



Jersey Financial
Services Commission

Financial Services (Jersey) Law 1998

Code of Practice For General Insurance Mediation Business

Effective from: 1 January 2008

Last Revised: 1 June 2019

Deleted: 21 March 2018

https://edrms/RF/cops/Codes18/Final-for-Publication/O_20190322_GIMB-Code-TC_JFSC-Official.docx



Contents

	Page
Glossary	4
Introduction	6
Principles:	
1. A registered person must conduct its business with integrity.	9
2. A registered person must have due regard for the interests of its clients.	10
3. A registered person must organise and control its affairs effectively for the proper performance of its business and be able to demonstrate the existence of adequate risk management systems.	
› Corporate Governance (3.1)	11
› Internal Control Systems (3.2)	12
› Compliance Officer and Money Laundering Reporting Officer (3.3)	12
› Record keeping (3.4)	18
› Complaints (3.5)	19
› Integrity and competence (3.6)	21
› Continuing Professional Development (3.7)	22
› <u>Payment of financial penalties (3.8)</u>	24
4. A registered person must be transparent in its business arrangements.	25
5. A registered person must maintain, and be able to demonstrate the existence of, adequate financial resources and adequate insurance.	27
6. A registered person must deal with the JFSC in an open and co-operative manner.	32
7. A registered person must not make statements that are misleading, false or deceptive.	36

Glossary

Unless otherwise defined, the following terms when used in the *Code* shall have the meanings set out below. If not defined below or elsewhere in the *Code*, terms, where relevant, have the same meanings as are ascribed to them in the *FS(J)L*.

All terms which appear in this Glossary are reflected in the *Code* utilising *italic* text. Guidance to the *Code* in the form of “Notes” has been placed in a box to highlight its status.

Accounts, Audits, Reports and Solvency Order	means the Financial Services (General Insurance Mediation Business (Accounts, Audits, Reports and Solvency)) (Jersey) Order 2005, as amended from time to time.
CII	means the Chartered Insurance Institute.
client	has the same meaning as provided by Article 1 of the FS(J)L, namely: “client”, in relation to a registered person, means a person, whether resident on or off Jersey, with or for whom the registered person transacts or has transacted financial service business (other than trust company business) or gives or has given advice about financial service business (other than trust company business)”.
Client Money	<p>means <i>insurance money</i> which is either –</p> <p class="list-item-l1">1.1 <u>not immediately due and payable on demand to the registered person for its own account, or</u></p> <p class="list-item-l1">1.2 <u>if it is so due and payable, is held or received in respect of any obligation of the registered person which has not yet been performed; or</u></p> <p class="list-item-l1"><u>owed to a client and which is immediately due and payable without the need for the client to demand such payment.</u></p>
Code	means the Code of Practice for General Insurance Mediation Business.
complaint	means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a service that relates to general insurance mediation business carried on by the registered person, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.
CPD	means Continuing Professional Development.
Exceptions Regulations	means the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, as amended.
FS(J)L	means the Financial Services (Jersey) Law 1998, as amended.

<u>Insurance Money</u>	has the same meaning as provided for by Article 3 of the Financial Services (General Insurance Mediation Business (Client Assets)) (Jersey) Order 2005
JFSC	means the Jersey Financial Services Commission.
key person	has the same meaning as provided by Article 1 of the FS(J)L.
net free assets	means total assets less total liabilities.
PII	means the Professional Indemnity Insurance.
principal person	has the same meaning as provided by Article 1 of the FS(J)L.
registered person	means a person registered by the JFSC under Article 9 of the FS(J)L to carry on general insurance mediation business as defined by Article 2(7) of the FS(J)L, except those registered to undertake only Class R or Class S business.
regulatory framework	means the legislative and regulatory requirements established in a jurisdiction that are relevant to a registered person's class(s) of general insurance mediation business.

Introduction

Power exercised and scope

The Code of Practice for General Insurance Mediation Business (the **Code**) is issued by the Jersey Financial Services Commission (the **JFSC**) in accordance with the powers given to it by Article 19 of the Financial Services (Jersey) Law 1998, as amended (the **FS(J)L**). The Code has been prepared and issued for the purpose of setting out the principles and detailed requirements that must be complied with in the conduct of general insurance mediation business.

The Code applies to persons registered by the JFSC under Article 9 of the FS(J)L to carry on general insurance mediation business as defined by Article 2(7) of the FS(J)L. Specifically, those registered to carry on Class P or Class Q business (a **registered person**).

Article 9 of the FS(J)L establishes threshold conditions that apply on an on-going basis – the fit and proper assessment – to registered persons, principal persons and key persons¹. This assessment process includes consideration of integrity, competence, financial standing, structure and organisation.

The JFSC has published a Policy Statement: *Licensing Policy in respect of those that require registration under the FS(J)L* Part 2 of which provides further information on *The JFSC's "fit and proper" assessment* and paragraph 4.5 of which highlights the continuing nature of the fit and proper assessment. The Code assists the JFSC with its on-going consideration of the fitness and propriety of a registered person by setting out actions that a registered person must or must not undertake, which it can be assessed against.

Where the Code requires a registered person to provide information to the JFSC, such requirement is established in accordance with the powers provided by Article 8 of the Financial Services Commission (Jersey) Law 1998.

Arrangement of the Code

The Code provides enforceable requirements in the form of high level principles supported by detailed rules in the areas of corporate governance, conduct of business and prudential matters and are arranged under seven principles, as described below:

1. A registered person must conduct its business with integrity.
2. A registered person must have due regard for the interests of its clients.
3. A registered person must organise and control its affairs effectively for the proper performance of its business and be able to demonstrate the existence of adequate risk management systems.
4. A registered person must be transparent in its business arrangements.
5. A registered person must maintain, and be able to demonstrate the existence of, adequate financial resources and adequate insurance.
6. A registered person must deal with the JFSC in an open and co-operative manner.
7. A registered person must not make statements that are misleading, false or deceptive.

Each section of the Code is designed to be understood by reference to its full text, including any notes.

¹ *principal person* and *key person* are defined in Article 1 of the *FS(J)L* and carry the same meaning in the *Code*.

Compliance with the Code

The Code should be read by registered persons in conjunction with the FS(J)L and its subordinate legislation, together with any conditions attached to a registration held under the FS(J)L.

It is the responsibility of a registered person not only to comply with the Code, but also to implement such additional practices as it considers necessary for the proper management and control of its business. Where a registered person considers that it may not be able to achieve full compliance with the Code for a temporary period (for example, for a short period after first being licensed) it should, in advance, agree a plan of action (to include timescales) with the JFSC to bring itself into full compliance with the Code. In circumstances where strict adherence to the Code would be at variance with regulatory requirements in the home jurisdiction or produce an anomalous result, registered persons may apply to the JFSC for a variation from the Code; this is in addition to those areas of the Code which specifically provide for a registered person to apply for a variance to the Code.

Methods of compliance with the provisions of the Code will vary depending on whether Jersey is the home or host jurisdiction of the registered person and the extent of the registered person's physical presence in the Island or elsewhere:

A registered person whose home jurisdiction is outside Jersey will be subject to the regulatory framework prescribed in its home jurisdiction and that of Jersey, including the Code. It must therefore satisfy itself that its conduct, procedures, controls and risk management systems comply with the regulatory framework in its home jurisdiction and that of Jersey. Compliance with the home regulatory framework will usually be sufficient to meet a registered person's obligations in Jersey. Should any significant differences emerge between the regulatory framework of the home jurisdiction and that of Jersey, which would result in non-compliance with the Code; they must be brought to the attention of the JFSC for discussion and resolution.

1. A registered person whose home jurisdiction is Jersey shall be subject to the Jersey regulatory framework, including the requirements of the Code. Where such a registered person has subsidiaries or branches outside Jersey, or makes services or products available outside Jersey through brokers or other intermediaries, it must ensure, as far as possible, that the Jersey regulatory framework is applied to those subsidiaries or branches or observed by the brokers and other intermediaries. Where significant differences exist between the host jurisdiction and that of Jersey which would result in non-compliance with the Code; they must be brought to the attention of the JFSC for discussion and resolution.
2. Where a registered person appoints its own agents or sub-agents, the registered person is responsible for ensuring that the agents or sub-agents are themselves registered persons, and that the legal agreements between them make provision for compliance with the Code.

Failure by a registered person to comply with the Code represents grounds for the JFSC to take regulatory action. Where the JFSC has reason to believe that at any time there has been a failure on the part of a registered person to comply with the Code, it may consider making use of its regulatory powers, which, in serious cases, could include the revocation of the registration to conduct general insurance mediation business.

In addition, failure to comply with the Code may support a decision by the JFSC that, for example, continued non-compliance or other failure to remedy the circumstances giving rise to the breach, may be addressed by the issue of a specific, additional registration condition under Article 10 of the FS(J)L, or by a direction under Article 23 of the FS(J)L. Such a direction might impose requirements on a registered person to do or not to do specified things, including the removal of specified individuals or the cessation of business. In appropriate circumstances a direction can be made public by virtue of Article 25(a) of the FS(J)L. The JFSC also has the power under Article 21A of the Financial Services Commission (Jersey) Law 1998 to impose financial penalties for significant and material contraventions of the Code.

When considering a registered person's failure to comply with the Code the JFSC places emphasis on whether or not a registered person conducts its business with integrity and deals with the JFSC in an open and co-operative manner.

Whilst Article 19(3) of the FS(J)L provides that the contravention of the Code shall not of itself render any person liable to proceedings of any kind (excluding regulatory action that may be taken by the JFSC in response to a contravention) or invalidate any transaction, Article 19(4) provides that, subject to a condition of registration indicating that any part or parts of the Code are to be wholly or partly disregarded by a registered person, the Code shall be admissible in evidence in any proceedings if it appears to the court, conducting the proceedings, to be relevant to any questions arising in the proceedings, and shall be taken into account in determining any such questions.

Where it appears to the JFSC that a person has failed to comply with the Code, it may issue a public statement under Article 25(b) of the FS(J)L.

In a number of places the Code requires the JFSC to be advised of a matter "in writing". For the avoidance of doubt, a notification given by email, or by means of the JFSC's online portal, will be considered by the JFSC to meet that requirement (unless the particular Code requirement specifies otherwise how a notification "in writing" must be given).

Revision of the Code

In accordance with Article 19(1)(b) of the FS(J)L the JFSC may, after consultation with such persons or bodies as appear to be representative of the interests concerned, revise the Code by revoking, varying, amending or adding to its provisions.

In November 2018 the JFSC published Consultation Paper No. 10, proposing a number of amendments to the Code and, in March 2019, published a feedback paper summarising respondents' comments and the JFSC's responses.

Deleted: July 2017

Deleted: 6

Deleted: December 2017

Rather than detail the amendments here, the JFSC has published a version of the Code that highlights the amendments applied.

Effective Date

This revised Code is effective from 1 June 2019 for all registered persons. Where revisions to the Code in respect of PII would prompt a registered person to renegotiate or extend their PII cover, the revised Code in respect of the specific matters that would require renegotiation or extension only, may be implemented from the registered persons next PII renewal date provided that the PII renewal date is less than twelve months from 1 June 2019.

Deleted: This revised Code is effective from 21 March 2018 for all registered persons.¶

Any person that has made an application to the JFSC which is currently under consideration, should review the Code and contact the JFSC to discuss any areas where compliance on grant of registration may be an issue.

Deleted: John Harris¶
Director General¶
3 January 2018¶

The Principles

1 A registered person must conduct its business with integrity.

1.1 Without limiting the scope of this principle, a registered person must not:

- 1.1.1 act or refrain from acting; or
- 1.1.2 contract or have any other form of arrangement,

so as to avoid, or seek to avoid, any regulatory responsibilities that it may have under the *Code* and the full consequences of not following them unless the *Code* expressly permits any such avoidance.

2 A registered person must have due regard for the interests of its clients.

- 2.1 A *registered person* must act with due skill, care and diligence to fulfil the responsibilities that it has undertaken and the obligations of the business that it has accepted.
- 2.2 Where a *registered person* is responsible for providing advice or exercising discretion for or in relation to its *clients*, it must:
 - 2.2.1 be able to demonstrate that it has provided the best advice or exercised the necessary discretion that is appropriate for its *clients*' needs; and
 - 2.2.2 seek from them such information as may be appropriate with regard to the services requested and ensure that all aspects of the *clients*' needs have been taken into account: documentary evidence must be maintained in this respect.
- 2.3 A *registered person* must only exercise its power or discretion for a proper purpose.
- 2.4 A *registered person* must ensure that adequate procedures are implemented to either avoid any conflict of interest arising or, where conflicts do occur, address such conflicts by disclosure, applying internal rules of confidentiality, declining to act or otherwise, as appropriate. A *registered person* must not unfairly place its interests above those of its *clients* and, where a properly informed *client* would reasonably expect that the *registered person* would place his or her interests above its own, the *registered person* must live up to that expectation.
- 2.5 A *registered person* must transact its business (including the establishment, maintenance, transfer or closure of business relationships with its *clients*) in an expeditious manner, keeping proper records of its client's affairs, including *client* documentation.
- 2.6 Any delegation of obligations or responsibilities, whether by power of attorney, formal agreement or otherwise, must only be entered into with an appropriate person for a proper purpose. The *registered person* must:
 - 2.6.1 ensure any delegation is for a specific purpose and has an expiry date;
 - 2.6.2 monitor the application of the power of attorney, formal agreement or other arrangement; and
 - 2.6.3 ensure that appropriate due diligence has been carried out on the delegatee.
- 2.7 A *registered person* must ensure that adequate procedures are implemented to ensure that the general insurance mediation business services that it provides to its client are regularly reviewed at appropriate intervals.

Deleted: *client'*

Deleted: *ve*

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

3.1 Corporate Governance

- 3.1.1** *Registered persons* must operate an effective corporate governance system that must include the following key elements:
 - 3.1.1.1** An adequate regulatory span of control must exist, at all times, that is appropriate to the nature of the business. *Registered persons* must be controlled by at least two appropriately qualified or experienced people.
 - 3.1.1.2** The relationship of directors and managers within the company must be such as to ensure that they can all exercise independent judgement without duress or undue influence from one another in the best interests of *clients*, and so as to secure compliance with the *FS(J)L*, any Orders made under it, and the *Code*.
 - 3.1.1.3** The apportionment of responsibilities among directors, *key persons*, senior managers and employees must be such that their individual responsibilities are clear, that there are separated critical functions and that the business of the *registered person* is adequately monitored and controlled at the appropriate level.
 - 3.1.1.4** The procedures for the appointment of directors, both executive and non-executive, must be documented and in line with the stated structure, functions and accountabilities of the board of directors.
- 3.1.2** With respect to 3.1.1, where a *registered person* is a Jersey incorporated company:
 - 3.1.2.1** Those individuals comprising the regulatory span of control must be actively involved in the day-to-day management of the business and be able to exercise executive powers on behalf of the *registered person*. As such, any directors that are not actively involved, "non-executives", or those who are not locally based, may not form part of the regulatory span of control of a *registered person*.
 - 3.1.2.2** As soon as a *registered person* becomes aware that the regulatory span of control requirement will not be maintained they must notify the *JFSC* in writing. In this respect, where a *registered person* has the minimum individuals comprising the regulatory span of control and one of those individuals is absent from the business for a substantial period of time, the *registered person* must contact the *JFSC* to discuss its proposed arrangements such that during this period, the business is managed and controlled by an appropriate number of locally based individuals.
 - 3.1.2.3** Where close family members are eligible to form part of the regulatory span of control, only one member may be counted.
- 3.1.3** Clearly defined procedures must be in place in order to enable the board of directors and senior management to manage the business risks:

- 3.1.3.1 the management must assess the risks present in the business, and they must be documented, as must the ways in which these are monitored and controlled; and
- 3.1.3.2 the *registered person* must maintain accurate and reliable information systems and timely and appropriate management reporting.
- 3.1.4 All aspects of corporate governance arrangements must be subject to appropriately regular review to ensure their continuing adequacy in light of the *registered person's* business activities and risk profiles, and include a periodic self-assessment, or external assessment, of the board's effectiveness.

Notes:

- 1 *Corporate governance is the system by which a company is directed and controlled. A corporate governance framework specifies the distribution of rights and responsibilities among different participants in the company and sets out the rules and procedures for making decisions. Risk management is an integral part of a corporate governance framework. In the context of Principle 3, "risk" refers to all the risks that a registered person faces, or may face, as a business enterprise.*
- 2 Article 74(1) of the *Companies (Jersey) Law 1991* states:
"A director, in exercising the director's powers and discharging the director's duties, shall—
 - (a) *act honestly and in good faith with a view to the best interests of the company; and*
 - (b) *exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.*
- 3 *Depending on the circumstances of the registered person, the JFSC may permit the inclusion of an individual who is actively involved in the day-to-day management of the business (a senior manager) when considering regulatory span of control. In this scenario, the JFSC will consider the fitness and propriety of senior managers using the procedure established for considering principal persons and key persons.*
- 4 *Where the size of a registered person's business warrants it, a separate risk management function and a risk management committee should be established.*
- 5 *For the purpose of 3.1.1.3, all individuals having up to date job descriptions may best evidence apportionment of responsibilities. However, the terms of reference relating to particular offices or committees, or Board resolutions, may also demonstrate apportionment of responsibilities.*
- 6 *With respect to 3.1.2.2, the JFSC considers a period of in excess of four weeks to constitute a substantial absence from the registered person.*
- 7 *For the purposes of 3.1.2.3, "close family" comprises spouses (including co-habitees), civil partners, children, dependants, parents, brothers, and sisters.*

3.2 Internal Systems and Controls

- 3.2.1 A *registered person* must maintain an effective, documented system of internal control (policy and procedures manual) including, where appropriate, operations manuals for employees in English. Where the registered person undertakes its activities from an established place of business in Jersey, these documents must be kept accessible in Jersey. In all other cases, these documents must be kept in such a form as to be made available to the JFSC upon request and without delay.

Deleted: and kept within Jersey.

3.2.2 A *registered person's* systems and controls must ensure that:

- 3.2.2.1 the business is planned and conducted prudently, and in an orderly manner, in accordance with management policies;
- 3.2.2.2 transactions and commitments are entered into in accordance with laid down general or specific authority;
- 3.2.2.3 the assets of the *registered person* are safeguarded and the liabilities controlled through measures designed to minimise the risk of loss from irregularities, error and fraud, and to identify any such occurrences promptly;
- 3.2.2.4 adequate, orderly and up-to-date records are kept which must include, but are not necessarily limited to:
 - 3.2.2.4.1 its business transactions,
 - 3.2.2.4.2 its financial position,
 - 3.2.2.4.3 its internal organisation,
 - 3.2.2.4.4 its risk management systems,
 - 3.2.2.4.5 its board or management minutes, and
 - 3.2.2.4.6 the relationship between the legal persons/ arrangements forming part of the group subject to registration under the *FS(J)L*;
- 3.2.2.5 the accounting and other records of the *registered person* capture and record on a timely basis and in an orderly fashion every transaction and commitment into which the *registered person* has entered, and can be used to compile financial statements, management information and returns in line with the requirements of the *FS(J)L* and any Orders made under it. They must contain sufficient information to explain:
 - 3.2.2.5.1 the nature and purpose of the transaction or commitment, including: the parties; amount and currency, and the frequency of payment; and the contracted commission or fee payable or receivable,
 - 3.2.2.5.2 any asset or liability, actual or contingent, that arises or may arise, and
 - 3.2.2.5.3 any income or expenditure, current or deferred, that arises or may arise;
- 3.2.2.6 financial and business information can be extracted promptly to enable directors and senior management to:
 - 3.2.2.6.1 identify, measure, monitor and control the quality of the *registered person's* assets and safeguard them,
 - 3.2.2.6.2 identify, measure, monitor and control its obligations to *clients*,
 - 3.2.2.6.3 monitor its solvency and its reserves,
 - 3.2.2.6.4 monitor the performance of all aspects of its business on an up-to-date basis, and
 - 3.2.2.6.5 make timely and informed decisions;

- 3.2.2.7 management is able to identify, regularly assess, and where appropriate quantify, the risk of loss in the business so that any necessary provisions can be made for bad or doubtful debts and for any other exposures both on and off balance sheet;
- 3.2.2.8 the *registered person* is able to guard against involvement in financial crime (including the detection and prevention of money laundering and terrorist financing) and to comply with the *Code* and other regulatory requirements;
- 3.2.2.9 adequate business resumption, disaster recovery and contingency arrangements are in place and are tested at appropriate intervals;
- 3.2.2.10 sufficient access controls exist to protect the confidentiality and integrity of electronic data;
- 3.2.2.11 adequate procedures are in place for controlling changes to systems and records to ensure that only valid changes are made;
- 3.2.2.12 any gifts or entertainment provided or received by the *registered person* must be limited in value and frequency so as not to be construed as an inducement for the provision of insurance business to the detriment of the principle of best advice to *clients*;
- 3.2.2.13 where the *registered person* provides seminars and other training to the directors and staff for the purpose of ensuring that policies are properly sold, such training may include associated travel and accommodation costs; and
- 3.2.2.14 the *registered person* complies with the *JFSC*'s policy on outsourcing as may be updated from time to time.

3.2.3 The control objectives in section 3.2.2 above apply equally to the operations undertaken in both manual and electronic environments. Special controls are required to address the unique risks encountered with computer systems, although these risks are not exclusive to the area of computer operations.

3.2.4 In respect of 3.2.2, the internal systems and controls must facilitate preparation of information for directors and senior management so that they can monitor, assess and control the performance of the business, the state of its affairs and the risks to which it is exposed. Information must be prepared on an individual business basis and, where appropriate, on a consolidated basis. Management information must be prepared:

- 3.2.4.1 to show the state of affairs of the business;
- 3.2.4.2 to show the overall solvency of the business;
- 3.2.4.3 to show the operational results of the business both on a cumulative basis and by discrete period, and to give a comparison with budgets and relevant previous periods;
- 3.2.4.4 to provide an analysis of assets and liabilities, showing how they have been valued;
- 3.2.4.5 to provide an analysis of any off-balance sheet positions, showing how they have been valued;
- 3.2.4.6 to provide an analysis of income and expenditure, showing how the income and expenditure relates to the different categories of asset and liability and to *clients*' and shareholders' funds; and

Deleted: 21 March 2018

3.2.4.7 to show the business' exposure to each type of risk, compared to the relevant limits set by management.

3.2.5 A *registered person* must undertake a periodic review of the internal systems and controls to ensure that they continue to work effectively.

3.2.6 Where a *registered person* controls *client money* it should implement an independent review of the controls over *client money* on, at least, an annual basis:

- 3.2.6.1 The review shall verify the effectiveness of the *registered person*'s relevant controls over *client money* with particular regard to those controls that prevent the:
 - 3.2.6.1.1 Loss;
 - 3.2.6.1.2 Misuse; and
 - 3.2.6.1.3 Misappropriation of *client money*.
- 3.2.6.2 The review should be performed by an appropriately qualified independent person who may be an internal or external party.
- 3.2.6.3 Where an internal party performs such review they must be operationally independent from the individuals or functions within the *registered person* responsible for the operation of the controls under review.

Notes:

- 1 The JFSC will recognise and take comfort from those registered persons that do have effective internal audit controls or where such functions are provided from elsewhere within a group.
- 2 With respect to 3.2.2.14, the JFSC's policy on outsourcing is available from the JFSC's website.
- 3 With respect to the various risk management provisions under principle 3 of the Code, particularly 3.1, 3.2 and 3.4, it is expected that a registered person will have specifically considered, amongst other risks, the risk of a cyber security incident, and have in place a corresponding documented policy to identify assets and risks, to protect them, to quickly detect potential cyber security incidents, to respond to contain the impact of an incident and to recover from it.

Formatted: No bullets or numbering

3.3 Compliance function, Compliance Officer and Money Laundering Reporting Officer

3.3.1 The senior management (most often the board of directors) of the *registered person* is responsible for ensuring that it has robust arrangements for compliance with the *regulatory framework*, these must include:

- 3.3.1.1 approval of a compliance policy;
- 3.3.1.2 establishment of a permanent and effective compliance function, whose responsibilities are formally documented;
- 3.3.1.3 assessment, on at least an annual basis, of the extent to which compliance risk is managed effectively; and
- 3.3.1.4 appointment, as its Compliance Officer, an appropriately skilled and experienced person.

3.3.2 The compliance function must:

- 3.3.2.1 have appropriate independence;
- 3.3.2.2 have direct access to the *registered person*'s Jersey management board or equivalent;
- 3.3.2.3 have unfettered access to all business and support departments and information necessary to properly discharge their responsibilities;
- 3.3.2.4 act as the principal point of contact for employees on day-to-day regulatory matters; and
- 3.3.2.5 be able to devote sufficient time and have sufficient resources to discharge properly the responsibilities of the function, including implementation of the compliance policy.

3.3.3 The *registered person* must ensure that the Compliance Officer is responsible for:

- 3.3.3.1 ensuring the appropriate monitoring of operational performance and managing regulatory and compliance risk within the *registered person* which includes:
 - 3.3.3.1.1 monitoring that the internal policies and procedures are being consistently and effectively adhered to,
 - 3.3.3.1.2 assessing, and recommending amendments to, internal systems and controls as well as policies and procedures which facilitate compliance with the *regulatory framework*, and
 - 3.3.3.1.3 where appropriate, promptly instigating action to remedy any deficiencies in such arrangements;
- 3.3.3.2 providing senior management and the board of directors of the *registered person* with regular reports in respect of the *registered person*'s compliance with the requirements of the *FS(J)L*, Orders (issued under the *FS(J)L*) and the *Code*; and
- 3.3.3.3 acting as the principal point of contact with the *JFSC* on day-to-day regulatory matters, unless otherwise agreed with the *JFSC*.

3.3.4 The Compliance Officer must:

- 3.3.4.1 *where the registered person has a physical presence in Jersey*, be based in Jersey, unless otherwise agreed with the *JFSC*;
- 3.3.4.2 be an individual operating under a contract of employment directly with the *registered person* or another company within the same group;
- 3.3.4.3 have sufficient experience and skills, which includes holding an appropriate compliance or other qualification or be studying towards such a qualification; and
- 3.3.4.4 have appropriate status and authority within the *registered person* to ensure that senior management and the board of directors of the *registered person* react to and determine whether to act upon his or her recommendations.

3.3.5 In the event that a Compliance Officer is temporarily unable to fulfil his or her responsibilities, the *registered person* must:

- 3.3.5.1 notify the *JFSC*; and
- 3.3.5.2 designate an appropriately skilled and experienced alternate.

Deleted: 21 March 2018

3.3.6 With respect to 3.3.5, notification to the *JFSC* must be made, in writing, as soon as the *registered person* becomes aware that the compliance officer will be temporarily unable to fulfil their responsibilities.

3.3.7 A *registered person* is advised to appoint a suitably qualified or experienced senior employee to act as Money Laundering Reporting Officer.

3.3.8 It is recognised that the risk of the use of general insurance for the purposes of money laundering or the financing of terrorism is less than the use of long term insurance products. However, where a Money Laundering Reporting Officer has been appointed, they must:

- 3.3.8.1 report directly to the *registered person*'s Jersey management board or equivalent;
- 3.3.8.2 be properly trained in the responsibilities and duties of such a position;
- 3.3.8.3 have sufficient independence and resources to properly discharge the responsibilities of the position; and
- 3.3.8.4 pay special attention to:
 - 3.3.8.4.1 applications for insurance of a high value or unusual risks,
 - 3.3.8.4.2 claims that are for large amounts of money, or
 - 3.3.8.4.3 claims that are made within a short period of time following the inception of insurance cover.

3.3.9 Where a *registered person* has limited or inexperienced employee resource in Jersey:

- 3.3.9.1 The *JFSC* either expects the *registered person* to support the Compliance Officer as necessary by importing specialist skills, through the use of group resources, or by outsourcing to a management company, if one has been retained.
- 3.3.9.2 The *registered person* may support the Money Laundering Reporting Officer function as necessary, where one has been appointed, either by importing specialist skills or through the use of group resources or by outsourcing to a management company, if one has been retained.
- 3.3.9.3 Where it is the case that the Compliance Officer and the Money Laundering Reporting Officer, if appointed, is the same person, notification of such must be made, in writing, to the *JFSC*.

3.3.10 Where the structure of a *registered person*'s business is such that procedures do not require the Compliance Officer to be based in Jersey or any appointed Money Laundering Reporting Officer to report to local management in Jersey, then the *JFSC* will consider a written application by the *registered person* for a variance from the requirement to comply with either paragraphs 3.3.4.1 or 3.3.8.1 respectively. In considering such a variance request for a compliance officer the *JFSC* will pay particular regard to the extent to which the Jersey operation is subject to compliance monitoring and whether a Jersey based compliance contact has been nominated by the *registered person*.

Notes:

- 1 It is recognised that there may be registered persons where the compliance function is the Compliance Officer.

- 2 *The role of Compliance Officer and Money Laundering Reporting Officer meet the definition of a key person, as defined by Article 1 of the FS(J)L; consequently, Article 14 of the FS(J)L applies to these positions.*
- 3 *When considering a key person application, the JFSC will not only look at the suitability of the qualifications and experience of the applicant, but will also consider this in the context of the qualification and experience of the balance of the board and/or other key persons employed by the registered person.*
- 4 *With respect to 3.3.5, the JFSC considers a period in excess of four weeks to constitute being temporarily unable to fulfil his/her responsibilities.*
- 5 *If a Money Laundering Reporting Officer is appointed in accordance with 3.3.7, it is useful for the registered person to understand that anti-money laundering legislation includes: the Proceeds of Crime (Jersey) Law 1999; the Money Laundering (Jersey) Order 2008; and the Terrorism (Jersey) Law 2002, as well as any other applicable laws and United Nations or European Union Sanctions Orders applied within Jersey, all as amended from time to time. Additionally, the standards set out in the relevant Handbook for the Prevention and Detection of Money Laundering and Financing of Terrorism issued by the JFSC, as amended from time to time, provides additional details of the anti-money laundering requirements.*

3.4 Record keeping

All records

- 3.4.1 The *registered person* must ensure that it has appropriate record keeping arrangements for compliance with the applicable laws, Orders and regulatory requirements, set by the *Code*.
- 3.4.2 A *registered person* is expected to maintain its books and records in a language understood by the employees of the business. These must be translated into English at the request of the JFSC. A *registered person* must be able to readily retrieve them in Jersey and, if kept otherwise than in legible form, maintain them so as to be readable at a computer terminal in Jersey so that they may be produced in legible form without delay.
- 3.4.3 A *registered person* must have a clearly documented policy and procedures regarding record retention that includes:
 - 3.4.3.1 periodic review of the accessibility and condition of paper and electronic records;
 - 3.4.3.2 the adequacy of the safekeeping of records; and
 - 3.4.3.3 periodic testing of procedures relating to the retrieval of records.
- 3.4.4 A *registered person* that is ceasing to conduct general insurance mediation business is required to arrange appropriate record keeping arrangements as part of a cessation of business plan.

Business records

- 3.4.5 A *registered person* must maintain an audit trail of material changes to the policies and procedures manual that covers the operation of the business, which is updated as required. When updates are made, the effective date of such updates must be recorded and the superseded records maintained.
- 3.4.6 A *registered person* must keep adequate and orderly records, not only of business transacted but also of its internal organisation and risk management controls.

Deleted: 21 March 2018

3.4.7 The period for which business records must be kept is the later of:

- 3.4.7.1 the period required for any particular record by any law; and
- 3.4.7.2 where records relate to significant corporate governance matters, such as management meeting minutes and risk assessment matters, or are records relating to requirements established by the *Code* - ten years from the date of the record.

Client records

3.4.8 A *registered person* is expected to keep adequate, orderly and up-to-date *client* records.

3.4.9 Where the *Code* requires *client* related records to be kept, these must be kept for at least five years from the date of the event to which the record relates.

Notes:

- 1 *This section explains the minimum standards of record keeping that are required in respect of a registered person's own business and the general insurance mediation services business services that it is providing.*
- 2 *The FS(J)L is silent as to the form that records should take, but the JFSC expects that registered persons will use available technology to retain and facilitate access to these records. Legal advice may need to be taken regarding the types of records that are admissible in a court of law.*
- 3 *The Code does not establish any retention requirements for tape recordings of telephone conversations.*
- 4 *With respect to 3.4.5, a change to the policies and procedures manual that necessitates communication to impacted staff is a material change.*
- 5 *With respect to 3.4.7.1, the JFSC considers that laws relating to companies, tax, proceeds of crime, and data protection may be relevant.*

3.5 Complaints

3.5.1 A *registered person* must establish and maintain an effective *complaint* handling system and procedures and in particular must:

- 3.5.1.1 maintain adequate records of *complaints* against the *registered person*, including a central register that contains details of any agreed compensation or compromise;
- 3.5.1.2 inform *clients* of how *complaints* may be made and how they may expect these to be responded to;
- 3.5.1.3 handle *complaints* transparently, competently, diligently, and impartially;
- 3.5.1.4 provide, in writing, within five business days, unless expressly agreed to the contrary with the complainant, an acknowledgement that their *complaint* has been received and confirm that the *complaint* is being considered;
- 3.5.1.5 keep the complainant informed about the progress of their *complaint*, including details of any actions being taken to resolve their *complaint*;

- 3.5.1.6 advise the complainant in writing when the *complaint* is considered closed and where the *complaint* is not upheld, clearly state the reason(s) for rejecting the *complaint*;
- 3.5.1.7 at the same time, advise the complainant in writing:
 - 3.5.1.7.1 that if they are dissatisfied with its response to the *complaint*, the complainant may be able to refer the *complaint* to the Channel Islands Financial Ombudsman;
 - 3.5.1.7.2 of the contact details for the Channel Islands Financial Ombudsman (namely its website address, postal address, email address and telephone number);
- 3.5.1.8 comply with the requirement of 5.2.9.5, in relation to determining whether a *complaint* gives rise to any notification requirement under its professional indemnity insurance policy; and
- 3.5.1.9 consider the *complaints* data for patterns emerging.

- 3.5.2 As soon as it becomes aware, a *registered person* must notify the *JFSC* promptly, in writing, if:
 - 3.5.2.1 a *complaint* is not satisfactorily resolved within three months of it being lodged;
 - 3.5.2.2 the Channel Islands Financial Ombudsman, using the powers it has under Article 16 of the Financial Services Ombudsman (Jersey) Law 2014, requires the *registered person* to pay compensation to a complainant or directs the *registered person* to take other specified steps in relation to a complainant;
 - 3.5.2.3 a pattern to *complaints* is identified; or
 - 3.5.2.4 A *complaint* results in the payment of a claim under the *registered person's* professional indemnity insurance policy, or any type of settlement, worth in excess of £1,000.
- 3.5.3 A *registered person* must deal with the Channel Islands Financial Ombudsman in an open and co-operative manner.

Note:

- 1 With respect to 3.5.1, a *registered person* may wish to consider adopting and following the "Model complaint-handling procedure for financial services providers" published by the Channel Islands Financial Ombudsman.
- 2 With respect to 3.5.1.3, the *JFSC* considers that it would be inconsistent with that requirement if a *registered person* were to act in a way that may undermine the integrity of the complaints-resolution framework provided under the Financial Services Ombudsman (Jersey) Law 2014, such as:
 - › making a settlement offer that is conditional upon the complainant not referring the matter to the Channel Islands Financial Ombudsman. (The complainant may want to seek independent advice from the Channel Islands Financial Ombudsman before deciding whether or not to accept the offer.) This would not preclude a *registered person* – if it has fully informed the complainant of their right to refer their complaint to the Channel Islands Financial Ombudsman – asking the complainant to sign a full and final release as part of the settlement if the offer is accepted;

- › *misleading a complainant about their right to refer a complaint to the Channel Islands Financial Ombudsman;*
- › *offering a view as to the likelihood of the Channel Islands Financial Ombudsman ruling in favour of the complainant.*

3 *With respect to 3.5.2, “as soon as it becomes aware” applies from the point at which the registered person knows, or has reasonable grounds for believing, that any of the matters stated has occurred or may be about to occur, even where it is outside the control of the registered person.*

3.6 Integrity and competence

3.6.1 A *registered person* must ensure that its directors, senior managers and all other employees are fit and proper for their roles. The term “employees” includes not only staff directly employed by the *registered person* but also indirect staff, such as temporary or contracted employees, and other contracted service providers.

3.6.2 A *registered person* must:

- 3.6.2.1 operate robust arrangements for meeting the standards and requirements of the regulatory system;
- 3.6.2.2 establish adequate supervision of employees, and procedures governing sole, dual or multiple authorisations for handling business assets; and
- 3.6.2.3 guard against involvement in financial crime (including the detection and prevention of money laundering), and ensure that all transactions and decisions are properly authorised by persons with the requisite knowledge and experience to effect such transactions or make such decisions.

3.6.3 A *registered person* must assess and monitor the competence and probity of its directors, senior managers and other employees, and ensure that trainees are properly supervised.

3.6.4 A *registered person* must ensure that:

- 3.6.4.1 it has a clear, written policy regarding the identification, notification and handling of any conflicts of interest that its directors and employees may encounter during the normal course of their employment in the *registered person*’s business; and
- 3.6.4.2 it has a clear, written policy regarding private transactions, self-dealing, preferential treatment and other transactions of a non-arm’s length nature.

3.6.5 A *registered person* is responsible for ensuring that its employees are competent on an on-going basis and trained adequately and appropriately, and must document the basis upon which such competency has been assessed. Competence comprises a balance between relevant qualifications held, training received, and experience gained having regard, amongst other things, for the nature of the work being carried out by the employees and the level of their responsibility.

3.6.6 A *registered person* must ensure that there is a sufficient number of staff, at all levels, with adequate qualifications and experience. Directors and/or senior management, who form part of the regulatory span of control, must always hold appropriate qualifications to enable them to demonstrate the technical competence to perform such a senior role.

3.6.7 A *registered person* must ensure that it obtains and retains copies of documentary evidence of qualifications held by employees where such qualifications have been determined by the *registered person* to be a requirement for the role involved.

3.6.8 A *registered person* must have in place a proper, documented, remuneration policy for directors and employees, and must review it periodically. Such a policy must ensure that remuneration has due regard for the *registered person's* financial position as well as the personal performances of directors and employees, and that any incentive schemes are properly managed so as to avoid any encouragement of improper or imprudent behaviour.

Notes:

- 1 Paragraph 3.6.1 and 3.6.3 above are subject to the Rehabilitation of Offenders (Jersey) Law 2001, which prohibits an employer requesting information from its employees and prospective employees about convictions that are "spent". This general prohibition is subject to exceptions provided for by the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, as amended (the **Exceptions Regulations**).
- 2 Regulation 21 of the Exceptions Regulations permit a registered person, applicants and those intending to apply for registration to request information about all "relevant offences", whether "spent" or not, from employees holding certain positions and applicants for such positions.
- 3 To be consistent with the Code, it is necessary for employers to make use of such exceptions when screening employees who are subject to these exceptions.

3.7 Continuing Professional Development (CPD)

3.7.1 A *registered person* is responsible for ensuring that the opportunity is available to all relevant employees to continue their professional development as part of their normal working environment.

3.7.2 A *registered person* is responsible for ensuring that the *CPD* is appropriate and relevant to such employees, taking into account their job descriptions, current duties and future development needs.

3.7.3 For *registered persons* that employ relevant employees in Jersey, the minimum recommended *CPD* is 25 hours per year, including technical and professional reading (for which a maximum of five hours is permitted), and research. Where a *registered person* has no relevant employees in Jersey they must ensure that *CPD* is undertaken in accordance with the *regulatory framework* of their home jurisdiction.

3.7.4 A *registered person* must maintain *CPD* records for all relevant employees (although it is permissible for a *registered person* to require employees to keep their own records and account to the *registered person* on a regular basis).

Notes:

- 1 For these purposes, the term "relevant employee" will include an employee who:
 - (a) provides general insurance business advice to clients;
 - (b) is the compliance officer; or
 - (c) any employee who has, or is working towards, or who wishes to begin studies for, a professional qualification that the employer has agreed with the employee is necessary for that person's employment with the registered person.

Deleted: 21 March 2018

2 *It is recognised that some relevant employees may be members of professional bodies that have their own CPD requirements as a condition of continued membership. In these circumstances, it is a matter for the registered person:*

- (a) *firstly, to ensure that the necessary opportunity is given to such relevant employees to enable them to comply with these professional requirements; and,*
- (b) *secondly, to take a view on the extent to which such professional CPD is relevant to the registered person's business and may therefore be counted towards the relevant employees' work-related CPD.*

3 *Courses in key subjects, such as anti-money laundering, data protection, health and safety, and IT, should be part of every employee's training programme in addition to those courses specifically related to insurance.*

4 *As a guide for the purposes of paragraph 3.6.6 and 3.7, a registered person should encourage staff to undertake courses and qualifications provided by institutions that are appropriate to employees' seniority and experience, such as the Chartered Insurance Institute (CII). For example, staff might undertake the following insurance-specific qualifications, as part of a development programme:*

<i>Junior employees</i>	<i>CII Foundation Insurance Test</i>
<i>Administrative staff</i>	<i>CII Certificate in Insurance (Cert. CII)</i>
<i>More experienced staff</i>	<i>CII Diploma in Insurance (Dip. CII)</i>
<i>Middle management</i>	<i>CII Advanced Diploma in Insurance (ACII)</i>
<i>Senior Management/Directors</i>	<i>ACII or FCII</i>

5 *Qualifications from other professional institutes may also be acceptable when combined with practical experience of the insurance industry. These include, but are not limited to:*

- (a) *The Chartered Institute of Bankers;*
- (b) *The Chartered Institute for Securities and Investment²;*
- (c) *The International Compliance Association; and*
- (d) *The various accountants' institutes.*

6 *It is expected that relevant employees will achieve their CPD targets by adhering to the requirements of their own relevant professional body. However, where the relevant professional body does not prescribe how CPD should be achieved, there are a number of acceptable ways to attain the minimum CPD requirement, including, but not restricted to:*

- (a) *studying for further qualifications;*
- (b) *in-house training, seminars, conferences and product presentations;*
- (c) *computer-based training;*
- (d) *one-to-one tuition;*
- (e) *reading relevant professional and trade magazines;*
- (f) *personal structured study; and*
- (g) *attending external training courses.*

² Previously called the Securities Institute.

3.8 Payment of financial penalties

3.8.1 *A registered person must not pay a financial penalty imposed by the JFSC on any other person.*

4 A registered person must be transparent in its business arrangements.

- 4.1 A registered person must inform its *client* that it is regulated by the regulatory authority in its home jurisdiction. For a Jersey-based registered person this will be the Jersey Financial Services JFSC.
- 4.2 A registered person must communicate information to *client* in a way that is adequate, fair and not misleading. Advertising and promotional literature must be clear, fair and reasonable, and must not be deceptive or misleading (advertising requirements are contained in Section 7 of the *Code*).
- 4.3 If applicable, a registered person must state whether insurance policies can only be provided from a restricted range of products from one product provider.
- 4.4 A registered person must provide confirmation, in legible form, of any contract or transaction effected for its *client*. This will usually take the form of a policy document or cover note and, where appropriate, a notice of any policy exclusions or special terms that are attached to the policy.
- 4.5 A registered person must provide to its *client*, in writing, the terms and conditions applying to the insurance services provided by the registered person. These terms and conditions must:
 - 4.5.1 be distinguishable from marketing or promotional material;
 - 4.5.2 be consistent with the *Code*;
 - 4.5.3 be clearly expressed in plain language that only uses technical or legal terms where absolutely necessary;
 - 4.5.4 be provided before the contract of insurance becomes legally binding on the parties, except when it is impractical to do so, in which case the terms and conditions shall be provided at the earliest opportunity; and
 - 4.5.5 contain details of the services provided by the registered person at the renewal date of the policy, and the consequences, financial and otherwise, of early termination.
- 4.6 At the time when a policy is first taken out and at renewal, the registered person must disclose the nature and amount of all standard fees and charges associated with the policy levied over and above the premium charged by the insurance provider.
- 4.7 A registered person must, upon request, provide a *client* with the information held about that *client* to which the *client* is legally entitled. The registered person may recover its reasonable costs of supplying such information to the *client*.
- 4.8 A registered person must inform *client* if it has a policy of recording telephone conversations with them for monitoring or training purposes. This may be achieved by including an appropriate statement in the registered person's terms of business, marketing and promotional material and regular statements provided to *client*, or by advising callers at the start of any telephone conversation.

Notes:

- 1 *The requirements described in paragraphs 4.1 and 4.5 above will be satisfied by the inclusion of the information on the registered person's letterhead, or its marketing or advertising literature, or its terms of business, or policy documentation, as appropriate.*
- 2 *The requirements described in 4.6 apply to each and every policy of insurance. This includes where the registered person is providing or arranging for more than one policy for a client at any one time from the same or a different insurer. The JFSC expects the registered person to provide to the client a breakdown of the costs levied over and above the premium for each policy and, in accordance with 4.2 a client must not be misled into believing a policy of insurance is included in the premium price of one policy when it is in fact an additional policy for which an additional premium is payable or that the policy is provided by an insurer when it is in fact provided by another insurer. To reflect best practice, the registered person is expected to set out not only the costs of each individual policy but also the identity of each insurer so the client is fully informed of all relevant material facts.*

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1 cm + Tab after: 1.75 cm + Indent at: 1.75 cm

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

5.1 Financial Resources

- 5.1.1 A *registered person* must maintain at all times a level of capital adequacy sufficient to meet its liabilities and the minimum solvency margin requirements. The required minimum solvency margins are those prescribed in the Financial Services (General Insurance Mediation Business (Accounts, Audits, Reports and Solvency)) (Jersey) Order 2005, as amended from time to time (the **Accounts, Audits, Reports and Solvency Order**).
- 5.1.2 A *registered person* must retain approved assets, for the purposes of assessing capital adequacy, in line with those listed in Article 12 of the *Accounts, Audits, Reports and Solvency Order*.
- 5.1.3 A *registered person* must ensure that quoted investments are listed on one of the recognised international stock exchanges described in Article 12 of the *Accounts, Audits, Reports and Solvency Order*. Upon application by the *registered person*, the *JFSC* may approve other exchanges as recognised for this purpose, but only where the use of such an exchange is considered necessary for the proper performance of the *registered person's* business.
- 5.1.4 A *registered person* must ensure that its liabilities are calculated and monitored on a continuous basis. Such liabilities must be calculated according to generally accepted industry principles and accounting standards and the calculations must be made available to the *JFSC* for review upon request.

Subordinated Loans

- 5.1.5 In accordance with Article 20 of the *Accounts, Audits, Reports and Solvency Order* a *registered person* must obtain the prior approval of the *JFSC* before entering into a subordinated loan agreement; such approval should be sought in writing. If the *registered person* is seeking a variance to the treatment afforded the subordinated loan in the solvency requirements calculation, this should be clearly set out in the request. Any request must be accompanied by a signed consent request checklist and such consent is only likely to be granted where:
 - 5.1.5.1 the subordinated loan is drawn up in accordance with the *JFSC's* proforma Subordinated Loan Agreement; and
 - 5.1.5.2 the subordinated loan is made by an approved lender.
- 5.1.6 The Subordinated Loan Agreement must be signed by authorised signatories of all parties to the agreement, and:
 - 5.1.6.1 be for a fixed period of not less than two years; or
 - 5.1.6.2 where no fixed term is cited, be subject to a minimum notice period of repayment of two years.

5.1.7 Where the *JFSC* has approved the issuance of a subordinated loan and has also agreed that the subordinated loan may be treated as a deduction from liabilities in the solvency requirements calculation, the maximum a *registered person* may deduct from liabilities is four times the *net free asset* position of the *registered person*. The *net free asset* position must be calculated using the *registered person*'s latest audited financial statements.

5.1.8 The variance treatment for the subordinated loan will automatically fall away if either:

- 5.1.8.1 the *registered person* fails to comply with any of the requirements of the subordinated loan agreement, including the notification requirements; or
- 5.1.8.2 the subordinated loan repayment date falls due within one year.

5.1.9 In addition to being a signatory to the Subordinated Loan Agreement, the *JFSC* will place a condition on the *registered person*'s registration requiring that it comply in full with the terms of the Subordinated Loan Agreement.

5.1.10 Although a *registered person* is required to submit to the *JFSC* at regular intervals financial statements that demonstrate the ability to meet its liabilities and its minimum solvency margin requirements, it is the responsibility of the *registered person* to ensure that this position is maintained at all times. Should the *registered person* become aware that it is unable to comply with the solvency requirements, Article 15 of the *Accounts, Audits, Reports and Solvency Order* requires immediate written notification to the *JFSC*.

5.1.11 Where a *registered person* fails to meet the solvency requirements it must produce, and provide to the *JFSC*, a plan for the restoration of solvency within 30 calendar days of the date of notification of the solvency breach. Should the plan not be forthcoming, or be deemed inadequate, the *JFSC* may impose its own conditions, financial or otherwise, for the return of the *registered person* to acceptable solvency levels.

5.1.12 In order to properly control its assets, liabilities and its solvency position, a *registered person* must have in place effective procedures for monitoring and managing the asset/liability position; and

- 5.1.12.1 ensure that the directors review the adequacy of all management policies on a regular basis in the light of the company's activities, its overall risk tolerance, and its solvency position; and
- 5.1.12.2 have in place procedures to identify and mitigate against the effects of deteriorating business conditions.

Notes:

- 1 "net free assets" is defined as total assets less total liabilities.
- 2 With respect to 5.1.5, the proforma Subordinated Loan Agreement and consent request checklist are available from the *JFSC* website.
- 3 For the purpose of 5.1.5.2, an approved lender is:
 - (a) a financial service business as defined by Article 2 of the *FS(J)L*;
 - (b) a financial service business regulated by a "relevant supervisory authority", as defined by Article 1 of the *FS(J)L*;

- (c) a person that is registered by the JFSC to carry on deposit-taking business under Article 9 of the Banking Business (Jersey) Law 1991;
- (d) a principal person of the registered person; or
- (e) a person that does not meet any of the above criteria but has been specifically approved by the JFSC.

5.2 Insurance Arrangements

5.2.1 A registered person must have and maintain adequate insurance cover at all times, commensurate with its business activities. Such cover must include professional indemnity insurance (PII) extended to include fidelity guarantee (employee dishonesty or fraud) insurance and director's and officer's insurance.

5.2.2 PII cover and extensions must include negligence and errors and omissions by a registered person and employee dishonesty, and must, where possible, extend to all territories from which a registered person conducts business.

5.2.3 A registered person must not enter into, arrange, claim on or make a payment under a contract of insurance that is intended to have, or has or would have, the effect of indemnifying any person against all or part of a financial penalty imposed by the JFSC.

5.2.4 PII cover must be written on a "claims-made" basis including costs and expenses and, so far as lawful, must include:

5.2.4.1 legal defence costs;

5.2.4.2 loss or theft of documents (liability and costs of replacement, reinstatement, restoration or reconstruction of data);

5.2.4.3 self-employed or contract hire persons engaged in a registered person's business; and

5.2.4.4 indemnity to current or former employees, partners, and consultants.

5.2.5 Subject to 5.2.6, the minimum indemnity limit for any one claim and in the aggregate must equal or exceed the greater of:

5.2.5.1 three times the amount of relevant fees and commissions;

5.2.5.2 £1,000,000 (one million pounds sterling).

5.2.6 A registered person shall not be required by virtue of 5.2.5 to have aggregate insurance cover exceeding £5,000,000 (five million pounds sterling).

5.2.7 In the event that a registered person's aggregate level of PII cover is depleted as a result of a claim on its policy, such that it is no longer sufficient to meet the requirements set out in 5.2.5, a registered person must obtain reinstated cover that meets the requirements set out under paragraph 5.2.5.

5.2.8 Any excess (or deductible) per claim on the policy must not:

5.2.8.1 Exceed £5,000 (five thousand pounds sterling) or 3% of the annual relevant fees and commissions, whichever is greater; or

5.2.8.2 reduce the limit of indemnity payable under the policy such that it is insufficient to meet the minimum indemnity limit prescribed under 5.2.5.

5.2.9 As soon as it becomes aware, a registered person must notify the JFSC in writing of any material limitations in its PII policy, including the basis on which the limitation has been applied, in respect of matters such as:

Deleted: a

Formatted: Tab stops: Not at 1.25 cm

Deleted:).

Formatted: Tab stops: Not at 2.5 cm + 2.75 cm

Deleted: the

Deleted: ,

Deleted: .

Deleted: ,

Deleted: is

Deleted: ,

Deleted: ,

Deleted: the

Formatted: Font: Not Italic

Deleted: employees,

Deleted: /or

Deleted: 5.2.5

Deleted: or

Deleted: 5.2.4

Formatted: Font: Not Italic

Deleted: limit

Deleted: indemnity

Deleted: 5.2.4, the

Deleted: re-instated cover.

Deleted:

Deleted: e

Deleted: the

Deleted:

Field Code Changed

Deleted: ,

Deleted: ,

Deleted: 21 March 2018

5.2.9.1 an inability to obtain PII cover in line with the requirements of 5.2.3 or 5.2.5;

5.2.9.2 any territory from which a registered person conducts business or may reasonably be expected to conduct business;

5.2.9.3 any exclusion applied by way of endorsements;

5.2.9.4 any retroactive date applied to the PII policy;

5.2.9.5 the cancellation of the PII policy;

5.2.9.6 if a registered person becomes aware that it has conducted any activity that is not covered by the PII policy; and

5.2.9.7 if a registered person's aggregate level of PII cover is depleted as described at 5.2.7.

5.2.10 A registered person that is ceasing to conduct a class of financial service business is required to arrange for appropriate "run off" PII cover in respect of claims arising from past acts or omissions. The level of such cover will require the JFSC's consent as part of a cessation of business plan.

5.2.11 A registered person must have adequate procedures in place to ensure compliance with all terms and conditions set out in its PII policy, particularly in relation to the timely notification of events by a registered person to its insurer, which may lead to a claim on the policy by a registered person.

5.2.12 Where a registered person may be subject to an Eligible complaint as defined at Article 7 of the Financial Services Ombudsman (Jersey) Law 2014, in addition to the requirements at 5.2.3, a registered person must ensure that its PII cover is adequate in the event that a Determination is made against a registered person by the Channel Islands Financial Ombudsman.

Notes:

1. With respect to 5.2, a registered person may consider allocating responsibility to a named principal person to ensure that adequate insurance cover is maintained at all times [5.2.1] and that a registered person is in compliance with all terms and conditions set out in its PII policy [5.2.11].
2. Paragraph 5.2.3 is not intended to prevent a registered person from entering into, arranging, claiming on or making any payment under a contract of insurance which indemnifies any person against all or part of the costs of defending JFSC enforcement action or any costs the person may be ordered to pay to the JFSC.
3. With respect to 5.2.5.1 and 5.2.8.1, "relevant fees and commissions" for PII purposes is gross income paid or payable to a registered person, which is fees, commission, brokerage, or other relevant income arising from professional business activities (regulated or not) covered under the PII policy. This applies for the last accounting year before the start or renewal of the policy, or as per the business plan for new applicants.
4. With respect to 5.2.9 "as soon as it becomes aware" applies from the point at which a registered person knows, or has reasonable grounds for believing, that any of the

Formatted: Font: Not Italic
Deleted: 5.2.4
Field Code Changed
Deleted: in
Deleted: is
Deleted: be conducted
Deleted: s
Deleted: and
Formatted: Font: Not Italic
Deleted: .
Deleted: A registered person must have adequate procedures in place to ensure compliance with all terms and conditions
Formatted: Font: Not Italic
Deleted: , particularly in relation to the timely notification of events by the
Deleted: to the insurer, which may lead to a claim on the
Formatted: Font: Not Italic
Deleted: .
Deleted: general insurance mediation
Formatted: Font: Not Italic
Deleted: prior

Formatted Table
Deleted: 5.2.4.1
Deleted: 5.2.7.1
Formatted: Notes, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1 cm + Tab after: 1 cm + Indent at: 2 cm, Keep with next
Deleted: the
Deleted: fees
Deleted: 5.2.8,
Deleted: the

matters stated has occurred or may be about to occur, even where it is outside the control of a registered person.

5. *The JFSC has issued a guidance note on professional indemnity insurance, available from the policy statements and guidance notes page of the JFSC website, which a registered person may find helpful when considering the PII requirements. Specifically,*
 - (a) *with respect to the material limitations notification required by paragraph 5.2.9, paragraph 3.1 of the guidance note provides a list of exclusions and limitations that the JFSC considers standard and therefore fall outside of the notification requirement; and*
 - (b) *paragraph 6.3.2 of the guidance note highlights the information to be submitted to the JFSC when requesting a variance to enter into a self-insurance arrangement.*
6. *With respect to 5.2.10, the JFSC will generally expect to see "run off" PII cover covering a period of at least 3 years.*
7. *The requirements of paragraph 5.2.1 may be satisfied by a registered person being covered under the provisions of a group PII policy if such cover is sufficient to satisfy the requirements under paragraphs 5.2.1 to 5.2.6.*

Deleted: the

Formatted: Font: +Body (Calibri)

Deleted: available from the *policy statements and guidance notes*

Formatted: Font: +Body (Calibri)

Deleted:

Deleted: s

Formatted: Notes, Outline numbered + Level: 2 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 2 cm + Tab after: 1 cm + Indent at: 3 cm

Deleted: 5.2.8

Deleted: 2

Formatted: Notes, Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1 cm + Tab after: 1 cm + Indent at: 2 cm

6 A registered person must deal with the JFSC in an open and co-operative manner.

Notes:

- 1 *There is a need for candour and co-operation in a registered person's relationship with the JFSC. Article 28(3) of the FS(J)L provides that a registered person, or formerly registered person, shall be guilty of an offence if he or she fails to provide the JFSC with any information in his or her possession, knowing or having reasonable cause to believe that or being reckless as to whether –*
 - (a) *the information is relevant to the exercise by the JFSC of its functions under the FS(J)L in relation to the registered person or formerly registered person; and*
 - (b) *the withholding of the information is likely to result in the JFSC being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to the registered person or formerly registered person.*
- 2 *The scope of Principle 6 is extended to the provision of information and the notification of events concerning non-regulated activities and other members of the corporate group, to the extent that such information or events might reasonably be expected to have a material impact on the registered person in Jersey.*
- 3 *Notification to the Companies Registry does not constitute notification to the JFSC for the purposes of this principle.*
- 4 *The JFSC considers that the obligations of a registered person under this Principle include the timely provision of data required in connection with a registered person's regulatory fees and the timely payment of fees due.*

General Notifications

- 6.1 *A registered person must advise the JFSC in writing as soon as it becomes aware of any matter that might reasonably be expected to affect its registration or be in the interests of its client/investors to disclose. Wherever possible, this notification must include details of the steps the registered person has taken, or intends to take, to mitigate the matter.*
- 6.2 *In addition to the requirements of the relevant law, 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 JFSC of any part of the activities in relation to which the registered person has been granted registration under the FS(J)L. 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.*
- 6.3 *A registered person must comply with the notification requirements of the JFSC's policy on outsourcing as may be updated from time to time.*

Note:

- 1 *With respect to 6.1, "as soon as it becomes aware" applies from the point at which the registered person knows, or has reasonable grounds for believing, that any of the matters referred to have occurred or may be about to occur, even where it is outside the control of the registered person. The JFSC considers the following indicative that notification is necessary. Any matter which:*

- (a) is material to the JFSC's ability to undertake its function of supervision of financial services provided in or from within Jersey;
- (b) the registered person considers is material to, or may make it impractical for it to comply with, one or more of:
 - (i) the provisions of the FS(J)L or any Regulation or Order made under it;
 - (ii) compliance with a registration condition;
 - (iii) compliance with a direction issued by the JFSC;
 - (iv) the Code;
 - (v) the fitness and propriety of their principal persons or key persons, especially where the registered person has imposed a formal disciplinary measure or sanction.

Specific Notifications

6.4 A registered person must inform the JFSC of the following, in writing, not less than ten business days before the change is implemented:

- 6.4.1 a change of name of the registered person;
- 6.4.2 the adoption of, or a change in, any business or trading name under which the registered person carries on general insurance mediation business;
- 6.4.3 a change to:
 - 6.4.3.1 the address of the principal office of the registered person,
 - 6.4.3.2 the address of the registered office of the registered person, and
 - 6.4.3.3 any address which is treated as the proper address of the registered person by Article 40(6) of the FS(J)L; and
- 6.4.4 the summary winding up or voluntary dissolution of the registered person.

6.5 A registered person must notify the JFSC, in writing, within a reasonable time of becoming aware of, or having resolved to undertake, any of the following:

- 6.5.1 The decision to voluntarily cease a business activity, whether temporarily or permanently, where this decision involves the revocation of a registration in accordance with Article 9(4)(a) of the FS(J)L. A registered person must complete a Cessation of Business Plan, as prescribed by the JFSC, which must include details of arrangements for the protection of clients, creditors and other stakeholders. Before implementing a Cessation of Business Plan a registered person must obtain written confirmation from the JFSC that it has no objection to it.
- 6.5.2 The presentation of any application to the court for an application to declare the property of the registered person en désastre.
- 6.5.3 The summoning of any meeting to consider a resolution to wind-up a registered person or the winding up of the registered person.
- 6.5.4 The application by any person for the commencement of insolvency proceedings, appointment of a receiver, administrator or provisional liquidator under the law of any jurisdiction in relation to the registered person.
- 6.5.5 The making of or any proposals for the making of a composition or arrangement with the creditors of the registered person.

6.5.6 The imposition of disciplinary measures or sanctions on the *registered person* or any of their *principal persons* or *key persons* by any relevant supervisory authority or professional body.

6.5.7 A conviction of the *registered person*, or any of its *principal persons* or *key persons*, for any offence:

- 6.5.7.1 under the legislation of any jurisdiction relating to the conduct of financial services business (includes legislation relating to: banking, building societies, collective investment funds, companies, credit unions, consumer credit, friendly societies, insolvency, insurance, industrial and provident societies and trust companies); or
- 6.5.7.2 involving fraud or dishonesty.

6.5.8 The imposition of any penalties for deliberate tax evasion on the *registered person* or any of its *principal persons* or *key persons*.

6.5.9 The granting, withdrawal or refusal of any application for authorisation to carry on any regulated financial services business in Jersey or any jurisdiction outside Jersey, or the revocation of such authorisation.

6.5.10 The withdrawal of any application for membership of any professional body by the *registered person*, a *principal person* or *key person* of the *registered person*, in any jurisdiction, or refusal or revocation of such membership.

6.5.11 The appointment of inspectors (howsoever named) by a statutory or other relevant supervisory authority to investigate the affairs of the *registered person*.

6.5.12 Any litigation following the institution of proceedings before a Court of Law:

- 6.5.12.1 instigated by the *registered person* (or a subsidiary of the *registered person*);
- 6.5.12.2 instigated against the *registered person*; or
- 6.5.12.3 where the *registered person* is a cited party.

6.5.13 Any decision relating to business activities likely to have a material effect on the *registered person* (specifically its Jersey operations) or its profitability (notifications must specify, as applicable, the name of any company and its principal business). Such decisions include, but are not limited to:

- 6.5.13.1 the introduction of a new business activity;
- 6.5.13.2 closure to new business;
- 6.5.13.3 the formation, acquisition, disposal or dissolution of a subsidiary, associated group company or branch office, wherever situated; and
- 6.5.13.4 changes to investments held, where the *registered person* acquires or disposes, for its own benefit, of a holding of more than half in nominal value of the equity share capital of a company, specifying the name of the company and its principal business.

6.5.14 Any material changes, other than those specifically referred to in the *Code*, in the information previously submitted under the following headings, any:

- 6.5.14.1 overseas operations through which the *registered person* carries on general insurance mediation business, irrespective of the vehicle utilised to deliver the business (branch, subsidiary, representative office or otherwise); and

Deleted: 21 March 2018

6.5.14.2 jurisdictions outside Jersey in which the *registered person* carries on general insurance mediation business, indicating whether this is done through a branch office, a subsidiary or otherwise.

6.5.15 ~~A decision by the *registered person*'s auditor to qualify its audit report or to raise an emphasis of matter therein.~~ **Deleted:** a

6.5.16 Any material deficiencies in the effectiveness of controls over client money identified during an independent review as required by paragraph 3.2.6.

Notes:

- 1 *With respect to 6.5 the JFSC considers:*
 - (a) *"a reasonable time" to be five business days; and*
 - (b) *that "becoming aware" applies from the point at which the registered person knows, or has reasonable grounds for believing, that any of the matters stated has occurred or may be about to occur, even where it is outside of the control of the registered person.*
- 2 *With respect to 6.5.1, a full outline of the matters that must be addressed within the COBP is available from the JFSC upon request.*

Notifications arising in other parts of the Code

6.6 A *registered person* is required to comply with notification requirements established in other parts of the *Code*:

- 6.6.1 3.1.2.2 sets a requirement to contact the *JFSC* as soon as a *registered person* becomes aware that the regulatory span of control requirements will not be maintained;
- 6.6.2 3.3.5 sets a notification requirement in respect of a compliance officer being temporarily unable to fulfil his/her responsibilities;
- 6.6.3 3.3.9.3 sets a notification requirement where the role of Compliance Officer and Money Laundering Reporting Officer are to be undertaken by the same individual;
- 6.6.4 3.5.2 sets notification requirements in respect of *complaints*;
- 6.6.5 5.1.10 sets notification requirements in respect of failure to meet the solvency requirements; and
- 6.6.6 5.2.9 sets notification requirements in respect of *PII*.

Notifying or providing information via the *JFSC*'s online portal

6.7 Where the *JFSC* so specifies (whether in the *Code* or otherwise) a *registered person* must notify or provide information by means of the *JFSC*'s online portal.

6.8 If, because of a systems failure of any kind, a *registered person* is unable to access the online portal to make a relevant notification or provide required information it must notify the *JFSC* in writing within one business day of the systems failure being identified.

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

Note

- 1 This section applies to all registered persons whose home jurisdiction is Jersey and who make insurance products available to the general public. In the case of those registered persons whose home jurisdiction is outside Jersey but who offer their insurance products to Jersey residents, these requirements apply only where they do not conflict with any regulatory requirements in the home jurisdiction of those registered persons.

- 7.1 A registered person must ensure that its advertising and promotional literature is clear, fair and reasonable, and is free of misleading, false or deceptive statements. Words used in advertisements must be chosen carefully and certain words, such as "guarantee" and "assured" must be treated with caution.
- 7.2 A registered person must comply with such advertising guidelines as may exist in its home jurisdiction.
- 7.3 A registered person incorporated in Jersey must state that it is regulated by the Jersey Financial Services Commission in the documentary marketing and sales material that is prepared for all *client*, whether resident in Jersey or not.
- 7.4 A registered person incorporated outside of Jersey must state that it is regulated by the Jersey Financial Services Commission in the documentary marketing and sales material that is prepared and issued solely for Jersey *client* (as defined by the registered person).
- 7.5 A registered person must obtain the approval of its Compliance Officer on each occasion that it intends to issue new or amended product-related advertising or promotional literature.
- 7.6 An advertisement must not contain:
 - 7.6.1 a statement, promise or forecast that is untrue or misleading;
 - 7.6.2 a statement of fact that a registered person does not have reasonable grounds, supported by documentary evidence, for believing to be true at the time when the advertisement is issued;
 - 7.6.3 a statement of opinion by any person that the registered person does not have reasonable grounds, supported by documentary evidence, for believing to be the honestly held opinion of that person at the time when the advertisement is issued;
 - 7.6.4 a statement of fact that the registered person does not, at the time the advertisement is issued, have reasonable grounds for believing will continue to be true for so long as the advertisement continues to be issued in current publications;
 - 7.6.5 a misleading statement about the activities of, or the scale of the activities of, or the resources of or available to, the registered person or its group or affiliates;
 - 7.6.6 a statement relating to *client* confidentiality unless it is properly qualified to show the limits of any confidentiality assurance made;
 - 7.6.7 a comparison with other entities that carry on general insurance mediation business unless the basis of comparison is clearly stated, and the comparison is fair; and

Deleted: 21 March 2018

7.6.8 a statement implying that the product or service involved is only available for a limited period or in limited form, if such is not the case.

7.7 The content and format of any advertisement must not:

- 7.7.1 be so designed as to be likely to be misunderstood;
- 7.7.2 be so designed as to disguise the significance of any warning, statement or information that is required to be included under the *Code*;
- 7.7.3 be presented in such a way that it is not clearly identifiable as an advertisement; and
- 7.7.4 signify in any way that the advertisement has been approved by the *JFSC* (this rule applies even if the *JFSC* has been consulted with regard to the specific advertisement).

7.8 An advertisement may include a quotation from a statement made by any person commending any product or service of the *registered person* provided that:

- 7.8.1 where the person is an employee or associate of the *registered person*, the fact is disclosed in the advertisement;
- 7.8.2 the quotation is included with that person's written consent, if applicable;
- 7.8.3 the statement is relevant to the product or service that is the subject of the advertisement;
- 7.8.4 where the whole of the statement is not quoted, what is quoted fairly represents the message contained in the whole of the statement; and
- 7.8.5 the statement has not become inaccurate or misleading since it was originally made, because of the passage of time.

7.9 An advertisement that only specifies some of the terms and conditions that attach to a product or service, but excludes others, must indicate this fact. Where those terms and conditions that are specified give only a partial indication of the nature of the product or service being offered, the advertisement must refer to how all the terms and conditions may be obtained. Where no details of terms and conditions are given, the advertisement must contain information as to how all such terms and conditions may be obtained.

7.10 An advertisement must disclose all specific areas of risk that may relate to the product or service advertised. It may not be possible to list within the advertisement all the risks that might apply, but the objective of the *Code* is to ensure that prospective policyholders are fully apprised of the key risks associated with the product or service prior to a commitment being given in order that they can make informed decisions. The need for such risk warnings will be dependent upon the nature of the products and services being advertised.