



Jersey Financial
Services Commission

**POLICY STATEMENT AND GUIDANCE NOTES
ON
OUTSOURCING**

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BACKGROUND

1 Scope

- 1.1 The Policy Statement and Guidance Notes contained in this document apply to all firms who:
 - 1.1.1 have functions which fall within the scope of one or more of the following regulatory laws ("**Registered Persons**"):
 - 1.1.1.1 Banking Business (Jersey) Law 1991;
 - 1.1.1.2 Collective Investment Funds (Jersey) Law 1988;
 - 1.1.1.3 Insurance Business (Jersey) Law 1996; and
 - 1.1.1.4 Financial Services (Jersey) Law 1998;
 - 1.1.2 and who outsource one or more parts of their regulated functions to a delegate who may also be in Jersey or elsewhere.
- 1.2 For the purposes of this document, a delegate can be any one of the following:
 - a) an independent third party;
 - b) a fellow group company;
 - c) a branch; or
 - d) a representative office.
- 1.3 All Registered Persons will need to examine outsourcing arrangements to satisfy themselves they meet the requirements of this document. Where they do not, the Jersey Financial Services Commission (the "**Commission**") will look to the Registered Person to take appropriate action to bring themselves within the requirements of the six Core Principles.

2 Structure

- 2.1 Part I introduces the paper. It seeks to explain why such a paper is considered necessary and provides some basic definitions.
- 2.2 Part II is the Commission's stated policy on outsourcing. It is in the form of Core Principles with which all Registered Persons are expected to comply.
- 2.3 Part III provides Guidance Notes that expand upon and clarify how Registered Persons can ensure compliance with the Core Principles. These Guidance Notes apply to all Registered Persons when outsourcing to any of the delegates detailed in 1.2. above.
- 2.4 Part IV provides additional guidance on compliance with the Core Principles in those cases when functions are outsourced to a branch of a Registered Person.
- 2.5 Part V provides additional guidance to permit holders under the Collective Investment Funds (Jersey) Law 1988 ("**CIF Law**") and those persons registered to conduct fund services business under the Financial Services (Jersey) Law 1998 ("**FS(J)L**").

- 2.6 Other parts may be added in the future if further areas of activity or structure are identified which require specific guidance to ensure compliance with the Core Principles.

PART I: INTRODUCTION

- 1 The Commission is responsible for the supervision of financial services provided in or from within the Island. That responsibility is discharged through a number of regulatory laws. Those same laws require persons to apply for and be granted a licence by the Commission before they can undertake the relevant financial service. In determining whether to grant or refuse such licences or whether to cancel an existing licence the Commission will need to determine whether the applicant has met, and in the case of a Registered Person, is continuing to meet certain minimum standards on matters such as honesty, competency and solvency.
- 2 To assist the Industry in determining what the minimum standards are the Commission will, from time to time, issue Policy Statements and/or Guidance Notes to the Industry on subjects which are relevant to assessing such standards. Such policy statements and Guidance Notes do not have force of law but compliance with them will be taken into account when considering an application for a licence or when determining whether an existing Registered Person remains a fit and proper person.
- 3 The purpose of this Policy Statement and accompanying Guidance Note is to describe the Commission's requirements when a Registered Person is considering outsourcing a material part of its regulated functions. It is, however, the responsibility of each Registered Person's management to decide the level of control and oversight needed in any particular outsourcing proposal. What this document seeks to provide is a framework within which the day to day management of outsourced functions will operate.
- 4 What constitutes "material" will differ from firm to firm depending on the size of the firm and the nature of its business. Among the other matters set out in 1.4 of Core Principle No 1 in Part III, a Registered Person should consider the potential impact on its reputation and its customer service if the delegate were to fail for any reason. Where this impact is regarded as high, the function will be considered to be material.
- 5 Outsourcing for the purpose of this document occurs when a Registered Person decides to transfer, the day-to-day running of some part of its business to another party. The activity outsourced can be either a part of the Registered Person's existing business or operations or an entirely new venture or operations system for which the Registered Person wishes to use outside expertise. Note that the purchase of a standard service from, for example, an information screen provider such as Bloomburys or Reuters falls outside the scope of this Policy Statement.
- 6 The Commission recognises that the outsourcing of functions has become a common practice and can bring benefits to a Registered Person and its customers, however outsourcing must not happen at the expense of proper regulation. The Commission is concerned to ensure that when a regulated function is outsourced, the Registered Person does not lose control over the outsourced activity. To that end the Registered Person retains full legal liability and accountability to the Commission for any and all functions that it may outsource to a service provider to the same extent as if the service were performed in-house.

- 7 The paper also covers outsourcing to branches of a Registered Person. Unlike the other delegates listed in 1.2 of the Background, a branch is not a separate legal person. Part IV below details the modifications necessary to the guidance given in Part III when outsourcing to a branch to take account of this fact.

PART II: POLICY STATEMENT ON OUTSOURCING

When considering outsourcing any material part of its regulated functions, the Commission would expect a Registered Person to comply with the following Core Principles:

Core Principle No 1

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

Core Principle No 2

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

Core Principle No 3

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

Core Principle No 4

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

Core Principle No 5

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

Core Principle No 6

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

PART III: GENERAL GUIDANCE NOTES ON OUTSOURCING

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

1 Core Principle No 1

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

Guidance on Core Principle No 1

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

2 Core Principle No 2

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

Guidance on Core Principle No 2

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

3 Core Principle No 3

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

Guidance on Core Principle No 3

- 3.1 A Registered Person cannot contract out of its regulatory obligations and remains fully responsible as if the outsourced activity were performed in-house. The Registered Person must not therefore allow itself to become devoid of either the

necessary means to supervise and monitor any delegated function or of the internal expertise enabling it to evaluate the quality of the work performed by the delegate. These functions cannot be delegated. In effect, a situation where only a “brassplate” operation remains in Jersey is unacceptable.

- 3.2 The Commission will normally require the compliance officer to be resident in Jersey. Delegation of some of the duties of the compliance officer to persons resident outside the Island will be acceptable provided the reports are reviewed and retained in the Island by the Jersey resident compliance officer.
- 3.3 Following the delegation the Registered Person must continue to satisfy any licensing conditions, any applicable Codes of Practice, and the Commission’s Licensing Policy in respect of those activities that require registration under the FS(J)L¹.

4 Core Principle No 4

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

Guidance on Core Principle No 4

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

5 Core Principle No 5

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

Guidance on Core Principle No 5

- 5.1 The Commission should be informed of any subsequent material problem and told in advance of changes to the outsourcing proposal.
- 5.2 A particular concern for the Commission is to ensure that outsourcing does not defeat the purpose of regulation. Whatever the nature of the outsourcing, the regulatory framework and any licence conditions applying to the Registered Person or to the products for which it is responsible, (including reporting requirements) continue to apply.

¹ Reference to Commission’s Website.

- 5.3 The Commission must, at reasonable cost, be able to continue to supervise outsourced activities.
- 5.4 Where the outsourcing is to an entity outside Jersey, mutual co-operation arrangements (formal or informal) will be necessary between the Commission and the delegate's or sub-delegate's regulator to enable exchange of material information. If such co-operation is not available the Commission may object to the outsourcing.
- 5.5 The Commission may sometimes require information regarding any outsourcing function to be given to the clients of Registered Persons. In particular, the investor or client may need to be notified formally which company is responsible for the outsourced function.
- 5.6 The Commission may wish to be satisfied as to the confidentiality and security of the records maintained in any jurisdiction outside of Jersey. Verification might be sought in certain cases to the satisfaction of the Commission, for example by an annual certification by the Registered Person's external auditors.

6 Core Principle No 6

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

Guidance note on Core Principle No 6

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

PART IV: GUIDANCE NOTES ON OUTSOURCING TO BRANCHES

1 Introduction

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

2 Application of Core Principles to Branches

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

2.1 Core Principle No 1

Replace Guidance Note 1.1 with the following:

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

2.2 Core Principle No 2

Replace Guidance Note 2.1 with the following:

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

2.3 Core Principle No 3

Replace Guidance Note 3.1 with the following:

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

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

1 General Requirements

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

Investment Management Function Outsourced

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

2 Guidance on the Extent to which Administration Work may be Delegated

- 2.1 Investors' cheques may be banked away from Jersey so long as the money is transferred to the account of the fund within a reasonable period. Anyone receiving monies in this way would normally be a distributor or subscription agent and hold the monies in client accounts. The Commission would need to be satisfied as to the quality of the firm before allowing such a structure.
- 2.2 Accounting records of the fund may be maintained outside Jersey provided that the Jersey Registered Person always has access to the records e.g. by computer link and that a backup copy of the records is retained in Jersey. The backup may be in printed form or in computer readable form. Periodic checks should be carried out in Jersey to ensure that entries are being made on an accurate and timely basis.
- 2.3 The Jersey office of the Registered Person should always be capable of answering any routine queries and resolving all others.
- 2.4 The Commission would normally expect valuations to be carried out in the Island. However, valuations may be prepared outside Jersey provided they are always checked by the Registered Person in Jersey². Evidence of the Registered Person's valuation checks should always be available in the Island.
- 2.5 The Commission would normally expect the checks undertaken by the Custodian/Trustee to verify the accuracy of valuations and compliance with investment restrictions to be carried out in Jersey. However, the day-to-day work may be carried on outside Jersey provided the management and control of those tasks remain in Jersey.
- 2.6 Creation and cancellation instructions to the banks and the Custodian should at least be authorised, in Jersey on the day of delivery.
- 2.7 The share register (or equivalent) of the fund, whether the fund is a Jersey company, limited partnership or unit trust, should be available in the Island. See Articles 44 and 45 of the Companies (Jersey) Law 1991 for companies.
- 2.8 There should be no non-routine communication between any local fund service provider (e.g. a Custodian) and the non-Jersey fund service provider without the Jersey resident Manager being involved. The local fund service provider should always notify the Jersey resident Manager if there is a problem.

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

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