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AN EYE-OPENER TO THE FINANCIAL (DISCLOSURE AND PROVISION OF INFORMATION) (JERSEY) LAW 2020

"The time has come..... to practice full financial disclosure. The world is watching how we walk and how we talk. We must have the highest standards of morality, ethics and integrity if we are to continue to have influence."

William Franklin Graham, Jr.

To ensure that Jersey maintains its status as a premier regulated international financial centre, the Government of Jersey has introduced new primary legislation and secondary.

The legislation will change the transparency of the corporate landscape forever.

On 6 January 2021, the Financial (Disclosure and Provision of Information) (Jersey) Law 2020 (the **Disclosure Law**) and specific related legislation came into force, namely the Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 2020 and the Financial Services Disclosure and Provision of Information (Jersey) Order 2020.

INTRODUCTION, BACKGROUND AND PURPOSE

This guide will help you minimise the risks of falling foul of the Disclosure Law. It is directed to local businesses and Jersey corporate service providers that manage and administer Jersey entities.

For further information, please contact your usual advisor at Lexstone Lawyers. We would be delighted to assist you.

Kindly note that this guide is intended to provide general guidance and does not represent Jersey legal advice.

In February 2012, the Financial Action Task Force (**FATF**) published its so-called 2012 Recommendations on the International Standards on Combatting Money Laundering and Financing of Terrorism and Proliferation. These were recently updated emphasising member governments to have clearer transparency requirements and take up a more rigorous approach to fighting corruption, including financial. One of these updates was FATF Recommendation 24, which focuses on transparency and beneficial ownership of legal persons, requires jurisdictions to *"ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities"*.

The Disclosure Law is Jersey's response to FATF Recommendation to put it at the cutting-edge. It establishes a new legal framework for certain entities to disclose defined financial information to the Jersey Financial Services Commission (the **JFSC**). Although some may argue that the Disclosure Law is a restatement of previous legal obligations, it is somewhat broader and imposes new obligations.

In the JFSC's template letter to entities in December 2020 announcing the move to full online services, Julian Lamb, the Registrar of Companies of the JFSC stated that: -

"As well as modernising the Registry, these changes are in response to new legislation recently passed by the Government of Jersey under the banner of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020. The new law has been introduced to help the Island meet international standards and is the next stage following the introduction of the central register of beneficial owners and controllers in 2017".

SO, WHAT IS NEW?

1. Each entity must appoint a nominated person.
2. Beneficial owner information for foundations and some funds must be disclosed and kept private by the JFSC.
3. Significant person information must be disclosed to the JFSC with some of it publicly available.
4. Nominee shareholders and their nominations must be disclosed to the JFSC.
5. JFSC has the power to strike off entities for non-compliance with the disclosure obligations.
6. JFSC may issue a code of practice.
7. JFSC will introduce annual confirmation statements to replace annual returns.

Existing obligations regarding beneficial owners and controllers have not changed. The annual confirmation statement adds details of beneficial ownership and significant persons.

WHO DOES IT APPLY TO?

In a nutshell, it applies to all of the following established or registered in Jersey: -

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

It does not grasp common-law partnerships, limited partnerships or trusts. The existing legal obligations will remain unchanged.

WHEN MUST THE ANNUAL CONFIRMATION STATEMENT BE FILED?

The annual confirmation statement must be filed by the end of February in each calendar year. In 2021, this has been extended to 30 April on an exceptional basis.

WHAT IS THE ROLE OF THE NOMINATED PERSON?

A nominated person is appointed by the entity to be the principal point of contact between the entity and the JFSC. All interactions with the JFSC will be through the nominated person. Such a person is nominated to furnish the JFSC with any information required to be provided by the entity per the Disclosure Law or otherwise.

The nominated person must be one of the following: -

1. a Jersey corporate service provider regulated by the JFSC under the Financial Services (Jersey) Law 1998;
2. a Jersey resident significant person of that entity; and
3. a Jersey resident lawyer or accountant regulated by the JFSC under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

WHO IS THE BENEFICIAL OWNER?

The term beneficial owner is a misnomer. For the Disclosure Law, it is an *“individual who ultimately owns or controls the entity, or the individual on whose behalf a transaction is being conducted by the entity, including an individual who exercises ultimate effective control over the entity”*.

Under the Disclosure Law, the JFSC must publish guidance on how to identify the *“beneficial owner”*.

The definition of *“beneficial owner”* has already been well defined by the JFSC and was first covered in Money Laundering (Jersey) Order 2008 contains the original meaning. The so-called three tier-test should be applied to identify the beneficial owner of the entity. The root of the test originates from FATF guidance covered in the JFSC’s various handbooks for anti-money laundering and countering the financing of terrorism.

WHAT BENEFICIAL OWNERSHIP INFORMATION NEEDS TO BE DISCLOSED?

The beneficial ownership information that needs to be disclosed is as follows: -

1. full legal name (as in passport and birth certificate);
2. full correspondence address;
3. full residential address;
4. gender;



5. nationality;
6. occupation;
7. full date of birth; and
8. place of birth (village, town or city and country).

In practice, the Disclosure Law will not change the information that is already collated by the JFSC. Historically, the JFSC obtains this information under the consent issued under the Control of Borrowing (Jersey) Order 1958 to each company.

The Disclosure Law now adds a central modern framework for disclosing beneficial ownership information and extending it to foundations.

WHAT IS A SIGNIFICANT PERSON?

A significant person can be bodies corporate or individuals, as follows: -

1. director, company secretary or other officer purporting to act in a similar capacity of a company;
2. a council member of a foundation;
3. a general partner of an incorporated limited partnership or a separate limited partnership;
4. a partner participating in the management of a limited partnership; and
5. a manager or, if no manager, members involved in the management of a limited liability company.

For natural persons, the significant person information is the same as the beneficial owner information.

WHAT IS DISCLOSED TO THE JFSC?

Subject to limited exceptions, the beneficial owner information, certain significant person information, and details relating to nominee shareholders must be disclosed to the JFSC upon incorporating or establishing an entity.

An entity must notify the JFSC of any change, error or inaccuracy in the beneficial owner or significant person information previously disclosed within 21 days of the entity becoming aware of the change, error or inaccuracy. It is an offence not to do so.

WHAT IS PUBLICLY DISCLOSED?

The Disclosure Law stipulates that some significant person information is to be made public by 31 July 2021.

The information to be made public vis-à-vis significant persons are as follows: -

1. full legal name;
2. month and year of the date of birth;
3. correspondence address;
4. nationality; and
5. occupation.

Information relating to persons under the age of 18, a secretary of the company or significant persons of certain local share transfer property companies are excluded.

The JFSC has the discretion to disclose any shareholder's name and address that holds an interest of more than 1% in any class of shares of a company.

In exceptional circumstances (such as the risk of harm), information may be kept private.

WHO MAY SEE THE PRIVATE INFORMATION?

The private information may be disclosed to combat money laundering and terrorism.

The Disclosure Law permits a local authority at the request of a foreign competent authority: -

1. facilitate the access by the foreign competent authority to information;
2. exchange information; and
3. obtain beneficial information.

The definition of a "*local competent authority*" includes the JFSC, the Financial Crimes Unit, the Attorney General and the Minister for External Relations. In contrast, a "*foreign competent authority*" is a public authority exercising functions or responsible for anti-money laundering and counter-terrorism measures in a jurisdiction outside of Jersey.

The Disclosure Law also permits disclosure to a law enforcement agency to investigate or prosecute an offence.

WHAT ARE THE OFFENCES?

The Disclosure Law introduces various civil and criminal offences such as providing false and misleading information to the JFSC within 21 days of a change or error, failing to file an annual confirmation statement and failing to appoint a nominated person.

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

Penalties include fines, imprisonment, daily default fines for subsequent offences, late-filing fees and striking-off provisions.

After the initial period of grace, we do anticipate that there will be prosecutions.

WHAT NEEDS TO BE DONE?

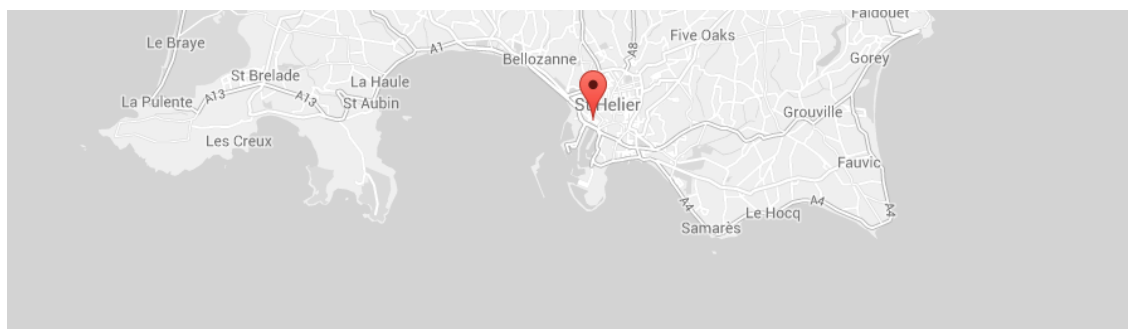
The following is an aide-memoire of what needs to be done: -

1. The entity must appoint a nominated person by 6 April 2021.
2. The nominated person must register with the JFSC using myRegistry by 30 April 2021.
3. The nominated person verify that he/she has complete and accurate beneficial owner information.
4. The nominated person must check that he/she has significant person information.
5. The nominated person and significant person must identify the significant person's correspondence address.
6. The nominated person must ascertain whether or not there are exceptional circumstances to keep the information private.
7. The nominated person must complete the transition application and annual confirmation statement using myRegistry by 30 April 2021.
8. The nominated person must complete the annual confirmation statement each year by the end of February from 2022 onwards.
9. The nominated person must be proactive and regularly apprise himself or herself of any updates at www.jerseyfsc.org/registry.
10. The nominated person must be conversant with any applicable new legislation at www.jerseylaw.je/laws.
11. The entity must pay the annual confirmation of £220 (for 2021 and 2022) by credit card or debit card.
12. The nominated person should diarise all the key dates and keep records of all submissions and filings.

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