



Beneficial Ownership and Control

Policy relating to COBO consents issued between 1 January 2017 – 30 June 2017

Background

Since 1 January 2017, the Companies Registry at the Jersey Financial Services Commission (JFSC) has required all Corporate and Legal Entities (apart from foundations) to complete a C17S form (or equivalent form) detailing current beneficial ownership and control¹ by 30 June 2017.

From the 1 July 2017, new COBO consents will no longer include reference to the requirement to submit a C17S form by the 30 June 2017 and will be slightly amended to ensure clarity is provided in relation to:

- › Article 18 of the Money Laundering (Jersey) Order 2008 (MLO)
- › The notification of changes of beneficial owner or controller information regime (in particular condition 3 of the COBO consents issued between 1 January 2017 and 30 June 2017).

The JFSC deems it necessary to provide guidance relating to interpretation of the existing COBO consents in circulation which is set out in this Registry policy herein.

In short, this policy has been designed to:

1. Clarify the reference made to Article 18 of the MLO in COBO consents issued to companies incorporated on or after 1 January 2017 and in replacement COBO consents issued, with effect from 1 January 2017, to companies incorporated prior to that date
2. Explain an amendment to the ongoing notification obligation in relation to changes of beneficial owner or controller information
3. Explain the position in relation to Collective Investment Funds (CIFs)
4. Clarify the meaning behind condition 1 of the COBO consents and
5. Explains policy in respect of AIM listed companies, listed public companies and Government Entities.

¹ The beneficial owner and controller regime is being implemented to meet with Government of Jersey policy and to comply with international standards. The terminology used is strictly confined to the beneficial owner and controller regime administered by the Companies Registry at the JFSC.

Application of Article 18 of the MLO

The replacement COBO consent and any consent issued after 1 January 2017, stated that conditions no. 2 and 3 relating to submissions of a C17S form and notification by TCSPs of a change of beneficial owner or controller, do not apply:

- i) Where the Company holds a permit or certificate from the JFSC under the Collective Investment Funds (Jersey) Law 1988, as amended or
- ii) Where a trust company business registered with the JFSC under the Financial Services (Jersey) Law 1998, as amended, provides any company administration, trustee or fiduciary services to the Company and such trust company business has applied simplified identification measures under Article 18 of the Money Laundering (Jersey) Order 2008 for the purpose of identifying the Company.

Clarity has been requested in respect of point (ii) above. The Companies Registry at the JFSC confirms that part ii) above applies only in relation to Article 18(6A) of the MLO which states as follows:

“18(6A) Where the customer of a relevant person is –

- (a) a public authority acting in that capacity;*
- (b) a body corporate the securities of which are listed –*
 - (i) on an IOSCO-compliant market, or*
 - (ii) on a regulated market as defined by Article 2(5);*

or

- (c) a person wholly owned by a person mentioned in sub-paragraph (b), the relevant person need not comply with his or her obligations under Article 13 in respect of those measures mentioned in Article 3(2)(c)(i), but only in so far as those measures require identifying any person purporting to act on behalf of the customer, nor with his or her obligations under Article 13 in respect of those measures mentioned in Articles 3(2)(a), 3(2)(c)(ii) and 3(2)(c)(iii).”*

In particular, part ii) of the COBO consent identified above does not apply in relation to Article 18(7) of the MLO as this would undermine collection of beneficial ownership and control information. The beneficial owner and controller reporting regime is being implemented to meet with Government of Jersey policy and to comply with international standards and agreements. Accordingly, TCSPs must understand that:

- › The beneficial ownership and control reporting requirements will not always match the customer identification requirements on relevant persons set out in the MLO. This is particularly the case in the context of simplified customer due diligence.
- › In relation to a Jersey regulated trustee, Registry will not require beneficial ownership details of a Jersey registered trust company on the basis that it has submitted a C17S form (see Supplemental FAQs for TCSPs – Trust Associated Complexities).

The JFSC recognises that the outcome does not match the AML/CFT regime completely, however we have a commitment to maintain a register of beneficial ownership and control. Therefore, reference to Article 18 of the MLO in the COBO consent should be read as restricted to Article 18(6A) only. Otherwise, please disclose beneficial owner and controller information on the basis of a general threshold of 25%, using a risk based approach for beneficial ownership, as well as any controller who exercises control through other means. Where no individual can be determined in this way, please identify an individual(s) who controls through position held (tier 3 of the three tier test).

Notification of changes of beneficial owner or controller information (Condition 3)

Replacement COBO consents and any consents issued after 1 January 2017 have, until 30 June 2017, included a condition numbered 3, as follows:

“That, subject to the exceptions detailed in paragraphs i) and ii) below, following the notification made in accordance with condition no. 2 set out above, the Company must thereafter notify the JFSC within 21 days of the Company having knowledge that: (a) any individual has become a beneficial owner or controller of the Company; or (b) any individual has ceased to be a beneficial owner or controller of the Company; or (c) any beneficial owner or controller of the Company has changed their identity, in such manner as may be specified by the JFSC.”

In order to ensure that the JFSC retains a register that meets with Government of Jersey policy and to comply with international standards and agreements, this condition is to be amended so that the ongoing notification obligation imposed by this condition applies to any beneficial owner or controller, including cases where the name of a Jersey regulated trustee has been submitted, in line with the above guidance (“see Supplemental FAQs for TCSPs – Trust Associated Complexities). This will bring condition 3 into line with condition 2, which already requires a one-off notification of information relating to any beneficial owner or controller (whether individuals or not), by submitting a C17S form on or before 30 June 2017. In practice, this means that after the C17S form has been submitted, when any of the information in the C17S form is known to have changed, it will be necessary to notify the JFSC of the updated information.

Collective Investment Funds (CIFs)

Pursuant to Article 14 of the Control of Borrowing (Jersey) Order 1958, the COBO regime does not apply to certified or recognized CIFs. With regard to Jersey CIFs that are either Jersey companies or Jersey limited partnerships, the Companies Registry at the JFSC envisages either that amended CIF certificates will be issued with a condition incorporating the reporting requirement or a general statement will be made (potentially through the CIF Codes) requiring compliance. You should therefore ensure that you are in the process of collecting information concerning beneficial owners and controllers for CIFs which are Jersey companies or Jersey limited partnerships.

Subsequent changes of beneficial owner or controller information (Condition 1)

For the avoidance of any doubt, the prior approval of an officer of the JFSC must be sought and obtained for any change to:

- a) Any beneficial owner or controller of the Jersey registered company or partnership named in the application for COBO consent (under Articles 2, 5 or 10 and 11) of the Order; and
- b) For any subsequent change of any beneficial owner or controller of the Jersey registered company or partnership.

AIM Listed Companies (Exception to Condition 1)

In line with international standards, the JFSC will be deleting the reference to AIM listed companies and other “recognised markets” in all COBO consents issued from 1 July 2017. Companies trading on

an IOSCO compliant or regulated market as referred to in Article 18(6A) of the MLO will remain exempt.

In respect of condition 2 and 3 obligations, AIM listed companies must submit a C17S form by 30 June 2017 and must continue to keep the Companies Registry informed of any subsequent change of any beneficial owner or controller.

Listed public companies

For the avoidance of any doubt, all listed companies must submit a C17S form. The listed public company is simply exempted from providing beneficial ownership and control information. It still has to submit a C17S form.

Government Entities

Where a Government Entity owns or controls a Jersey Corporate or Legal Entity a C17S (or equivalent form) will still have to be completed and filed. However, it is recognised that ownership is with many. When identifying a controller in respect of such entities, the Registry of the JFSC will only expect information to be submitted for contact purposes only. Accordingly, it is recognised that the controller identified for Government Entities is not necessarily a controller and that this will be stipulated when information is shared.

The term “Governmental Entity” means:

The government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a “Governmental Entity”).

This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.

- a. An “integral part” of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
- b. A controlled entity means an Entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:
 - i. The Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
 - ii. The Entity’s net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
 - iii. The Entity’s assets vest in one or more Governmental Entities upon dissolution.
- c. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.