Jersey Finance

Delivering Insight ▪ Driving Innovation

A Transparent Outlook

Jersey has collected information about the beneficial owners of companies on a robust central register since 1989. Although the register is not made public, relevant information is made available on request to law enforcement and competent authorities.

Factsheet

Introduction

In 2013, the UK Government made improvement in the transparency of the ownership and control of legal persons and legal arrangements a cornerstone of its G8 Presidency.

The UK Government considers that a public register of company beneficial ownership would:

- help tackle tax evasion, money laundering and terrorist financing
- improve the investment climate and make doing business easier
- ensure that businesses, investors, employees and consumers have trust in UK companies
- be good for both business and growth

The UK does not currently hold a central register of beneficial ownership.

The UK Government has encouraged Jersey, along with others, to join the UK in implementing a public register of beneficial ownership.

Jersey Finance does not consider that a public register of beneficial ownership would achieve the intended aims set out above, but instead will damage jobs and growth in the UK.

The G8 appears, in remarks published following its June 2013 meeting, to acknowledge that the existing Financial Action Task Force (FATF) Recommendations are the appropriate global benchmark for verification of client identity. The FATF Recommendations do not require public registers of company beneficial ownership.

Jersey has collected information about the beneficial owners of companies on a robust central register since 1989. Although the register is not made public, relevant information is made available on request to law enforcement and competent authorities.

The information contained within the register is subject to strict and robust validation by regulated professionals, meaning that the ultimate owners of every company registered in Jersey is known and monitored. This is an important distinction from other jurisdictions.

The ‘Jersey Model’, a central register combined with the regulation of trust and company service providers, is a business-friendly system of beneficial ownership reporting which is effective in preventing the potential misuse of companies, promotes data quality and minimises concerns regarding privacy and personal safety.

We consider that a public register of beneficial ownership reliant on self-reporting would result in the degradation, rather than the improvement, of data quality. Individuals misusing companies for the purposes of engaging in criminal activity would be unlikely to comply, concealing their interests and thus eroding the quality of data.

A public register of beneficial ownership information also has the potential to detrimentally impact business and growth. There are legitimate reasons why individuals would not want information about their ownership of a company made publicly available and, if the UK is not an attractive place to form companies, we would expect to see a shift away from the use of UK incorporated companies to foreign incorporated companies, which would not be covered by UK rules. We consider this would reduce corporate ownership visibility, potentially lower tax revenues for the UK and result in a reduction in investment into the UK via, for example, the Crown Dependencies and Overseas Territories.

Given that public registers of beneficial ownership, such as the UK are enacting, will erode data quality, negatively impact economic and business growth, and deter investment into the UK, our view is that Jersey should not follow suit. Instead a regulatory framework around company formation and beneficial ownership, such as Jersey currently has, would better succeed in fighting financial crime and deterring the illicit use of companies.

Recent developments

On 14 April 2016, a letter signed jointly by representatives of the Governments of the UK, Germany, France, Italy and Spain, urges international cooperation to tackle tax dodging and illicit finance by what they describe as firm collective action on increasing beneficial ownership transparency. What is proposed is that information on the beneficial ownership of companies, trusts, foundations, and other relevant entities be automatically exchanged between relevant authorities similar to the way in which information is exchanged under the Common Reporting Standard. A pilot initiative between the five countries has been announced but the stated aim is for this to become a global standard.

On 11 April 2016, Jersey’s Chief Minister announced that he had agreed to sign an exchange of notes with the UK government reinforcing the existing arrangements for providing beneficial ownership information to law enforcement and tax authorities. Jersey has been sharing beneficial ownership information with authorities, such as the National Crime Agency, for nearly 30 years and the signing of this agreement represents the formalisation of an existing practice. However, the new agreement involves the use of technology to speed up responses to requests, requiring non-urgent queries to be dealt with in 24 hours and urgent queries in one hour.

Recommendation 24 – Transparency and beneficial ownership of legal persons

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should 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. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

It is expected that the FATF Recommendations will continue to be seen as the global standard. However, they do not require public registers of beneficial ownership.

Global standard

Following the 2013 G8 commitments, in 2014 the G20 set out that it considered financial transparency, in particular the transparency of beneficial ownership of legal persons and arrangements, a high priority.

In this regard, the G20 showed leadership by example through endorsing a set of core principles on the matter. These contained a commitment for all G20 countries to develop their own National Action Plans by 2016.

The G20 High Level Principles on Beneficial Ownership Transparency are consistent with FATF Recommendations.

The FATF Recommendations are widely acknowledged as being the appropriate global benchmark for verification of client identity; reference is frequently made to compliance with them when evaluating the transparency of a jurisdiction, and they have influenced EU Money Laundering Directives.

FATF currently has 35 member jurisdictions and two member regional organisations (being the European Commission and the Gulf Cooperation Council). Of the G20 countries, 16 are members as well as, among others, Hong Kong, Switzerland and Luxembourg.

The FATF recommendations require jurisdictions to ensure that adequate and accurate information on the beneficial ownership of corporate vehicles is available for access by competent authorities in a timely fashion. The specific recommendation in respect of legal persons is Recommendation 24.

Public Registries – a new global standard?

At the Open Government Partnership summit in 2013, the UK Prime Minister announced that the UK would ‘establish a central register of company beneficial ownership’ and that it was going to be open to the public.

Following this, legislation was passed in March 2015 introducing a public register of beneficial ownership and obliging all UK registered companies to provide information on ultimate beneficial owners via the public register.

Due to go live in June 2016, it will mark the UK as the first major country to establish a public central beneficial ownership registry.

Only two other countries have also committed to a public register of beneficial ownership information, and whilst the G20 countries have committed to tackling illicit finance, the majority have not yet declared their position on whether the public registers are the most appropriate way of achieving this common objective.

Arguments against public registries

Self-Reporting

Implementing a public register of beneficial ownership which is based on the premise of self-reporting, such as the UK are putting in place, is likely to be ineffective.

People misusing companies for the purposes of engaging in criminal activity are unlikely to comply with the requirements on a self-reporting basis.

Criminals can be expected to conceal their interests

As such we consider it questionable as to whether a central register whose information is provided through self-reporting will meet the requirements of FATF Recommendation 24, which requires competent authorities to be able to obtain adequate, accurate and current information on the beneficial ownership of legal persons created in the country.

Impact on private companies

Proponents of public registries suggest that they make it easier for people to identify who really owns companies and therefore who they are transacting with.

However, this register is not just being put in place for trading companies, but also companies such as private investment holding companies legitimately incorporated to hold investments on a personal basis with no wider business engagement.

Therefore, the argument of ‘who one is trading with’ is of less relevance.

First Mover Disadvantage

The UK are committed to moving to a public register of beneficial ownership.

To date there are only two other countries who have committed to a public register.

This reduces the incentive for other jurisdictions to reciprocate as they would already be in receipt of the benefit, i.e. the information, but without incurring the cost element in terms of collecting and sharing their own beneficial ownership information.

Measures such as a publicly available register of beneficial ownership information should only be adopted on a coordinated widely applied multilateral basis.

There are also practical reasons meaning that the success of the model would be restricted should it not be adopted at a global level. The purpose of a public register of beneficial ownership is to be able to trace ownership of companies to natural persons. However, corporate structures frequently involve groups comprising parent, subsidiary and affiliated entities in multiple jurisdictions, and so unless each of these jurisdictions had in place a public register, finding out who the ultimate beneficial owner is would not be possible.

Unintended criminal consequences

One of the main objectives cited in support of increased transparency of company ownership is to reduce crime in terms of tax evasion, money laundering and terrorist financing.

However, there is a risk that the introduction of public registers will actually increase instances of crimes such as identity theft, cyber-crime and extortion. With public registers making personal, and by extension family, information readily available, legitimate concerns exist, particularly in certain cultures, in relation to physical safety with kidnap and ransom risks being heightened.

Therefore, not only may public registers prove ineffective in tackling the crimes they supposedly target, but they could give rise to different types of criminal activity.

Human Rights Impact

Article 8 of the UK’s Human Rights Act 1998 is as follows ‘Everyone has the right to respect for his private and family life, his home and his correspondence.’

Public registers could be argued to be an unnecessary and disproportionate intrusion of an individual’s right to privacy.

There are alternative ways by which the same ends can be met (see section 8) but without the violation of human rights.

Automatic exchange of information (AEOI)

There is a global trend towards AEOI, which provides the tools that jurisdictions need in order to tackle tax evasion.

The automatic receipt of tax payer information by relevant authorities in a person’s home jurisdiction enables that authority to take appropriate action to ensure any tax they are due is able to be collected.

Given this AEOI via gateways such as US/UK FATCA, the OECD Multilateral Convention on Mutual Tax Assistance and the OECD’s

Common Reporting Standard (CRS), no additional benefit would be obtained from a public register of beneficial ownership information. This has seemingly been supported by the recent announcement that, rather than each of them introducing public registers of company beneficial ownership, the competent authorities of UK, France, Germany, Italy and Spain will instead automatically share beneficial ownership information.

Reduced transparency and UK company fees

As noted above, the UK register only covers UK incorporated companies. This presents two risks:

i. Criminals who had been availing themselves of UK incorporated companies may simply lie in their declaration of the company's beneficial owner, or they may seek to undertake their activities through a non-UK company. This will result in UK law enforcement authorities having less visibility than they did under the old regime.

ii. Legitimate business persons who simply value their privacy may undertake activity through a non-UK incorporated company. This should not impact on the trade itself or the tax liability of the company, but it will decrease the number of UK incorporated companies, and therefore fee income for Companies House.

Together, these will serve to (counterintuitively) reduce the transparency of activities being undertaken in the UK and negatively impact fee revenue generated from UK incorporated companies.

The Jersey Model

In Jersey, Trust and Company Service Providers (TCSPs) are regulated by the JFSC.

Jersey companies are only able to be incorporated either by Jersey resident individuals or a TCSP.

Costs of the verification process are also largely incurred by the private sector.

Experts (TCSPs) are required to be involved in the company incorporation process, so that any difficult judgement calls (including on beneficial owners) are resolved by experienced professionals.

Errors or deliberate misstatements can lead to fines and termination of licences. Therefore while data accuracy is not guaranteed, it is significantly enhanced.

On company incorporation Jersey's regulatory regime requires not only identification of beneficial owners, but also verification of such identity in line with FATF requirements.

It is our view that, in order to ensure that the international requirement of adequate, accurate and current information on beneficial ownership in accordance with FATF standards is met, the following framework is required;

- An active company registry staffed by experts that not only calls for information on beneficial ownership on incorporation but also runs that information through independent checks and has the power to refuse incorporation when the activities/beneficial owners are considered particularly 'sensitive' (for example if they are deemed to pose a particular reputational risk to the Island).
- The licensing and active supervision of TCSPs with requirements to ensure that information on the beneficial ownership of the companies they administer is adequate, accurate and current.
- Strict limitations placed on who may apply to incorporate a company.
- Legislation to ensure that, in accordance with the international obligations entered into, the information that is available can be readily provided to tax authorities and law enforcement authorities.

The Jersey Model - A different approach

Jersey is one of the few jurisdictions with an existing effective, fit-for-purpose, central register of company beneficial ownership and is a world leader in this regard.

The information contained within the register is subject to strict and robust validation by regulated professionals.

The register, together with other legal and regulatory requirements, enables Jersey to provide law enforcement and tax authorities with 'adequate, accurate and timely' data on the beneficial ownership of Jersey companies – the specific requirement of the FATF Recommendations, however the register is not available publicly.

In line with the FATF Recommendation, the following system operates in Jersey:

- Statutory requirements are placed on companies, foundations and incorporated partnerships to keep information on shareholders, council members and partners at their registered offices.
- The Island's financial services regulator, the Jersey Financial Services Commission (JFSC), collects information on the ultimate beneficial owners of companies at the time of incorporation.
- That information is kept accurate and current either by the JFSC or by the relevant TCSP. All TCSPs are required to apply preventive measures under Jersey's anti-money laundering laws and are regulated and supervised by the JFSC for compliance with those measures.
- Taken together, the effect is that information on beneficial ownership is available at a specified location in Jersey, being: (i) the registered office of the company (ii) and/or premises of the JFSC; and/or (iii) the office of a regulated TCSP.

Company incorporation consent

Companies are only able to be incorporated in Jersey with JFSC consent.

Prior to giving consent, the JFSC requires upfront disclosure of the name, address, date of birth and occupation of each of the ultimate beneficial owners who are to have at least a 10% interest in the company immediately following registration.

The JFSC enforce strict limitations on who may apply to incorporate a company.

Consent for incorporation will only be granted where an application is received from:

i. A TCSP that is registered (and regulated as such) to form companies or partnerships under the Financial Services Law; or

ii. A Jersey resident individual. In this case, the individual must present evidence of identity to the Commission at the time of application (usually a passport and utility bill less than three months old).

Information verification

Information collected on beneficial ownership is subject to a number of independent checks, e.g. Consolidated List of persons subject to sanctions legislation in Jersey, WorldCheck, Internet and regulatory databases maintained by the JFSC.

Ongoing monitoring

There is a legislative requirement that TCSPs must also apply ongoing monitoring during a business relationship. This includes ensuring that documents, data or information obtained under identification measures, including regarding ultimate beneficial ownership, are kept up-to-date and relevant by undertaking regular reviews of existing records.

In order for the JFSC to be able to enforce and supervise adherence to these requirements, the JFSC has a statutory power to conduct routine examinations of businesses carrying on regulated trust and company services.

Access to information by competent authorities

Following due process, the Bailiff (being Jersey's chief judge) may require a person, including the JFSC or a TCSP, to produce material to law enforcement within such a period as may be specified.

Additionally, through information held at the JFSC, law enforcement and other competent authorities are able to link a legal person with a specific TCSP, thus locating beneficial ownership information.

Legislation is in place to ensure that, in accordance with international obligations, information that is available can be readily provided to tax authorities and law enforcement authorities when sought. Specifically in respect of the UK-Jersey relationship, this has been formalised through the recent Exchange of Notes between the UK and Jersey which will provide for non-urgent queries to be dealt with inside 24 hours and urgent queries within one hour.

Additionally, in Jersey it is a requirement that beneficial ownership information is obtained on all companies administered in Jersey wherever they are incorporated in the world. This information is available for exchange between governments in appropriate circumstances but is not made public.

Effective system

From Jersey's experience it is considered that to ensure the international requirement of adequate, accurate and timely information on beneficial ownership is met most effectively, the process should include the following:

An active company registry staffed by experts that not only calls for information on beneficial ownership on incorporation but also runs that information through independent checks and which has the power to refuse incorporation when the intended commercial activities/beneficial owners are considered 'sensitive'.

A broad but clearly defined definition of beneficial ownership;

The licensing and active supervision of TCSPs with requirements to ensure that information on the beneficial ownership of the companies they administer – whether incorporated in Jersey or elsewhere - is adequate, accurate and current;

Strict limitations placed on who may apply to incorporate a company;

Legislation to ensure that, in accordance with the international obligations entered into, the information that is available can readily be provided to tax authorities and law enforcement authorities when sought;

A power to strike off a company where it is no longer provided with any company administrative, trustee or fiduciary service by a TCSP.

International Endorsements

Jersey is not a member of FATF. However, Jersey is a member of MONEYVAL, a FATF-style regional body which has 36 member jurisdictions and which monitors and promotes the effective implementation of the FATF Recommendations.

The International Monetary Fund (IMF), in its 2009 assessment of Jersey's compliance with the (then) FATF Recommendations, found that Jersey was fully compliant with Recommendation 33 (legal persons) and largely compliant with Recommendation 34 (legal arrangements). Jersey's Action Plan to prevent the misuse of legal persons and legal arrangements, published in June 2013, committed the Island to fully implementing the revised FATF standards in respect of improving the transparency of the ownership and control of legal persons and legal arrangements.

The Global Forum on Transparency and Exchange of Information for Tax Purposes has recently rated Jersey as largely compliant overall, and Jersey was found to be fully compliant in meeting the standard for the availability of ownership information.

Jersey has been cited by the World Bank in the StAR project report "The Puppet Masters" as an exemplar of good practice in capturing, at company registry level, the details of beneficial ownership of companies.

The same StAR report noted that 12 Jersey incorporated vehicles had been involved in grand corruption cases, but this figure is small in comparison to the circa 32,000 companies that are on the Jersey company registry at any one time. It is further noted that the 'Grand Corruption Database Project' used a wide time horizon, going back 30 years to 1980, since which time Jersey's AML and regulatory laws have been extensively modernised.

Jersey is also fully aligned with the standards required by the EU Anti-Money Laundering Directive and was one of the first international finance centres to become a full signatory to the IOSCO Multilateral Treaty, an international benchmark for cross border co-operation between regulators. Jersey was also an early adopter of the Common Reporting Standard, the global standard in Automatic Exchange of Information, and US FATCA.

Further evidence of Jersey's world class reputation is outlined below:

- Jersey has signed up to the Convention on Mutual Administrative Assistance in Tax Matters, which came into force in Jersey on 1 June 2014.
- On 29 November 2013, in a joint statement to the OECD, Jersey and over 30 countries committed themselves to the early adoption of the CRS. The CRS contains the reporting and due diligence standard that underpins the automatic exchange of financial account information.
- Jersey's Chief Minister received a letter of congratulations from Angel Gurria, Secretary General of the OECD, dated 25th July 2013, concerning Jersey's position on international tax transparency.
- Mr Gurria made particular reference to the joint statement issued by the Crown Dependencies on 15 June 2013, in which the Island committed to join the pilot initiative of multilateral automatic tax information exchange launched by the UK and four other EU Member states, to publish an action plan on beneficial ownership and to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.
- The results of Jersey's 2011 OECD Peer Review (including the 2014 Supplementary Report) found 'the Jersey authorities are fully committed to transparency and exchange of information for tax purposes[1]' and 'Jersey's practices to date have demonstrated a responsive and cooperative approach'.
- Jersey was rated by the IMF in 2009 as one of the best global International Finance Centres (IFCs).
- Jersey was one of the first IFCs to be placed on the OECD 'White List' as having implemented internationally agreed tax standards in 2009.
- Jersey was invited by the French Chair of the OECD Peer Review Group to be the Vice Chair, alongside Japan, Singapore and India in 2009.
- Jersey received a favourable British Crown Dependencies Review (conducted by UK government – the Foot Review of 2009).
- Tax evasion is illegal in Jersey and has been since 1999. It is also a criminal offence to facilitate or engage in tax evasion.
- Jersey has captured beneficial ownership information on a central register since 1989. The Registrar of Companies (part of the Jersey Financial Services Commission) maintains a central register of beneficial ownership of companies. In addition, Jersey regulates those who form and administer companies, trusts, partnerships and foundations. They are required by statute to maintain up-to-date and accurate information on the ownership of companies. All the information held in the Island is available to tax authorities and law enforcement agencies on request.
- The Jersey authorities have signed:
  a.37 Tax Information Exchange Agreements (TIEAs)
  b. 8 Double Taxation Agreements (DTAs) that follow the OECD's model convention for information exchange
  c. 12 other, partial DTAs that cover income of certain individuals (such as employment and pension income) and operations of ships and aircraft.

Taken together, these arrangements assist in building good quality business with those countries and are a reflection of Jersey's commitment to comply with international standards.

1 http://star.worldbank.org/star/publication/puppet-masters

About Jersey Finance

Jersey Finance has been run as a not-for-profit organisation since it was formed in 2001. It represents and promotes Jersey as an international financial centre of excellence.

It is funded by members of the Island's finance industry and the States of Jersey government, and has offices in Dubai, Hong Kong, Mumbai and New Delhi along with representation in London and a CBBC Launchpad in Shanghai.

While Jersey Finance commissioned this work, it remains the independent work of Professor Jason Sharman.

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