Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020

The Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 ("**FSDL**") has been registered by the Royal Court and the FSDL, together with the accompanying Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 2020 (the "**Regulations**"), will come into force on 6 January 2021.

The impetus for the FSDL stems from the 2016 MONEYVAL report, which identified that Jersey needed to take further measures in respect of Recommendation 24 of the Financial Action Task Force's International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation. Recommendation 24 states that jurisdictions ought to "*ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons*...[which] *can be obtained...in a timely fashion by competent authorities*."

The provisions of the FSDL

The FSDL provides that any Jersey "*entity*" (namely, any company, foundation, limited liability company, limited liability partnership, separate limited partnership or limited partnership which is incorporated or established in Jersey) must collect and provide to the JFSC the following information:

1. "*beneficial ownership information*";
2. "*significant person information*"; and
3. the identity of any nominee and nominator (unless the nominee is registered by the JFSC under the Financial Services (Jersey) Law 1998).

The meaning of "*beneficial ownership information*" and "*significant person information*" will be determined by secondary legislation introduced under the FSDL. The Financial Services (Disclosure and Provision of Information) (Jersey) Order 202- (the "**Draft Order**") was previously published for consultation and is expected to be made on 6 January 2021, together with the FSDL and the Regulations. The Draft Order provides that "*beneficial ownership information*" includes the beneficial owner's name (and any former names), address for correspondence, residential address, nationality, occupation, gender, date of birth and place and country of birth. The Draft Order also provides that the same information must be provided in respect of each significant person.

The FSDL defines "*beneficial owner*" as an individual who "*ultimately owns or controls the entity*". The JFSC will publish detailed guidance about the meaning of "*beneficial owner*" in due course. The FSDL also contains a definition of "*significant person*" which includes, for example, company directors and secretaries and limited partners participating in the management of a limited liability partnership.

The information provided to the JFSC will be kept on a registry maintained by the JFSC, which will be partially public and partially private. A Jersey entity must provide the JFSC with an "*annual confirmation*

statement" each year which verifies that the beneficial ownership and significant person information contained on the registry remains correct. This "*annual confirmation statement*" will replace the existing requirement to file an annual return. An entity must notify the JFSC within 21 days of becoming aware of a change to the information provided to the JFSC (or otherwise of becoming aware that there is an error or inaccuracy in the information provided).

An entity must also specify a "*nominated person*" who is authorised to submit to the JFSC the relevant information required under the FSDL. The FSDL provides that a nominated person can be a person registered to carry on trust company business, a Jersey resident who is a significant person for the entity, a Jersey resident lawyer or accountant who acts for the entity or a person regulated to carry on fund services business. Where a nominated person resigns or has their appointment revoked, the entity must appoint a new nominated person within 21 days.

The FSDL provides that the "*States may, by Regulations…specify* [whether]…*information kept on the register…is or is not to be made public*". In relation to an individual who is a significant person, the Regulations provide that a significant person's name, the month and year of their birth, an address for correspondence and the person's nationality and occupation will be accessible on the public register. In relation to an entity which is a significant person, the Regulations provide that the public register must detail the type of entity that is a significant person, the registered name and number of the entity, the business address or registered office of the entity and the date on which the entity was incorporated or established. Importantly, the Regulations provide that someone who is a significant person only (i) by virtue of being a company secretary or (ii) due to holding a share in a company which confers a right of occupation of land in Jersey (that is, share transfer properties) are excluded from having their information made public on the register.

The Regulations contain provisions which allow a significant person of an entity to apply to the JFSC to remove publically available significant person information from the public registry. The Regulations provide limited grounds for such an application, namely serious risk of violence or intimidation, serious risk of damage or threats to property, where the information relates to a subject who lacks capacity to manage their own affairs or "*exceptional circumstances*".

The Regulations also provides a list of information which "*may, at the discretion of the* [JFSC]*, be made available for public inspection*", which includes 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*" including details of "*the class and number of shares that are held by* [such]… *member*".

Beneficial ownership information is not public and will continue to remain private until an international consensus has been reached about the scope of beneficial ownership information to be disclosed. However, the Crown Dependencies have been instructed by the Home Office to introduce public registers of beneficial ownership by 2023. The EU has also indicated that it expects third countries, such as Jersey, to implement the 5th EU AML Directive (which includes a requirement for public registers of beneficial ownership) or face a potential blacklisting.

The impact of the FSDL

As the Government consultation paper makes clear, the FSDL "*in particular... seeks to*...[place] *requirements relating to beneficial ownership on a statutory footing*" and to "*support the development of a more modern Registry and includes provisions* [which] *allow for a fully digital, future-ready companies registry".*

The initial impact of the FSDL will be limited, particularly as the FSDL "*seeks to maintain the current situation whereby the Commission collects and makes public certain information"* and Jersey already has a central register of beneficial ownership and controllers. The most immediate effect of the FSDL is that, for the first time, Jersey foundations will be required to file an abridged version of their regulations which will become publically available on the register. However, the FSDL must be viewed in light of the international pressure which Jersey is facing to move towards a fully public register.

For further information or specific advice, please contact Kate Anderson.

This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.