



# Jersey Foundations – New Reporting Requirements

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## Summary

An amendment to the Foundations (Jersey) Law 2009 is expected to come into force on 1 December this year. Going forwards, a qualified member will need to file an abridged version of the foundation's regulations with the Jersey Financial Services Commission. However, only certain details relating to the operation of the council and guardian are reportable and the new requirements expressly exclude any information that would allow any person to be identified.

## Background and Context

The proposed amendment to the Foundations (Jersey) Law 2009 (the "Foundations Law") is buried within a more wide-reaching piece of legislation: the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202- (the "Registry Law"), which has been passed by the States of Jersey. The Registry Law is now awaiting Privy Council approval, subject to which it is scheduled to come into force on 1 December. The Registry Law reflects a desire to ensure that Jersey is fully compliant with the Financial Action Task Force's parameters with a view to combating the financing of terrorism and promoting good anti-money laundering procedures. In particular, one of the FATF's recommendations was that the "basic regulating powers" of foundations should be publicly available.

The FATF recommendations aim in part for a consistent regime for corporate entities. They are broad in scope and do not contain detailed provisions specific to foundations, only an indication that they (alongside Anstalts and limited liability partnerships) should be treated similarly to companies. The difficulty for government and industry was that foundations markedly differ from companies in that the regulations of a foundation often include a significant body of information which is rightfully private to the beneficiaries of a foundation. Indeed in that sense foundations are often used as an alternative to trusts, rather than companies. The intention of the FATF recommendations, by setting common requirements for foundations as for companies, did not extend to the publication of such private information, especially since such private information is not made publicly available in relation to companies.

## What's New?

In a nutshell, the Registry Law includes an amendment to the Foundations Law that introduces the concept of "abridged regulations". The current state of affairs is that only the charter of a foundation needs to be filed with the JFSC upon incorporation; the regulations are private. However, the new regime mandates that, upon an application to incorporate a new foundation, the charter needs to be accompanied by an abridged version of the regulations. In addition, existing foundations will be within scope as there is an obligation for all foundations to make available to the registrar a copy of the abridged regulations.

## Are there privacy concerns?

The Registry Law has been carefully drafted, recognising the need to treat foundations consistently with other bodies corporate (which have filed their constitutional documents publicly for many years), but at the same time acknowledging that foundation regulations often include personal information about council members, guardians, founders and beneficiaries.



As such, the abridged regulations do not need to include any information from which a person can or may be identified. Furthermore, the Registry Law anticipates that the States of Jersey may issue further carve-outs as time passes. In this way, the Registry Law allows for adjustments to be made to the scope of the abridged regulations so as to protect legitimate concerns around confidentiality. Finally, it is expected that the JFSC will provide guidance to industry on the information that should be included or excluded from abridged regulations. It is not clear to us to what extent this new reporting obligation actually furthers MONEYVAL's work on the prevention of terrorism or money laundering, given that the JFSC is already able to obtain from qualified members (and then pass on to international governmental authorities) comprehensive information about foundations, including their founders and beneficiaries. Nevertheless, as part of Jersey's strategy of being (and being seen to be) one of the best regulated and most transparent financial centres globally, in our view it successfully and proportionately removes what might otherwise be, at least superficially, an inconsistency in the overall reporting regime for corporate entities. Achieving a positive outcome from MONEYVAL inspections is a key commitment by the Jersey government and we expect to see a similar approach from the other Crown Dependencies (indeed the Isle of Man already requires the filing of redacted foundation rules).

### So what does need to be included?

The definition of "abridged regulations" envisages that only part of the regulations of a foundation need to be filed with the registrar. The precise format of the abridged regulations is not yet clearly specified. It may be possible to provide the information via a registry form, rather than filing redacted copies of the regulations themselves, although the latter would appear to be more consistent with FATF intentions. Either way, broadly speaking this would include details about the council (how decisions are made, how membership changes, what the council's functions are) and the guardian (what powers the guardian has and how a guardian retires or is appointed).

As mentioned above, personal details about individual office-holders or beneficiaries will not be included. This achieves consistency with filing articles of association for companies, which results in details about the governance of the company becoming publicly available but not personal information about the directors, secretaries and shareholders. In addition, most of the remaining provisions of the regulations (for example, anything relating to the beneficiaries of the foundation, or the standard "boilerplate" wording dealing with amendments, remuneration, disclosure, account-keeping and so forth) would appear to be out of scope.

### What do Qualified Members need to do?

While the proposed amendments suitably address privacy and confidentiality concerns, some proactivity will be required by qualified members to review any existing foundations' regulations with a view to preparing abridged versions in good time. A transitional period is anticipated whereby qualified members will have until February 2021 to make the necessary arrangements as part of filing their next annual return. New foundations will also need to have abridged versions of the regulations prepared to accompany the application for incorporation. Of particular importance is the need to ensure that the abridged regulations comply with the new requirements but at the same time avoid accidentally putting personal information into the public domain.

The Walkers team, which includes members of the Foundations Law Working Group and a former member of government involved with the drafting of the Registry Law itself, would be pleased to assist with this and in relation to the interpretation and application of any forthcoming guidance that may be issued. Do please get in touch with the authors or one of your other regular Walkers contacts if there is anything you would like to discuss.

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