under Article 8B(1) in relation to an entity for the purpose of fulfilling the obligations of the relevant person under Part 3 of the Money Laundering Order in relation to that entity; and
  - (b) the beneficial owner information has not been used for any other purpose.
- (2) The Commission may, by notice in writing, require the requester –

- (a) to attend at the times and places specified in the notice; and
  - (b) to answer questions in relation to the matters in paragraph (1)(a) and (b).
- (3) If the requester does not comply with a notice under paragraph (1) or (2) within the period, or at the times and places, specified in the notice –
- (a) the requester commits an offence; or
  - (b) if the requester is an incorporated limited partnership or a separate limited partnership, each general partner of the entity commits an offence.
- (4) Information, documents or answers to questions provided in compliance with a notice under paragraph (1) or (2) may not be used by the prosecution in evidence against the person in criminal proceedings except proceedings under paragraph (3).”.

#### **4 Article 9 (provision of information to local competent authorities) amended**

In Article 9 –

- (a) in paragraph (3), after “period” there is inserted “, or at the times and places,”; and
- (b) after paragraph (3) there is inserted –  
“(3A) Information, documents or answers to questions provided in compliance with a notice under paragraph (1) or (2) may not be used by the prosecution in evidence against the person in criminal proceedings except proceedings under paragraph (3).”.

#### **5 Article 16 (punishment of offences) amended**

In Article 16(1), after sub-paragraph (b) there is inserted –

- “(ba) Article 8B(3) is a fine and 5 years’ imprisonment;
- (bb) Article 8B(5) is a fine and 2 years’ imprisonment;
- (bc) Article 8C(3) is a fine and 4 years’ imprisonment;”.

#### **6 Article 19 (Royal Court may declare dissolution of entity void) amended**

In Article 19(1), for “Article 16(5)” there is substituted “Article 16(4)”.

#### **7 Citation and commencement**

This Law may be cited as the Financial Services (Disclosure and Provision of Information) (Jersey) Amendment Law 202- and comes into force 7 days after it is registered.