

# Guidance Note: Managed Trust Company Business

May 2013

TCB Code references updated July 2014

## Glossary of Terms

The following table sets out a glossary of terms used in this Guidance Note.

the TCB Code	Code of Practice for Trust Company Business
the JFSC	Jersey Financial Services Commission
the FS(J)L	Financial Services (Jersey) Law 1998
Manager	A registered person who has been granted a class N trust company business registration under the FS(J)L
MTCB	Managed Trust Company Business
registered person	A person registered by the JFSC under Article 9 of the FS(J)L

## 1 Introduction

- 1.1 The purpose of this guidance note is to set out the JFSC's expectations, on an on-going basis, with regard to the day to day operations of a MTCB.
- 1.2 The framework for determination of an application to establish a MTCB is enshrined in the Law, Orders and the TCB Code of Practice (the "regulatory regime"). This note does not address the registration of a MTCB but guidance has previously been published with the Policy Statement: Licensing Policy in respect of those activities that require registration under the FS(J)L and the Guidance Note: Distinguishing between the authorisation requirements of a Managed Trust Company and a Participating Member within an affiliation.
- 1.3 For the purposes of this note a MTCB is a financial services business providing trust company business services as defined under Article 2 of the FS(J)L that is operating in Jersey as a managed entity utilising the services of a Manager.

## 2 Regulatory Regime

- 2.1 A MTCB is a registered person in its own right and is therefore subject to the same regulatory regime as any other trust company business operating in Jersey. However, a MTCB may rely upon the non-financial resources of its Manager in order to meet certain of its regulatory responsibilities, some of which are discussed below.

## 3 Corporate Governance

- 3.1 The responsibility for corporate governance of a MTCB rests with its board. The management and control (heart and mind of management) of the MTCB must at all times be in or from within Jersey<sup>i</sup>. The MTCB and its board will be expected to be able to demonstrate appropriate qualifications, experience, competency and a broad, complementary skill set relevant to the business.
- 3.2 The JFSC will require that a MTCB maintains sufficient span of control at all times<sup>ii</sup> and it will normally expect that the majority of the directors making up the span of control will be provided by the Manager. It is acknowledged that these directors may not be engaged on the business of the MTCB on a full time basis; however, they must be actively involved in the day to day management of the business and be able to exercise executive powers on behalf of the MTCB.
- 3.3 The parent company of a MTCB may wish to appoint representatives to the board; however, the JFSC would expect the majority of the board of a MTCB to be made up of Jersey resident individuals throughout the registration of a MTCB.
- 3.4 The JFSC will expect the board of a MTCB to meet regularly and the MTCB must maintain proper records including board minutes and reports/papers submitted for their consideration<sup>iii</sup>. The board should periodically consider the adequacy of its span of control especially in the event of changes to, among other things, the board, staffing provided by the Manager or changes to the nature of its business<sup>iv</sup>.
- 3.5 It is the responsibility of the board of a MTCB to monitor its business risks<sup>v</sup> notwithstanding that day to day monitoring will usually be done by the Manager.

## 4 Compliance Function and AML/CFT

- 4.1 The JFSC will expect a MTCB to share the same compliance function as that of its Manager to adequately demonstrate consistency and effective use of policies and procedures and systems and controls between both businesses.
- 4.2 The JFSC will also expect the key person positions of Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer to be fulfilled by employees of the Manager.
- 4.3 The JFSC will consider proposals where a MTCB may wish to utilise the services of a Compliance Officer, Money Laundering Reporting Officer or Money Laundering Compliance Officer who is not provided by the Manager, so long as the proposed incumbent is resident in Jersey and is fit and proper to undertake the role. All appointments will be considered on a case by case basis; however, where the JFSC agrees to such an arrangement the Manager will be expected to maintain oversight of the functions of the MTCB and ensure that there is adequate monitoring of all of the MTCB's activities.

## 5 Policies and Procedures

- 5.1 The Manager is responsible for the operating environment of a MTCB. It is the JFSC's expectation that in order to effectively demonstrate this, both businesses would usually share the same policies, procedures, systems and controls.

- 5.2 The JFSC recognises that in some cases the business model of a MTCB will be different from that of the Manager and so it may be appropriate for some modification to the policies and procedures to reflect those differences.
- 5.3 The JFSC will expect the rationale for these variances to be agreed and fully documented by the boards of both the Manager and the MTCB.

## 6 Contractual Arrangements

- 6.1 The JFSC will expect there to be a formal written agreement between the Manager and the MTCB clearly specifying the terms of engagement and the levels of service to be provided by the Manager. This agreement should be periodically reviewed to ensure that it remains current, accurately reflects the arrangement between the MTCB and the Manager and complies with the requirements of the regulatory regime.

## 7 Outsourcing

- 7.1 Any proposals to outsource a material part of a MTCB's regulated functions must comply with the core principles set out in the JFSC's Policy Statement and Guidance Notes on Outsourcing and Delegation by Jersey Certified Funds and Funds Services Businesses<sup>vi</sup>.

## 8 Conflicts of Interest

- 8.1 A MTCB and its Manager must have regard to conflicts of interest<sup>vii</sup> including any that arise from the arrangements between a MTCB and its Manager. One example of a conflict of interest would be if a MTCB and its Manager find themselves acting for different customers and a dispute arises between these customers.
- 8.2 All identified conflicts of interest must be addressed by both the MTCB and its Manager<sup>viii</sup> and, where appropriate, policies and procedures implemented to monitor and manage the conflicts.

## 9 Financial Resources

- 9.1 A MTCB must be able to meet the financial resource requirements independently of its Manager<sup>ix</sup>. For the avoidance of doubt, the JFSC would expect the management fee paid by a MTCB to its Manager to be included as an expense in the MTCB's adjusted net liquid asset calculation.

## 10 Premises

- 10.1 In order to be able to demonstrate sufficient oversight by the Manager the JFSC will expect a MTCB to operate solely from the premises of its Manager.

## 11 Termination of Services

- 11.1 A MTCB must notify the JFSC immediately in writing where notice has been given of termination, by either the MTCB or its Manager, of the services agreement between the MTCB and its Manager<sup>x</sup>.

## 12 Supervisory Approach

12.1 A MTCB will be subject to the same regulatory supervision as any other registered person and so will be subject to periodic on-site examinations by the JFSC.

## 13 Conclusion

13.1 If after considering this guidance note there are areas that remain uncertain, the JFSC would encourage Managers and/or MTCBs to have a meeting with a JFSC officer to discuss their own circumstances.

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<sup>i</sup> Paragraph 9 of the Policy Statement: Licensing Policy in respect of those activities that require registration under the FS(J)L

<sup>ii</sup> Section 3 of the TCB Code

<sup>iii</sup> Section 3.2.1.2 of the TCB Code

<sup>iv</sup> Section 3.1.1.1 of the TCB Code

<sup>v</sup> Section 3.1.1.5 of the TCB Code

<sup>vi</sup> Section 3.2.1.6 of the TCB Code

<sup>vii</sup> Section 2.4 of the TCB Code

<sup>viii</sup> Section 2.4 of the TCB Code

<sup>ix</sup> Section 5 of the TCB Code

<sup>x</sup> Section 6.4.16 of the TCB Code