

FinReg

MOURANT OZANNES

FINANCIAL SERVICES & REGULATORY

SPRING UPDATE 2017 - JERSEY

WELCOME



Sarah Huelin & Simon Gould

Welcome to our Spring 2017 update.

In this quarter's edition we consider new sanctions reporting requirements under the United Nations Financial Sanctions (Jersey) Law 2017; an update on Jersey's Register of Beneficial Owners or Controllers; and some interesting new cases, including in relation to UK data subject access requests.

Our Spotlight article focuses on the new JFSC Outsourcing Policy. It identifies key points and dates and, following our discussions with several Jersey financial services providers, some next steps for you to consider.

In the coming quarter, we'll be watching out for appointed day acts, to bring the Bank (Recovery and Resolution) (Jersey) Law 2017 and the Dormant Bank Accounts (Jersey) Law 2017 into force.

We will be hosting an extended Financial Services & Regulatory Forum alongside QEB Hollis Whiteman on 12 June 2017. If you would like to attend please [register here](#). We will host our usual quarterly FinReg Forum on 13 July 2017.

Finally, if you have a couple of minutes to answer the questions arising from our Quick Fire Updates and Spotlight article below, we look forward to hearing from you.

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QUICK FIRE UPDATES

1. UNITED NATIONS FINANCIAL SANCTIONS (JERSEY) LAW 2017

What's it about?

This law has been implemented to make sure that Jersey can comply with its international obligations to put UN financial sanctions measures in place "without delay". It also creates reporting requirements in respect of persons (including prospective clients) designated under the law, and those who have committed sanctions offences under the law.

How does this affect you?

It's important to update your policies and procedures to reflect this law. The changes which are required are likely to be minimal because the reporting requirements are similar to those in the Terrorist Asset-Freezing (Jersey) Law 2011. These reporting requirements should also be communicated to staff. You should also bear in mind that the 'Sanctions' section of the JFSC website (including the JFSC's Financial Sanctions Practice Guidance document) has yet to be updated to reflect this new law.



Fiona Magee

HAVE YOUR SAY: Have you checked that your existing sanctions screening procedures will identify persons who are temporarily designated under this law?

Yes Not yet

2. REGISTER OF BENEFICIAL OWNERS OR CONTROLLERS

What's it about?

Since January 2017, trust companies providing services to companies, limited partnerships and limited liability partnerships (Jersey entities) have been working towards assisting these Jersey entities to notify the JFSC of their beneficial owners or controllers before the 30 June 2017 deadline. The JFSC continues to publish guidance notes and FAQs to address points of uncertainty.

How does this affect you?

The obligation to notify the JFSC of beneficial owner or controller information applies to the Jersey entities themselves. Trust company service providers are, however, expected to have: (i) identified any beneficial owners or controllers in accordance with relevant standards; (ii) appropriate authority to submit the requisite information on behalf of the Jersey entities (usually by reason of being a director or company secretary but, in other cases, may require a power of attorney); and (iii) a role in assisting Jersey entities with the ongoing obligation to keep the information submitted to the JFSC up to date. This may require communication with clients and updates to procedures.



Sarah Huelin

HAVE YOUR SAY: Will you be amending your scope of services and charges to take account of the additional ongoing responsibility for assisting with meeting beneficial ownership or control reporting obligations?

Yes No N/A for my business

3. NEW SECTION OF THE AML HANDBOOK FOR FUNDS AND FUND OPERATORS

What's it about?

The JFSC has published its feedback to a consultation on proposals to provide additional guidance on the application of AML/CFT requirements to funds and fund operators, together with the final form of the new section of the AML/CFT Handbook (section 14).

How does this affect you?

The new section of the AML/CFT Handbook was effective as of 10 March 2017. Affected businesses should familiarise themselves with the content although note that the new section does not amend any existing statutory obligations for funds or fund operators.



Cassandra Heugh

HAVE YOUR SAY: Do you consider the guidance provided in the new section to be clear and helpful?

Yes No

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4. PUBLIC STATEMENT – MS GISELE HELENE LE MIERE

What's it about?

Ms Le Miere was managing director and MLRO for Jordans Trust Company (Jersey) Limited (JLL). The public statement sets out directions which prevent Ms Le Miere from working in any financial services business in Jersey without the JFSC's prior consent and highlights some valuable lessons for any financial services business.

How does this affect you?

Amongst other things this statement highlights: (i) the need to have clear policies and procedures in place (in particular in relation to client on boarding); (ii) the importance of maintaining the integrity of a firm's client bank account (in this case, monies were received from members of the public even through JLL's formal client take-on process had not been completed); and (iii) how crucial it is that compliance with policies and procedures, and internal decision-making, is fully documented.



Julia Le Cornu

HAVE YOUR SAY: Does your compliance team review JFSC public statements and feedback statements to use them as triggers for potential updates to procedures or staff training?

Yes No

5. DAWSON-DAMER AND OTHERS V TAYLOR WESSING LLP/ITTIHADIEH V 5-11 CHEYNE GARDENS

What's it about?

In these cases the UK Court considered Data Subject Access Requests (a DSAR) submitted under the UK data protection law. They highlight a number of considerations that should be applied in considering DSARs.

How does this affect you?

First, the Court made it clear that DSARs are "purpose blind", meaning that a DSAR filed as a "fishing expedition" in litigation is valid. However, in certain cases, the purpose of the DSAR will be a consideration for the Court. Further, a DSAR allows access to **information**, not documents. The Court also emphasised that the searches that need to be carried out must be "reasonable and proportionate". Finally, it is important to consider available exemptions, and to explain those in responding to a DSAR.



Mathew Cook

OUR SAY: "It is highly recommended that any data controller has a policy for dealing with DSARs, and that these considerations are incorporated into that policy."

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CONSULTATION SNAPSHOTS

CONSULTATION NO.3 OF 2017 – BASEL III: LIQUIDITY MANAGEMENT

Closing 26 July 2017

This consultation paper will be of interest to all persons who are registered to conduct deposit-taking business.



UPCOMING EVENTS & SEMINARS

MOURANT OZANNES & QEB FINANCIAL SERVICES & REGULATORY FORUM

Monday 12 June 2017

JERSEY FINANCE ANNUAL GENERAL MEETING

Thursday 22 June 2017

MOURANT OZANNES FINREG FORUM

Thursday 13 July 2017

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MOURANT OZANNES COMMUNITY NEWS

Mourant Ozannes was charmed to be a sponsor of the National Trust for Jersey Love Nature Festival which took place from Friday 18 May to Sunday 21 May 2017. It was a wonderful fun filled weekend for all of the family with activities on how to forage for wild food, Earth Walks through nature to learn about wildlife in Jersey, and art workshops sketching the flora and fauna of the wild nature reserve in St Ouen.

We are also sponsoring the National Trust Country Cinema Series where you can watch classic films in some of the National Trusts most beautiful locations. The next films coming up are Jean de Florettes on 1 June and Tamara Drewe on 6 July.

For a full listing visit the National Trust events page.
<http://nationaltrust.je/events/>



Fred Milner, Louise Bond, Dawn Buckley, Lynne Salisbury & Charlie Beattie

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6. **ESSAM ABDULAMIR AL FADHI AL TAMIMI V ROUZIN MARWAN AL CHARMAA [2017]**

What's it about?

This case involved a dispute regarding the beneficial ownership of two Jersey companies. The claimant alleged that shares in the companies, which were registered in the name of his wife, were held either as nominee or as trustee for him. The Court refused to recognise any arrangement which detracts from the ability of regulators to identify beneficial owners of companies.

How does this affect you?

If your business provides incorporation agent services to clients, this case provides an opportune reminder of the potentially serious consequences of failing to accurately disclose ownership to the JFSC, even when those arrangements are made outside of Jersey.



Charmaine Murdock

OUR SAY: "This case illustrates that attempts to hide beneficial ownership will be taken extremely seriously and may even be criminal."

7. **SMITH V SWM LIMITED [2017] JRC 026**

What's it about?

In this case, the Court considered whether a report that was prepared pursuant to powers exercised by the Jersey Financial Services Commission and was hotly contested could be used in civil proceedings or whether it was subject to litigation privilege.

How does this affect you?

The Court determined that the report was not privileged, and so it was required to be disclosed. This does highlight that in cases where civil liability issues arise, caution should be exercised in considering reports and responses to the Commission. This potentially creates a tension with the duty of transparency and will require careful management.



Mathew Cook

OUR SAY: "It is prudent to have a policy setting out the considerations that apply in dealing with regulatory enquiries, and civil risk should certainly feature on it."





SPOTLIGHT ON: AMENDED JFSC OUTSOURCING POLICY AND GUIDANCE NOTES

On 1 March 2017, the JFSC published the final version of its amended Outsourcing Policy and Guidance Notes (the 2017 Policy). The 2017 Policy replaces the JFSC’s 2011 Policy Statement and Guidance Notes on Outsourcing and Delegation (the 2011 Policy).

Until 1 June 2017	New outsourcing arrangements can either: a. Continue to comply with the 2011 Policy; or b. Choose to comply with the 2017 Policy
From 1 June 2017	New outsourcing arrangements will need to comply with the 2017 Policy
No later than 1 June 2018	The 2017 Policy must be applied to all existing in-scope outsourcing arrangements

Key points to note

- **The definition of ‘Outsourcing’ has changed:** It now includes arrangements which, if they failed or were performed poorly, would materially impair a registered person from complying with its own regulatory requirements. This means that non-regulated services could be subject to the 2017 Policy.
- **The distinction between “delegation” and “outsourcing” has been removed:** This is a welcome change for certified funds and fund services businesses.
- **There are some express exclusions from the scope of the 2017 Policy:** For example, generally transfers of activity between the same legal entity (such as between branches) will fall outside the scope of the 2017 Policy.
- **Provided certain conditions are met, the JFSC won’t expect Jersey registered collective investment funds and fund services providers to comply with the 2017 Policy:** These conditions include that fund service providers are clearly disclosed to the JFSC and investors in an offer document.
- **The ‘core principles’ are similar to the 2011 Policy:** The most significant change is to core principle 5, which now requires prior confirmation of no objection from the JFSC in respect of both new outsourcing arrangements and material changes to existing outsourcing arrangements – previously the JFSC simply had to be notified of material changes.
- **The ‘guidance notes’ are different:** While some parts are akin to the 2011 Policy, there are new pieces of guidance, including a new process for notifying the JFSC about outsourcing arrangements (there’s now a specific form for this) and timescales within which the JFSC will endeavour to respond to requests for confirmation of no objection. These timescales should be factored in as part of any relevant outsourcing negotiation.
- **Minor changes have been made to the JFSC Codes of Practice:** To refer to the 2017 Policy. Remember that failure to comply with the 2017 Policy could result in regulatory action being taken by the JFSC.

What do I need to do?

As a minimum, registered persons should be:

1. Considering existing contractual arrangements to assess whether the 2017 Policy applies. Jersey registered collective investment funds will also need to consider whether any additional disclosures should be made to investors;
2. Implementing appropriate governance measures, to reflect the requirements of the 2017 Policy. Since you remain ultimately responsible for their actions, you must know who your service providers are and make sure that measures are in place to effectively supervise them; and
3. Updating existing outsourcing policies and procedures to ensure compliance with the 2017 Policy. This might include amending policies and procedures so that the JFSC’s new Outsourcing Notification process is followed.



Alistair Horn

Fiona Magee

HAVE YOUR SAY: Do you think that the 1 June 2018 deadline gives sufficient time to review and amend existing contractual arrangements in response to the 2017 Policy?

Yes No Not sure





INDUSTRY UPDATE TRACKER

We've chosen a few topics that are likely to have a significant impact on the current legal and regulatory landscape in Jersey – we'll update this tracker every quarter with information on key developments that have taken place.

BANK RECOVERY AND RESOLUTION

The EU's Bank Recovery and Resolution Directive 2014 (BRRD) is intended to avoid systemic disruption in the event that any bank should fail. Jersey is proposing to introduce equivalent legislation.

1 January 2016	EU Member States must have transposed Article 55 BRRD, to implement 'contractual bail-in'. EU financial institutions will, where relevant, now require Jersey law governed agreements to indicate that relevant liabilities may be subject to bail-in
14 February 2017	Bank (Recovery and Resolution) (Jersey) Law 201- adopted by the States.
12 May 2017	Bank (Recovery and Resolution) (Jersey) Law 2017 registered by the Royal Court
2017	Appointed day act anticipated (to bring the new law into force)

BENEFICIAL OWNERSHIP REPORTING AND REGISTER OF DIRECTORS

Jersey continues to review and enhance its position on beneficial ownership and control reporting.

Historically	Jersey has maintained a central register of beneficial ownership for over 20 years. Beneficial ownership information is disclosed to the Jersey Companies Registry upon incorporation of Jersey companies and partnerships
13 April 2016	Jersey and UK enter into 'Exchange of Notes' to reinforce existing arrangements for providing beneficial ownership information to UK law enforcement and tax authorities, including using technology to speed up responses to information requests
2 November 2016	Chief Minister's Department Policy Document published, confirming intent to update central register of beneficial owners and controllers by 30 June 2017 and to legislate to create centrally held register of directors by mid-2018
Before 30 June 2017	Notification to JFSC of any current beneficial owner or controller of all Jersey companies, limited partnerships and limited liability partnerships
End 2017 to Early 2018	Anticipated changes to legislation applicable to companies, limited partnerships, limited liability partnerships and foundations, all in relation to disclosure of beneficial owner or controller information
Q2 2018	Proposed reporting of director information to Jersey Companies Registry
Mid-2018	Proposed establishment of central register of directors

BREXIT

A key risk for Jersey's financial services industry, Brexit negotiations will be closely monitored and industry should feed into Government's work on Brexit where possible.

27 June 2016	Ministry of External Relations Report on what Brexit means for Jersey
21 March 2017	Justice Committee Report on the impact of Brexit for Crown Dependencies
26 May 2017	Government's "Brexit Residents' Survey" closed
29 March 2017	Government announces funding for a review of Jersey's financial services industry, commissioned by Jersey Finance Limited, to take account of opportunities and challenges arising from Brexit
Mid-June	Government engagement to continue with a survey aimed at Jersey businesses
End 2017	Expected publication date for the Jersey Finance Limited commissioned report on Brexit opportunities and challenges

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please contact one of your usual Mourant Ozannes contacts.

