PUBLIC REGISTERS OF BENEFICIAL OWNERSHIP

JERSEY FINANCE LIMITED

31 MARCH 2017

Contact:
Geoff Cook
Chief Executive Officer
Jersey Finance Limited
geoff.cook@jerseyfinance.je
01534 836011

1. INTRODUCTION

1.1. Jersey Finance Limited (**Jersey Finance** or **We**) represent and promote the interests of Jersey as an international finance centre of excellence. We are run as a not-for-profit organisation funded by members of the local finance industry and Jersey's government.

1.2. Whilst Jersey Finance is part-funded by Jersey's government, we are an independent not for profit organisation and the government of Jersey has not contributed to this paper. Any views or opinions expressed in this paper are solely the views of Jersey Finance.

1.3. We submit this paper ahead of consideration of the Criminal Finances Bill 2016-2017 (**the Bill**) by the House of Lords on 3 April 2017. We note the amendments tabled to the Bill relating to the establishment of publicly-accessible registers of ultimate beneficial ownership of companies in the Overseas Territories and/or Crown Dependencies and respectfully seek consideration of the matters set out below.

1.4. We do not consider that the introduction of a public register of beneficial ownership of companies would be in the best interests of Jersey or, in turn, the UK. We have considerable concerns with public registers, particularly where corporate service providers are not regulated, are seeing an increasing move away from such registers internationally and are confident that Jersey's existing model regarding beneficial ownership meets, and exceeds, the standards set by the UK's public register.

2. CONCERNS WITH PUBLIC REGISTERS

Failure to meet international standards

2.1. International standards governing beneficial ownership are widely accepted to be set through the Recommendations published by the Financial Action Task Force (**FATF)**. Specifically, they require that**:**

> *"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."*

2.2. We believe there is a high risk that persons seeking to use UK companies for criminal activity will not comply with the self-reporting mechanism which underpins the UK's register of persons with significant control (**PSC Register**).

2.3. As corporate service providers are not regulated in the UK, verification may occur only through public scrutiny of individual PSC Register entries. Such an approach is sporadic at best and those who intentionally provide incorrect information to conceal their interests will be confident of remaining undiscovered.

2.4. Although the UK has not been assessed against the FATF Recommendations since the PSC Register was launched, we are sceptical that the UK will be assessed as "compliant" with the above noted Recommendation regarding the beneficial ownership of legal persons due to the requirement for information to be accurate.

Unintended criminal consequences

2.5. Public registers may lead to increased instances of crimes such as identity theft, cyber-crime, extortion, kidnap and ransom as personal – and by extension, family – information is made public.

2.6. This was highlighted in the wake of the so-called Panama Papers, when details were published of Emma Watson's use of a BVI company to hold her UK property. The story garnered significant news coverage and allegations quickly appeared. Ms Watson's spokesman subsequently confirmed that:

> *"UK companies are required to publicly publish details of their shareholders, and therefore do not give her the necessary anonymity required to protect her personal safety, which has been jeopardised in the past owing to such information being publicly available… Emma receives absolutely no tax or monetary advantages from this offshore company whatsoever - only privacy."*

2.7. It is evident that public registers risk overlapping between disclosing information that is in the public interest and information which interests the public, potentially with grave consequences.

2.8. Additionally, Article 8 of the European Convention on Human Rights (ECHR) confers the fundamental right to respect for private and family life, home and correspondence. We consider that public registers undermine that right by making personal information available to the public. It appears questionable as to whether public registers can be ECHR compliant.

3. THE JERSEY MODEL

An appropriate alternative

3.1. Irrespective of the concerns that we have with public registers, we submit that Jersey maintains a system of beneficial ownership capture, ongoing monitoring and exchange which, as a minimum, already meets the standards advocated by the UK.

3.2. Jersey companies may only be incorporated with the consent of the Jersey Financial Services Commission (**JFSC**), the body responsible for the regulation, supervision and development of the financial services industry in the Island of Jersey. Such consent will only be forthcoming where an application is received from either a trust and company service provider (**TCSP**) regulated by the JFSC, or from a Jersey resident individual.

3.3. During the incorporation process, the personal details of beneficial owners are collected and verified in accordance with FATF requirements, and submitted to the JFSC. This information is then held in a central register, a process that has been in place since 1989.

3.4. Additionally, TCSPs are required to meet ongoing monitoring requirements, and changes in beneficial ownership information will be required to be submitted to the JFSC within 21 days of knowledge of such a change. In contrast, the UK government has only recently consulted on a proposal to require updates to beneficial ownership information on the PSC Register within six months of a change, and still without the expert verification or regulated corporate service providers.

3.5. Despite the already positive relationship between UK and Jersey law enforcement authorities, in 2016 the Government of Jersey agreed to a more formal mechanism of beneficial ownership information exchange, committing to respond to non-urgent requests within 24 hours and urgent requests within one hour.

3.6. In a situation where Jersey's register provides insufficient information for the purpose of law enforcement, the necessary further information can, upon request, be obtained from the regulated TCSP. Such a supporting pillar does not appear to exist in the UK.

3.7. Jersey's register therefore provides crucial information to authorities, ensuring they have all the material they need to fight tax evasion and other criminal activity, whilst also protecting the personal financial information of individuals and businesses.

International recognition

3.8. Jersey was most recently independently assessed by MONEYVAL and their report, published on 24 May 2016, rated Jersey as 'compliant' or 'largely compliant' in relation to 48 of the 49 FATF Recommendations, the joint highest score amongst all jurisdictions assessed in the MONEYVAL fourth round assessment. By way of comparison, in its last review, the UK scored 36.

3.9. Specifically, Jersey was rated 'largely compliant' in relation to transparency and ownership of legal persons, with MONEYVAL concluding:

> *"Jersey's combination of a central register of the UBO with a high level of vetting/evaluation not found elsewhere and regulation of TCSPs of a standard found in few other jurisdictions has been widely recognised by international organisations and individual jurisdictions as placing Jersey in a leading position in meeting standards of beneficial ownership transparency."*

3.10. The World Bank in their 2011 Report under the Stolen Assets Recovery (StAR) initiative entitled "*The Puppet Masters – How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*" recognised that:

> *"The "Jersey Model" should be upheld as an example of how access to beneficial ownership and control information can be implemented in a jurisdiction."*

3.11. Further examples of independent third party evaluations of Jersey's compliance with international standards are included in Appendix 1.

3.12. For Jersey to move to an alternative beneficial ownership model would be extremely costly and the upside benefits to all parties appear limited, if existent at all in view of the exemplary model already in force.

4. INTERNATIONAL TRENDS

4.1. The FATF does not require that beneficial ownership information is held in a central register, public or otherwise. Indeed, in the interpretive note to the Recommendation on beneficial ownership of legal persons, FATF explicitly states that "*Countries may choose the mechanisms they rely on to achieve this objective*".

4.2. Despite the FATF often being non-prescriptive in explaining how its Recommendations can best be met, one may see an accepted best practice develop where jurisdictions around the world adopt a common approach. This has not been the case for public registers and the UK, despite its best efforts to promote public registers as a global standard, looks increasingly to be in a minority position. The international trend instead appears to be moving away from public registers and, notably, such moves are being taken by jurisdictions and bodies which one would traditionally have expected to be in favour of public registers.

4.3. On 2 February 2017, the European Data Protection Supervisor (**EDPS**) published its opinion on proposed amendments to the Fourth Anti-Money Laundering Directive and commented that public registers "*depart from the risk-based approach adopted by the current version of the AML Directive"* and display *"a lack of proportionality, with significant unnecessary risks for the individual rights to privacy and data protection*." The EDPS went on to conclude that access to beneficial ownership information should only be available "*to entities who are in charge of enforcing the law*".

4.4. On 22 July 2016, the French Constitutional Court suspended the publicly-accessible register of trusts, containing ultimate beneficial ownership information, on the basis that it conflicted with the French Constitution and disproportionately infringed individual's rights to privacy. The French Constitutional Court further held on 8 December 2016 that making country-by-country reporting information public would be unconstitutional on the basis that it jeopardised 'entrepreneurial freedom'.

4.5. Because of the international rejection of public registers, there is a real risk that, should the UK government seek to enforce publicly-accessible registers in the Crown Dependencies and Overseas Territories (**CDOTs**), cross-border financial services business will be lost to rival jurisdictions such as the United States, Hong Kong and Singapore.

4.6. Not only is the quality of beneficial ownership recording less robust in many rival jurisdictions but, if investment flows are interrupted, there could be considerable negative consequences for the UK. It is estimated, for example, that Jersey alone, predominantly because of it being an international financial centre, supports some 250,000 British jobs, adds £14 billion to the UK economy and accounts for one in every twenty pounds invested into the UK. The introduction of a public register would most likely jeopardise a substantial portion of these investment flows.

5. CONCLUSION

5.1. The Jersey model of capturing and recording beneficial ownership information is a well-established and internationally acclaimed alternative to a publicly accessible register of beneficial ownership.

5.2. A positive, and now formal, relationship exists between Jersey and UK law enforcement authorities ensuring the swift exchange of beneficial ownership information to tackle tax evasion, money laundering and terrorist financing.

5.3. While the UK may consider a public register is the mechanism which best enables it to comply with the relevant FATF standard, it is not a direction of travel in which the rest of the world is heading, and it would appear counterproductive to ask that Jersey depart from a model which has been proven to work.

5.4. Jersey Finance would respectfully invite the reader to carefully consider the proposals contained within the Bill in conjunction with the matters set out in this report.

Appendix 1 – Examples of third party assessments of Jersey's compliance with international standards

MONEYVAL

In 2015, Jersey was subject to a Mutual Evaluation by MONEYVAL (the FATF Regional style body for Europe). Jersey was found to be "Compliant" or "Largely Compliant" with 48 out of 49 of the FATF Recommendations.

OECD

In April 2009, the OECD published a list of jurisdictions that had substantially implemented the internationally agreed standard on tax transparency and information exchange; a list of jurisdictions that were committed to the principles; and a list of those not committed - the so-called white, grey and black lists. Jersey was in the "white list".

IMF

Assessed in 2008 under the IMF's Financial Sector Assessment Programme, the report published in September 2009 placed Jersey in the "top division" of international finance centres.

Financial Stability Board (FSB)

The FSB is engaged in the assessment of jurisdictions' adherence to standards on international co-operation and information exchange. In November 2011, Jersey was placed in "Group 1" as a jurisdiction demonstrating sufficiently strong adherence to the relevant international standards.

Global Forum on Transparency and Exchange of Information for Tax Purposes

Jersey was assessed by the Global Forum in 2010 and its assessment report was published in October 2011. The assessors concluded:

> *"Overall, this review of Jersey identifies a legal and regulatory framework for the exchange of information which generally functions effectively to ensure that the required information will be available and accessible… Jersey's practices to-date have demonstrated a responsive and cooperative approach."*

A supplementary report was published in July 2014 which concluded that Jersey's laws and regulations met all nine of the elements making up the standard.

Academic research and practical testing

The *Global Shell Games* project conducted 2011-2012 sought to strength test the regulatory systems of 180 countries by impersonating money launderers, corrupt officials and terrorist financiers. The study found that international finance centres on average performed notably better than OECD countries. Jersey performed particularly strongly, with not a single corporate service provider willing to provide a shell company.

United Kingdom

The 2009 Foot Review, commissioned by the Chancellor of the Exchequer and delivered to HM Treasury, strongly endorsed Jersey's high standards of regulation. It further highlighted the significant contribution the Crown Dependencies make to the liquidity of the UK financial market.