



Jersey Financial
Services Commission

Guidance Note

FSB Licensing of: LPs with an LLP GP

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Notes:

The Limited Liability Partnerships (Jersey) Law 1997 was replaced by the Limited Liability Partnerships (Jersey) Law 2017. This policy will need to be updated.

In connection with the Fund Services Business (**FSB**) licensing of applicants (or applicant structures) that involve a limited liability partnership (**LLP**), the Jersey Financial Services Commission (the **JFSC**) has published the following three documents, each of which details how the ‘Licensing Policy in respect of those activities that require registration under the Financial Services (Jersey) Law 1998’ would be applied in the relevant scenario:

A) FSB licensing of: LLPsⁱ.

Applicable in connection with Jersey-law and foreign-law governed LLPs.

B) FSB licensing of: LPs that have an LLP as their GP.

At this time, such LPs will only be FSB-licensed if their LLP GP is Jersey-law governed.

C) FSB licensing of: SLPs / ILPs that have an LLP as their GP.

At this time, such SLPs / ILPs will only be FSB-licensed if their LLP GP is Jersey-law governed.

This is “Document B” – Overview

This document addresses the FSB licensing of Limited Partnerships established pursuant to the Limited Partnerships (Jersey) Law 1994 (**LPs**) in which the sole general partner (**GP**) is an LLP established pursuant to the Limited Liability Partnerships (Jersey) Law 1997. As a result of the LP’s lack of separate legal personality, the Jersey-law LLP acting in its capacity as GP of the LP will be the FSB applicant (herein, an **Applicant** and, in the event that its application to be licensed in such capacity for one or more FSB classes has been successful, the **Registered Person**).

1 Applications in this scenario

1.1 FSB licensing of Applicants (in accordance herewith), will at this time, be available for the ‘management / advisory’ classes of ‘manager’, ‘general partner’, ‘investment manager’ and ‘investment adviser’.

Such applications will be considered carefully, on a case-by-case basis.

At this time, an FSB licence will not be issued in connection with an LP whose GP is an LLP established pursuant to the laws of a foreign jurisdiction. (Similarly, an FSB licence will not, at this time, be issued to an LLP in the capacity as GP of a foreign-law governed partnership unless the latter partnership is itself a fund).

Parties that wish to receive an FSB licence in connection with an LP in which there are multiple GPs, one or more of which is proposed to be an LLP, should be aware that: (i) the JFSC would discourage such an applicant structure (as being unduly complicated and presenting greater challenges in terms of effective regulation over the ‘heart and mind’ of the licensed entity); and (ii) this document does not cover such a scenario. Stopping short of prohibiting such arrangements entirely, the JFSC would wish for potential applicants that seek to make an

application on such lines to note the following: (a) a compelling case for the applicant structure will need to be made; (b) the application may well not be successful; (c) even if successful, the position as described herein would be subject to such amendments in the context of the applicant structure as the JFSC considers appropriate. The addition of further licence conditions should be expected; and (d) no assurances can be provided concerning the timescale for consideration of such an application.

- 1.2 Licensing of Applicants to conduct FSB of the relevant class(es) will not be restricted to Applicants established for the purpose of acting for a Qualifying Fund (such term as defined in the FSB Codes of Practice). However, applications from Applicants established for the purpose of acting for other categories of fund should be expected to be more closely scrutinised, as a consequence of which: (i) additional licensing requirements may be specified (the same being considered on a case-by-case basis); and / or (ii) it may take longer for the JFSC to process a successful application.
- 1.3 The FSB licence would be issued in the following format: '[LLP] acting as general partner of [the LP]'. The Applicant on the FSB Application Form (Form FSJ/FSB) should be identified in the same manner.
- 1.4 Where a partner in the LLP is a company, irrespective of where it is domiciled, the directors of that company must be natural persons.

Corporate shareholders in a corporate partner of the LLP will be subject to consideration and approval in the usual manner. Accordingly, Principal Person procedures will apply to a corporate shareholder in a corporate partner of the LLP in the event that it falls within the definition of 'Principal Person' contained in the FS(J)Lⁱⁱ.

- 1.5 A partner in an LLP who participates in the management of that LLP (each of the same, a **Managing Partner**) may be either a natural person (wherever domiciled) or a company incorporated in Jersey which has at least two Jersey-resident directors. (An appropriate condition in this regard shall be added to an Applicant's FSB licence).
- 1.6 Span of control will be the core of the regulatory approach where LLPs are concerned. The JFSC must be able to identify an adequate regulatory span of control and, in connection with the Applicant, the regulatory span of control is to be assessed and satisfied by reference to the direction of the LLP.

The standard "four-eyes / six-eyes" FSB approach to regulatory span of control is to apply. The regulatory span of control is to be exclusively comprised of natural persons (each of whom is a Managing Partner or a director of one or more Managing Partners in the LLP, or both), at least two of whom are Jersey-resident. (Although it is the JFSC's view that the 'registered person' for the purposes of the FS(J)L is the LLP acting in its capacity as GP of the LP, it would not appear to be beyond argument that persons participating in the foregoing regulatory span of control of the LLP must necessarily be Principal Persons as defined in the FS(J)L. To ensure that the JFSC has an opportunity to review such persons, a condition will be added to an Applicant's FSB licence providing that partners shall not be admitted to the LLP without the prior consent of the JFSC. Similarly, because they are participants in a regulated service provider but persons who may not fall within the definition of Principal Person in the FS(J)L, a further condition will be added to an Applicant's FSB licence providing that partners shall not be admitted to the LP without the prior consent of the JFSC).

- 1.7 The FSB Application Form should be signed by two Jersey-resident persons forming part of the regulatory span of control of the Applicant.
- 1.8 The JFSC will expect the Business Plan accompanying the Applicant's FSB Application to contain a detailed description of how the Applicant will be operated and managed, with particular emphasis on: (i) how the persons within the Jersey regulatory span of control will be in a position to effectively exercise the oversight that such role requires; and (ii) what aspects, if any, of the Applicant's (and, necessarily therefore, the LLP's) governance arrangements will not take place in Jersey.

Successful applicants should bear in mind their obligation, on an on-going basis, to notify the JFSC of any material changes to the information provided to the JFSC as part of the licensing process.

- 1.9 The LLP shall have at least one 'Designated Partner' that is either domiciled in Jersey (if a natural person) or incorporated in Jersey (if a company). For the avoidance of doubt, such party (or parties) need not be the only Designated Partner(s) of the LLP.
- 1.10 In line with the existing approach in the FSB Codes: (i) if it is a managed entity (and has appointed to it a party registered to conduct FSB in the class ZK of (manager of managed entity (**MoME**)) and has been established for the purpose of acting for a Qualifying Fund, the Applicant (once a Registered Person) would be subject only to the Core Principles of the FSB Codes unless it elects to follow the FSB Codes in full (any such election to be made in writing to the JFSC); and (ii) the MoME may provide the Registered Person's Compliance Officer, MLRO and MLCO resource if desired.

Please note that the requirement is for the MoME to be appointed directly to the Registered Person. Any appointment of a MoME to one or more Managing Partners in the LLP would not constitute or equate to a MoME having been appointed to the Registered Person.

- 1.11 The JFSC expects that the offering documentation of the fund(s) for which the Registered Person acts (wherever such fund(s) may be domiciled) would include:
- 1.11.1 disclosure of:
- 1.11.1.1 the LP's status as a limited partnership established pursuant to the Limited Partnerships (Jersey) Law 1994, the date of its establishment and its registered office address;
 - 1.11.1.2 the Registered Person's regulatory status as an entity registered to conduct fund services business pursuant to FS(J)L;
 - 1.11.1.3 the LLP's role as GP of the LP (and the fact that it is in such capacity that the LLP is the Registered Person); and
 - 1.11.1.4 the LLP's status as a limited liability partnership established pursuant to the Limited Liability Partnerships (Jersey) Law 1997, the date of its establishment and its registered office address;
- 1.11.2 statements to the following effect, in a prominent position within the offering document close to where the disclosure referred to in paragraph 1.11.1) above is given:
- 1.11.2.1 "The Jersey Financial Services Commission does not take any responsibility for the financial soundness of the [fund – use appropriate defined term] or for the correctness of any statements

made or expressed in this [offering document– use appropriate defined term].”; and

1.11.2.2 “The Jersey Financial Services Commission is protected by the Financial Services (Jersey) Law 1998, as amended, against liability arising from the discharge of its functions under that law.”; and

1.11.3 disclosure of the identity and jurisdiction of residence / incorporation (and also, in the case of any company, its date of incorporation and registered or principal office address) of:

1.11.3.1 each of the LLP’s partners; and

1.11.3.2 the directors of each corporate partner in the LLP.

(The relevant licence condition will provide that an officer of the JFSC may grant a dispensation in respect of aspects of the foregoing disclosure requirement at (c)(ii) if the circumstances are considered to warrant it, such as, for example, where there are a very large number of directors who might all be members of a locally licensed Trust Company Business, in which case a disclosure of the latter fact might suffice).

All such disclosures should be made in addition to other details which the fund (or the Registered Person) is required to disclose or which it is appropriate to make disclosure of.

1.12 The JFSC does not wish to unreasonably fetter the commercial freedom of a Registered Person to determine the governing law of the contracts under which it transacts its business. However, nothing in the agreement pursuant to which the Registered Person contracts to provide FSB services to its client fund(s) may exclude the jurisdiction of the Courts of Jersey. (An appropriate condition in this regard shall be added to an Applicant’s FSB licence).

1.13 As part of reviewing an FSB Application from an Applicant, the JFSC will look to satisfy itself that the names of the LLP and the LP are not misleading in light of: (i) the composition of the partnerships (in particular, the names of their partners and, if different, those of persons who form part of the LLP’s regulatory span of control); and (ii) their activities.

1.14 No changes are currently proposed to the existing:

1.14.1 Outsourcing / delegation position (ie: same approach to apply);

1.14.2 Application Forms: FSB-NDF, AIFSB Notification-Exemption, FSJ/FSB (although this latter form may be updated generally in due course);

1.14.3 Fees Notices: FSB Fees, AIFSB Fees;

1.14.4 Financial Services (Fund Services Business (Accounts, Audits and Reports)) (Jersey) Order 2007 (FSB Accounts Order);

1.14.5 Financial Services (Appointment of Manager) (Jersey) Order 2008 (Appointment of Manager Order);

1.14.6 AML-CFT provisions; and

1.14.7 Principal Person definition *Please note the definition of Principal Person under the FS(J)L which applies in the context of a partnership, including how it applies in circumstances where a partner is a company. Correctly identifying and disclosing Principal Persons will be relevant in particular for section B.12 of Form FSJ/FSB and the regulatory checks which may be undertaken on such persons by the JFSC. It is essential that Applicants appropriately identify all Principal Persons.*

- 1.15 As with any FSB application, the JFSC may in its discretion require undertakings to be given from (or in respect of) an Applicant as part of the licensing process.
- 1.16 As with all JFSC policy and guidance, the foregoing is subject to amendment from time to time. The JFSC's accumulated experience (both specific and general, positive or otherwise) in connection with the authorisation and ongoing regulation of Applicants as FSBs, will be a key factor in arriving at any decision to amend the foregoing.

Standard Licence Conditions

2 The Standard FSB Conditions (applicable to all Applicants):

- 2.1 In connection with the Jersey-law limited liability partnership which acts as the general partner of the limited partnership (and which, in such capacity, is the Registered Person), namely [insert name of LLP] (the **LLP**), any partner therein which is a company (wherever domiciled) must at all times have only natural persons as its directors.
- 2.2 Any partner who from time to time participates in the management of the LLP (each of the same, a **Managing Partner**) must be either a natural person (wherever domiciled) or a company incorporated in Jersey which has at least two Jersey-resident directors.
- 2.3 The Span of Control required by virtue of the fund services business Codes of Practice in connection with the Registered Person is to be satisfied by reference to the direction of the LLP. The Span of Control of the LLP is to be exclusively comprised of natural persons (each of whom is a Managing Partner or a director of one or more Managing Partners, or both), at least two of whom are Jersey-resident.
- 2.4 No partner shall be admitted to:
 - 2.4.1 the LLP; or
 - 2.4.2 the limited partnership to which the LLP acts as the general partner (and, in so doing, is the Registered Person) (the **Limited Partnership**);
without the prior written consent of an officer of the JFSC.
- 2.5 The Registered Person must ensure that the offering documentation of the fund(s) for which it acts, wherever such fund(s) may be domiciled, includes:
 - 2.5.1 disclosure of:
 - 2.5.1.1 the Limited Partnership's status as a Jersey-law limited partnership established pursuant to the Limited Partnerships (Jersey) Law 1994, the date of its establishment as such and its registered office address;
 - 2.5.1.2 the Registered Person's regulatory status as an entity registered to conduct fund services business pursuant to the Financial Services (Jersey) Law 1998, as amended;
 - 2.5.1.3 the LLP's role as general partner of the Limited Partnership (and the fact that it is in such capacity that the LLP is the Registered Person);
and

- 2.5.1.4 the LLP's status as a limited liability partnership established pursuant to the Limited Liability Partnerships (Jersey) Law 1997, the date of its establishment as such and its registered office address;
- 2.5.2 statements to the following effect, in a prominent position within the offering document close to where the disclosure required by condition 5(a) above is given:
 - 2.5.2.1 "The Jersey Financial Services Commission does not take any responsibility for the financial soundness of the [fund – use appropriate defined term] or for the correctness of any statements made or expressed in this [offering document - use appropriate defined term]."; and
 - 2.5.2.2 "The Jersey Financial Services Commission is protected by the Financial Services (Jersey) Law 1998, as amended, against liability arising from the discharge of its functions under that law."; and
- 2.5.3 disclosure of the identity and jurisdiction of residence (or, as the case may be, incorporation) and, in respect of any corporate partner in the LLP, its date of incorporation and registered (or principal) office address, of:
 - 2.5.3.1 each partner in the LLP; and
 - 2.5.3.2 save insofar as the prior written consent of an officer of the JFSC has been obtained, the directors of each corporate partner in the LLP.
The Registered Person must inform an officer of the JFSC of any failure (or anticipated failure) to make such disclosure(s).
- 2.6 Save insofar as the prior written consent of an officer of the JFSC has been obtained, nothing in the agreement(s) pursuant to which the Registered Person contracts to provide fund services business to its client fund(s) may exclude the jurisdiction of the Courts of Jersey.
- 2.7 At least one partner in the LLP, either domiciled in Jersey (if a natural person) or incorporated in Jersey (if a company), is to be a Designated Partner of the LLP (Designated Partner being as defined in the Limited Liability Partnerships (Jersey) Law 1997), save for any period in respect of which the prior written consent of an officer of the JFSC has been obtained.

3 The Standard MoME / ME Conditions (applicable, in addition to the foregoing conditions, to a managed entity subject only to the Core Principles):

- 3.1 The Registered Person may not act for new or further funds without first obtaining the written consent of an officer of the JFSC.
- 3.2 The Registered Person must appoint a person registered to act as Manager of a Managed Entity (**MoME**).
- 3.3 The Registered Person must notify the JFSC of its intention to change its MoME at least 28 days prior to the change taking effect.
- 3.4 The Registered Person must adhere with such notification and consent requirements as the JFSC has set out in the fund services business Code of Practice as may be updated or revised from time to time.

- 3.5 The Registered Person must permit, and shall procure that any agent or subcontractor resident or established in Jersey and appointed by the Registered Person permits, officers of the JFSC to conduct inspections of any part of the activities in relation to which this registration is granted, and the Registered Person will (and will procure the agreement of any such agent or subcontractor to) give all assistance in connection with any such inspection which they are reasonably able to give.
- 3.6 The Registered Person must adhere to such advertising standards as the JFSC has set out in the fund services business Code of Practice as may be updated or revised from time to time.
- 3.7 The Registered Person must adhere to such record keeping requirements as the JFSC has set out in the fund services business Code of Practice as may be updated or revised from time to time. This requirement will be satisfied where a MoME provides the registered person with the necessary means to comply.
- 3.8 The Registered Person must appoint a compliance officer, a money laundering compliance officer and a money laundering reporting officer. This requirement will be satisfied where a MoME provides the registered person with the necessary means to comply.

4 Standard AIFSB Condition (if applicable)

- 4.1 The Registered Person must comply with the applicable sections of the Code of Practice for Alternative Investment Funds and AIF Services Business.

Notes:

The JFSC reserves the right to apply other specific conditions which reflect the unique circumstances of a particular applicant, as is the case with current FSB licensing. For example, a managed entity electing to comply with the Full FSB Code will often have tailored conditions applied to its FSB licence.

ⁱ Parties may be interested to note that Document A) includes, at paragraph 1.18) thereof, some commentary in connection with whether a partner in an LLP (managing or otherwise) may itself require licensing for one or more types of financial service business pursuant to the Financial Services (Jersey) Law 1998, as amended (FS(J)L).

ⁱⁱ Applicants should note however that the Commission retains discretion to request the submission of a Personal Questionnaire by a party which falls (or may fall) outside of the definition of 'Principal Person' in the FS(J)L if this should be deemed appropriate in the circumstances of a particular Applicant.