

# **Feedback on the Compliance function: Key Persons regime green paper**

A feedback paper relating to the green paper on the Compliance function: Key Persons regime

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## Glossary

AI	artificial intelligence
CO	Compliance Officer
FATF	Financial Action Task Force
GoJ	Government of Jersey
IFC	international finance centre
JATCo	Jersey Association of Trust Companies
JCOA	Jersey Compliance Officers Association
JFA	Jersey Funds Association
JFL	Jersey Finance Limited
JFSC	Jersey Financial Services Commission
JSCCA	Jersey Society of Chartered and Certified Accountants
MLCO	Money Laundering Compliance Officer
MLRO	Money Laundering Reporting Officer
NRA	National Risk Assessment
RegTech	regulatory technology
we / us / our	Jersey Financial Services Commission

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# 1 Executive summary

## 1.1 Background

- 1.1.1 On 11 October 2024, we issued a green paper on the [Compliance function: Key Persons Regime](#). The green paper was issued in response to industry concerns that they were facing challenges in resourcing Key Person roles and sought feedback on a range of possible solutions.
- 1.1.2 Key Person roles for the purposes of the green paper include: the Money Laundering Reporting Officer (MLRO), the Money Laundering Compliance Officer (MLCO) and the Compliance Officer (CO).
- 1.1.3 The green paper explored three options:
  - 1.1.3.1 Option 1 - Status quo – retain employment and residency requirements for Key Persons with enhancements.
  - 1.1.3.2 Option 2 - Retain the employment connection of Key Persons and remove the Jersey residency requirement.
  - 1.1.3.3 Option 3 - Retain the Jersey residency requirement for Key Persons and remove the Key Person employment requirement.
- 1.1.4 We sought views on the options and respondents were requested to:
  - 1.1.4.1 rank the above options in order of preference
  - 1.1.4.2 provide commentary for each option on:
    - › how the proposed option would address the challenge in recruiting and retaining Key Persons
    - › how the proposed option would benefit the financial services industry in Jersey
    - › the effect the proposed option would have on Jersey's compliance with FATF standards
    - › the risks associated with this option, and how they might be mitigated
- 1.1.5 We also explored how regulatory technology (RegTech) could address the objectives of the green paper.
- 1.1.6 We acknowledge and appreciate the contributions of compliance professionals and all that they bring to the stability and prosperity of the Jersey financial services industry. We are committed to collaborating with Key Persons to emphasise the importance of their role.

## 1.2 Feedback received

- 1.2.1 The consultation period for the green paper closed on 6 December 2024, with a total of 47 responses received. We appreciate all respondents for taking the time to consider and comment on the proposals. We also value the support provided by the technical working group coordinated by Jersey Finance Limited (JFL), who assisted us before and after the consultation with understanding the Key Persons landscape.
- 1.2.2 Within this total we received four submissions from sector groups: Jersey Compliance Officers Association (JCOA), Jersey Funds Association (JFA), Jersey Society of

Chartered and Certified Accountants (JSCCA), and Jersey Association of Trust Companies (JATCo).

- 1.2.3 55% of the respondents who indicated a preference, ranked Option 1 – Status quo, as their favoured option.
- 1.2.4 The lack of a clear consensus, although leaning towards retaining the status quo, suggests that no single transformative change to the framework is available or desirable. Different parts of industry have varying requirements. More recent feedback from industry indicates that the resourcing pressures for compliance roles, which were the primary driver for commencing this work, have subsided. Overall, this indicates that wholesale reform of the current regime, which would require legislative change and is not entirely within our remit, is not desirable at present.
- 1.2.5 We acknowledge that, as part of the Government of Jersey's (GoJ) financial services competitiveness programme, work is underway to consider changes that would improve the business environment for financial services firms. Our focus will be to implement those changes that we, GoJ and industry collectively agree will make the most significant positive difference.
- 1.2.6 In the green paper, we clarified the position of outsourcing Key Person tasks in line with our [Outsourcing Policy](#). We also offered starting point suggestions for potential enhancements to Option 1; these included the use of RegTech, suggestion of a defined career path for compliance professionals and the use of a corporate governance code to help shape a firm's compliance culture. These starting points were generally acknowledged as possible enhancements to the current regime.

### 1.3 Next steps: Key Persons priority enhancements

- 1.3.1 As stated above, we do not believe it is appropriate at this time to undertake any large-scale reforms to the Key Persons regime. However, respondents have identified several priority enhancements to the Key Persons framework that merit further exploration. These recommended enhancements were observed in direct feedback, independent of that respondent's preference and are as follows:

#### **Outsourcing Policy**

- 1.3.2 We will review our Outsourcing Policy to assess whether the interaction between the policy and the Key Persons regime can be simplified and clarified to enhance industry's understanding of the policy's application.

#### **Derogation and variance guidance**

- 1.3.3 We will develop and provide guidance to assist firms who wish to make applications for time-limited derogations and variances concerning Key Persons.

#### **Key Person liability**

- 1.3.4 We will engage with industry regarding the application of liability for Key Persons in enforcement actions.

#### **RegTech guidance**

- 1.3.5 We will share the RegTech feedback with other relevant stakeholders and will review our existing guidance on this subject. We recognise adoption of RegTech is a cornerstone in supporting Jersey's efforts to keep pace with international competitors.

## 2 Consultation feedback

### 2.1 Overview

- 2.1.1 This section summarises the context of our proposed next steps, and the comments received in response to the green paper which support the development of the Key Persons priority enhancements.
- 2.1.2 At the conclusion of the consultation period, we had received a total of 47 responses. Among these, four submissions came from sector groups: the JCOA, JFA, JSCCA, and JATCo, 11 responses from firms and the remainder were from individuals.
- 2.1.3 44 respondents indicated a preferred option, with 24 (55%) selecting Option 1. One respondent, who preferred Option 1, shared the following:

*“It is important (in fact I would argue critical) that risk, compliance and financial crime staff are both on the island and employed by the regulated firm ...”* **Individual banking respondent**

- 2.1.4 Of the remaining respondents who provided a preference, 10 indicated Option 2, five indicated Option 3 and five indicated ‘none of the above’. Three respondents did not indicate any preference. However, one of these respondents, a sector group representing businesses who varied considerably in size and jurisdictional footprint, did indicate that the majority of its members preferred Option 1, but was cognisant that this position did not reflect all membership views.
- 2.1.5 While no overwhelming majority option emerged, a qualitative analysis of the responses revealed recurring themes, irrespective of the top-line preferences expressed. There was consensus on several areas requiring improvement. These priority enhancements are detailed in Section 3.
- 2.1.6 Respondents provided constructive commentary indicating that whilst changing the status quo may be favourable to some participants, the consequences may result in a negative impact on others. This respondent’s comment highlights the delicate balancing act we would need to address should the status quo not continue:

*“The main risk is that Jersey’s effectiveness in combatting financial crime is weakened. Allowing non-resident key persons would limit the ability of information to be shared effectively and efficiently (e.g. informal knowledge transfer at local industry events) and be a slippery slope to having weak ‘on island’ expertise that really understands the risks and controls that are relevant (and sometimes unique) to the jurisdiction.”* **Anonymous Response**

### 2.2 The Government of Jersey’s financial services competitiveness programme

- 2.2.1 Any priority enhancements to the Key Persons regime that we propose must align with the ongoing GoJ’s financial services competitiveness programme. We are currently collaborating closely with the GoJ and industry stakeholders on this initiative. A key outcome will be the development of a prioritised list of actions that we, GoJ, and other relevant agencies will implement to enhance the business environment in Jersey.
- 2.2.2 We will ensure that the evidence gathered, and views submitted as part of the green paper feedback process will be considered as part of the GoJ’s financial services competitiveness programme. This will help to make sure that any long-term reform

of the Key Persons regime aligns with our wider work to support Jersey's competitiveness as an international financial centre (IFC).

## 3 Next steps: Key Persons priority enhancements

### 3.1 Way forward

- 3.1.1 We consider that it would be premature to undertake any large-scale reforms to the Key Persons regime. In the short term, we will pursue several enhancements to the current regime.
- 3.1.2 We will revisit this matter following the publication of the GoJ's financial services competitiveness programme actions to determine whether any further enhancements may be viable. At that time, we will reach out to industry to consult.
- 3.1.3 Below are the Key Persons priority enhancements that we are committed to implementing at this stage.

### 3.2 Outsourcing Policy

- 3.2.1 Feedback received suggested that a clearer understanding of the outsourcing regime and the requirement for pre-approval of 'support' functions related to onboarding systems should be considered. Similar sentiments suggested that outsourcing some compliance function tasks may relieve Key Persons of the amount of administrative work they are required to do, allowing them to focus on the legislative expectations of their role and their key skills.
- 3.2.2 We will review our Outsourcing Policy to assess whether the interaction between the policy and the Key Persons regime can be simplified and clarified to aid industry's understanding and application of the policy.

### 3.3 Derogations and variances

- 3.3.1 There was recognition by the respondents that we currently allow for time limited derogations and variances to the Key Person requirements. It was noted by the JCOA that:  
  
*"... the JFSC has already permitted derogations and therefore this option does not seem to require change but perhaps formalisation of its derogation process."*
- 3.3.2 Every application by a firm for a derogation or variance from a code of practice, whether related to Key Persons or not, is nuanced. Consequently, providing general guidance on the process is challenging.
- 3.3.3 There are however elements of Key Person applications that could be given particular attention. We will look at ways to assist industry to submit optimal applications for derogations and variances, with the aim to guide a firm in crafting a submission that addresses the critical aspects.

### 3.4 Increased engagement with industry on Key Person liability

- 3.4.1 A respondent submitted this feedback:  
  
*"I believe that the individuals who are suited and drawn to the key person role are naturally risk aware and have a high moral and ethical standards.[sic] These persons are exposed to a disproportionate amount of*

*personal risk when taking on a key person role. They can often find themselves in companies with very weak corporate governance and poor compliance culture and have little influence over a group culture such as this. This is why there are many qualified and experienced professionals who will not enter this type of role, hence the gap in the market. If the personal risk could be mitigated, there would be a greater appetite for the role.”*

**Individual fund services business respondent**

- 3.4.2 We understand that the exposure of Key Persons to civil and criminal liabilities can be a disincentive to taking up such a role. There is also a level of apprehension on how we approach enforcement action regarding the level of scrutiny applied to Key Persons as well as the board of directors of the firm or entity under investigation.
- 3.4.3 We commit to further engagement with industry to enhance understanding of the approach to Key Person liability during enforcement actions.

### 3.5 RegTech

- 3.5.1 The general sentiment of respondents was that the use of RegTech would be welcomed as long as human oversight is maintained, but firms are seeking further guidance from us on preferred vendors.
- 3.5.2 This respondent saw the potential of RegTech improving the productivity of Key Persons:
 

*“We believe that RegTech could be used to overlay critical thinking. It can be used to augment speed of tasks and free up capacity of key persons. A lot of opportunity exists with AI, for example we could use AI to augment capability of our key persons and to free up time to allow more focus on challenge interrogation on themes of data rather than spending time on preparing data as well as interrogating it. The JFSC should be thinking of ways to put RegTech into their practices as well as finance firms, such as with NRA. We would also welcome more specific guidance from the JFSC on the regulatory requirements relating to the deployment of RegTech.”* **Banking business response**
- 3.5.3 The GoJ’s financial services competitiveness programme is an ideal forum for us to share the RegTech feedback. The green paper feedback has shown a genuine interest to explore the possibilities for RegTech to increase the efficiency, effectiveness and more generally improve the experience of Key Persons.
- 3.5.4 As the banking firm respondent suggests, the use of RegTech may allow Key Persons to focus on tasks where their skills are best utilised, and which may consequently increase productivity. We are aware that Jersey Business will be offering a Better Business Grant for firms who are interested in increasing productivity by developing digital skills. Further details can be found here: [Better Business Grant](#).
- 3.5.5 Additionally, we will review our existing RegTech guidance and pursue initiatives working with other Jersey associations to supplement our expertise and broaden the guidance offering.

### 3.6 Alternative solutions

- 3.6.1 Respondents also provided interesting alternative solutions to the suggested options, including tailoring solutions to the size and sector of the firm. However, given the nature of the GoJ’s financial services competitiveness programme, other than



acknowledging the feedback and sharing core ideas with the programme, no further review of the alternative solutions will occur at this time.

- 3.6.2 There is a general consensus that Jersey needs to establish a clear career path for Key Person roles, regardless of the solution. Establishing a professional development route would enhance Jersey's perception as an IFC with high standards for its regulatory compliance framework. Recognising that this is not an immediate solution and would require implementation over a decade or more to build a skilled workforce, we will communicate this approach to the GoJ's financial services competitiveness programme. As this suggestion will require the involvement of other parties to achieve a cohesive framework, including tertiary institutions, JFL and GoJ, it will be best placed for assessment within the GoJ financial services competitiveness programme context.

## 4 Conclusion

- 4.1.1 While we await the outputs of the GoJ's financial services competitiveness programme, we will not pursue large-scale, strategic reforms to the Key Persons regime.
- 4.1.2 Our immediate next steps will be to develop the Key Person priority enhancements as described above, which will deliver tangible, incremental gains for industry in respect of the Key Persons regime.