



Jersey Financial
Services Commission

Themed Examination Programme 2018:

Revised Registry Requirements - Beneficial Owners and Controllers

Issued: 19 July 2018

Glossary of terms

All defined terms used in this feedback paper are indicated by *italics*.

Administration Services	Whilst it is not the role of the JFSC to provide legal advice, we acknowledge that the term ‘administration’ is not defined in law and has not been tested in a regulatory context in a Jersey court. The <i>JFSC</i> has interpreted that ‘administration’ within the context of the Beneficial Ownership Register would include the provision of any service specified within Article 2(4) of the <i>FSJL</i> . By way of example, the provision of a registered office and the provision of a company secretary are both services specified within Article 2(4) of the <i>FSJL</i> .
AIM	Alternative Investment Market
AML	Anti-money laundering
API	Application Program Interface
BO	Beneficial Owner - Shall have the meaning assigned to it in Article 2 of the <i>MLO</i>
Board	Board of Directors
BOC17	BOC17 Form – The form that a <i>TCSP</i> must complete within 21 days of knowledge, when there is a change to information of <i>BO</i> and <i>Controllers</i> .
C17S	C17S Form – The form that a <i>TCSP</i> must have completed by 30 June 2017, which provides full information in respect of the <i>BOs</i> and <i>Controllers</i> for administered companies or partnerships.
C17Z	The form equivalent to the <i>C17S</i> , which is filed via <i>API</i> submission.
CDD	Customer Due Diligence
CFT	Countering the financing of terrorism
COBO	Control of Borrowing (Jersey) Law 1947 and the Control of Borrowing (Jersey) Order 1958
the Code	Code of Practice for Trust Company Business – 01 September 2016
Controller	Shall have the meaning assigned to it in Article 2 of the <i>MLO</i>
ECR	The <i>Registry</i> online portal on the Easy Company Register
EDD Measures	Enhanced Due Diligence Measures set out in Article 15 of the <i>MLO</i>
FSJL	Financial Services (Jersey) Law 1998 , as amended
the Handbook	the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Businesses

IOSCO	International Organisation of Securities Commissions
Jersey Registered Companies or Partnerships	<ul style="list-style-type: none"> • Companies registered under the Companies (Jersey) Law 1991, including companies limited by guarantee as well as all protected cell companies and incorporated cell companies; • Incorporated Limited Partnerships registered under the Incorporated Limited Partnerships (Jersey) Law 2011; • Limited Liability Partnerships registered under the Limited Liability Partnerships (Jersey) Law 1997; • Limited Partnerships registered under the Limited Partnerships (Jersey) Law 1994; and • Separate Limited Partnerships registered under the Separate Limited Partnerships (Jersey) Law 2011.
JFCU	States of Jersey Police and Customs Joint Financial Crimes Unit
JFSC	Jersey Financial Services Commission
MLO	Money Laundering (Jersey) Order 2008
PEP	Politically Exposed Person, as defined in Article 15(6) of the <i>MLO</i>
Registered person	A person registered by the <i>JFSC</i> under Article 9 of the <i>FSJL</i> , to carry on <i>TCB</i> , as defined under Article 2 of the <i>FSJL</i>
the Registry	Jersey Companies Registry
Relevant Person	A person carrying on financial services business in or from within Jersey; or a Jersey body corporate or other legal person registered in Jersey, carrying on financial services business in any part of the world
Terms	Terms and Conditions
TCB	Trust Company Business
TCSP	Trust and Corporate Service provider
Three-tier test	<p>Refers to the process, by which, a <i>Relevant Person</i> may demonstrate that it has identified each individual who is a <i>BO</i> or <i>Controller</i> of its customer, as set out in Section 4 of <i>the Handbook</i>.</p> <p>The Three-tier-test can be summarised as: tier 1 control through ownership means, tier 2 exercising control through other means and tier 3 control through positions held.</p>

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1 Introduction

This paper provides the key findings from the *JFSC's* themed programme of on-site examinations which focused on the revised *Registry* requirements relating to *BOs* and *Controllers*. The themed examinations were conducted in Q1 of 2018.

A total of 12 *TCSPs* were individually subject to a two day examination. In addition to reviewing policies and procedures and discussions with management and staff, a total of 169 customer files were also reviewed as part of the examination process.

2 Background

Jersey recognises that transparency of beneficial ownership and control of corporate entities is a critical factor in preventing abuse of the global financial system for laundering the proceeds of crime, financing of terrorism, corruption and bribery, financing the proliferation of weapons of mass destruction and other serious and organised crime.

Jersey has had a central register of beneficial ownership since 1989, which, when combined with the regulation of *TCSPs* providing oversight of those who form and administer corporate and legal entities in Jersey, ensures compliance with the international standard of having available adequate, accurate and current *BO* and *Controller* information. Jersey's leading position in this regard has been acknowledged on many occasions by international standard setters, for example, Moneyval stated in 2016:

“Jersey’s combination of a central register of the UBO with a high level of vetting/evaluation not found elsewhere and regulation of TCSPs of a standard found in few other jurisdictions has been widely recognised by international organisations and individual jurisdictions as placing Jersey in a leading position in meeting standard of beneficial ownership transparency”.

The *JFSC* collects and maintains information on beneficial ownership and control of *Jersey Registered Companies or Partnerships* by virtue of the provisions of *COBO*.

In April 2016, the Governments of Jersey and the United Kingdom signed an Exchange of Notes to enhance the exchange of *BO* and *Controller* information between law enforcement agencies^{1,2}, which is effected through an Information Sharing Agreement entered into between the *JFSC* and the *JFCU*³. The focus of the enhancement was to strengthen the centralised register of *BOs* and *Controllers*, with up to date and accurate information. Accordingly, from 1 January 2017, the *JFSC* required all *Jersey Registered Companies or Partnerships* to complete a *C17S* form detailing current *BO* and *Controller* information by 30 June 2017. Effectively, this meant that *TCSPs* had six months to comply with this new requirement. On submission of a *C17S* form and thereafter, all *Jersey Registered Companies or Partnerships* must notify the *Registry* of any changes to *BO* or *Controllers* within 21 days of knowledge of a change.

¹ The Exchange of Notes can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/624238/Jersey-UK_beneficial_ownership_information_sharing.pdf

² The Exchange of Notes was subject to a six month review, a copy of the Chief Ministers' Statement can be found at <https://www.gov.je/news/2018/pages/exchangenotesreviewcompleted.aspx>

³ Information Sharing Agreement between the *JFSC* and the *JFCU* dated 30 June 2017 - <https://www.jerseyfsc.org/pdf/JFSC-JFCU-Information-Sharing-Agreement-June-2017.pdf>

As a continuation of the on-going work in this area, the *JFSC* carried out a series of themed on-site examinations to a cross section of Jersey based *TCSPs* in Q1 of 2018 who provide *Administration Services to Jersey Registered Companies and Partnerships*.

3 Scope and regulatory requirements

The scope of the themed on-site examination was:-

- I. to assess the extent to which *TCSPs* administering *Jersey Registered Companies or Partnerships* have understood and verified the *BOs* and *Controllers* details (with reference to the *three-tier test*) which were provided to the *Registry* by 30 June 2017 (*C17S* form or equivalent)⁴; and
- II. to further understand if appropriate systems and controls are in place at the *TCSPs* relating to the on-going obligation to notify the *Registry* of the changes in *BOs* and *Controllers* (within 21 days of knowledge), insofar as they relate to an administered *Jersey Registered Company or Partnership*⁵.

In preparation for the revised *Registry* requirements the *JFSC* issued Guidance to assist those affected (*TCSPs* and individuals); and, along with Government, Jersey Finance Limited and relevant local industry bodies, conducted an outreach programme.

Links to *JFSC* publications concerning *BO* and *Controller*:

Registry Guidance - <https://www.jerseyfsc.org/registry/beneficial-ownership/trust-company-service-providers-tcps/>

Information relating to *BO* information and how this is held by the *JFSC* - <https://www.jerseyfsc.org/registry/beneficial-ownership/information-relating-to-beneficial-ownership-information-and-how-this-is-held-by-the-jersey-financial-services-commission/>

4 Limitations

The *JFSC* regularly undertakes on-site examinations on specific themes to: (1) assess the extent to which regulated entities are operating in accordance with their regulatory obligations under the respective Laws, Orders, Code and Guidance Notes; (2) provide direct feedback to the firms examined; and (3) issue related guidance for the wider industry.

The *JFSC's* on-site examination programme is designed to:

- › Assess the risks faced by individual entities and review the controls, procedures, policies; and
- › assess the processes in place to mitigate those risks.

The purpose of this paper is to summarise the key findings from this themed examination, and also to provide, where noted, areas of good practice observed by way of example⁶. It is not intended to comprehensively describe all risks that may be associated with non-adherence to regulatory obligations and not all firms face the issues described below. However, the observations made reflect areas of potential risk and are provided for general guidance.

⁴ Since 01 January 2017, the *Registry* has required all *Jersey Registered Companies or Partnerships* to submit details of current *BOs* and *Controllers*, by 30 June 2017.

⁵ Since 30 June 2017, the *Registry* has required *TCSPs* to report any changes in respect of the *BOs* and *Controllers* within 21 days, from the date of that knowledge.

⁶ The areas of good practice observed and referenced herein should not be taken as formal guidance issued by the *JFSC* as they may not be relevant or appropriate to every *TCSP*.

5 Methodology

Having reviewed and analysed data held by *Registry*, together with supervisory knowledge of *TCSPs* held by the *JFSC*, a selection of 12 *TCSPs* was made. The selection included large, long established *TCSPs* who are well versed in providing *Administration Services* through to smaller entities who can provide *Administration Services* ancillary to their core business. Consideration was also given to how firms engaged with the *Registry*, to include filings made via the Easy Companies Registry or automated through the *API*.

Prior to each examination, the *JFSC* requested a range of policy and procedural documents from the *TCSP* being examined. This information was assessed before the on-site examination commenced. In addition, a list of customers was also requested in advance with *JFSC* officers selecting a sample of customer files to be reviewed on-site based on criteria which included; risk rating, jurisdiction of residence / nationality of the *BO(s)* or *Controller(s)*, services provided and the nature of the business (Sound Business Practice Policy). On-site discussions were held with management and staff. Files were reviewed to determine whether procedures were being adequately followed and to establish the extent of any control deficiencies.

Findings were based upon information provided by the *TCSP* and evidence available at the time of the examination. Where findings have been identified, these are being separately addressed between the individual *TCSP* and the *JFSC* and are subject to a formal remediation plan having been submitted by the *TCSP* to the *JFSC* (setting out actions to be taken and timescales to complete) and agreed.

6 Executive Summary

Following several short consultation periods, on 2 November 2016, the Government of Jersey released an enhanced Policy which focused on Beneficial Ownership and a Register of Directors⁷.

In deploying the Policy, the *JFSC* noted that the timelines for the implementation of the Beneficial Ownership requirements were ambitious. In order to meet the deadlines, the *JFSC* worked with industry and related interest groups, and an extensive programme of outreach was commenced to ensure the process of delivery was efficient and effective.

Feedback regarding the findings of this thematic examination programme should be read in the context of the tight deadline set for the *TCSPs* to comply (approximately six months to review, validate and submit the required dataset in the C17S forms or equivalent). The *JFSC* takes this opportunity to acknowledge the efforts made by *TCSPs* affected by the revised *Registry* requirements in meeting those deadlines⁸.

Summarised Key Findings

Corporate Governance – Board Oversight

- › **Applicable Rule:** Section 3.1.1.5 and Section 3.2.1.2 of the *Code*
- › **Review:** *JFSC* officers reviewed extracts of board minutes in order to understand the board's oversight and compliance with the *Registry's BO* and *Controller* requirements.
- › **Finding:** The *JFSC* concluded that board oversight was adequate in most cases, however, there were isolated instances where *TCSPs* did not fully comply with the *Code* requirements insofar that minutes did not record deliberations and resultant actions in sufficient detail.

Systems and Controls to include Policies and Procedures and Training

- › **Applicable Rule:** Section 3.2.1.1 of the *Code*
- › **Review:** *JFSC* officers assessed whether policies and procedures relating to the *Registry's BO* and *Controller* requirements were adequate, effective and implemented correctly. Additionally whether appropriate training had been provided to relevant staff in relation to the *Registry's BO* and *Controller* requirements (to include the *three-tier test*).
- › **Finding:** On the whole, the *JFSC* found that appropriate systems and controls were in place, however, it was not always evident that the risk-based approach, incorporating the *three-tier test*, had been appropriately documented within policies and procedures. In some instances, it would also have been beneficial to provide practical guidance to staff in applying the *three-tier test* to identify *BOs* and *Controllers* in varying scenarios to assist with their understanding and practical application.

⁷ [https://www.jerseyfsc.org/pdf/CR-Beneficial Ownership of Jersey Corporate and Legal Entities and a Register of Directors Policy Document 2016 1101 VP.pdf](https://www.jerseyfsc.org/pdf/CR-Beneficial%20Ownership%20of%20Jersey%20Corporate%20and%20Legal%20Entities%20and%20a%20Register%20of%20Directors%20Policy%20Document%202016%201101%20VP.pdf)

⁸ As of 30 June 2017 there was a 99.98% completion rate of C17S/C17Z forms.

Record Keeping

- › **Applicable Rule:** Section 3.7 of the *Code*.
- › **Review:** JFSC officers assessed whether firms had appropriate record keeping arrangements, to include documented rationale for disclosing *BO* and *Controller* information to the *Registry* on a risk-based approach.
- › **Finding:** The *JFSC* noted that whilst guidance in respect of the *three-tier test* had been given through policies and procedures, and on-boarding procedures also made reference to applying a risk-based approach to determining the *BOs* and *Controllers*, *TCSPs* did not always formally document the evaluation or the outcome of the *three-tier test*.

Revision of Terms

- › **Applicable Rule:** Guidance issued by *Registry*⁹ outlined the expectation that *TCSPs* review all *Terms* with its customers to ensure proper and adequate reporting arrangements were in place, before 30 June 2017.
- › **Review:** JFSC officers reviewed the *Terms* at each firm, to assess whether or not the firm had incorporated a requirement for its customers to proactively inform it of any known changes in *BO* or *Controller*; which also includes changes in circumstance, such as change in residential address.
- › **Finding:** In a limited number of instances, *TCSP Terms* had not been adequately revised to obligate its administered *Jersey Registered Companies or Partnerships* to inform the *TCSP* of a change in *BO* or *Controller*, or indeed any changes in circumstance, such as a change in residential address or occupation.

Disclosure of relevant information

- › **Applicable Rule:** COBO compliance and Exchange of Notes
- › **Review:** *JFSC* officers assessed whether controls were in place to ensure the validity of the data uploaded to the *Registry* systems.
- › **Finding:** The *JFSC* noted on occasions *TCSPs* had provided the *Registry* with generic or insufficient detail in relation to the occupation of *BOs* and *Controllers* within the initial *C17S* or ongoing *BOC17* forms. The *JFSC* understands this was on the assumption that the *Registry* should know, or already has this information available to it. *BOC17s* have been, or are in the process of being, submitted to rectify any instances of generic or insufficient details regarding occupations.

API Submissions

- › Where *Registered Persons* have decided to use the *API* system to transmit the requisite *BO* and *Controller* information to the *Registry*, the *JFSC* noted that in several instances there was some minor discrepancies between the information disclosed to the *Registry* via the initial *C17Z* submission as at 30 June 2017, and the identification documentation held on the customer files. Examples included misspellings and omissions of middle names.
- › Where the submission of information is made via the *API* system, the *JFSC* would expect that management sign off any transmission and an independent sample check be carried out.

⁹ See FAQ 16, *Registry* Guidance Footnote: *BO* and *Controllers*: Trust Associated Complexities Supplemental FAQs for *TCSPs* - <https://www.jerseyfsc.org/pdf/Supplemental-FAQs-TCSPs-Trust-Associated-Complexities-March-2017.pdf>

General Observations from Customer file reviews

- › In order to assess the accuracy of Jersey's central beneficial ownership register, the *JFSC* officers corroborated the information held within the *TCSPs* customer files against the information provided to the *Registry*.
- › In total, 169 customer files were selected, and reviewed. A summary of the general observations can be found at Section 7.7.
- › From the files reviewed, the *JFSC* considers that the correct beneficial owners had been identified and disclosed to the *Registry*. However, in some limited instances, the determination of the correct *Controller* was not always clearly documented to show the audit trail of why a certain, or specific, *Controller* was disclosed to the *Registry*.
- › Whilst conducting the customer file reviews, the *JFSC* observed failings when it came to *CDD* and *EDD Measures*.

The *JFSC* takes this opportunity to remind all *TCSPs* to review the information disclosed to the *Registry* on an on-going basis. Where the *TCSP* becomes aware of any incorrect or outdated information originally submitted as part of a *C17S*, a *BOC17* should be submitted to the *Registry* at its earliest opportunity.

In addition, *TCSPs* are reminded of their on-going obligation to notify the *Registry* of changes in *BOs* and *Controllers* (within 21 days of knowledge).

The above is required to ensure that Jersey's central beneficial ownership register remains up-to-date, complete and accurate.

7 Key findings

7.1 Corporate Governance – Board oversight

- 7.1.1 Section 3.1.1.5 of the *Code* sets out that the business and affairs of a *Registered Person* must be adequately monitored and controlled at senior management and board level.
- 7.1.2 Section 3.2.1.2 of the *Code* requires a *Registered Person* keep to adequate and orderly records of its risk management systems and its board or management minutes.
- 7.1.3 *JFSC* officers reviewed extracts of board minutes in order to understand the board's oversight and compliance with the *Registry's BO* and *Controller* requirements.
- 7.1.4 In conducting its reviews the *JFSC* noted the following evidence of good practice:
- Good practice identified:**
- 7.1.5 Several *TCSPs* identified the need to appoint a project team or working group to ensure compliance with the revised *Registry* requirements. These 'teams' were sponsored by a member of the board / senior management, or in one instance the Company Secretary, who would have oversight and ensure timely reporting into the board or sub-committee on a regular basis.
- 7.1.6 Project initiation documentation seen by the *JFSC* set out the project scope, responsibilities, project team structure, communications plan (including external newsletters, internal briefing sheets and weekly updates to project team / steering committee).
- 7.1.7 The *JFSC* saw evidence of reports to the board or sub-committee providing a clear overview of timelines and phases along with demonstration of the submission options, costs, and customer communications being considered. Comprehensive spreadsheet trackers of weekly project updates were also observed and included milestones, tasks to be completed, key risks and issues. These trackers also included items such as updates to policies and procedures; staff training requirements; in-house data quality assurance (data cleansing and remediation ahead of filing with *Registry*); technical enhancements required to in-house systems; and specific business concerns, such as monitoring resource including unplanned absences, were highlighted and tracked for management and the Board.
- 7.1.8 Quarterly compliance reports were also a method used by some boards to inform it of the progress in complying with the new *BO* and *Controller* requirements and included relevant Management Information, such as:
- › total number of 'unknown' data entry fields, or incomplete date;
 - › total number of information or data gaps;
 - › total number of outstanding breaches; and
 - › where the firm currently held inadequate or incomplete *CDD*.
- 7.1.9 As a result of being notified of the *JFSC's* intention to conduct a themed examination, several *TCSPs* embarked on a self-assessment exercise to review the customer files selected by the *JFSC*, prior to the on-site examination. Having reviewed the files, and dealing with the *JFSC* in an open and transparent manner, the *TCSPs* in question informed the *JFSC* that they had self-identified issues relating to the scope of the examination and commenced a remediation plan by submitting a *BOC17* to update the *Registry's* records. This was done in the full knowledge that the submissions

made now fell outside the 21 days knowledge threshold and therefore resulted in a breach of the *Registry* requirements. Whilst a breach of the requirements had occurred, the *JFSC* saw this action as proactive on the part of the *TCSPs*.

- 7.1.10 Given that the breaches had been self-identified from a relatively small sample size chosen, the *TCSPs* informed the *JFSC* of their intentions to perform a wider review of their customer files, to ensure the information disclosed to the *Registry* was up-to-date and accurate. The *TCSPs* have taken steps to ensure the accuracy of their disclosures by putting measures in place such as: testing the effectiveness of the initial *C17S* submissions within its Compliance Monitoring Programme; and ensuring its policies and procedures, including relevant internal checklists, now reference the specific requirement to submit any reportable changes to the *Registry*, via a *BOC17*, within the timeframes set.

Areas for further improvement:

- 7.1.11 Notwithstanding the good practice identified above, the *JFSC* concluded that in six out of the twelve *TCSPs* examined, the board oversight failed to fully comply with the *Code*. Examples of non-compliance included:
- 7.1.11.1 Limited or minimal consideration or discussions was documented regarding the revised *Registry* requirements. In some instances the *JFSC* was made aware that informal communications took place outside of board meetings, however these were not recorded and actions not tracked and agreed as being complete.
- 7.1.11.2 Minutes acknowledged progress in compliance of filing *C17S* forms and highlighted the need for staff training on areas such as *three-tier test* and, generally, that policy and procedures may require updating; however, the minutes lacked sufficient detail to evidence that essential matters were discussed in any detail and how they were to be dealt with and by whom. Where discussions were held, the *JFSC* would have expected to have seen relevant information regarding the requirements discussed such as, but not limited to:
- › The number of outstanding ‘unknown’¹⁰ data field entries or inaccurate data disclosed to the *Registry*;
 - › The number of outstanding *CDD* and outstanding information to collect; and
 - › The number of identified or potential breaches in respect of the *Registry* requirements, why they had occurred, how and when the business was to make disclosure to the *Registry*.
- 7.1.12 Generic statements such as ‘we appear to be making good progress on our *C17S* filings, but the deadline is fast approaching’ lacks sufficient detail and any resultant action.
- 7.1.13 One Board decided not to disclose the *BOs* and *Controllers* on a risk-based approach, instead adopting the broad approach to provide details of all owners and directors as this was easier than filtering their database. Such an approach was inconsistent with Guidance¹¹ issued by the *Registry*.

¹⁰ Part B – Completing the *Registry’s C17S* – *TCSPs* were required to provide the full information to the *Registry*, as soon as possible, where ‘unknown’ information was provided – https://www.jerseyfsc.org/pdf/C17S-Guidance_to_completing_form.pdf

¹¹ Guidance – Completing the *Registry’s C17S* – https://www.jerseyfsc.org/pdf/C17S-Guidance_to_completing_form.pdf

- 7.1.14 Policies and procedures implemented to effect the changes required were not seen or signed off by the board.

It is of concern that in half of the *Registered Persons* examined, the boards of the *TCSPs* did not have sufficient oversight of, or give sufficient *gravitas* to, the revised *Registry* requirements. These findings were surprising given the outreach programme and publicity conducted in advance of revised *Registry* requirements.

7.2 Systems and Controls – Policies and Procedures & Training

- 7.2.1 Section 3.2.1 of the *Code* requires a *Registered Person* to have robust arrangements for meeting the standards and requirements of the *regulatory framework*¹², including maintaining, and testing adherence to, policies and procedures covering the operation of the business.

- 7.2.2 In conducting its reviews the JFSC the following evidence of good practice was observed:

Good practice identified:

- 7.2.3 One *TCSP* produced an internal document providing staff with guidance on applying the *three-tier test* for different types of corporate entities, especially in respect of identifying tier 2. The document set out detailed practical examples for each tier for various corporate and legal entities.
- 7.2.4 One firm produced a circular, prepared by a local law firm, which it issued to customers prior to the *Registry* requirements coming into force and provided customers with a detailed background of why the changes were taking place and any resulting implications.
- 7.2.5 The issuance of a customer communication (Circular / Guidance Note / Newsletter) informing customers of the revised *Registry* requirements, including ongoing notification obligations. The documents provided background to why the *Registry* requirements changed, including who could access the Register. Explanations of *Controllers* and *BOs* was also provided. The Communications were sometimes accompanied by a form asking customers to update existing customer data thus allowing the *TCSP* to conduct a quality assurance against existing data.
- 7.2.6 In two *TCSPs*, all relevant staff were issued with additional guidance on trust scenarios and clarifying the parties that should be disclosed to *Registry*.
- 7.2.7 One *TCSP* stated in its policies and procedures, that it should procure and hold sufficient information to understand the roles a minority shareholder may play. For instance, someone with only a 5% shareholding of the capital, may hold the majority voting rights and hence exercise control. Whilst the firm may not need to identify minority shareholders, it must be able to demonstrate that it has sufficient information, which confirms they are not controlling parties and hence do not need to be identified.
- 7.2.8 Internal *AML/CFT* guidance was revised to reflect the changes to the *Registry* requirements and staff were required to sign off once read and on an on-going basis whenever any changes are made.

¹² Regulatory framework is defined as the legislative and regulatory requirements established in a jurisdiction that are relevant to a *Registered Person's* classes of trust company business.

- 7.2.9 Some TCSPs have a centralised on-boarding team, which has ownership for identifying and verifying *BOs* and *Controllers*. The on-boarding team liaised very closely with the compliance team.
- 7.2.10 ‘Drop in’ sessions were held for customer teams to provide staff with the opportunity to talk through any queries on specific areas relevant to staff on the *BO* and *Controller* requirements.
- 7.2.11 Training was provided to customer facing Administration Managers and Review Teams on how to analyse the *API* report extracts and how to complete any changes based on the *three-tier test* and validation process, prior to the data being transmitted to the *Registry*. As a result of this training, the Administration Managers and Customer Services Directors were better equipped to validate the data extract reports.

Areas for further improvement:

- 7.2.12 With regard to the scope of the examinations, the *JFSC* found that seven of the twelve *Registered Persons* examined failed to demonstrate that they had complied with the *Code*. Examples for improvement include:
- 7.2.12.1 The risk-based approach, incorporating the *three-tier test*, had not been appropriately documented within policies and procedures, or was absent altogether. The *JFSC* noted on occasions that a strict threshold had been set (for example 15% or 25%) as to when individuals must be disclosed as *BOs*. *Registry* Guidance¹³ however sets out that in the identification of *BOs*, TCSPs should adopt a risk based approach and the 25% (for example) is not a set threshold, as a case by case risk assessment is required on each customer relationship.
- 7.2.12.2 No practical guidance provided to staff in applying the *three-tier test* to identify *BOs* and *Controllers* in varying scenarios, for example where the customers are share transfer companies¹⁴, or for lower risk relationships¹⁵.
- 7.2.12.3 No requirement for staff to document their assessment of the *three-tier test*. As a result it was unclear in numerous cases the role of certain parties identified and how the TCSP had determined why individuals should be included or, similarly, discounted as *BOs* or *Controllers* in *Registry* submissions.
- 7.2.12.4 Not having robust arrangements in place to ensure the integrity and validity of information disclosed to the *Registry*, for example, numerous typographical errors had been made due to incorrect typing when manually inputting information through the *ECR* Portal, or where one individual was tasked with manually inputting and checking the data before submission to the *Registry*.

¹³ Guidance - Completing the Companies Registry’s Confirmation Statement Form (C17S), Version 2 issued June 2017. Accessed at: https://www.jerseyfsc.org/pdf/C17S-Guidance_to_completing_form.pdf

¹⁴ Supplementary FAQs in Relation to Property Share Transfers. Issued March 2017. Accessed at: <https://www.jerseyfsc.org/pdf/Registry-FAQs-Property-Share-Transfer-Companies-March-2017.pdf>

¹⁵ C17S Guidance Notes. Version 2 issued: June 2017. Accessed at: https://www.jerseyfsc.org/pdf/C17S-Guidance_to_completing_form.pdf

- 7.2.12.5 Failure to retain records of information submitted to the *Registry* which meant the *TCSPs* were unaware of any insufficient or missing data previously submitted and if any remediation was required.
- 7.2.12.6 Failure to provide relevant information concerning the ongoing notification requirements (*BOC17*) to include:
- › Recognising the types of changes in circumstances requiring a notification to the *Registry*, to proactively obtain the information to trigger the 21 day requirement;
 - › the requirement to notify the *Registry* within 21 days of knowledge of the change;
 - › whether any specific internal forms or records must be completed;
 - › whether additional *CDD* must be obtained to support the submission to the *Registry*; and
 - › the requirement to maintain a record of the notification submitted to the *Registry*.
- 7.2.12.7 Systems currently in use which hold *CDD* and corporate information no longer being supported by the software provider, or incapable of being interrogated in sufficient detail to identify changes in shareholders and directors, which in turn could trigger the *TCSP* to review customer data and consider whether a *BOC17* must be submitted to the *Registry*.
- 7.2.12.8 Senior staff attending training sessions (externally facilitated or the *JFSC*'s outreach programme) on identifying and verifying *BOs* and *Controllers*, incorporating the *three-tier test*, but not always cascading down to relevant staff or reflecting/implementing knowledge obtained within the policies and procedures of the *TCSP*.
- 7.2.12.9 Where relevant training had taken place (organised by the *TCSP*) this was not always formally recorded as having been provided by the *TCSP*. Likewise, individuals did not always recording their attendance at relevant events in their CPD records.

7.3 Record Keeping

- 7.3.1 Section 3.7.1 of the *Code* requires a *Registered Person* to ensure that it has appropriate record keeping arrangements for compliance with the applicable Laws, Orders and other regulatory requirements.

Good practice identified:

- 7.3.2 The introduction of an internal *BO & Controller* Change Notification Form (or so however called) which allowed the *TCSP*, as soon as it became aware of a proposed change in *BO* or *Controller* (including any change in any underlying detail or circumstance), to capture what specific change has occurred, the date that knowledge became known and the date the *Registry* was notified via a *BOC17* submission.
- 7.3.3 *TCSPs* including a free format text section to document any rationale, should a change be unclear to a third party (such as the *JFSC* or Law Enforcement). This also assisted firms in complying with their on-going obligations when checking the information disclosed to the *Registry* was up-to-date and accurate.

Areas for further improvement:

- 7.3.4 It was disappointing to find that eleven of the twelve entities examined did not fully comply with the *Code*.
- 7.3.5 Some *TCSPs* gave guidance in respect of the *three-tier test* through policies and procedures, and on-boarding procedures also made reference to applying a risk-based approach to determining the *BOs* and *Controllers*, and the subsequent application of *EDD* measures to those individuals deemed as posing a higher risk of money laundering or terrorist financing. *TCSPs* did not however, always formally document the outcome of the *three-tier test*; nor did they always document their evaluation of how the correct individuals had, or conversely had not, been disclosed to the *Registry*, on a risk-based approach. Examples include:
- 7.3.5.1 Where companies had been incorporated to hold share transfer property¹⁶ there was a lack of documented risk-based evaluation as to which shareholders should be disclosed to the *Registry* as *BOs*. Several *TCSPs* approached this by submitting all shareholders, regardless of their ownership interest (none of whom held 25% or more interest in the company) and level of risk.
- 7.3.5.2 Similarly, it was found that *TCSPs* had disclosed all directors as *Controllers* of companies without documenting their evaluation and understanding as to which directors ultimately had strategic decision making powers.

7.4 Terms and Conditions

- 7.4.1 *Registry Guidance*¹⁷ outlined that the *JFSC* would expect *TCSPs* to review all *Terms* with its customers to ensure proper and adequate reporting arrangements were in place, before 30 June 2017.

Good practice identified:

- 7.4.2 *Terms* had been updated to obligate administered companies and partnerships to notify the *TCSP* of a change in ownership, which in turn, will assist the firm in meeting its own obligations in ensuring Jersey's central beneficial ownership register remained up-to-date and accurate.

Areas for further improvement:

- 7.4.3 In four of the twelve *TCSPs* examined, *Terms* had not been revised to obligate administered companies and partnerships to inform the *TCSP* of a change in *BO* or *Controller*, or indeed any changes in circumstance, such as a change in residential address or occupation. Any such change would act as a trigger event for the *TCSP* to collect the full information and underlying *CDD*, if required, in order to notify and comply with the *Registry* requirements.

¹⁶ *Registry* guidance clarifies that for property share transfers relating to only Jersey real estate, it is appropriate for the *BO* and control reporting requirement to only apply to a threshold of 25% or more. See Supplementary FAQs in Relation to Property share Transfers. Issued March 2017. Accessed at: <https://www.jerseyfsc.org/pdf/Registry-FAQs-Property-Share-Transfer-Companies-March-2017.pdf>

¹⁷ See FAQ 16, *Registry* Guidance Footnote: *BO* and *Controllers*: Trust Associated Complexities Supplemental FAQs for *TCSP*'s - <https://www.jerseyfsc.org/pdf/Supplemental-FAQs-TCSPs-Trust-Associated-Complexities-March-2017.pdf>

7.5 Disclosure of Occupations

7.5.1 The *JFSC* noted that the *Registry* is provided with generic or insufficient detail in relation to the occupation of *BOs* and *Controllers* within the initial *C17S* or ongoing *BOC17* forms. The *JFSC* understands this is on the assumption that the *Registry* should know, or already have this information available to it. Examples of generic occupations usually disclosed to the *Registry* include, but are not limited to:

- › Director/CEO;
- › Manager;
- › Businessman/woman; and
- › Investor.

7.5.2 *TCSPs* should be cognisant of the *Registry's BOC17 Guidance*¹⁸, which requires *TCSPs* to provide the name of a company associated to the individual, who is acting as Director (for example), for vetting purposes in each separate *BOC17* submission. Where the individual is associated with more than one company, the *TCSP* should identify an associated company of choice to the *Registry*.

7.6 API Submissions

7.6.1 The *JFSC* officers examined whether controls were in place to ensure the validity of the data uploaded to the *Registry* systems, where *Registered Persons* had decided to use the *API* system to transmit the requisite *BO* and *Controller* information.

Good practice identified:

7.6.2 Specific policies and procedures had been embedded, and focused on checking and validating the integrity of the information transmitted to the *Registry*. All data uploaded to the *Registry* was subject to appropriate level sign off.

Areas for further improvement:

7.6.3 In several instances there were some minor discrepancies between the information disclosed to the *Registry* via the initial *C17Z* submission as at 30 June 2017, when compared to the identification documentation held on the customer files. For example, the misspelling or omission of the middle names of individuals.

7.6.4 Where the submission of information is made via the *API* system, the *JFSC* would expect that management sign off any transmission and an independent sample check is carried out.

7.7 General observations from the Customer file reviews

7.7.1 In order to assess the accuracy of Jersey's central beneficial ownership register, the *JFSC* officers corroborated the information held within the *TCSPs* customer files against the information provided to the *Registry*. In total 169 customer files were selected and reviewed.

7.7.2 Having reviewed the customer files the *JFSC* makes the following observations:

7.7.2.1 In May 2017, the *Registry* issued *Guidance*¹⁹ for *TCSPs* completing the *Registry's C17S*. It stated *TCSPs* could record 'unknown', where the occupation of an individual being disclosed was not known; on the

¹⁸ Guidance to Completing the Companies *Registry's BOC17* - <https://www.jerseyfsc.org/media/1652/guidance-to-completing-boc17-jan2018.pdf>

¹⁹ Guidance to completing the *Registry's C17S* - https://www.jerseyfsc.org/pdf/C17S-Guidance_to_completing_form.pdf

basis of updating and providing the full information to the *Registry*, as soon as possible. In these circumstances, the *JFSC* would expect the *TCSP* to demonstrate it was proactively making every effort to obtain this information as soon as practicable.

- 7.7.2.2 As a result of the examinations, the *JFSC* noted on several occasions instances of *TCSPs* submitting the *C17S* with incomplete data specifying 'unknown' (for example as the occupation), when the information was known to them in customer files and at the time of the *C17S* filing.
- 7.7.2.3 Although *TCSPs* had disclosed the *BO(s)* to the *Registry*, in limited instances it was found that *TCSPs* had failed to identify and disclose the *Controller(s)*, as part of the initial *C17S* submissions. *TCSPs* are reminded to review Section 5 of the *Registry FAQs*²⁰, which provides guidance on how to identify a *Controller* by using the *three-tier-test*, as outlined within Section 4 of the *Handbook*.
- 7.7.2.4 It was evident that some *TCSPs* did not fully understand the different parties which needed to be disclosed to the *Registry* in the event of a Trust directly owning a Jersey administered company. Again, *TCSPs* should note that guidance has been issued by the *Registry* which may assist with Trust Associated Complexities²¹.
- 7.7.2.5 The *JFSC* observed a *TCSP* had identified and disclosed the council and guardian of a foundation, however it had not disclosed additional parties. In respect of when administered companies are owned by foundations guidance has been issued which may be of assistance²².
- 7.7.2.6 Discrepancies were seen in recording *BO's* residential addresses, for example, utility bills held on the customer file stating one address but the *C17S* filed stating another with no documented rationale for the difference.
- 7.7.2.7 *JFSC* officers identified several occasions where the *Registry* was provided with incomplete information, as per the initial requirements of filing a *C17S* form or subsequent *BOC17* filings. An example of such was where a customer had become uncontactable. Nevertheless, and although possibly out of date, the *TCSP* held information on its files (obtained during the take on process) at the date required by the *Registry*. The information required as part of the *C17S* submission (date of birth or place of birth) is not subject to change and therefore, the fact that the customer is uncontactable was irrelevant for the purposes of disclosing such information and therefore should have been disclosed.

²⁰ *BO* and *Controller* FAQs for *TCSPs* - <https://www.jerseyfsc.org/pdf/Registry-BO-FAQs%20-TCB.pdf>

²¹ *BO* and *Controller* – Trust Associated Complexities - <https://www.jerseyfsc.org/pdf/Supplemental-FAQs-TCSPs-Trust-Associated-Complexities-March-2017.pdf>

²² Foundation Associated Complexities Guidance - <https://www.jerseyfsc.org/pdf/FAQs-for-TCSPs-Foundation-Associated-Complexities-June-2017.pdf>

- 7.7.2.8 *Registry* guidance²³ states that when completing a *BOC17*, at least one individual *Controller* must be identified unless there is regulated General Partner of a registerable partnership, a trustee of a trust, or, a qualified member of a foundation – but only on the basis that in each case a *C17S* has been filed with the Registry. It was noted in the examinations that trustees (and protectors) who were not *JFSC* regulated, failed to disclose individuals as *Controllers*.
- 7.7.2.9 In one instance, a holding company was owned by a Government entity²⁴. The *Controller* details disclosed to the *Registry* were that of a very high ranking member of the Government who would not have had any involvement with or knowledge of the company. Section 7 of the *Registry* guidance²⁵ states to include an individual as a *Controller*, however insert “(contact only)” after the individuals surname, if the individual is purely disclosed for contact purposes. The individual disclosed should be a manager or senior manager within the Governmental department who, if contacted, would be able to provide information relating to the company and its surrounding structure.
- 7.7.2.10 A Jersey company’s share capital was split between two companies who in turn were individually owned by two separate trusts located outside of Jersey. For *TCSPs* regulated outside of Jersey, a *Controller* on behalf of the Trustee must be identified²⁶, and for trusts that own and control Jersey entities, there is a requirement to submit to *Registry* the details of beneficiaries with a vested interest and the settlor²⁷.
- 7.7.2.11 Trust documentation reviewed identified instances where individuals had the power to appoint new or additional trustees or remove the trustees. It was not always the case that these individuals’ details were disclosed to the *Registry* in accordance with *Registry* guidance setting out that ‘Power Holders’ (such as previously described) must be declared as *Controllers* to the *Registry*²⁸.
- 7.7.2.12 Several customer files reviewed identified companies listed on *AIM*. In nearly all cases the *TCSPs* had declared the *Controllers*, but not the *BOs*, to the *Registry*. *Registry* guidance²⁹ identified an exemption to submitting a *C17S* to *Registry* if the company was a public listed company on an *IOSCO* compliant or regulated market. The guidance

²³ Guidance to Completing the Companies *Registry*’s *BOC17*, issued January 2018. Accessed at: <https://www.jerseyfsc.org/media/1652/guidance-to-completing-boc17-jan2018.pdf>

²⁴ Government Entity is defined on page 4 of the policy relating to *COBO* consents issued between 1 January 2017 – 30 June 2017 - <https://www.jerseyfsc.org/pdf/CoBo-Consent-Policy-Jan-June2017-June-2017.pdf>

²⁵ Guidance to Completing the Companies *Registry*’s *BOC17*, issued January 2018. Accessed at: <https://www.jerseyfsc.org/media/1652/guidance-to-completing-boc17-jan2018.pdf>

²⁶ Guidance to Completing the Companies *Registry*’s *BOC17*. Issued January 2018. Accessed at: <https://www.jerseyfsc.org/media/1652/guidance-to-completing-boc17-jan2018.pdf>

²⁷ Supplementary FAQs for *TCSPs* – Trust Associated Complexities. Accessed at: <https://www.jerseyfsc.org/pdf/Supplemental-FAQs-TCSPs-Trust-Associated-Complexities-March-2017.pdf>

²⁸ See *Registry* guidance on *power holders*. Supplementary FAQs for *TCSPs* – Trust Associated Complexities. Issued March 2017. Accessed at: <https://www.jerseyfsc.org/pdf/Supplemental-FAQs-TCSPs-Trust-Associated-Complexities-March-2017.pdf>

²⁹ Policy relating to *COBO* consents issued between 01 January 2017 – 30 June 2017. Issued: May 2017. Version 2 Issued: June 2017. Accessed: <https://www.jerseyfsc.org/pdf/CoBo-Consent-Policy-Jan-June2017-June-2017.pdf>

confirmed that the *JFSC* would be removing any reference to *AIM* listed companies in all *COBO* consents issued from 1 July 2017. As a result therefore, *AIM* listed companies, cannot avail themselves of the exemption, and if not done so already, must submit details of *BOs* and *Controllers* to *Registry* and ensure the *Registry* is informed of any changes thereafter.

In light of the above, The *JFSC* takes this opportunity to remind all *TCSPs* to review the information disclosed to the *Registry* on an on-going basis.

Where the *TCSP* becomes aware of any incorrect or outdated information originally submitted as part of a *C17S*, a *BOC17* should be submitted to the *Registry* at its earliest opportunity. In addition, *TCSPs* are reminded of their on-going obligation to notify the *Registry* of changes in *BOs* and *Controllers* (within 21 days of knowledge).

The above is required to ensure that Jersey's central beneficial ownership register remains up-to-date, complete and accurate.

7.7.3 In reviewing the customer files, failings were observed when it comes to *CDD*, to include:

7.7.3.1 **Identification measures** - Article 13 of the *MLO* is concerned with the application and timing of *CDD* measures, which includes at the commencement of the relationship and on an ongoing basis. Article 3(3) of the *MLO* sets out what ongoing monitoring entails. Section 4 of the *Handbook* specifies requirements to keep customer information and documents up-to-date and relevant. The *JFSC* observed instances such as:

- › An address verification was identified relating to a non-Jersey residential address dated late 2015, but certified to be a true copy of the original document in mid-2017. There was no commentary or other supporting documentation as to why it had taken some 18 months to certify the document.
- › Bank statements certified to be a true copy of the original by staff many months after the actual date of the bank statement.
- › Certifications had been made but did not contain the date the certification took place.
- › Address verification documentation for a *BO* was a copy of an uncertified utility bill which had been received in the post, the original having not been seen.
- › Identification documents had been certified by a family member who held a governmental position, but was also the *BO* of the company. Section 4 of the *Handbook* maintains that certification provided by a certifier who has a professional rather than a personal relationship, provides a higher degree of assurance.

7.7.3.2 **Enhanced Due Diligence** - Article 15 (1) of the *MLO* requires a *Relevant Person* to apply *EDD measures* on a risk sensitive basis in any situation presenting a higher risk of money laundering. Section 3.2.1.4 of the *Code* requires the *Registered Person* to comply with relevant *AML* legislation and the standards set out in the *Handbook*. Examples of failings include:

- › Having identified a *BO*, who was also the director of a company, to be a *PEP* associated to higher risk jurisdiction associated to money laundering and terrorist financing³⁰, the company was risk rated as high by the *TCSP*. A review of the customer files could not demonstrate that the *TCSP* had undertaken any *EDD measures* commensurate to the company's risk rating.

- 7.7.3.3 **Translation of documents** - Section 4.3.2 of the *Handbook* requires that all key documents (or parts thereof) obtained by a *Registered Person* as evidence of identity, must be understandable (i.e. in a language understood by the employees of the business), and must be translated into English at the request of the *JFCU* or the *JFSC*.
- 7.7.3.4 In addition, 3.7.2 of the *Code* expects a *Registered Person* to maintain all records in a language understood by the employees of the business.
- 7.7.3.5 *JFSC* officers observed that several *TCSPs* held *CDD* documentation on their files which had not been translated from the native language to English. The *TCSPs* in question were unable to confirm to the *JFSC* what was contained or detailed within these documents.

³⁰ Appendix D2 of the *Handbook* identifies countries and territories identified by independent third party sources as presenting a higher risk in areas relevant to the assessment of money laundering and terrorist financing. Accessed at: <https://www.jerseyfsc.org/media/1616/part-1-appendix-d2-aml-handbook.pdf>