



# Jersey Financial Services Commission

## **POLICY STATEMENT AND GUIDANCE NOTES ON:**

- (1) OUTSOURCING; AND**
- (2) DELEGATION BY JERSEY CERTIFIED  
FUNDS AND FUND SERVICES  
BUSINESSES**

Please consider page 2 of “Outsourcing Policy and Guidance Notes - March 2017”, which contains details of the Effective Dates of that Policy.

For the avoidance of doubt, this document will not be effective after 1 June 2018.

Issued: May 2011



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## BACKGROUND

### 1 Scope

- 1.1 The Policy Statement and Guidance Notes contained in this document apply to all firms that:
- 1.1.1 have functions falling within the scope of one or more of the following regulatory laws (“**Registered Persons**”):
    - 1.1.1.1 Banking Business (Jersey) Law 1991;
    - 1.1.1.2 Collective Investment Funds (Jersey) Law 1988 (“**CIF(J)L**”);
    - 1.1.1.3 Insurance Business (Jersey) Law 1996; and
    - 1.1.1.4 Financial Services (Jersey) Law 1998 (“**FS(J)L**”);
  - 1.1.2 and outsource or delegate one or more parts of their regulated functions to a service provider who may also be in Jersey or elsewhere.
- 1.2 For the purposes of this document, a service provider can be any one of the following:
- 1.2.1 an independent third party;
  - 1.2.2 a fellow group company;
  - 1.2.3 a branch; or
  - 1.2.4 a representative office.
- 1.3 All Registered Persons will need to examine outsourcing and delegation arrangements to satisfy themselves they meet the requirements of this document. Where they do not, the Jersey Financial Services Commission (the “**Commission**”) will look to the Registered Person to take appropriate action to bring itself within the requirements of the Core Principles, depending on whether the arrangements relate to outsourcing or delegation.

### 2 Structure

- 2.1 Part I introduces the paper. It seeks to explain why such a paper is considered necessary and provides some basic definitions.
- 2.2 Part II is the Commission’s stated policy on outsourcing. It is in the form of Core Principles with which all Registered Persons are expected to comply.
- 2.3 Part III provides Guidance Notes expanding upon and clarifying how Registered Persons can ensure compliance with the Core Principles. These Guidance Notes apply to all Registered Persons when outsourcing to any of the service providers detailed in 1.2 above.

- 2.4 Part IV provides additional guidance on compliance with the Core Principles in those cases when functions are outsourced to a branch of a Registered Person.
- 2.5 Part V is the Commission's stated policy on delegation by Jersey certified funds and fund services businesses. It is in the form of seven Core Principles with which all Jersey funds established as certified funds under the CIF(J)L and all persons registered under the FS(J)L to conduct fund services business are expected to comply when delegating functions.
- 2.6 Part VI provides Guidance Notes on outsourcing by functionaries under the CIF(J)L or persons registered to conduct fund services business under the FS(J)L.
- 2.7 Other parts may be added in the future if further areas of activity or structure are identified requiring specific guidance to ensure compliance with the Core Principles.

## **PART I: INTRODUCTION**

- 1 The Commission is responsible for the supervision of financial services provided in or from within Jersey. That responsibility is discharged through a number of regulatory laws. Those same laws require persons to apply for and be granted a licence by the Commission before they can undertake the relevant financial service. In determining whether to grant or refuse such licences or whether to cancel an existing licence, the Commission will determine whether the applicant has met, and in the case of a Registered Person, is continuing to meet certain minimum standards on matters such as honesty, competency and solvency.
- 2 To assist Industry in determining what the minimum standards are the Commission will, from time to time, issue Policy Statements and/or Guidance Notes on subjects that are relevant to assessing such standards. Such Policy Statements and Guidance Notes do not have force of law but compliance with them will be taken into account when considering an application for a licence or when determining whether an existing Registered Person remains a fit and proper person.
- 3 The purpose of this Policy Statement and accompanying Guidance Notes is to describe the Commission's initial and continuing requirements when a Registered Person is considering outsourcing or delegating a material part of its regulated functions. It is, however, the responsibility of each Registered Person's management to decide the level of control and oversight needed in any particular outsourcing or delegation arrangement. What this document seeks to provide is a framework within which the day to day management of outsourced or delegated functions will operate.
- 4 What constitutes "material" will differ from firm to firm depending on the size of the firm and the nature of its business. Among the other matters set out in 1.4 of Core Principle No 1 in Part III of this paper, a Registered Person should consider the potential impact on its reputation and its customer service if the service provider were to fail for any reason. Where this impact is regarded as high, the function will be considered to be material.
- 5 This Policy Statement was amended in 2011 in order to reflect the distinction between outsourcing and delegation in the context of Jersey collective investment schemes and functionaries of collective investment schemes. This distinction is recognized internationally by the International Organisation of Securities Commissions (IOSCO) in papers published in December 2000 and February 2005.
- 6 Outsourcing for the purpose of this document occurs when a Registered Person decides to transfer the day-to-day running of some part of its business to another party. The activity outsourced can be either a part of the Registered Person's existing business or operations or an entirely new venture or operations system for which the Registered Person wishes to use outside expertise. Note that the purchase of a standard service from, for example, an information screen provider such as Bloomberg or Reuters falls outside the scope of this Policy Statement.
- 7 Delegation occurs where the Registered Person does not provide a certain service and therefore makes arrangements with a service provider for specific services. In this case

investors or customers and the Commission know they should deal directly with the service provider for specific services, as those services do not in the first instance form part of the services to be provided directly by the Registered Person. This would commonly be disclosed in the terms and conditions, the prospectus or offering document.

- 8 The Commission recognises that outsourcing and delegating functions has become a common practice and can bring benefits to Registered Persons and their customers, however neither outsourcing nor delegation must happen at the expense of proper regulation. The Commission is concerned to ensure that, when a regulated function is outsourced or delegated, the Registered Person does not lose control over the outsourced or delegated activity. To that end the Registered Person retains full legal liability and accountability to the Commission for any and all functions that it may outsource or delegate to a service provider to the same extent as if the service were performed in-house.
- 9 The Guidance Notes also cover outsourcing to branches of a Registered Person. Unlike the other service providers listed in 1.2 of the Background, a branch is not a separate legal person. Part IV below details the modifications necessary to the guidance given in Part III when outsourcing to a branch to take account of this fact.

## **PART II: POLICY STATEMENT ON OUTSOURCING**

When considering outsourcing any material part of its regulated functions, the Commission would expect a Registered Person to comply with the Core Principles set out below.

### **Core Principle No 1**

When a Registered Person outsources any material part of its regulated functions it must first ensure that the service provider is fit and proper and can fulfil the task in a responsible, professional and suitable manner.

### **Core Principle No 2**

A Registered Person must have a written agreement with the service provider that clearly specifies the terms of engagement and the levels of service to be provided by the service provider.

### **Core Principle No 3**

A Registered Person must maintain sufficient capacity (i.e. skills and knowledge) to be able to assess whether the outsourced activity is being performed adequately. It must also maintain adequate resources and establish procedures, including compliance plans, to be able to monitor the performance of the service provider.

### **Core Principle No 4**

A Registered Person must be able to terminate the outsourcing arrangement and have contingency plans for making alternative arrangements for the performance of the outsourced function.

### **Core Principle No 5**

A Registered Person must inform the Commission in writing of its intention to outsource any material part of its regulated functions, within a reasonable time prior to the commencement of the outsourcing arrangement, in order to allow the Commission to consider the proposal and raise any concerns.

### **Core Principle No 6**

Nothing in any outsourcing arrangements should prevent the Commission from exercising its statutory responsibilities. In particular, a Registered Person must ensure that the Commission is able to inspect the books and records (or copies thereof) relating to the outsourced activity upon request and without undue delay, irrespective of whether they are in the hands of the Registered Person or the service provider.

## **PART III: GENERAL GUIDANCE NOTES ON OUTSOURCING**

This Part provides guidance on how to achieve compliance with the Core Principles in practice.

### **1 Core Principle No 1**

When a Registered Person outsources any material part of its regulated functions it must first ensure that the service provider is fit and proper and can fulfil the task in a responsible, professional and suitable manner.

#### **Guidance on Core Principle No 1**

- 1.1 A Registered Person must ensure that the service provider possesses and continues to possess sufficient human, technical and financial resources to undertake the outsourced tasks. In addition, it must also check the fitness and propriety of the service provider.
- 1.2 The outsourcing of functions should not be passed to a service provider whose interests could conflict with those of the clients of a Registered Person. Where conflicts do arise it will be necessary for precautionary measures to be taken.
- 1.3 The Commission will normally require an outsourced activity that is a regulated activity (e.g. managing investments) to be outsourced to a service provider which is itself regulated in its jurisdiction of domicile for that activity.
- 1.4 The assessment of what is material in this context is often subjective, however additional factors to be considered are:
  - 1.4.1 financial, reputational and operational impact on the Registered Person if the service provider fails to perform;
  - 1.4.2 the impact of the outsourcing on the service provider's ability to maintain adequate services to its own clients;
  - 1.4.3 potential impact on the Registered Person's clients should the service provider fail to perform;
  - 1.4.4 impact on the Registered Person to comply with regulatory requirements and future changes in requirements; and
  - 1.4.5 the degree of difficulty and the time required to select an alternative service provider or to bring the activity in-house if necessary.

### **2 Core Principle No 2**

A Registered Person must have a written agreement with the service provider that clearly specifies the terms of engagement and the levels of service to be provided by the service provider.

## **Guidance on Core Principle No 2**

- 2.1 The outsourcing arrangement should be contained in a written, legally binding and enforceable contract signed and dated by all relevant parties. For branch outsourcing please see Part IV.
- 2.2 Such contracts would normally be expected to include, as a minimum, the following:
  - 2.2.1 unambiguous descriptions and definitions of function(s) to be outsourced and the duties of both parties;
  - 2.2.2 an agreed standard between the service provider and the Registered Person of resources and service, supported as necessary by performance measures. This standard should be no lower than that required by the Commission and operated within the Registered Person;
  - 2.2.3 the requirement for regular detailed reporting to a specified frequency from the service provider in respect of its duties and activities;
  - 2.2.4 provisions relating to the reporting of relevant events (such as technological changes or error reporting) and, in particular, any event that undermines the ability of the service provider to fulfil its duties;
  - 2.2.5 the provision of an annual review (at a minimum) of the relationship, and provision for termination; and
  - 2.2.6 provisions relating to records, adequate access by the Registered Person, its auditors and the Commission; adequate data protection as required under all applicable data protection laws in the jurisdiction of the Registered Person and the service provider; and the return of the records to the Registered Person on termination of the relationship.
- 2.3 The practice of sub-outsourcing should be considered carefully by outsourcing parties and the Commission. The Registered Person should ensure that the service provider cannot in turn outsource the functions outsourced unless the sub-service provider has been approved by the Registered Person. Sub-outsourcing must not undermine the ability of the Registered Person or the Commission properly to monitor compliance with regulatory requirements.

## **3 Core Principle No 3**

A Registered Person must maintain sufficient capacity (i.e. skills and knowledge) to be able to assess whether the outsourced activity is being performed adequately. It must also maintain adequate resources and establish procedures, including compliance plans, to be able to monitor the performance of the service provider.

### **Guidance on Core Principle No 3**

- 3.1 A Registered Person cannot contract out of its regulatory obligations and remains fully responsible as if the outsourced activity were performed in-house. The Registered Person must not therefore allow itself to become devoid of either the necessary means to supervise and monitor any outsourced function, or of the internal expertise enabling it to evaluate the quality of the work performed by the service provider. These functions cannot be outsourced. In effect, a situation where only a “brass plate” operation remains in Jersey is unacceptable.
- 3.2 The Commission will normally require the compliance officer to be resident in Jersey. Outsourcing of some of the duties of the compliance officer to persons resident outside the Island will be acceptable provided the reports are reviewed and retained in the Island by the Jersey resident compliance officer.
- 3.3 Following the outsourcing arrangement, the Registered Person must continue to satisfy any licensing conditions, any applicable Codes of Practice, and the Commission’s Licensing Policy in respect of those activities that require registration under the FS(J)L<sup>1</sup>.

## **4 Core Principle No 4**

A Registered Person must be able to terminate the outsourcing arrangement promptly and have contingency plans for making alternative arrangements for the performance of the outsourced function.

### **Guidance on Core Principle No 4**

- 4.1 The Registered Person should be able to take over promptly day-to-day control of the outsourced functions or transfer them to another suitably qualified service provider such as an authorised group company.
- 4.2 Contingency plans should be in place to enable alternative arrangements to be set up as quickly as possible with minimum disruption to business, if the outsourcing agreement is suddenly ended, the service provider fails or is affected by disaster.

## **5 Core Principle No 5**

A Registered Person must inform the Commission in writing of its intention to outsource any material part of its regulated functions within a reasonable time prior to the commencement of the outsourcing arrangement in order to allow the Commission to consider the proposal and to raise any concerns.

### **Guidance on Core Principle No 5**

- 5.1 The Commission should be informed of any subsequent material problem and told in advance of changes to the outsourcing arrangement.

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<sup>1</sup> The FS(J)L Licensing Policy is available on the Commission’s Website:  
[http://www.jerseyfsc.org/the\\_commission/general\\_information/policy\\_statements\\_and\\_guidance\\_notes/index.asp](http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp)

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- 5.2 A particular concern for the Commission is to ensure that outsourcing does not defeat the purpose of regulation. Whatever the nature of the outsourcing, the regulatory framework and any licence conditions applying to the Registered Person or to the products for which it is responsible, including reporting requirements, continue to apply.
- 5.3 The Commission must, at reasonable cost, be able to continue to supervise the outsourced activities.
- 5.4 Where the outsourcing is to an entity outside Jersey, mutual co-operation arrangements (formal or informal) will be necessary between the Commission and the service provider's or sub-service provider's regulator in order to enable exchange of material information. If such co-operation is not available the Commission may object to the outsourcing.
- 5.5 The Commission may sometimes require information regarding any outsourcing function to be given to the clients of Registered Persons. In particular, the investor or client may need to be notified formally which company is responsible for the outsourced function.
- 5.6 The Commission may wish to be satisfied as to the confidentiality and security of the records maintained in any jurisdiction outside of Jersey. Verification might be sought in certain cases to the satisfaction of the Commission, for example by an annual certification by the Registered Person's external auditors.
- 5.7 Where the outsourcing arrangement concerns fund services business, the Commission will endeavour to raise any concerns in relation to the outsourcing proposal within 10 working days of receipt of the Registered Person's written intention to outsource.

## **6 Core Principle No 6**

Nothing in any outsourcing arrangements should prevent the Commission from exercising its statutory responsibilities. In particular, a Registered Person must ensure that the Commission is able to inspect the books and records (or copies thereof) relating to the outsourced activity upon request and without undue delay irrespective of whether they are in the hands of the Registered Person or the service provider.

### **Guidance note on Core Principle No 6**

- 6.1 A Registered Person must allow, and shall procure that any agent or subcontractor of the Registered Person also allows, inspections by or on behalf of the Commission of any part of the activities (including books and records) in relation to which the Registered Person has been granted registration under the relevant law.
- 6.2 The Registered Person must provide all reasonable assistance in connection with any such inspection and shall procure that any such agents or subcontractors also provide all reasonable assistance.

## **PART IV: GUIDANCE NOTES ON OUTSOURCING TO BRANCHES**

### **1 Introduction**

- 1.1 This Part seeks to give additional guidance to Registered Persons who have, or are contemplating, outsourcing any material part(s) of their regulated functions to one or more branches.
- 1.2 The need for this Part arises from the fact that, in the case of branches, the Registered Person and the service provider are part of the same legal person. As a consequence some of the Guidance Notes in Part III above need to be modified to reflect this fact.

### **2 Application of Core Principles to Outsourcing to Branches**

The Guidance Notes in Part III above are equally applicable to a branch situation save in the following respects.

#### **2.1 Core Principle No 1**

Replace Guidance Note 1.1 with the following:

A Registered Person must ensure that its service provider is sufficiently resourced (both human and technical) to undertake the outsourced tasks.

#### **2.2 Core Principle No 2**

Replace Guidance Note 2.1 with the following:

The outsourcing arrangement should be contained in a written service level agreement which is signed and dated by all relevant parties.

#### **2.3 Core Principle No 3**

Replace Guidance Note 3.1 with the following:

The Registered Person must not allow itself to become devoid of either the necessary means to supervise and monitor any outsourced function or of the internal expertise enabling it to evaluate the quality of the work performed by the service provider. These functions cannot be outsourced. In effect, a situation where only a “brass plate” operation remains in Jersey is unacceptable.

## **PART V: POLICY STATEMENT ON DELEGATION BY JERSEY CERTIFIED FUNDS AND FUND SERVICES BUSINESSES**

When considering delegating any material part of its regulated functions, the Commission would expect a Registered Person to be able to demonstrate consideration of and compliance with the following seven Core Principles at board level as evidence of best practice corporate governance.

### **Core Principle No 1**

Before entering into a delegation arrangement, the Registered Person should ensure the regulatory framework of the service provider's home jurisdiction provides protection for the investor equivalent to the one available in Jersey. In particular, when a delegate is situated in a country where the delegated functions are regulated and such functions may only be performed by a registered entity, the Registered Person should ensure the delegate is duly registered to perform that function.

### **Guidance on Core Principle No 1**

If the function is delegated to a party which is not subject to the same level of regulatory supervision as the delegator, the investors should be informed. The Registered Person should also ensure the delegation arrangement complies with the Core Principles below.

### **Core Principle No 2**

When a Registered Person delegates any material part of its regulated functions, it must first ensure the service provider is fit and proper and can fulfil the task in a responsible, professional and suitable manner.

### **Core Principle No 3**

A Registered Person must have a written delegation agreement with the service provider that clearly specifies the terms of engagement and the levels of service to be provided by the service provider.

### **Core Principle No 4**

A Registered Person must maintain sufficient capacity (i.e. skills and knowledge) to be able to assess whether the delegated activity is being performed adequately. It must also maintain adequate resources and procedures, including compliance plans, to be able to monitor the performance of the service provider.

### **Core Principle No 5**

A Registered Person must be able to terminate the delegation as soon as reasonably practicable and have contingency plans for making alternative arrangements for the performance of the delegated function.

### **Core Principle No 6**

Nothing in any delegation arrangements should prevent the Commission from exercising its statutory responsibilities. In particular, a Registered Person must ensure the Commission is able to inspect books and records (or copies) relating to the delegated activity upon request and without undue delay, irrespective of whether they are in the hands of the Registered Person or the service provider.

### **Core Principle No 7**

Before the delegate enters into a sub-delegation arrangement, the Registered Person must first approve the sub-delegate in accordance with Core Principle No 2 as if the sub-delegate were itself the delegate. Sub-delegation must not undermine the ability of the Registered Person or the Commission to monitor properly compliance with regulatory requirements.

## **PART VI: GUIDANCE NOTES ON OUTSOURCING SPECIFIC TO FUNCTIONARIES UNDER THE CIF(J)L OR THOSE PERSONS WHO ARE REGISTERED TO CONDUCT FUND SERVICES BUSINESS UNDER THE FS(J)L**

### **1 General Requirements**

- 1.1 This Section seeks to give additional guidance to Registered Persons who hold one or more permits under the CIF(J)L or who are registered to conduct fund services business under the FS(J)L.
- 1.2 An example of the level of monitoring that might be regarded as satisfactory is as follows:

#### **Investment Management Function Outsourced**

- 1.2.1 Prior to the appointment of a service provider, undertake a full due diligence exercise, focussing in particular, on the service provider's ability to carry out the outsourced activity and the control environment in which it operates.
- 1.2.2 Monitor the performance of the service provider on an ongoing basis by, for example, considering at board level:
  - 1.2.2.1 the investment performance of the service provider against relevant benchmarks;
  - 1.2.2.2 the compliance of the portfolio against its investment guidelines; and
  - 1.2.2.3 receiving periodic reports from the service provider concerning the performance of the fund.
- 1.2.3 In some cases investment committees may be established who will meet periodically (independent of the fund's board or management) to discuss investment performance and report back to the full board.
- 1.3 In determining the level of control and oversight needed in any particular outsourcing proposal, the following factors can be taken into account:
  - 1.3.1 the substance and reputation of the service provider;
  - 1.3.2 the strength of the service provider's control environment;
  - 1.3.3 the availability of information from the service provider;
  - 1.3.4 whether outsourcing is in-house or external; and
  - 1.3.5 the number and sophistication of shareholders/unitholders in the fund(s) affected by the outsourcing.

## **2 Guidance on the Extent to which Administration Work may be Outsourced**

- 2.1 Investors' cheques may be banked away from Jersey so long as the money is transferred to the account of the fund within a reasonable period. Anyone receiving monies in this way would normally be a distributor or subscription agent and hold the monies in client accounts. The Commission would need to be satisfied as to the quality of the firm before allowing such a structure.
- 2.2 Accounting records of the fund may be maintained outside Jersey provided the Registered Person always has access to the records, e.g. by computer link, and that a backup copy of the records is retained in Jersey. The backup may be in printed form or in computer readable form. Periodic checks should be carried out in Jersey to ensure that entries are being made on an accurate and timely basis.
- 2.3 The Jersey office of the Registered Person should always be capable of answering any routine queries and resolving all others.
- 2.4 The Commission would normally expect valuations to be carried out in the Island. However, valuations may be prepared outside Jersey provided they are always checked by the Registered Person in Jersey.<sup>2</sup> Evidence of the Registered Person's valuation checks should always be available in the Island.
- 2.5 The Commission would normally expect the checks undertaken by the Custodian/Trustee to verify the accuracy of valuations and compliance with investment restrictions to be carried out in Jersey. However, the day-to-day work may be carried on outside Jersey provided the management and control of those tasks remain in Jersey.
- 2.6 Creation and cancellation instructions to the banks and the Custodian should at least be authorised in Jersey on the day of delivery.
- 2.7 The share register (or equivalent) of the fund, whether the fund is a Jersey company, limited partnership or unit trust, should be available in the Island. See Articles 44 and 45 of the Companies (Jersey) Law 1991 for companies.
- 2.8 There should be no non-routine communication between any local fund service provider (e.g. a Custodian) and the non-Jersey fund service provider without the Jersey resident Manager being involved. The local fund service provider should always notify the Jersey resident Manager if there is a problem.

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<sup>2</sup> It will be satisfactory for the Registered Person to receive confirmation at each valuation point from the service provider that all necessary valuation procedures have been carried out and evidenced by a sign off in accordance with the service provider's internal signatory arrangements, provided the Registered Person is entirely satisfied with the service provider's control environment. It is acknowledged that it will not always be possible to complete such procedures prior to the valuation being issued but there is an expectation that such procedures would be completed within 24 hours of issuing the valuation so that any issues can be identified quickly. This must be supplemented by a detailed review of the fund valuation at a certain date and relevant reconciliation procedures and results involving the local functions once a month for each sub-fund.

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- 2.9 As a minimum, all reconciliations should be reviewed, held and signed off in Jersey (e.g. cash, stock, and dividends).