



Jersey Financial
Services Commission

GUIDANCE NOTE

**FOR A MANAGER OF A MANAGED ENTITY
(a "MOME") AND CERTAIN MANAGED
ENTITIES**

Issued: April 2009

CONTENTS

Contents	3
1 Introduction	4
2 MoME arrangements	4
3 Application of the Fund Services Business Codes of Practice (the “FSB Codes”)	6
4 Compliance with the FSB Codes by certain managed entities	9
5 Application of the Financial Services (Fund Services Business) (Accounts, Audits and Reports) (Jersey) Order 2007 (the “Accounts Order”)	12
6 Supervisory approach	12
Appendix 1: Guidance on Complying with the Core Principles of the FSB Codes	13

1 Introduction

- 1.1 The Licensing Policy in respect of those activities that require registration under the Financial Services (Jersey) Law 1998 (“**FS(J)L Licensing Policy**”)¹ recognises that there are circumstances in which fund services business will be undertaken through a managed entity.
- 1.2 Acting as the Manager of a Managed Entity (a “**MoME**”) was introduced as a class of fund services business under the Financial Services (Jersey) Law 1998 (the “**Law**”) on 14 November 2007. All persons that were already acting as a MoME prior to that date automatically became registered to conduct fund services business under Article 9 of the Law.
- 1.3 The Law does not provide a definition of the activities that would constitute acting as a MoME however, in broad terms, the activity is interpreted by the Commission as involving the provision of management services to another person registered to conduct fund services business so as to enable that person (the “**managed entity**”) to comply with a material part of the regulatory framework.

2 MoME arrangements

Structural arrangements

- 2.1 Paragraph 12.1 of the FS(J)L Licensing Policy establishes that a managed entity will have one manager. However, it is acknowledged that additional service providers may also be contracted to provide certain services. It is not for the Commission to determine who shall be the MoME however, where a service provider has supplied the managed entity with a Compliance Officer, the Commission would ordinarily expect that provider to be fulfilling the MoME role.
- 2.2 Typically, a MoME will be an established business with its own staff and premises in the Island. A managed entity will tend to be a vehicle established by a non-Jersey promoter for the purpose of acting for a specific fund or series of related funds; such vehicles are most often established to act as the general partner or manager of an expert fund, related expert funds or materially equivalent funds.

MoME services

- 2.3 The extent of services provided by a MoME will differ from one arrangement to the next, however the Commission would regard the provision of some or all of the following services, from within Jersey, as being indicative of a MoME relationship²:
 - 2.3.1 provision of Director(s);
 - 2.3.2 provision of a Compliance Officer;

¹ Available from the Commission website:

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

² With respect to some of the services the MoME may wish to consider the exemptions provided in the Financial Services (Trust Company Business) (Exemptions) (Jersey) Order 2000.

- 2.3.3 provision of a Money Laundering Reporting Officer (“MLRO”) and/or a Money Laundering Compliance Officer (“MLCO”);
 - 2.3.4 maintenance of statutory and non-statutory books and records for the managed entity, in particular minutes of board meetings and statutory registers;
 - 2.3.5 inclusion of the managed entity on the MoME PII policy;
 - 2.3.6 provision/adoption of MoME’s procedures manual by the managed entity;
 - 2.3.7 provision of company secretarial services to the managed entity; and
 - 2.3.8 provision of a registered office for the managed entity.
- 2.4 In assessing the risk of a particular MoME relationship, the Commission would regard an arrangement where the MoME is represented on the board of the managed entity and has active involvement in the compliance function as being inherently lower regulatory risk than one where such key services are not provided by the MoME.
- 2.5 In performing its ongoing supervision and risk assessment of a MoME, the Commission will also take account of the following issues:
- 2.5.1 the extent to which managed entities are reliant on the MoME’s systems and controls;
 - 2.5.2 the MoME’s degree of access/involvement in the corporate governance of the managed entity;
 - 2.5.3 the MoME’s regulatory track record; and
 - 2.5.4 the MoME’s own level of competence in relation to the classes of fund services business carried on by the managed entity, i.e. has the MoME itself been registered, or does it have the capacity to be registered, to conduct the same class of fund services business as the managed entity for which it is acting?

Contractual arrangements

- 2.6 The Commission recognises that the provision of services to a managed entity is different from the outsourcing of regulated functions undertaken by other registered persons and which is subject to the Commission’s policy on outsourcing as may be updated from time to time. However, the general principles of good corporate governance, in respect of new business relationships, continue to apply therefore the Commission anticipates that any new MoME engagements will be subject to a formal agreement setting out, inter alia:
- 2.6.1 the services to be provided;
 - 2.6.2 termination arrangements; and
 - 2.6.3 record keeping arrangements.

- 2.7 Where such agreements pre-date the current regulatory framework the MoME may wish to consider reviewing the agreements in order to determine whether they remain appropriate and update them if necessary.
- 2.8 As a general point, the Commission considers it good corporate governance for any agreements to be reviewed and updated to reflect changes in the regulatory framework and/or services provided.

3 Application of the Fund Services Business Codes of Practice (the “FSB Codes”)

Overview

- 3.1 As provided in the advisory note to the FSB Codes, the FSB codes are applicable to all persons registered to carry on fund services business, this includes persons registered to act as a MoME or a managed entity.
- 3.2 However as an exception to the general statement, the FSB Codes also note that managed entities that have been established for the purpose of acting for an expert fund, related expert funds or materially equivalent funds³ (referred to in this guidance note as certain managed entities) shall be subject to only the core principles (see 3.5) of the FSB Codes, unless they elect to follow the FSB Codes in full.
- 3.3 Where a managed entity elects to follow the FSB Codes in full, not all of the conditions described in 3.4 will be imposed as compliance with the full FSB Codes negates their requirement.
- 3.4 With respect to the managed entities noted in 3.2 the Commission has previously provided guidance⁴ on the conditions that may be attached to the registration certificate of managed entities. The conditions commonly applied to the managed entity registration certificate will be such that:
- (a) the registered person⁵ may not act for new or further funds without first obtaining the consent of a duly authorised officer of the Commission;
 - (b) the registered person must appoint a person registered to act MoME;
 - (c) the registered person must notify the Commission of its intention to change its MoME at least 28 days prior to the change taking effect;
 - (d) the registered person must adhere with such notification and consent requirements as the Commission has set out in the FSB Codes as may be updated or revised from time to time;
 - (e) the registered person must permit, and shall procure that any agent or subcontractor resident or established in Jersey and appointed by the registered person permits, officers of the Commission to conduct inspections of any part of the

³ Information in respect of the definition of a materially equivalent fund can be found in the Classification Guide: Non-Jersey Domiciled Fund Guide, available from the Commission website.

⁴ Commission website: Question 13 of the Funds Frequently Asked Questions on the transfer of functionaries to the Financial Services (Jersey) Law 1998.

⁵ For the purposes of (a) to (h) “registered person” should be read as “managed entity”.

activities in relation to which this registration is granted, and the registered person will (and will procure the agreement of any such agent or subcontractor) give all assistance in connection with any such inspection which they are reasonably able to give;

- (f) the registered person must adhere to such advertising standards as the Commission has set out in the FSB Codes as may be updated or revised from time to time;
- (g) the registered person must adhere to such record keeping requirements as the Commission has set out in the FSB Codes as may be updated or revised from time to time. This requirement will be satisfied where a MoME provides the registered person with the necessary means to comply; and
- (h) the registered person must appoint a compliance officer. This requirement will be satisfied where a MoME provides the registered person with the necessary means to comply.

3.5 The “core principles” referred to are the seven headline principles set out in the FSB Codes, namely:

3.5.1 *A registered person must conduct its business with integrity.*

3.5.2 *A registered person must have due regard for the interests of the Fund.*

3.5.3 *A registered person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems.*

3.5.4 *A registered person must be transparent in its business arrangements with the Fund.*

3.5.5 *A registered person must maintain, and be able to demonstrate the existence of, both adequate financial resources and adequate insurance.*

3.5.6 *A registered person must deal with the Commission and other authorities in Jersey in an open and co-operative manner.*

3.5.7 *A registered person must not make statements that are misleading, false or deceptive.*

MoMEs

3.6 As stated in 3.1, MoMEs are required to adhere to the FSB Codes in full. Particular attention should be paid to paragraph 3.1.2 of the FSB Codes which requires that:

“Clearly defined procedures must be in place so that there is appropriate oversight by the board of directors and senior management in order to address the principles of risk management:

an assessment of the risks present in the registered person’s business must be made, and those risks must be documented, as must the ways in which they are monitored and controlled;”

3.7 When complying with this aspect of the FSB Codes the Commission anticipates that a MoME will take account of the risks that may arise from the managed entities for which it acts.

- 3.8 The Commission's anticipation is based on paragraph 3.1.5 of the FSB Codes which states that:

"If providing management services to a managed entity under Article 2(10)(a) of the Law, the manager should:

pay due regard to the risks that might arise from performing this role as part of its own corporate governance;"

and goes on to require that:

"where the manager of a managed entity provides directors to the board of the managed entity, take reasonable steps to ensure that those acting understand and are able to meet their obligations in the performance of their directors' duties to the managed entity."

Managed entities

- 3.9 The Commission acknowledges that a managed entity will typically engage a MoME to provide services that assist it in complying with one or more parts of the regulatory framework. However, it is important to remember that responsibility for assessing the provided services such that the managed entity meets the required standards set out in the FSB Codes and monitoring the performance of those services remains with the managed entity. In this way, a managed entity can obtain assistance from a MoME but will always retain responsibility for its own compliance with the regulatory framework.
- 3.10 Considering 3.2 and 3.4 together means that in practice, whilst the FSB Codes permit certain managed entities to only apply the core principles, five of the more detailed requirements of the FSB Codes are commonly imposed by way of conditions attached to registration certificates (items (d) to (h) in 3.4). It is therefore important that managed entities that do not elect to apply the FSB Codes in full, study the conditions of their registration certificate carefully and implement systems and controls appropriate to maintain compliance with the conditions imposed.
- 3.11 Appendix 1 of this guidance note sets out an indicative benchmark of how a managed entity might go about demonstrating compliance with the core principles of the FSB Codes.
- 3.12 In providing this guidance, the Commission is responding to direct requests from both the funds industry and auditors of fund businesses for clarification of how the Commission might, in practice, interpret the core principles of the FSB Codes. Appendix 1 has been provided in this spirit but the Commission would emphasise that guidance is non-binding and a managed entity may adopt other appropriate measures to demonstrate compliance with the core principles of the FSB Codes. The Commission will always consider such arrangements in the context of the managed entity and the activities that it is engaged in.
- 3.13 Section 4 supplements the guidance that is set out in Appendix 1 and, as is the case for Appendix 1, the guidance is non-binding.

4 Compliance with the FSB Codes by certain managed entities

Conflicts of interest (FSB Codes paragraph 2.3)

- 4.1 Particular attention needs to be paid to the inherent conflicts that might arise as a result of the contractual arrangements between MoME and managed entity. By way of example, potential conflicts arise as a result of, inter alia:
- 4.1.1 a Compliance Officer appointed to a managed entity preparing reports on work that has been performed by the MoME (his principal employer) particularly in circumstances where he/she is also a director or Compliance Officer of the MoME or associated group entities;⁶
 - 4.1.2 directors of the managed entity being provided by the MoME;
 - 4.1.3 directors and/or staff of the MoME having a financial interest in a fund to which services are indirectly being provided.
- 4.2 Should any such conflicts be identified it would be appropriate for the details to be tabled for discussion by the board of the managed entity and, where appropriate, to implement policies and procedures that reflect how the conflicts will be mitigated.
- 4.3 At a minimum, the Commission anticipates that a managed entity will maintain a documented policy setting out areas of likely conflict and what steps may be taken in the event of such conflicts arising. One practical means of addressing conflicts would be for a managed entity to formally adopt the MoME's conflicts of interest policy and procedures documents and tailor these to reflect the specifics of the managed entity as deemed necessary.

Corporate Governance/Span of control (FSB Codes paragraph 3.1.1)

- 4.4 It is firstly important to emphasise that the responsibility for corporate governance rests with the board of a managed entity, notwithstanding any services (for example the provision of directors) that may be contracted from the MoME.
- 4.5 Whilst the Commission expects the board of a managed entity to be able to demonstrate that it has considered its responsibilities and accountabilities collectively, it acknowledges that it may not be necessary to assign individual responsibilities to each director. The exception to this statement is where a director also holds the position of Compliance Officer, MLRO or MLCO of the managed entity as these positions have specific responsibilities.
- 4.6 One aspect of corporate governance is the maintenance of an adequate span of control in respect of the business of the managed entity. The span of control may be comprised of staff provided to the managed entity by its MoME. Whilst the Commission appreciates that the activities undertaken by a managed entity may not warrant the persons forming the span of control to be dedicated to the role on a full time basis, it would nevertheless expect that such persons are available at short notice should the need arise.

⁶ For additional guidance on this point please see 4.17 of this guidance note.

- 4.7 What represents adequate span of control for a managed entity is a matter to be agreed by the board of each managed entity and in reaching their decision the Commission would draw each director's attention to paragraphs 3.1.1.2 to 3.1.1.4 of the FSB Codes.
- 4.8 As part of fulfilling its corporate governance responsibilities the Commission would expect the board of the managed entity to:
- 4.8.1 meet regularly and maintain proper records including board minutes and reports/papers submitted for their consideration; and
 - 4.8.2 periodically consider the adequacy of its span of control especially in the event of changes to the board, staffing provided by the MoME or a significant change in business activities.
- 4.9 With respect to 4.8.1, whilst not prescribing the corporate governance arrangements required of a managed entity, the Commission would suggest that, as a minimum, the following items to be covered as part of any regular standing agenda:
- 4.9.1 operational issues;
 - 4.9.2 conflicts of interest;
 - 4.9.3 financial reporting;
 - 4.9.4 performance of the MoME and any other service providers; and
 - 4.9.5 report from the Compliance Officer;
- 4.10 The Commission considers it to be the responsibility of the board of the managed entity to monitor its business risks notwithstanding that the day-to-day monitoring of such risks may often be delegated to the MoME. Monitoring may be achieved by the establishment of key risk indicators agreed between the MoME and the managed entity which are monitored and reported on by way of periodic reports to the managed entity's board.
- 4.11 Should any managed entity wish to benchmark their corporate governance arrangements against industry best practice they could refer to the Corporate Governance Guide for Investment Companies produced by the Association of Investment Companies.

Procedures (FSB Codes paragraph 3.2)

- 4.12 The Commission expects a managed entity to maintain proper procedures governing their day-to-day activities. In establishing its procedures the managed entity may choose to:
- 4.12.1 adopt the procedures of its MoME in whole or in part; or
 - 4.12.2 develop its own procedures, or have procedures developed on its behalf.
- 4.13 Whichever method is utilised the Commission expects the board of the managed entity to formally adopt the procedures and to approve any material revisions.

Continuing Professional Development (“CPD”) (FSB Codes paragraph 3.4)

- 4.14 Where a managed entity is following the core principles of the FSB Codes, the Commission recognises that:
- 4.14.1 the staff or directors provided by a MoME will already be subject to separate CPD requirements within their own business; and
 - 4.14.2 the funds are only available to sophisticated investors who are able to form their own view of the competence of senior management as disclosed in any prospectus or offering document.
- 4.15 In view of the above, the Commission considers that an acceptable approach for a managed entity acting for an expert fund, related expert fund or materially equivalent funds would be for the managed entity to be able to demonstrate (either through board minutes or otherwise) that all directors had received and acknowledged periodic updates in relation to relevant changes in the regulatory requirements including legislation to counter money laundering and the financing of terrorism.

Compliance Officer (FSB Codes paragraph 3.5)

- 4.16 A managed entity is required to appoint a Compliance Officer either as a result of a condition attached to their registration certificate or as they have elected to follow the FSB Codes in full. The Commission anticipates that the Compliance Officer will be provided by the MoME.
- 4.17 The Commission anticipates that the Compliance Officer of the managed entity will have direct access to the board meetings of the managed entity notwithstanding that he/she may not attend the board meeting in person. In either event, the Compliance Officer should be in a position to submit compliance reports directly to the full board either in person or in writing. The Commission expects the use of such access to be documented in the board minutes.

Financial Resources and Professional Indemnity Insurance (“PII”) (FSB Codes Principle 5)

- 4.18 Paragraphs 5.3.1 and 5.7.1 of the FSB Codes require a managed entity to maintain such financial resources and PII cover as it deems appropriate for the activities that it undertakes. The Commission expects the board of a managed entity to consider and document the rationale for the level of financial resources and PII cover maintained and for this rationale to be reassessed at regular intervals.
- 4.19 It is not a requirement that the board of a managed entity calculate its financial resource requirements with reference to the adjusted net liquid assets calculation as set out in the First Schedule to the FSB Codes provided that a reasonable alternative methodology is utilised and documented.

5 Application of the Financial Services (Fund Services Business) (Accounts, Audits and Reports) (Jersey) Order 2007 (the “Accounts Order”)

- 5.1 The Accounts Order applies to MoMEs and managed entities alike.
- 5.2 MoMEs and managed entities may wish to refer to any separate guidance on the interpretation of the Accounts Order issued by the Commission however, for the purpose of this guidance note, attention is drawn to the transitional provisions of the Accounts Order in relation to the deadline for submitting financial statements.
- 5.3 Article 12(4) of the Accounts Order provides that in circumstances where the financial statements being submitted are for an accounting period ending before 1 December 2009, they must be submitted to the Commission within 10 months of the end of the accounting period; in all other circumstances, the financial statements must be submitted within 4 months. This transitional provision cannot override any submission requirements that result from the person undertaking another regulated activity.

6 Supervisory approach

- 6.1 The Commission regards MoMEs as the nexus of its regulatory supervision of managed entities and will be devoting a significant proportion of its on-site supervisory work on entities registered to undertake this class of fund services business.

APPENDIX 1: GUIDANCE ON COMPLYING WITH THE CORE PRINCIPLES OF THE FSB CODES

Introduction

The objective of this Appendix is to provide assistance to MoMEs and those managed entities eligible to take advantage of the exemption from following the full FSB Codes that came into force on 14 November 2007. The table is not intended to be prescriptive and the specific circumstances of a particular registered person should always be considered. A managed entity may adopt other appropriate measures to demonstrate compliance with the core principles of the FSB Codes. The Commission will always consider such arrangements in the context of the managed entity and the activities that it is engaged in.

	<i>FSB Codes – Core Principle:</i>	Guidance on how a managed entity may comply:
1.	<i>A registered person must conduct its business with integrity.</i>	Detailed code expected to be relevant should no alternative appropriate measures be in place.
2.	<i>A registered person must have due regard for the interests of the Fund.</i>	Detailed code expected to be relevant should no alternative appropriate measures be in place. (See paragraphs 4.1 to 4.3 of this guidance note for additional guidance in respect of conflicts of interest.)
3.	<i>A registered person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems.</i>	

	<i>FSB Codes - Core Principle:</i>	Guidance on how a managed entity may comply:
	<ul style="list-style-type: none"> • <i>Corporate Governance (3.1)</i> 	<p>3.1.1 detailed code expected to be relevant should no alternative appropriate measures be in place. (See paragraphs 4.4 to 4.9 of this guidance note for additional guidance in respect of span of control.)</p> <p>3.1.2 detailed code expected to be relevant should no alternative appropriate measures be in place. (See paragraph 4.10 of this guidance note for additional guidance in respect of board responsibilities.)</p> <p>3.1.3 not expected to be relevant to most managed entities.</p> <p>3.1.4 detailed code expected to be relevant should no alternative appropriate measures be in place.</p> <p>3.1.5 not applicable.</p> <p>3.1.6 detailed code expected to be relevant should no alternative appropriate measures be in place.</p> <p>3.1.7 not expected to be relevant to most managed entities.</p>
	<ul style="list-style-type: none"> • <i>Internal systems and controls (3.2)</i> 	<p>Detailed code expected to be relevant should no alternative appropriate measures be in place. (See paragraphs 4.12 and 4.13 of this guidance note for additional guidance.)</p>

	FSB Codes – Core Principle:	Guidance on how a managed entity may comply:
	<ul style="list-style-type: none"> • <i>Integrity and competence (3.3)</i> 	<p>3.3.1 the managed entity will be expected to have adequate procedures such that compliance is maintained with respect to all directors appointed to the board and staff employed by the managed entity.</p> <p>In respect of persons acting through the MoME we would anticipate that the board of the Managed Entity would consider the appropriateness of the MoME and the relevant staff performing services to the managed entity.</p> <p>3.3.2 detailed code expected to be relevant in relation to any directors of the managed entity and staff employed by the managed entity.</p> <p>In respect of persons acting through the MoME, we would anticipate that the board of the managed entity would consider the appropriateness of the MoME and the relevant staff performing services to the managed entity.</p>
	<ul style="list-style-type: none"> • <i>Continuing Professional Development (“CPD”) (3.4)</i> 	See paragraphs 4.14 and 4.15 of this guidance note for additional guidance.
	<ul style="list-style-type: none"> • <i>Compliance Officer and Money Laundering Reporting Officer (3.5)</i> 	Detailed code expected to be relevant should no alternative appropriate measures be in place. (See paragraphs 4.16 and 4.17 of this guidance note for additional guidance with respect to the Compliance Officer.)
	<ul style="list-style-type: none"> • <i>Complaints (3.6)</i> 	Detailed code expected to be relevant although it is anticipated that the MoME will perform the complaints handling process.
	<ul style="list-style-type: none"> • <i>Record Keeping (3.7)</i> 	Detailed code expected to be relevant, although it is anticipated that documentation of the relevant procedures and records are likely to be maintained by the MoME.

	<i>FSB Codes – Core Principle:</i>	Guidance on how a managed entity may comply:
4.	<i>A registered person must be transparent in its business arrangements with the Fund.</i>	Detailed code expected to be relevant should no alternative appropriate measures be in place.
5.	<i>A registered person must maintain, and be able to demonstrate the existence of, both adequate financial resources and adequate insurance.</i>	<p>5.1 and 5.2 are not expected to be relevant.</p> <p>5.3.1 detailed code expected to be relevant should no alternative appropriate measures be in place.</p> <p>Where a registered person that maintains a level of paid up share capital and non-distributable reserves that is less than the minimum amounts for the equivalent classes of fund services business under 5.3.2.1 of the FSB Codes of Practice, then the rationale for this should be clearly documented.</p> <p>See paragraph 4.19 of this guidance note for additional guidance with respect to the ANLA calculation.</p> <p>5.4, 5.5 and 5.6 are not expected to be relevant.</p> <p>5.7.1 detailed code expected to be relevant should no alternative appropriate measures be in place.</p> <p>5.7.2 and 5.7.3 are not expected to be relevant.</p> <p>5.8 and 5.9 are not expected to be relevant.</p>

	<i>FSB Codes - Core Principle:</i>	Guidance on how a managed entity may comply:
6.	<i>A registered person must deal with the Commission and other authorities in Jersey in an open and co-operative manner.</i>	Detailed code expected to be relevant should no alternative appropriate measures be in place.
7.	<i>A registered person must not make statements that are misleading, false or deceptive.</i>	Detailed code expected to be relevant should no alternative appropriate measures be in place.