

Jersey's new register of beneficial owners and significant persons

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Date / [February 2021](#)

Background

The Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 and associated secondary legislation, in force **6 January 2021**, establishes a new, central register of beneficial owners and significant persons in Jersey.

Beneficial owners are those persons (normally being individuals) who directly or indirectly beneficially own or control the entity, and significant persons are those persons who manage the entity (for example directors of a company).

The new law is intended to satisfy FATF Recommendation 24 on beneficial ownership of legal persons, as well as to help facilitate the development of a more modern, fully digital, future-ready companies registry in Jersey.

The types of entities covered are:

- Companies
- Foundations
- Incorporated limited partnerships (ILPs)
- Separate limited partnerships (SLPs)
- Limited liability companies (LLCs)
- Limited liability partnerships (LLPs)

The new law also makes certain consequential amendments to the primary legislation governing those entity types.

Limited partnerships (LPs) are not within the scope of the new law, although additional in-scope entity types can be added by regulation.

Summary of key changes

The key changes brought into effect by the new law are as follows:

Position under new law	Summary of changes
Information on current beneficial owners and significant persons of entities will be collected and maintained on a new central register operated by the Jersey Financial Services Commission (JFSC)	The vast majority of the relevant information (and more) is already reported to and centrally held by the JFSC as part of its function as financial services regulator What the new law does is establish a central repository for certain of that information, and will be a key factor in enabling Jersey to ensure it continues to comply with international standards in this area (including FATF Recommendation 24) as they develop over time
Details of beneficial owners will not be made public until an EU consensus has been reached on beneficial ownership disclosure standards, and then only to comply with those standards	Beneficial owner information was not publicly available and there will be no immediate change to this position

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Position under new law	Summary of changes
Details of significant persons will be made public (subject to exceptions) but not before 1 October 2021	<p>Only limited information on what are now “significant persons” was available via the JFSC’s Registry website (for example director details for public companies)</p> <p>The new law expands the scope of the information in relation to directors, managers, GPs etc of entities that is publicly available (absent rights to inspect registers etc at an entity’s registered office, which remain unchanged)</p>
Entities will need to appoint a locally resident “nominated person” to act as the main interface between the JFSC and the entity	This is a new requirement, but for most clients will not be a material change as this role will be fulfilled by their existing regulated corporate services provider
Entities will need to file an annual confirmation statement to confirm the accuracy of the information on the new register, which replaces the requirement to file an annual return	Certain entity types (for example companies) were required to file annual returns containing broadly similar information, save that annual confirmation statements are now required to contain significant persons information (only public company annual returns were previously required to include director information)
Entities will be required to make periodic filings to keep the information on the register up-to-date	This is a new requirement, though in relation to beneficial owners is consistent with the pre-existing requirement to notify material changes of beneficial ownership to the JFSC as financial services regulator

Timetable

The following summarises the key timetable for implementation of the new law and associated actions required by entities (current anticipated dates, which may be subject to change):

Position under new law	Summary of changes
6 January 2021	New law comes into force
No later than 6 April 2021	All in-scope entities required to appoint a nominated person
No later than 30 June 2021	<p>All in-scope entities required to:</p> <ul style="list-style-type: none"> • update the new register with the information that will be provided in their first annual confirmation statement; and • file that annual confirmation statement (instead of a 2021 annual return)
Not before 1 October 2021	Details of all “significant persons” of entities will be made public (subject to exceptions)
2022-2023	Once an EU consensus has been reached on public disclosure policy, certain beneficial owner information may become publicly available

Public versus private information

Information on significant persons will be made publicly available on the JFSC’s registry website, subject to exceptions, but not before 1 October 2021. The information to be made public will relate to current significant persons only.

Nominated person information will not be made publicly available, nor will information on who has nominated a “nominated director”.

Beneficial owners

The new law requires specified details of all direct or indirect beneficial owners of entities to be submitted to and held on the register.

Who are “beneficial owners”?

The definition of “beneficial owner” within the new law is very wide, covering any individual who ultimately owns or controls the entity or on whose behalf a transaction is being conducted by the entity, and includes any individual who exercises ultimate effective control over the entity, in each case whether directly or indirectly.

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This wide definition enables the scope of who is or is not considered a beneficial owner for the purposes of reporting to be adjusted over time through JFSC guidance, to ensure that the new law is and remains compatible and consistent with the international approach without the requirement to amend primary or secondary legislation.

The current JFSC guidance on beneficial owners is available here: [Beneficial ownership information – Jersey Financial Services Commission \(jerseyfsc.org\)](https://www.jerseyfsc.org/beneficial-ownership-information)

At the time of writing the JFSC has only published detailed guidance covering the position where an entity is in receipt of services provided by a Jersey regulated service provider. If and when detailed JFSC guidance is provided in relation to other entities we will update this note.

The following summarises the JFSC’s current guidance:

Nature of a beneficial owner

- Subject to exceptions, a beneficial owner must be an individual (ie a natural person)
- Those exceptions are (broadly) where the entity is:
 - a. listed on a regulated market;
 - b. wholly-owned by an entity listed on a regulated market;
 - c. wholly-owned by a specified category of Jersey regulated entity; or
 - d. state-owned

Who is a beneficial owner?

- A person is a “beneficial owner” if that person:
 - a. has a direct or indirect material beneficial ownership interest in the entity; or
 - b. can exercise control over the entity
- This “looks through” legal ownership to ultimate beneficial ownership or, where no person can be identified as having a material beneficial ownership interest, to those persons who control the entity

Material beneficial ownership interests

- For the purposes of establishing an entity, the materiality threshold is **10%**
 - For the purposes of ongoing reporting of changes, the materiality threshold is **25%**
 - Where a Jersey regulated service provider has determined that an entity, beneficial owner or controller is higher risk, the materiality threshold may be reduced
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Determining who is a beneficial owner

- To determine who is reportable, a “three tier test” should be applied
- Each “tier” is applied in turn until a reportable person is identified
- The “three tier test” is summarised by the JFSC in its guidance as follows:

Tier 1

Each individual with a material controlling ownership interest in the capital of the company (through direct or indirect holdings of interests or voting rights) or who exerts control of the company through other ownership means.

Tier 2

To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control over the company through other means.

Tier 3

Where no individual is otherwise identified under this section, individuals who exercise control of the company through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).

The current JFSC guidance provides examples explaining how the above should be applied in various circumstances and for various entity types, including entities owned by trusts.

The beneficial owner reporting requirements include specific provisions dealing with where legal title to equity securities (or equivalent) is held by a nominee (not being a locally regulated nominee) on behalf of a third party beneficial owner, although that information would generally already be required to be disclosed within general beneficial owner information.

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Information required

Subject to the exceptions below, the following information is required to be provided to the JFSC in relation to beneficial owners:

- Name and any former name or other names by which the individual is or was known
- Correspondence address
- Residential address
- Nationality
- Occupation
- Gender
- Date of birth
- Place and country of birth

Entities that are listed on a regulated market, and entities that are wholly-owned by an entity or organisation that is listed on a regulated market, are exempt from the obligation to file and update beneficial owner information and confirm its accuracy in their annual confirmation statements if they instead provide specified information in relation to the listed entity / the entity's listed parent (as applicable).

A similar exemption applies where an entity is wholly-owned or controlled by a registered person under Jersey's financial services law or is state-owned.

Interaction with financial services reporting

Reporting of beneficial owners and controllers to the JFSC as financial services regulator is currently undertaken pursuant to the consents issued to entities under the Control of Borrowing (Jersey) Order 1958 (COBO consents).

In due course (anticipated to be later in 2021) the JFSC will be issuing new COBO consents to in-scope entities which integrate reporting obligations with those under the new law.

Until that time, the JFSC has confirmed that, provided an entity has complied with the new law, it will be deemed to have complied with its COBO consent in relation to the provision of beneficial owner and controller information to the JFSC (including where a prior consent would otherwise be required under the COBO consent). This will avoid the need for double-reporting.

For the avoidance of doubt:

- Given LPs are outside the scope of the new law their COBO consents and associated reporting / consent requirements are unaffected.
- The new law does not affect other regulatory disclosure or consent requirements, for example where an entity is licenced to undertake regulated financial services business

Significant persons

The new law requires specified details of "significant persons" of entities to be submitted to and held on the register.

Who are "significant persons"?

The following categories of persons are significant persons:

Type of entity	Significant persons
Company	A director or secretary of the company, or any other officer purporting to act in a similar capacity
Foundation	A member of the council of the foundation
ILP	A general partner of the ILP
SLP	A general partner of the SLP
LLC	A manager of the LLC or, if there is no manager, the members involved in the management of the LLC
LLP	A limited partner participating in the management of the LLP (being a person who is able to cause the LLP to take a particular action)

Information required

The following information is required to be provided to the JFSC in relation to significant persons:

Type of significant person	Information
Individual	<ul style="list-style-type: none">• Name and any former name or other names by which the individual is or was known• Correspondence address• Residential address• Nationality• Occupation• Date of birth• Place and country of birth
Jersey entity	<ul style="list-style-type: none">• Type of entity• Registered name and number• Registered office or business address• Date of incorporation or establishment

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Any other organisation	<ul style="list-style-type: none"> • Type of organisation • Registered name and number • Jurisdiction of incorporation or establishment • Registered office or business address • Date of incorporation or establishment
Nominee director	Name of that nominee director's nominator

Publicly available information

The following information on significant persons will be made available to the public via a publicly searchable part of the register:

Type of significant person	Information to be made public
Individual	<ul style="list-style-type: none"> • Name • Month and year of birth • Correspondence address • Nationality • Occupation
Jersey entity	<ul style="list-style-type: none"> • Type of entity • Registered name and number • Registered office or business address • Date of incorporation or establishment (and, if applicable, the date on which the entity ceased)
Any other organisation	<ul style="list-style-type: none"> • Type of organisation • Registered name and number • Jurisdiction of incorporation or establishment • Registered office or business address • Date of incorporation or establishment (and, if applicable, the date on which the entity ceased)

As noted above, the information to be made public via the register will relate to then-current significant persons.

There are certain exceptions to the making of such information public, as follows:

- Information on the following categories of significant persons will not be made publicly available:
 - a. Any significant person who is under the age of 18 years
 - b. Any person who is a significant person by virtue only of being a secretary to a company
 - c. Any person who is a significant person by virtue only of holding a share in a specific category of local residential property holding company
- On application to the JFSC by (ordinarily) the nominated person or (exceptionally) the subject of the information, where:
 - a. 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; or
 - b. 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; or
 - c. the information relates to a subject who lacks capacity to manage their own affairs; or
 - d. there are exceptional circumstances that justify the making of the application

Nominee directors

FATF Recommendation 24 requires a jurisdiction to deal in some way with what are termed "nominee directors" (by prohibiting them, by requiring their and their nominator's details to be disclosed or a register, or in some other way).

The concept of a "nominee director" does not fit well with Jersey company law (or indeed the company law of many other jurisdictions, including the UK), as a person either is or is not a director at law, and either is or is not subject to the full spectrum of directors' duties.

Jersey has opted for a disclosure requirement and, given the way Jersey company law operates, has used a narrow definition of "nominator" and "nominee director", as follows:

- "nominator" means a person who instructs (directly or indirectly) a second person on the actions that that person is to take in that person's capacity as director of a company
- "nominee director" means a director of a company who in that capacity agrees to act routinely and without discretion on the direct or indirect instructions of a nominator, whether or not that director is subject to a formal nominee arrangement

It is important to note that the definitions above means that, provided a director exercises discretion (and does not simply do whatever he or she is told by the nominator without exercising discretion on a routine basis), the director would not be a "nominee director".

A key consequence of this is that bona fide appointments of directors in the ordinary course will not give rise to a nominee

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director / nominator relationship, and will not require disclosure. This would include examples such as:

- Directors appointed by a specific shareholder to represent them on the board (for example where an investor appoints a director to the board of an investee company)
- Professional directors appointed by a sole shareholder or specific shareholders
- Directors appointed by a sole shareholder

We do not therefore anticipate any material number (or any) nominee director disclosures being made. Where they are, this may indicate a wider issue that could have adverse legal, tax and/or regulatory consequences.

Nominated persons

Entities must appoint a locally resident “nominated person” to act as the main interface between the JFSC and the entity.

A nominated person must be one of the following categories of persons:

- A significant person of the entity who is ordinarily resident in Jersey
- A person registered to carry on certain categories of trust company business or fund services business under Jersey’s financial services law
- A lawyer or accountant who is ordinarily resident in Jersey and who carries on business requiring it to comply with Jersey’s anti-money laundering regime

For most clients the requirement to appoint a nominated person will not be a material change, as that role will be fulfilled by their existing corporate services provider.

An entity’s nominated person is authorised by the entity to provide to the JFSC all information required to be provided under the new law and the legislation governing the entity type (for example the Jersey companies law for a company).

It is also the nominated person who may (normally exclusively) apply to the JFSC to make information in relation to a person unavailable for public inspection.

The following information is required to be provided to the JFSC in relation to nominated persons:

Type of nominated person	Information
Individual	<ul style="list-style-type: none"> • Name • Address • Email address

Entity	Information
	<ul style="list-style-type: none"> • Type of entity • Name • Registered address • Registered number

Information on who is the nominated person of any entity is not within the scope of information that will be made available for public inspection.

Annual confirmation statement

Under the new law, entities are required to file an annual confirmation statement to confirm the accuracy of the information on the register, which replaces the requirement to file an annual return.

Other than the first annual confirmation statement following the new law coming into force, which must be filed by 30 June 2021, annual confirmation statements must be filed no later than the end of February of the same year. Unlike annual returns, annual confirmation statements confirm that the information on the register is current as at the date of filing (rather than as at 1 January of the relevant year).

The information to be contained in an annual confirmation statement is as follows:

Type of entity	Information
All entity types	<ul style="list-style-type: none"> • A statement verifying that the beneficial owner information, significant person information and any other prescribed information provided to the JFSC in relation to the entity is accurate as of 1st January of the year in which the statement is being provided • Registered address or business address (whichever is the case)
Par value company	<ul style="list-style-type: none"> • Name and address of each member who holds not less than one per cent in nominal value of all the issued shares of a class • Class and number of shares that are held by each such member • Number of members who each hold less than one per cent in nominal value of all the issued shares of a class • Nominal share capital • 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 • Number of shares of each class that have been issued

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No par value company	<ul style="list-style-type: none"> Name and address of each member who holds not less than one per cent in number of all the issued shares of a class Class and number of shares that are held by each such member Number of members who each hold less than one per cent in number of all the issued shares of a class Limit (if any) on the number of shares of each class authorised to be issued Number of shares of each class that have been issued
Company with a guarantor member	<ul style="list-style-type: none"> Name and address of each guarantor member Maximum amount that is guaranteed by each guarantor member
LLP	<p>Confirmation as to whether:</p> <ul style="list-style-type: none"> The secretary has received from the LLP any specified solvency statement made on or after 1 March of the previous year The LLP has provided to the secretary accounting records or any return under Article 11 of the Jersey LLP law and, if so, whether the LLP has indicated that it has provided all the records that it is required to provide under Article 11 of that law

Other consequential law changes

As noted above, the new law makes certain consequential changes to the laws governing the applicable entity types. Notable changes are as follows:

- The Jersey companies law is amended to expressly state that bearer shares are prohibited (which is consistent with the settled view on this point in any event)
- Foundations are required to publicly file an abridged version of their regulations

General exemptions

Certain general exemptions from the requirement to comply with the new law apply to certain Jersey court officers and Jersey.

Ongoing updates

Entities are required to notify the JFSC of any change to beneficial owner or significant person information previously supplied to the JFSC within **21 days** of becoming aware of the change.

The same requirement applies where the entity becomes aware of errors or inaccuracies in information previously provided.

Entities that are listed on a regulated market are not required to periodically update beneficial owner information.

Remedies and new offences

Certain failures by an entity in complying with the provisions of the new law can result in it being struck off the register, with a court order required to reinstate it.

The new law also creates several new criminal offences. Importantly, it is an offence to knowingly or recklessly provide to the JFSC, a nominated person or any other person entitled to information under the new law information that is false or misleading in a material particular.

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