

Financial Services (Disclosure and Provision of Information) (Jersey) Law: impact on Jersey foundations

Service area / [Trusts and Private Wealth](#)

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The Financial Services (Disclosure and Provision of Information) (Jersey) Law 202 (the '**Disclosure Law**') was adopted by the Government of Jersey on 14 July and is currently awaiting approval from the Privy Council. We anticipate that the Disclosure Law will come into force towards the end of 2020.

As noted in our [Update on Jersey register of beneficial owners, controllers and significant persons](#), the initial impact of the Disclosure Law will be relatively minimal for most entities given that Jersey already has a central register of beneficial owners and controllers of entities. Beneficial ownership information will continue to remain private until international consensus is reached on the level and type of public information disclosure.

Impact on Jersey foundations

A notable change for one entity in particular is that once the Disclosure Law comes into force, Jersey foundations will be required to file an abridged version of their regulations, which will be publicly available along with the foundation's charter (which is already available to the public).

The "abridged regulations" are those parts of a foundation's regulations comprising the information required to be included in the regulations under Articles 12 and 14 of the Foundations (Jersey) Law 2009 (the '**Foundations Law**'), but, importantly, not including any information from which a person can or may be identified (or any other information prescribed by Regulations passed by the Government of Jersey).

Articles 12 and 14 of the Foundations Law provide that the regulations of a foundation must:

- establish a council (to administer the foundation's assets and to carry out its objects) and provide for the retirement, appointment, removal and remuneration of council members;
- set out how decisions are to be made by the council and, if applicable, specify any decisions that require the approval of another person and the identity of that person;
- set out the functions of the council, and, if they must or may be delegated or exercised in conjunction with any other person, the extent to which this must or may be done;
- set out a procedure that ensures that a qualified person (i.e. a person registered under the Financial Services (Jersey) Law 1998 to carry on trust company business that permits the provision by the person of the services mentioned in Article 2(4)(d) of that law) is appointed to be the qualified member of the council (the foundation's council must include a qualified person (known as the qualified member) at all times) as soon as reasonably practicable if the qualified member dies, retires or otherwise ceases to act or to be able to act; and
- identify the initial guardian of the foundation (who must "*take such steps as are reasonable in all the circumstances to ensure that the council of the foundation carries out its functions*") and provide for the retirement, appointment and remuneration of guardians.

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Comment

The information required to be disclosed under the Disclosure Law in a foundation's abridged regulations is no different to the information contained in a company's articles of association (which are available to the public).

The Disclosure Law specifically provides that the Jersey Financial Services Commission may publish information and advice to provide guidance on the information that should be included or excluded from the abridged regulations. Such guidance will clearly be of assistance to those that administer or advise in relation to Jersey foundations and it is hoped that such guidance will be available at or around the time the Disclosure Law comes into force.

In the meantime, for new foundations, it is possible to draft the regulations so that personal details are not inadvertently disclosed in the abridged regulations. For example, details of the council member(s) and the guardian can be included in separate schedules to the regulations, or even in a separate register (akin to a register of directors for a company).

For existing foundations, it is anticipated that the guidance will explain the appropriate approach in circumstances where the provisions of the regulations relating to the council and the guardian contain personal information (e.g. redaction). It may also be possible to amend the regulations so that such information is not included in the sections that will be made available on the public register.



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