

# A practical guide for nominated persons

Last reviewed: January 2021

Every Jersey entity must appoint at least one nominated person by 6 April 2021. This guide highlights some of the immediate steps required and some longer term implications for nominated persons.

## Key points to note

- Every Jersey entity needs to appoint a nominated person to interact with the Registry.
- Nominated persons can assist their entities by checking that they have up to date beneficial owner information and significant person information.
- Nominated persons should satisfy themselves that certain significant person information disclosed to the Registry can be made public.
- A nominated person has very few statutory obligations but might be exposed to risk arising from contractual or other obligations to entities and their significant persons.
- The nominated person of a limited partnership does not have the same statutory protection as the nominated person of a company or other entities.

More details on these key points are provided below.

## What is the role of a nominated person?

The role of a nominated person is to be the principal point of contact between the entity and the new digital Registry, myRegistry.

A nominated person will be able to use myRegistry to see the beneficial owner information held by the Registry about the entity. An entity's nominated person will also assist the entity to comply with certain disclosure of information obligations. For example, to file the entity's annual confirmation statement and disclose beneficial owner information and significant person upon incorporation and within 21 days of the entity becoming aware of any change, error or inaccuracy in such information.

## Who can be a nominated person?

A nominated person must be: a JFSC regulated company secretary, registered office provider or fund services business; a Jersey resident significant person of the entity (so, for a company, a Jersey director or company secretary); or a Jersey resident lawyer or accountant who is carrying on such business that is supervised by the JFSC for anti-money laundering purposes.

Regulated trust companies and fund services businesses are most likely to be nominated persons for their client entities. For trading companies with no regulated service provider, their Jersey resident company secretary is the most obvious candidate.

## Preparing to disclose information

Entities must comply with new disclosure of information obligations before 30 April 2021. Most trust companies and fund services businesses will have already confirmed lists of their client entities to the Registry and are preparing to assist client entities to meet these obligations. Preparation work includes:

- (a) ensure that the nominated person is appointed by the client entity; it might be possible to rely on a pre-existing appointment in a widely drafted letter of engagement or administration agreement; alternatively, it might be necessary or preferable to arrange for entity board resolutions to approve or ratify the appointment as nominated person, specifically;
- (b) check that beneficial owners have been correctly identified and that beneficial owner information is up to date; if there has been any uncertainty about who should be identified as beneficial owner of an entity, now is the time to seek clarity and document the rationale for any necessary corrections;
- (c) check that significant person information is up to date and confirm which address should be disclosed as each significant person's correspondence address; it is anticipated that this should be the registered office address of the entity in most cases, so that residential addresses remain private at the Registry;
- (d) check whether any significant person requires an application to be made, to keep their significant person information private;
- (e) identify any nominee shareholders who are not regulated by the JFSC, so that they and the name of their nominator can be disclosed; and
- (f) identify any nominee directors, so that the name of their nominator can be disclosed; it is not anticipated that many directors of Jersey companies will be nominee directors but in some cases, it will be helpful to take steps to evidence why that is the case.

### **Protections for nominated persons**

The Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 (the **Registry Law**) includes some helpful protections for nominated persons. For example, the Registry Law confirms that:

- (a) a nominated person is authorised by an entity to provide certain information to the Registry;
- (b) a nominated person is not carrying on trust company business that would otherwise require regulation by the JFSC, by reason of being a nominated person;
- (c) a nominated person may resign by giving notice to the JFSC and the entity (which would be useful if the relationship between the entity and the nominated person breaks down); and
- (d) a requirement for an entity to provide information to the JFSC under the Registry Law has effect despite any obligation as to confidentiality and the confidentiality obligation will not be contravened by making a disclosure in accordance with a requirement to provide information under the Registry Law.

### **Risks for nominated persons**

In spite of these helpful protections, there are some potential risks for nominated persons, which should be managed by engagement with client entities and their significant persons, potential updates to terms of business and updates to procedures manuals. For example:

- (a) A nominated person must not knowingly or recklessly provide the JFSC with false or misleading information. A nominated person should have checks and controls in place to avoid falling foul of this requirement.
- (b) A nominated person is not obliged to disclose any information to the JFSC under the Registry Law. The obligation to disclose information applies to the entity and the nominated person may assist the entity to meet this obligation. This should be considered in relation to communications with entities and their significant persons, privacy statements and other client facing documentation.
- (c) If a nominated person causes an entity to fail to meet its disclosure obligations (eg. discloses information late, when the nominated person had the information), the nominated person might face a claim by the entity. Nominated persons should have systems in place to avoid such failures. These systems could be scrutinised by the JFSC if a pattern of failures emerges from one regulated business, in its role as nominated person for multiple clients, because the pattern might indicate insufficient systems to meet regulatory obligations.
- (d) In some cases an entity might have more than one nominated person. In these cases each nominated person should be clear about who is responsible for what, to avoid confusion and potential claims against them.
- (e) If a significant person wants to keep their information private, unless there are exceptional circumstances, the nominated person will need to make the requisite application even though the

nominated person will not usually have any contractual relationship with the significant person. In these circumstances, a nominated person should use clear communications with the significant person and consider how to protect itself against claims by the significant person.

- (f) Limited partnerships are not "entities" under the Registry Law but will need to appoint a nominated person to use myRegistry. Any nominated person appointed by a limited partnership will not be a "nominated person" under the Registry Law and will not, therefore, benefit from the helpful protections in the Registry Law, referred to above. This may require attention in resolutions passed by the general partner of the limited partnership and the contractual documentation between limited partnerships and their nominated persons.

If you require our advice about any of the issues referred to in this Guide, please do get in touch with your usual contact.

## Contacts

A full list of contacts can be found [here](#).

This guide 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 guide, please get in touch with one of your usual contacts. © 2021 MOURANT OZANNES ALL RIGHTS RESERVED