



Jersey Financial
Services Commission

Outsourcing Policy and Guidance Notes

Issued: 1 March 2017

Effective Dates

- › **New *Outsourcing* arrangements 1 June 2017**
- › **Deadline for all *Outsourcing* arrangements 1 June 2018**

This Policy applies to all new *Outsourcing* arrangements between a *Registered Person* and a *Service Provider* **three months** from the date of publication of this Policy, being 1 June 2017.

Registered Persons with existing *Outsourcing arrangements* may adopt this Policy **three months** from the date of publication of this Policy, being 1 June 2017. Please note the JFSC's expectations in paragraph 3.3.5 below. Registered Persons with existing *Outsourcing* arrangements must adhere to this Policy **fifteen months** from the date of publication of this Policy (the "*OSP Deadline*"), being 1 June 2018. For the avoidance of doubt Registered Persons with existing *Outsourcing* arrangements means all existing *Outsourcing* arrangements entered into before 1 June 2017 and includes any arrangements which under the 2011 Policy may not have been considered as an *Outsourcing* arrangement but are under this Policy.

Registered Persons may opt to adhere to this Policy and file the *Outsourcing Notification* form after publication of this Policy and prior to three month transition period expiring on 1 June 2017, providing that the *Registered Person*: (i) confirms in writing that it will adhere to this Policy; and (ii) agrees to be supervised by the JFSC as if this Policy applies to the proposed *Outsourcing* arrangement.

Contents

Glossary of terms	4
Interpretation	7
Part I	8
1. Introduction	8
1.1 Purpose	8
1.2 Structure	8
1.3 Key regulatory implications	8
Part II	10
2. Basic premises underlying the Outsourcing Policy	10
Part III	11
3. The Outsourcing Policy	11
3.1 Definition of Outsourcing	11
3.2 Scope.....	11
3.3 Effective Dates and Transitional Provisions.....	13
Effective Dates	13
Transitional Provisions.....	13
3.4 Core Principles	14
Part IV	16
4. Guidance notes.....	16
4.1 Guidance notes on Scope	16
4.2 Guidance on Core Principle No. 1	16
4.3 Guidance on Core Principle No. 2	17
4.4 Guidance on Core Principle No. 3	19
4.5 Guidance on Core Principle No. 4	19
4.6 Guidance on Core Principle No. 5	19
4.7 Guidance on Core Principle No. 6	21
Part V: FAQs	23
5. FAQs relating to general issues	23
6. FAQs relating to particular core principles	27
7. FAQs relating to particular types of activity	31
Appendix 1.....	33

Glossary of terms

2011 Policy	means the <i>JFSC</i> 's Policy Statement and Guidance Notes on: (1) Outsourcing; And (2) Delegation by Jersey Certified Funds and Fund Services Businesses Published by the <i>JFSC</i> in May 2011
AML/CFT	means anti-money laundering and countering the financing of terrorism
AML/CFT Handbook	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Business (as may be amended by the <i>JFSC</i> , from time to time) ¹
Banking Code	means the Code of Practice for Deposit-taking Business
Banking Law	means the Banking Business (Jersey) Law, 1991
Certified Fund	means a fund issued with a certificate pursuant to the Collective Investment Funds (Jersey) Law 1988
Certified Funds Code	means the Code of Practice for Certified Funds
Client	means a customer, investor or other <i>Person</i> in respect of whom a <i>Registered Person</i> is Licensed to provide products or services
COBO Conditions	means any conditions imposed by the <i>JFSC</i> pursuant to its granting of a <i>COBO Consent</i>
COBO Consent	means a consent issued by the <i>JFSC</i> pursuant to the Control of Borrowing (Jersey) Order, 1958
Codes of Practice (or Codes) ²	means, collectively, the <ul style="list-style-type: none"> › <i>Banking Code</i>; › <i>Certified Funds Code</i>; › <i>FSB Code</i>; › <i>GIMB Code</i>; › <i>IB Code</i>; › <i>Insurance Code</i>; › <i>MSB Code</i>; › <i>TCB Code</i>
Collective Investment Funds Law	means the Collective Investment Funds (Jersey) Law, 1988
JFSC	means the Jersey Financial Services Commission
Companies Law	means the Companies (Jersey) Law, 1991
FAQs	means frequently asked questions

¹ http://www.jerseyfsc.org/anti-money_laundering/Regulated_financial_services_businesses/aml_cft_handbook.asp

² *Codes of Practice* may be prepared and issued; or revised by the *JFSC* pursuant to, the *Regulatory Laws*, and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law, 2008 (in respect of *AML/CFT* requirements).

Fit and Proper	means that a <i>Person</i> would meet the standards required to be fit and proper to be <i>Licensed</i> or, continue to be <i>Licensed</i> (as applicable) pursuant to the requirements of the relevant <i>Regulatory Law</i> ³
FSB Code	means the Code of Practice for Fund Services Business
FSJL	means the Financial Services (Jersey) Law, 1998
Fund Services Business	means the <i>Regulated Activity</i> , involving the provision of services in relation to certain types of funds, which is described in Article 2(10) of the <i>FSJL</i>
GIMB Code	means the Code of Practice for General Insurance Mediation Business
Governing Body	means the body within a <i>Registered Person</i> that is considered to exercise ultimate control over it. Generally, this will be (i) the directors of a company, protected cell company or the relevant cells of an incorporated cell company; (ii) the trustee of a unit trust; (iii) the general partner of a limited partnership, separate limited partnership or incorporated limited partnership; or the partners of a limited liability partnership. In the case of a sole trader, the <i>Governing Body</i> will be the sole trader
Group	means a body corporate that would be defined as a “subsidiary”, “wholly-owned subsidiary” or “holding body” of another body corporate, under the <i>Companies Law</i> irrespective of the jurisdiction of the company
IB Code	means the Code of Practice for Investment Business
Insurance Code	means the Code of Practice for Insurance Business
Insurance Law	means the Insurance Business (Jersey) Law, 1996
Licence	means the authorisation by the <i>JFSC</i> to conduct <i>Regulated Activity</i> ⁴
Managed Entity	means, in the context of <i>MoME Arrangements</i> , an entity that is managed by a <i>MoME</i>
MoME	means, in the context of <i>MoME Arrangements</i> , a manager of a <i>Managed Entity</i>
MoME Arrangements	means arrangements described in the <i>MoME Guidance Note</i> and pursuant to which a <i>MoME</i> falls within class ZK of <i>Fund Services Business</i> by providing certain services to a <i>Managed Entity</i>

³ See for example Article 9 of the *FSJL*. Note also that the *JFSC* provides guidance as to, amongst other things, the criteria upon which it bases decisions as to whether such requirements are satisfied in the relevant Licensing Policy.

http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp

⁴ Such authorisation being: (i) registration under the *Banking Law*; (ii) grant of a permit or certificate under the *Collective Investment Funds Law*; (iii) registration under the *FSJL* or (iv) grant of a permit under the *Insurance Law*.

MoME Guidance Note	means the guidance issued by the <i>JFSC</i> and contained in the document entitled: <i>Guidance Note For a Manager of a Managed Entity (a "MoME") and Certain Managed Entities (as may be amended by the JFSC, from time to time)</i> ⁵
Money Laundering Order	means the Money Laundering (Jersey) Order, 2008
MSB Code	means the Code of Practice for Money Service Business
OCIF Guide	means the guide which is Schedule 4 to the <i>Certified Funds Code</i> called the <i>Guide to Jersey Open-Ended Unclassified Collective Investment Funds Offered to the General Public (as amended by the JFSC, from time to time)</i> ⁶
Offer Document	means a prospectus or other offering document inviting a <i>Person</i> to become an investor of a fund
Outsourcing	means an arrangement of any form between a <i>Registered Person</i> and a <i>Service Provider</i> by which the <i>Service Provider</i> performs any activity, that would otherwise be undertaken by the <i>Registered Person</i> , where a <i>Service Provider's</i> failure to perform or inadequate performance of such activity would materially impair the continuing compliance of the <i>Registered Person's Regulated Activity</i> , with the requirements of the <i>Regulatory Laws</i> ⁷
Outsourcing Notification	means a notification as detailed in paragraph 4.6.4
Outsourcing Policy/this Policy/the Policy	means this document
Person	means any natural or legal person (including a body of persons corporate or unincorporated)
Registered Person	means a <i>Person</i> that is <i>Licensed</i> or holds a permit or certificate, as applicable, under one or more of the <i>Regulatory Laws</i>
Regulated Activity	means activity conducted pursuant to the <i>Regulatory Laws</i> , in respect of which a <i>Person</i> is <i>Licensed</i>
Regulatory Laws	means the <i>Banking Law</i> , the <i>Collective Investment Funds Law</i> , the <i>FSJL</i> , and the <i>Insurance Law</i>
Service Provider	means a <i>Person</i> to whom a <i>Registered Person</i> <i>Outsources</i> activities
Sub-contractor	means a <i>Person</i> to whom a <i>Service Provider</i> transfers the carrying out of any <i>Outsourced</i> activity to the <i>Service Provider</i>
Sub-Outsourcing	means an arrangement of any form between a <i>Service Provider</i> and <i>Sub-contractor</i> pursuant to which the <i>Sub-contractor</i> performs any <i>Outsourced</i> activity that would otherwise be undertaken by the <i>Service Provider</i>
TCB Code	means the Code of Practice for Trust Company Business

⁵ http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp

⁶ http://www.jerseyfsc.org/the_commission/codes_of_practice/index.asp

⁷ For the avoidance of doubt "requirements of the *Regulatory Laws*" includes compliance with all secondary legislation, Notices, and *Codes of Practice* made pursuant to the *Regulatory Laws*.

Interpretation

In the Outsourcing Policy and Guidance Notes, unless the contrary intention appears:

- a. Words in the singular shall include the plural and words in the plural shall include the singular.
- b. The word “include” indicates a non-exhaustive list.
- c. Grammatical variations of words to which definitions are assigned shall be construed in accordance with the definitions.
- d. References to legal or regulatory requirements shall, unless the context provides otherwise, refer to such legal or regulatory requirements as may be amended from time to time.

Part I

1. Introduction

1.1 Purpose

- 1.1.1 The purpose of the Outsourcing Policy and Guidance Notes (“**Outsourcing Policy**”) is to assist *Registered Persons* in understanding what the *JFSC* expects of them if they *Outsource* activities.

1.2 Structure

The Outsourcing Policy and Guidance Notes are divided into five parts:

- 1.2.1 **Part I** explains the purpose, structure, and key regulatory implications of the *Outsourcing Policy*;
- 1.2.2 **Part II** sets out the basic premises underlying the *JFSC’s Outsourcing Policy*;
- 1.2.3 **Part III** sets out the Scope, Effective Dates and Transitional Provisions as well as the Core Principles the *JFSC* expects *Registered Persons* to satisfy in complying with the *Outsourcing Policy*;
- 1.2.4 **Part IV** provides guidance, in general terms, as to how *Registered Persons* may satisfy these requirements; and
- 1.2.5 **Part V** provides further general assistance to *Registered Persons* seeking to understand the *JFSC’s* expectations of them by providing responses to various *FAQs*.

1.3 Key regulatory implications

- 1.3.1 The *JFSC* is responsible for the supervision of *Regulated Activity* conducted in or from within Jersey. That responsibility is discharged pursuant to, amongst other things, the *Regulatory Laws*. Under the *Regulatory Laws*, *Persons* that conduct *Regulated Activity* must be *Licensed*. Upon *Licensing*, such *Persons* will be *Registered Persons*.
- 1.3.2 Compliance with the Outsourcing Policy and Guidance Notes may be taken into account by the *JFSC* when considering whether a *Person* is deemed *Fit and Proper* in terms of its structure and organisation.
- 1.3.3 The *JFSC* is empowered by the *Regulatory Laws* to “... prepare and issue a Code of Practice setting out the principles and detailed requirements that must be complied with in the conduct of financial services business”. The *Codes* require *Registered Persons* to comply with the *Outsourcing Policy*, the requirements of which are therefore incorporated by reference as *Codes* requirements.

- 1.3.4 The appropriate measures to be taken by a *Registered Person* that is considering *Outsourcing* will depend upon the particular facts of each case. The guidance contained in this document presents examples of when the *Outsourcing Policy* may apply and ways of complying with the *Outsourcing Policy* but is not exhaustive. The *Outsourcing Policy* should always be considered in conjunction with all relevant legal or regulatory requirements and anyone who is uncertain of these requirements should seek appropriate professional advice. The Outsourcing Policy and Guidance Notes are **not** intended to provide legal advice.

Part II

2. Basic premises underlying the Outsourcing Policy

2.1 The *Outsourcing Policy* is based on the basic premises that:

- a) A *Registered Person* remains fully responsible and accountable to the *JFSC* for (and the *JFSC's* powers in relation to the *Registered Person* may, if appropriate, be exercised in respect of) any *Outsourced* activity to the same extent as if the *Outsourced* activities were not *Outsourced*.
- b) A *Registered Person* must not, as a consequence of any *Outsourcing* arrangements, become devoid of functions to the extent that it becomes a “letter box” entity.

2.2 A *Registered Person* should therefore ensure that it takes reasonable steps to avoid its *Outsourcing* arrangements giving rise to any undue risks and the *JFSC* expects adherence to the Core Principles of its *Outsourcing Policy* will be essential in this regard. The relevant *Codes of Practice* require adherence with this policy.

Part III

3. The Outsourcing Policy

3.1 Definition of Outsourcing

- 3.1.1 *Outsourcing* means an arrangement of any form between a *Registered Person* and a *Service Provider* by which the *Service Provider* performs any activity, that would otherwise be undertaken by the *Registered Person*, where a *Service Provider's* failure to perform or inadequate performance of such activity would materially impair the continuing compliance of the *Registered Person's Regulated Activity*, with the requirements of the *Regulatory Laws*⁸.

3.2 Scope

- 3.2.1 The *Outsourcing Policy* applies to all *Registered Persons*, in respect of *Outsourcing*; irrespective of whether it is *Outsourced* to *Persons* within the same *Group*⁹, or to third parties. *Registered Persons* should ensure that the same requirements are met in respect of any *Sub-Outsourcing* arrangements as would apply in respect of any *Outsourcing* arrangements.

- 3.2.2 The following activities are not deemed to amount to *Outsourcing* for the purposes of this *Outsourcing Policy*:

- 3.2.2.1 The provision, to a *Registered Person*, of advisory services and other services which do not form part of the *Regulated Activity* in respect of which it is *Licensed*, including:

- › the provision of legal advice to the *Registered Person*;
- › the purchase of investment advisory services where investment advice is not part of the *Registered Person's Regulated Activity*;
- › the training of personnel of the *Registered Person*;
- › the provision of billing services;
- › the security of the *Registered Person's* premises and personnel; or
- › the purchase of standardised services including market information services and the provision of price feeds.

- 3.2.2.2 The performance of activity that would otherwise be *Outsourcing* by different elements of the same legal person, i.e. (i) a branch on behalf of its head office; or (ii) a branch on behalf of another branch, in both scenarios where all elements are parts of the same legal person.¹⁰

⁸ For the avoidance of doubt "requirements of the *Regulatory Laws*" includes compliance with all secondary legislation, Notices, and *Codes of Practice* made pursuant to the *Regulatory Laws*.

⁹ Refer to paragraph 3.2.2.2. regarding a branch.

¹⁰ Refer to *FAQ 7.2*, in Part V.

3.2.2.3 Where a custodian (including a prime broker) acting in relation to a *Certified Fund* is a member of an international corporate *Group*, and the sub-custodians engaged by the custodian are also members of the same *Group*. This is on the basis of the *JFSC's* guidance on the Certified Funds Prospectus Order (letter 31 May 2012)¹¹ and the *JFSC* would not expect the fund prospectus to list or describe each sub-custodian separately. References can simply be made in the fund prospectus to the use of members of the same corporate *Group* to act as sub-custodians.

3.2.2.4 Based on the *JFSC's* existing working practice in relation to the Trust Company Business where a Trustee regulated for Trust Company Business appoints a third party to act in relation to an individual Trust (save for where the Trust is a *Certified Fund* or Recognized Fund where the provisions of paragraph 3.2.2.5 below apply) this Policy does not apply.

Where a regulated Trustee appoints a *Service Provider* to generally act in relation to its *Clients*, rather than acting in relation to an individual Trust such proposed appointment and ongoing *Outsourcing* needs to be considered in accordance with the Policy. For example the global *Outsourcing* of accountancy services or IT Services may be caught.

3.2.2.5 The *JFSC* does **not** expect a *Registered Person* which is a fund¹² or a *Service Provider* that provides services in relation to a fund to comply with the *Outsourcing Policy*; **provided that** certain conditions are met. The conditions that should be met are that:

- › The *Service Providers* who will provide services to the fund are clearly disclosed to the *JFSC* and the fund's investors' in an *Offer Document* prior to these arrangements being implemented.¹³
- › A change of *Service Providers* post authorisation of the fund where the *Offer Document* is not to be updated and where the consent of the investor to the change in *Service Provider* is not required should be notified to the investors (the "Investor Notification").¹³
- › The *Offer Document/Investor Notification* or other documents seeking the consent of the investor to a change in *Service Provider* makes clear and unequivocal, in a manner that is suitable to the level of the fund's investors' financial sophistication.¹⁴

¹¹ Available from the Policy Statements and Guidance Notes page of the *JFSC* website: http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp

¹² This is the case whether or not the fund is a company, trust or form of partnership. Note also that, in all cases, it is the *Governing Body* which is ultimately responsible for the selection, appointment and monitoring of its fund service providers.

¹³ In some cases alternative documentation may be acceptable to the *JFSC*, but the *Registered Person* should seek the *JFSC's* confirmation of this on a case by case basis.

¹⁴ For example, if *investors* are retail investors the expectation is that more explanation is needed than would be required in the case of professional investors.

- › The nature of any activity to be undertaken by such *Service Providers*;
 - › Any material risks connected with the activity (including any conflicts of interest); and
 - › Where the fund’s investors should deal directly with those *Service Providers* in respect of the activities they carry out.
- 3.2.2.6 The *JFSC* deems that *MoME Arrangements*, which are consistent with the standards set out in its *MoME Guidance Note*, are not subject to the *Outsourcing Policy*.
- 3.2.3 For the avoidance of doubt, in relation to a fund:
- 3.2.3.1 if such *Service Providers* appointed in compliance with the conditions in paragraph 3.2.2.5 above should then propose to *Outsource* activity; and/or
 - 3.2.3.2 the conditions outlined in paragraph 3.2.2.5 above are not met, such *Outsourcing* will be subject to the *Outsourcing Policy*.
- 3.2.4 In exceptional circumstances, where strict adherence with the *Outsourcing Policy* would produce an anomalous result, *Registered Persons* may apply to the *JFSC* for a variance to the requirements of the *Outsourcing Policy*.

3.3 Effective Dates and Transitional Provisions

Effective Dates

- 3.3.1 This Policy applies to all new *Outsourcing* arrangements between a *Registered Person* and a *Service Provider* **three months** from the date of publication of this *Policy*, being 1 June 2017.
- 3.3.2 *Registered Persons* with existing *Outsourcing* arrangements may adopt this *Policy* **three months** from the date of publication of this *Policy*, being 1 June 2017. Please note the *JFSC*’s expectations in paragraph 3.3.5 below. *Registered Persons* with existing *Outsourcing* arrangements must adhere to this *Policy* **fifteen months** from the date of publication of this *Policy* (the “*OSP Deadline*”), being 1 June 2018. For the avoidance of doubt *Registered Persons* with existing *Outsourcing* arrangements means all existing *Outsourcing* arrangements entered into before 1 June 2017 and includes any arrangements which under the *2011 Policy* may not have been considered as an *Outsourcing* arrangement but are under this *Policy*.

Transitional Provisions

- 3.3.3 Any new arrangements entered into after the *Policy* is published and until the three months transition period has expired, on 1 June 2017, are subject to the *2011 Policy* (the “*Interim Period*”). However, these arrangements will need to be updated before the expiry of the fifteen months period on 1 June 2018 referred to in paragraph 3.3.2 so that they comply with this *Policy*. Therefore, any *Service Provider* may wish to ensure that any *Outsourcing* arrangements entered into during the *Interim Period* are compliant with this *Policy*.

- 3.3.4 *Registered Persons* may opt to adhere to this *Policy* and file the *Outsourcing Notification* form after publication of this *Policy* and prior to three month transition period expiring on 1 June 2017, providing that the *Registered Person*: (i) confirms in writing that it will adhere to this *Policy*; and (ii) agrees to be supervised by the *JFSC* as if this *Policy* applies to the proposed *Outsourcing* arrangement.
- 3.3.5 Insofar as existing *Outsourcing* arrangements are concerned, including those arrangements that may not have previously been considered *Outsourcing* under the *2011 Policy*, *Registered Persons* are expected to review and update these arrangements after 1 June 2017 in accordance with paragraphs 3.3.5.1 or 3.3.5.2 and in both cases before the *OSP Deadline*:
- 3.3.5.1 in the ordinary course of their business when the existing arrangements are reviewed or updated; or
- 3.3.5.2 upon the annual review of the *Outsourcing* Arrangement in accordance with the *2011 Policy*.

For consistency and continuity at the time the *Outsourcing* Arrangement is conformed to the *Policy* an *Outsourcing Notification* should be made to the *JFSC* in relation to those existing arrangements that are now subject to this *Policy* which have never previously been notified to the *JFSC*.

3.4 Core Principles

Core Principle No. 1

A *Registered Person* must satisfy itself at the outset, and on a continuing basis thereafter, that any *Service Provider* to whom it *Outsources* activities is *Fit and Proper* and will perform the *Outsourced* activities in a responsible, professional and suitable manner.

Core Principle No. 2

A *Registered Person* must have in place appropriate written agreements, with any *Service Providers* to whom it *Outsources* activities that clearly specify the terms of engagement and the level of services to be provided by the *Service Provider*.

Core Principle No. 3

A *Registered Person* must maintain the (i) capacity; (ii) resources; and (iii) policies and procedures to monitor, assess and ensure that any *Outsourced* activities are being performed adequately and the *Service Provider* remains *Fit and Proper*.

Core Principle No. 4

A *Registered Person* must put in place arrangements that allow it to terminate its *Outsourcing* arrangements without undue delay and manage the consequences of any such termination appropriately.

Core Principle No. 5

A *Registered Person* must provide the *JFSC* with adequate prior written notice of its intention to *Outsource* activities or make material changes to any existing *Outsourcing* arrangements. A *Registered Person* must not enter into any *Outsourcing* arrangement (save for contingency arrangements) until it has received prior written confirmation from an officer of the *JFSC* that the *JFSC* has no objection to such *Outsourcing* arrangements.

Core Principle No. 6

A *Registered Person* must ensure that nothing in any *Outsourcing* arrangements prevents or restricts the *JFSC's* ability to exercise the legal or regulatory powers it would otherwise have been able to exercise, in respect of any *Registered Persons* or *Outsourced* activity, had the *Outsourcing* not taken place.

Part IV

4. Guidance notes

4.1 Guidance notes on Scope

- 4.1.1 Please see in Appendix 1 a flow chart to assist *Registered Persons* in determining whether an activity is subject to this Policy. This flow chart is for guidance only and is not intended to provide legal advice.

4.2 Guidance on Core Principle No. 1

- 4.2.1 A *Registered Person* should conduct suitable due diligence itself or, where appropriate through another member of the same *Group*, in order to satisfy itself that:
- 4.2.1.1 adequate measures have been taken to counter any material risks relating to the *Outsourcing* arrangements; and
 - 4.2.1.2 its *Service Providers* are *Fit and Proper*; and possess adequate capacity and resources to perform the *Outsourced* activity.
- 4.2.2 Determining what amount to “adequate measures”, “material risks” or “adequate capacity and resources”, for the purposes of Core Principle No. 1, will depend on the particular facts of each case. A *Registered Person* should consider, amongst other things, any factors that may adversely impact upon the finances, reputation or operations of the *Registered Person* and its *Clients*.
- 4.2.3 Factors to consider when determining what amount to “material risks” may include any relevant:
- 4.2.3.1 conflicts of interest;¹⁵
 - 4.2.3.2 concentration risks (i.e. risks which might arise if multiple *Registered Persons* use a common *Service Provider* which results in the *Service Provider* lacking the capacity and resources to service them all properly); and
 - 4.2.3.3 jurisdictional risks.
- 4.2.4 Factors to consider, when determining whether a *Service Provider* has adequate capacity and resources to perform *Outsourced* activities, may include the level of the *Service Provider*’s:
- 4.2.4.1 Human resources (e.g. the substance and reputation of the *Service Provider* and whether staff are suitably qualified; experienced; well-trained; and are employed in sufficient numbers);

¹⁵ For example, conflicts of interest might arise in respect of undisclosed fee arrangements; transactions involving third parties; where companies have common directors and in other circumstances which benefit the *Registered Person*, but are prejudicial to its *Clients*’ best interests.

- 4.2.4.2 Technical resources (e.g. whether effective, reliable and robust systems and controls are in place that can, amongst other things, monitor and control the volume of anticipated activity and handle the complexity and nature of the *Outsourced* activity without prejudice to the *Client's* interests); and
- 4.2.4.3 Financial resources (e.g. whether the *Service Provider* is solvent and in good standing; has appropriate insurance; and has sufficient access to capital or credit).
- 4.2.5 The *JFSC* expects that any *Regulated Activity* which is *Outsourced* will be *Outsourced* to a *Service Provider* that is itself regulated for the conduct of such activity and acting in accordance with any applicable legal or regulatory requirements. This assessment should also form part of the *Registered Person's* due diligence.
- 4.2.6 It is possible that activity which is *Outsourced* may materially impair the continuing compliance of the *Registered Person's Regulated Activity*, with the requirements of the *Regulatory Laws* whilst not amounting to *Regulated Activity*. This will always turn on the particular facts of each case. However, where *Outsourced* activity does not amount to *Regulated Activity*, the expectation that the *Service Provider* should itself be regulated for the conduct of the *Outsourced* activity would not apply.
- 4.2.7 A *Registered Person* should be able to provide the *JFSC* with clear evidence that suitable due diligence has been conducted on their *Service Providers*, upon request.

4.3 Guidance on Core Principle No. 2

- 4.3.1 Subject to paragraph 4.3.4 (below), the *JFSC* expects a *Registered Person* to enter into written, legally binding agreements with its *Service Providers* that reflect the risks; size; and complexity of the *Outsourcing* arrangements.
- 4.3.2 Subject to paragraph 4.3.4 (below), the *JFSC* would normally expect such agreements to include enforceable and clearly defined provisions covering:
- 4.3.2.1 The function(s) to be *Outsourced*;
 - 4.3.2.2 The rights, obligations and liabilities of all relevant parties to the agreement;
 - 4.3.2.3 Whether any *Sub-Outsourcing* is allowed and if so, in what circumstances;
 - 4.3.2.4 The performance standards to be met by the *Service Provider*;
 - 4.3.2.5 The reporting requirements of the *Service Provider* to the *Registered Person* in respect of:
 - › Its obligations under the agreement;
 - › Any breaches, errors or other events that undermine its performance; and

- › Any other relevant information concerning its conduct of the *Outsourced* activities.
- 4.3.2.6 An annual review (at a minimum) of the relationship;
- 4.3.2.7 Termination provisions;
- 4.3.2.8 Access rights for the *JFSC*, *Registered Person* and any other relevant third parties (e.g. auditors) to information (including records) relating to the *Outsourced*¹⁶ activity;
- 4.3.2.9 Data protection standards that comply with any applicable legal or regulatory requirements; and
- 4.3.2.10 Protection of the *Registered Person's* confidential and other proprietary information or materials and, where relevant, that of its *Clients*. Where appropriate, such provisions should cover, amongst other things, the destruction or return of any such information or materials upon termination of the *Outsourcing* arrangements.
- 4.3.3 The practice of *Sub-Outsourcing* should be considered carefully by *Outsourcing* parties. The *Registered Person* should ensure that the *Service Provider* cannot in turn *Outsource* the functions *Outsourced* unless the *Sub-contractor* has been approved by the *Registered Person*. *Sub-Outsourcing* must not undermine the ability of the *Registered Person* or the *JFSC* properly to monitor compliance with regulatory requirements.
- 4.3.4 Where the *Service Provider* is an entity within the same *Group* as the *Registered Person*, which provides specialised central support functions to entities within the same *Group* of companies, the *JFSC's* expectation of "appropriate written agreements" may not amount to a written, legally binding agreement that covers the specific nature of the *Outsourcing* in as much detail as would otherwise be required.
- 4.3.4.1 **Provided that** (in all such exceptional circumstances):
- › the *Registered Person* is still able to provide the *JFSC* with evidence of sufficiently robust and clearly documented procedures which properly protect its *Clients'* interests;
 - › the other Core Principles can still be satisfied;
 - › there is no question of such arrangements having been implemented to circumvent the requirements of the *Outsourcing Policy*; and
 - › It meets all other regulatory and legal requirements.

¹⁶ In cases where *Registered Persons* may be unable to secure access for the *JFSC* to information about *Service Providers'* "Outsourced activities" *Registered Persons* should seek the *JFSC's* confirmation as to whether alternative arrangements may be acceptable, on a case by case basis.

4.4 Guidance on Core Principle No. 3

- 4.4.1 A *Registered Person* should be able to provide the *JFSC*, upon request, with evidence that it has itself or, where appropriate through another member of the same *Group*:
- 4.4.1.1 Effective policies and procedures to monitor and assess its *Service Providers'* performance of any *Outsourced* activities. The *JFSC* may request or review on a supervisory examination the results of such monitoring and assessment; and
 - 4.4.1.2 Adequate capacity and resources¹⁷ to implement any such policies and procedures.

4.5 Guidance on Core Principle No. 4

- 4.5.1 A *Registered Person* should be able to terminate an *Outsourcing* arrangement and the existing *Outsourcing* arrangements should not be terminated (save in exceptional circumstances as described in paragraph 4.6.7.) until the *JFSC* is notified either:
- 4.5.1.1 that the *Registered Person* intends to undertake the *Outsourced* activity itself; or
 - 4.5.1.2 of the new *Outsourcing* arrangements in accordance with this policy and a written no objection has been received from an officer of the *JFSC*.
- 4.5.2 A *Registered Person* should either itself or, where appropriate through another member of the same *Group*, establish and maintain appropriate contingency plans that enable alternative arrangements to be set up without undue delay and with minimum disruption to its business; if the *Outsourcing* ends suddenly or unexpectedly or, there is a significant interruption.
- 4.5.3 Contingency plans should be documented and, where appropriate, include provisions that allow the *Registered Person* or another member of the same *Group* to (i) take over day-to-day control of any *Outsourced* activity; or (ii) transfer its conduct to another suitable *Service Provider*.
- 4.5.4 The *JFSC's* expectation is that the contingency plans will be periodically tested. The *JFSC* may request or review on a supervisory examination the results of such testing.

4.6 Guidance on Core Principle No. 5

- 4.6.1 The *Registered Person* should communicate with the *JFSC* in respect of any proposals to *Outsource* or make material changes to existing *Outsourcing* arrangements. It is necessary to seek the *JFSC's* prior confirmation that it has “no objection” to such proposals. However, the *JFSC* may, if it sees fit, object to proposals or require further action to be taken where it has regulatory concerns.

¹⁷ Note the guidance in respect of Core Principle 1 on the meaning of “adequate capacity and resources”.

- 4.6.2 *Registered Persons* should provide the *JFSC* with sufficient time to review and assess the possible regulatory implications of any *Outsourcing* proposals. The *JFSC's* general expectation is that proposals to *Outsource* activity will be communicated to it at an early stage.
- 4.6.3 Determining what amounts to “sufficient time” or, an “early stage”, for the purposes of Core Principle No. 5, will depend upon the particular facts of each case. Factors that may be relevant include: (i) the size, risk and complexity of the proposed *Outsourcing*; (ii) the *Service Providers* and jurisdictions to which it is proposed to *Outsource*; and (iii) the ability of the *Registered Person* to comply with the *Outsourcing Policy* should the proposals be implemented.
- 4.6.4 The *JFSC* would expect the notification of proposed *Outsourcing* to include the following information (for ease the *JFSC* provides an *Outsourcing Notification* form on the *JFSC* website):
- 4.6.4.1 Name and address of the proposed *Service Provider*
 - 4.6.4.2 Regulatory status of the proposed *Service Provider*
 - 4.6.4.3 Summary of the *Outsourced* activity
 - 4.6.4.4 Whether the *Service Provider* is related to the *Registered Person* (i.e. subsidiary, part of the same *Group* or other connection)
 - 4.6.4.5 Reasons for the *Outsourcing*
 - 4.6.4.6 Summary of how the *Outsourcing* impacts on *Regulated Activities* including a summary of the risk assessment
 - 4.6.4.7 Confirmation due diligence has been performed on the proposed *Service Provider* in connection with the *Fit and Proper* test as required by Core Principle No.1
 - 4.6.4.8 Confirmation that there are no barriers to accessing records and data protection requirements have been considered
 - 4.6.4.9 Summary of how the *Outsourced* activity will be monitored on an ongoing basis
 - 4.6.4.10 Details of contingency plans that exist in the event the *Service Provider* fails to perform
 - 4.6.4.11 Whether *Sub-Outsourcing* is permitted and provide relevant details of the *Sub-Outsourcing*
 - 4.6.4.12 Confirmation that the *Registered Person* will comply with each of the six *Outsourcing Core Principles*
 - 4.6.4.13 A copy of the agreement should be provided if the *Outsourced* activity is a *Regulated Activity*
 - 4.6.4.14 Any other relevant information
- 4.6.5 The *JFSC* may request further information, including the *Outsourcing* agreement in relation to unregulated activity.

4.6.6 Upon receipt of the *Outsourcing Notification* the *JFSC* will acknowledge receipt confirming the date of receipt and indicate that the *JFSC* will use its best endeavours to respond within 20 business days of the date of receipt. Where the *Outsourcing Notification* is part of an application to authorise a *Certified Fund* or a *Fund Services Business* (where the *Outsourcing* arrangement is not exempt) no acknowledgement will be sent and the *JFSC* will endeavour to process the *Outsourcing Notification* in accordance with the published timeframes for the relevant *Certified Fund* or *Fund Services Business*. Where the *Outsourcing* arrangement is not exempt and concerns a *Certified Fund* or a *Fund Services Business*, the *JFSC* will endeavour to respond within 10 business days of receipt of the *Outsourcing Notification*. The *JFSC* response may be:

4.6.6.1 a request for further action to be taken such as:

- › the provision of further information and/or documentation; and/or
- › confirmation that additional time is required to consider the *Outsourcing Notification*; or

4.6.6.2 a “no objection”.

The *Registered Person* should not enter into an *Outsourcing* arrangement until a “no objection” is received in writing from the *JFSC*.

4.6.7 In exceptional circumstances where the *Registered Person* has to invoke its *Outsourcing* contingency plans and prior notice to the *JFSC* is not possible, the *JFSC* should be notified as soon as practicably possible afterwards. Such notification should also include:

4.6.7.1 an explanation as to why the *Outsourcing* arrangements have ended unexpectedly/been significantly interrupted;

4.6.7.2 provide details of the *Outsourcing* contingency plan implemented together with confirmation that its existing *Outsourcing* contingency plan was and remains adequate; and

4.6.7.3 confirm the time period that the *Outsourcing* contingency plan will be in place and when it is anticipated the replacement *Outsourcing* arrangements will be put in place.

4.7 Guidance on Core Principle No. 6

4.7.1 A *Registered Person* should ensure that its *Outsourcing* proposals do not defeat the purpose of regulation. Whatever the nature of any *Outsourcing* arrangements, the *Registered Person* should ensure that:

4.7.1.1 The provisions of any *Regulatory Laws* or other regulatory requirements (e.g. *Licence* conditions, *COBO Conditions* or *Code(s)* requirements) which apply to a *Registered Person*, prior to any *Outsourcing*, shall continue to apply upon such *Outsourcing* arrangements taking effect; and

- 4.7.1.2 The *JFSC* is able to exercise its supervisory and other regulatory functions effectively. In order to facilitate this requirement the *Registered Person* should procure that the *JFSC* is able to access, promptly upon request, any books, records or other sources of information relevant to its regulatory oversight.

Part V: FAQs

5. FAQs relating to general issues

5.1 Where terms such as “appropriate”, “adequate”, “suitable”, “effective” or other similar qualitative terms are used how should these be interpreted by a Registered Person?

- 5.1.1 A *Registered Person* is expected to apply its own judgement to the particular facts of each case in order to determine what might be “appropriate”, “adequate”, “suitable”, “effective” etc. In applying its judgement, the *Registered Person* is expected to be mindful of its obligations to comply with any applicable legal or regulatory requirements.
- 5.1.2 Where the *JFSC* provides specific guidance as to what it would normally consider “appropriate”, “adequate”, “suitable”, “effective” etc. then, in the absence of such steps being taken, the *JFSC* would expect a *Registered Person* to either take equivalent alternative steps or, be able to provide evidence to the *JFSC* explaining why it did not deem such steps to be necessary.
- 5.1.3 Similarly, where these *FAQs* provide further explanations of the *JFSC’s* general understanding of certain aspects of the Outsourcing Policy and Guidance Notes; the *JFSC’s* expectation is that *Registered Persons* will adopt an approach that is consistent with these *FAQs* where relevant to the particular circumstances of any *Outsourcing* arrangements they may become involved in.
- 5.1.4 It should also be noted that where reference is made to policies and procedures being “effective”¹⁸ or to plans being “appropriate”¹⁹; the *JFSC* expects that a *Registered Person* will, as part of the ongoing monitoring of its *Outsourcing* arrangements, periodically test whether such policies, procedures or plans comply with the Core Principles of the Outsourcing Policy. The frequency of such testing will depend on the particular facts of each case and should reflect the size, risk and complexity of the *Outsourcing* arrangements.

5.2 Why does the JFSC include, within the definition of “Outsourcing”, activity that may not actually be regulated by the JFSC?

- 5.2.1 Activity which the *JFSC* does not regulate may materially impair the continuing compliance of the *Registered Persons’s* activity that is regulated by the *JFSC*. The *JFSC* takes such activity into account when deciding whether to grant or revoke *Licences* and similarly, such activity may be a relevant consideration in respect of any *Outsourcing* arrangements.

¹⁸ See for example, the Guidance on Core Principle No. 3, paragraph 4.4., in Part IV.

¹⁹ This is relevant to the discussion of “contingency plans” in the Guidance on Core Principle No. 4 paragraph 4.5., in Part IV.

- 5.2.2 Two examples are provided below, to illustrate how this approach might be applied:
- 5.2.2.1 By way of example, if a *Registered Person* (e.g. a trust company business or a *Fund Services Business*), *Outsources* accounting functions to a *Service Provider* that are critical in supporting the performance of the *Regulated Activity* for which it is *Licensed* (e.g. the valuation of its assets); a failure to perform those accounting functions properly could result in the *Registered Person* failing to properly conduct the *Regulated Activity* for which it is *Licensed*.
- 5.2.2.2 By way of further example, if a money service business *Outsources* IT functions that are critical in facilitating the transmission of funds by electronic means, a failure in the IT system could result in the *Registered Person* failing to properly conduct the money service business for which it is *Licensed*²⁰.
- 5.2.3 However, the *Outsourcing Policy* is not intended to increase the amount of activity that is regulated. In other words, activity that is not relevant in determining whether a *Regulated Activity* is being performed properly does not fall within the scope of the *Outsourcing Policy*.
- 5.2.4 The *JFSC* has also expressly excluded certain types of activity from the scope of the *Outsourcing Policy* and *Guidance Notes* at paragraph 3.2.2 of Part III (i.e. the provision of advisory services and standardised services etc.).

5.3 What does the JFSC mean when it uses phrases such as “any applicable legal or regulatory requirements” without explaining what these might be?

- 5.3.1 It is the responsibility of a *Registered Person* to determine the legal or regulatory requirements which apply to it. The *JFSC*'s intention in using such phrasing is to emphasise that compliance with the *Outsourcing Policy* is in addition to any other legal or regulatory requirements which might apply to a *Registered Person*. The application of the *Outsourcing Policy* does not remove any such obligations.
- 5.3.2 By way of example, additional legal or regulatory requirements (outside of the *Outsourcing Policy*) might include requirements such as those contained in:
- 5.3.2.1 the *OCIF Guide* (e.g. in respect of the independence of the manager and trustee/ custodian);
- 5.3.2.2 the *Codes of Practice for Alternative Investment Funds and AIF Services Business* (e.g. in respect of “delegation”);
- 5.3.2.3 Other requirements of the *Codes of Practice*, such as requirements relating to *Corporate Governance*; and

²⁰ Under Article 2(9)(c) of the *FSJL*, transmitting or receiving funds by wire or other electronic means is deemed to be money service business, which means you must be *Licensed* to carry out this activity in or from within Jersey.

- 5.3.2.4 The *Money Laundering Order* (e.g. requiring the appointment of a Money Laundering Compliance Officer and Money Laundering Reporting Officer of “appropriate level of seniority”).
- 5.3.3 For the avoidance of doubt, in cases where a *Registered Person* places reliance on a “relevant person” or a *Person* carrying on “equivalent business” pursuant to Article 16 or 16A of the *Money Laundering Order*,²¹ the *JFSC* does not deem this to be *Outsourcing*²². Accordingly, the Outsourcing Policy and Guidance Notes do not apply to such circumstances. However, *Registered Persons* must still comply with any applicable provisions of the *Money Laundering Order* and any other relevant legal or statutory requirements²³.
- 5.3.4 Finally, it should be noted that, a *Registered Person* may have made contractual agreements, representations or other binding commitments to *Clients*. The *JFSC* expects *Registered Persons* to honour such commitments. Depending on the facts, *Outsourcing* arrangements that breach such commitments may also breach applicable regulatory requirements, such as the requirements under the *Codes of Practice* for a *Registered Person* to conduct its business with integrity and where applicable act in the best interests of its *Client*.

5.4 Should the Governing Body formally consider and document its consideration of any Outsourcing arrangements through board minutes (or, where appropriate, other similar documents formally recording its decision)?

- 5.4.1 The *Outsourcing Policy* is premised on an understanding that, amongst other things, *Registered Persons* remain fully responsible and accountable to the *JFSC* for any *Outsourced* activity. Since the *Governing Body* is ultimately responsible for the management and conduct of a *Registered Person’s* affairs; the *JFSC* would expect to see, upon request, board meeting minutes of the *Governing Body* evidencing that it had carefully considered any *Outsourcing* arrangements it implemented.
- 5.4.2 In certain circumstances, it may be sufficient for a *Governing Body* to approve a general *Outsourcing* Policy and delegate the handling of specific *Outsourcing* arrangements to particular individuals or committees. However, the *JFSC* would still expect to see, upon request, board meeting minutes of the *Governing Body* evidencing that it had carefully considered the activities of the particular individuals or committees in respect of the particular *Outsourcing* arrangements. In all cases, *Registered Persons* must be able to demonstrate to the *JFSC* that any *Outsourcing* arrangements are effective, reliable and robust and comply with the Core Principles of the Outsourcing Policy.

²¹ As such terminology is understood within the context of the *Money Laundering Order*.

²² See paragraph 12 of section 5.1 of the *AML/CFT Handbook*.

²³ Of particular importance are *AML/CFT Handbook*: (i) section 2.4.4 which addresses outsourcing and (ii) paragraph 5 of section 9 which clarifies that for the purpose of screening, awareness and training of employees, the term “employees” will include temporary and contract employees, and the employee of any external party fulfilling a function in relation to a relevant person under an outsourcing agreement.

- 5.4.3 For the avoidance of doubt, the *JFSC* would expect the *Governing Body* to adopt the approach, outlined above, in cases where it was *Outsourcing* within its *Group* to a “specialised central support function” (as described at paragraph 6.3 of Part V).

5.5 What are the *JFSC*’s expectations in the event that Outsourced Activities are Sub-Outsourced?

- 5.5.1 The *JFSC* expects *Registered Persons* to ensure that the same requirements are met in respect of any *Sub-Outsourcing* arrangements as would apply in respect of any *Outsourcing* arrangements.
- 5.5.2 *Registered Persons* contractual arrangements with their *Service Providers* should cover possible *Sub-Outsourcing* arrangements (including where they are prohibited).
- 5.5.3 For the avoidance of doubt,
- 5.5.3.1 *Sub-Outsourcing* includes arrangements with a *Sub-contractor* that is within the same *Group* or is a third party which is not in the same *Group* as the *Service Provider*. Again, in such cases, the same principles should be applied as would be applied if the *Sub-Outsourcing* arrangements were *Outsourcing* arrangements.
- 5.5.3.2 the premise underlying the Outsourcing Policy and Guidance Notes that *Registered Persons* remain fully responsible and accountable to the *JFSC* for any *Outsourced* activity which they may *Outsource* continues to apply (to the *Registered Person*) in circumstances where *Outsourced* activity has been *Sub-Outsourced*.

6. FAQs relating to particular core principles

6.1 Why does the JFSC provide that a Registered Person should conduct due diligence; have effective policies and procedures; or maintain appropriate contingency plans either itself or “where appropriate through another member of the same Group” (Core Principle No.’s 1, 3 and 4 Guidance in paragraphs 4.2, 4.4, and 4.5, respectively of Part IV)?

- 6.1.1 The *JFSC* recognises that, in certain circumstances, *Registered Persons* may enter into *Outsourcing* arrangements, pursuant to which monitoring or due diligence is conducted; policies, and procedures are implemented and contingency plans are maintained by other *Group* members.
- 6.1.2 In such circumstances, *Registered Persons* may rely upon such activities being carried out by other *Group* members **provided that** they can demonstrate that the *Outsourcing* arrangements²⁴:
- 6.1.2.1 Comply with any applicable legal or regulatory requirements;
 - 6.1.2.2 Are in their *Clients’* best interests²⁵; and
 - 6.1.2.3 Do not give rise to any undue risks having regard to, amongst other things, the *Service Provider* and its jurisdiction.
- 6.1.3 The ability to rely on members of a *Group*, as described above, only applies to structures involving bodies corporate.²⁶ Should a *Registered Person* consider another structure, involving different entities (i.e. not bodies corporate), that does not fall within these parameters is equivalent to a *Group* structure, it may approach the *JFSC* to determine whether it is able to place reliance on other members of such a “group” in the same way.
- 6.1.4 For the avoidance of doubt, *Registered Persons* remain fully responsible and accountable to the *JFSC* in respect of any *Outsourced* activity irrespective of whether they rely on a third party to conduct due diligence on their behalf. The *Registered Person* has to be able to demonstrate its oversight of these *Outsourced* arrangements.

²⁴ *Registered Persons* should be able to provide the *JFSC* with documentary evidence demonstrating the rationale and procedures pursuant to which they satisfied themselves that the *Outsourcing* arrangements were appropriate.

²⁵ By way of example, where a *Registered Person* relies on another *Group* member to monitor *Outsourcing* arrangements, the *Registered Person* should still satisfy itself that effective monitoring is in fact taking place (e.g. by appropriate internal auditing).

²⁶ The definition of “*Group*” in the Glossary is based on the *Companies Law* definition which relates to body corporates.

6.2 What does the JFSC mean when it suggests that, in cases where the Service Provider is an entity within the same Group as the Registered Person, “the JFSC’s expectation of appropriate written agreements may not amount to a written, legally binding agreement that covers the specific nature of the Outsourcing in as much detail as would otherwise be required” (Core Principle No. 2 Guidance in paragraph 4.3.4 of Part IV)?

- 6.2.1 The specific nature of such agreements will always depend on the particular facts of each case. By way of example, such less detailed agreements may be appropriate in circumstances where there is some form of overarching framework agreement between the *Registered Person* and the *Service Providers* which provides robust and enforceable procedures pursuant to which particular *Outsourcing* arrangements may be entered into pursuant to service level agreements. The *Registered Person* does however need to consider whether the documentation relating to the arrangements adequately protect its *Client’s* interests and meet all other relevant legal and regulatory requirements.

6.3 What is meant by “specialised central support functions” (Core Principle No. 2 – Guidance in paragraph 4.3.4 of Part IV)?

- 6.3.1 What the *JFSC* has in mind are so-called “centres of excellence” and other similar entities or arrangements which are normally used by large banking and other financial institutions. These are specific entities within a large *Group* of companies to which all entities in that *Group* *Outsource* specific activities (e.g. IT, finance-related or other functions).
- 6.3.2 It should be noted that use of such “centres of excellence” may not always be appropriate because the legal, tax or regulatory framework in their jurisdiction prevents this or presents a significant impediment to such *Outsourcing*.
- 6.3.3 Where a *Registered Person* intends to use such a specialised central support function as its *Service Provider*, the guidance at paragraph 6.2.1 applies.
- 6.3.4 *Registered Persons* seeking to use such specialised central support functions are reminded that they remain fully responsible and accountable to the *JFSC* for any activity which is *Outsourced* and they should also be able to satisfy themselves that the other Core Principles are still satisfied and all other relevant legal and regulatory requirements.

6.4 What is the timeframe in which a Registered Person should be able to implement its contingency plans if its Outsourcing arrangements are terminated or suffer a significant interruption (Core Principle No. 4 – Guidance in paragraph 4.5 of Part IV)?

- 6.4.1 The specific timeframe will depend on the facts of each case, but, in all cases, the *JFSC* expects *Registered Persons* to implement any such contingency plans as quickly as is reasonably possible having regard to those particular facts.

6.5 What constitutes a “significant interruption” (Core Principle No. 4 – Guidance in paragraph 4.5 of Part IV)?

6.5.1 The *JFSC* considers a “significant interruption” to be any interruption that has a serious and adverse impact on the performance of any *Outsourced* activity (e.g. a natural disaster or, major failure of the IT network).

6.6 When the JFSC responds that it has “no objection”, to an Outsourcing Notification by the Registered Person of its proposed Outsourcing arrangements does this mean that the JFSC has implicitly approved the proposals (Core Principle No. 5 – Guidance on paragraph 4.6 of Part IV)?

6.6.1 No. Unless the *JFSC* provides express written confirmation that it has approved any proposed *Outsourcing* arrangements, then no such approval should be implied. A *Registered Person* should however await a “no objection” in writing from an officer of the *JFSC* before entering into an *Outsourcing* arrangement.

6.7 What “further action” might the JFSC require a Registered Person to take in respect of its Outsourcing proposals (Core Principle No. 5 – Guidance in paragraph 4.6 of Part IV)?

6.7.1 Any required further action will depend on the particular facts of each case. For example, the *JFSC* may require the *Registered Person* to provide its *Clients’* or the *JFSC* with further information about the nature of the *Outsourced* activity; the *Service Provider*; or other relevant aspects of the proposed *Outsourcing* arrangements.

6.8 What might prevent the JFSC from exercising its supervisory functions effectively (Core Principle No. 6 – Guidance in paragraph 4.7 of Part IV)?

6.8.1 Again, this will depend on the particular facts of each case. For example, where *Outsourcing* arrangements involve foreign jurisdictions, the *JFSC* will need to be able to continue to effectively supervise the arrangements. This ability might be impaired by factors such as increased supervision costs; data protection, secrecy or other laws in the foreign jurisdiction that might prevent the *JFSC* from obtaining information; or a lack of mutual co-operation arrangements between the *JFSC* and regulatory authorities in the *Service Provider’s* jurisdiction. *Registered Persons* should be able to demonstrate to the *JFSC* that, where relevant, adequate measures are in place to address any such risks.

6.8.2 By way of example, where financial records or other information which the *JFSC* might need to obtain in order to exercise its supervisory or enforcement powers is transferred to a jurisdiction which has secrecy laws the *Registered Person* should take adequate steps to ensure that such laws will not be used to prevent the *JFSC* accessing such information and should periodically test whether these measures are effective.

- 6.8.3 *Registered Persons* should also be mindful of the fact that they are always accountable to the *JFSC* for any regulatory breaches in respect of their *Regulated Activity*.

7. FAQs relating to particular types of activity

7.1 Funds: where an entity is Licensed as a fund, and the appointment of a Service Provider is exempt from this policy by virtue of compliance with the conditions set out in paragraph 3.2.2.5 what responsibility does the fund have regarding the Service Providers?

- 7.1.1 It should be noted that the fund's *Governing Body* is ultimately responsible for the selection, appointment and monitoring of its *Service Providers*. This means that the fund should, amongst other things, monitor, conduct due diligence and implement policies and procedures in respect of the *Service Providers*.
- 7.1.2 The provisions of any *Regulatory Laws* (which includes the *Codes*) or any other regulatory requirements (e.g. such as *Licence* conditions or *COBO Conditions*) which apply to a *Registered Person* shall continue to apply notwithstanding whether such activity is caught by this Policy or not.

7.2 Branches: How does the Outsourcing Policy apply between elements of the same legal person (i.e. where a head office conducts activity for its branch or a branch conducts activity for another branch)?

- 7.2.1 Where activity the performance of which would materially impair the continuing compliance of the *Registered Person's Regulated Activity* with the requirements of the *Regulatory Laws* is performed by a head office on behalf of its branch or a branch for another branch (or vice-versa) ("elements of a legal person"), this falls outside the scope of the *Outsourcing Policy*. This is because the branch and the head office, or both branches, are the same legal person. However, it is important that *Registered Persons* recognise that they are still bound by other legal and regulatory requirements, including the *Codes of Practice* and the *AML/CFT Handbook*.²⁷
- 7.2.2 For the avoidance of any further doubt, if the *Registered Person's* legal person *Outsources* activity of the *Registered Person* to another legal person (i.e. a *Service Provider*), all such *Outsourced* activity will be caught by the *Outsourcing Policy*.
- 7.2.3 Pursuant to Principle 3 of the *Codes of Practice*:
- 7.2.3.1 The *Registered Person* is required, amongst other things, to adequately monitor and control its business. Accordingly, in cases where a *Registered Person* conducts its business in such a way that one element of a legal person carries out activity (that save for the exemption referred to in paragraph 3.2.2.2 would be *Outsourced* activity), on behalf of another, proper corporate governance

²⁷ Note, for example, that the *AML/CFT Handbook* makes reference to the requirement under the *Money Laundering Order* for a Jersey body corporate or other legal person registered in Jersey that carries on Financial Services Business through an overseas branch to comply with the *Money Laundering Order*.

mechanisms must be implemented by the *Registered Person* to ensure that such business is adequately monitored and controlled.²⁸

7.2.3.2 The *JFSC* does not expect elements of a legal person to conduct due diligence on each other or to enter into binding legal agreements. Further, the *JFSC* recognises that elements of a legal person may rely upon each other to conduct compliance monitoring and due diligence; implement policies and procedures; and carry out other activity (that save for the exemption referred to in paragraph 3.2.2.2 would be *Outsourced* activity).

7.2.3.3 Where elements of a legal person rely on each other to carry out activity (that save for the exemption referred to in paragraph 3.2.2.2 would be *Outsourcing* activity), the branch or head office (as applicable) should be able to demonstrate to the *JFSC* that its senior management²⁹ or, *Governing Body*³⁰ has adequate capacity, resources and systems and controls in place to ensure that the conduct of any such activity (that save for the exemption referred to in paragraph 3.2.2.2 would be *Outsourced* activity) being relied upon:

- › Complies with any applicable legal or regulatory requirements;
- › Is in the interests of any *Clients'* of the Jersey branch or head office (as applicable)³¹; and
- › have properly identified the risks including, the effect that such arrangements might have on *AML/CFT* risks, and is properly mitigating such risks.

²⁸ For the avoidance of doubt, it should be remembered that this is the activity conducted in or from within Jersey in respect of which the *Registered Person* is *Licensed* (by the *JFSC*) i.e. the carrying out, by the head office or other branch, of other functions which do not affect the activity which is regulated by the *JFSC* will not be relevant.

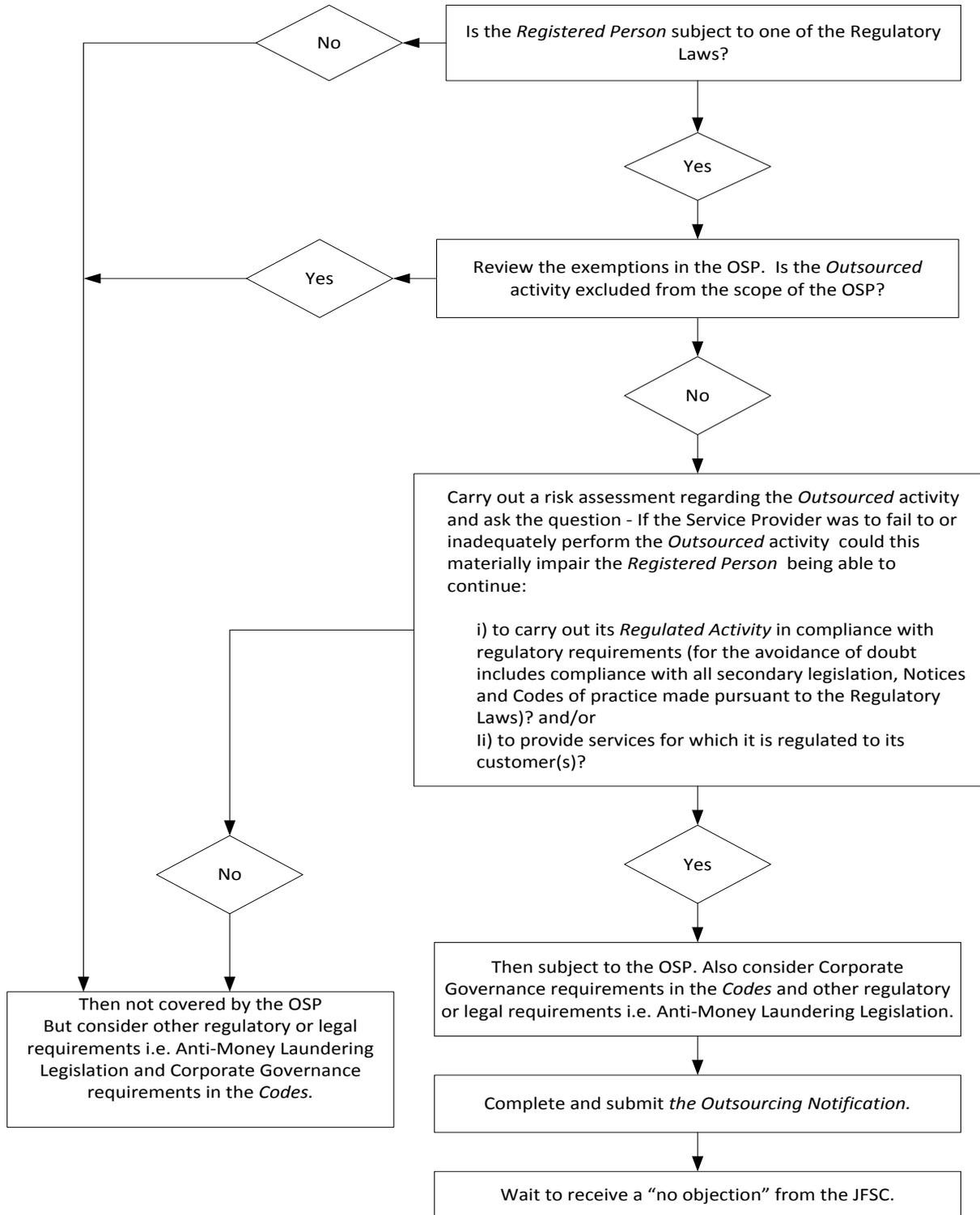
²⁹ Where the branch is relying on the head office or another branch of the same legal person.

³⁰ Where the head office is relying on the branch.

³¹ Regard should be had to Principle 2 of the relevant *Code of Practice*.

Appendix 1

Guidance on whether an activity is within the scope of the Outsourcing Policy (“OSP”).³²



³² This flow chart is for guidance only and is not intended to provide legal advice.