



Jersey Financial
Services Commission

Revised Outsourcing Policy Effective from January 2024

December 2023

JFSC Sensitive



What is outsourcing?

- › Outsourcing is an arrangement between a Business and a Service Provider by which:
 - › a Service Provider performs activity that would otherwise be undertaken by the Business itself (**Outsourced Activity**); and
 - › where that Service Provider's failure to perform or inadequate performance of such Outsourced Activity **would materially prevent, disrupt, or impact upon** the continuing compliance of that Business' Regulated Activity with the applicable Regulatory Laws.
- › The current JFSC Outsourcing Policy and Guidance Note was issued in March 2017 and was last revised December 2020.
- › The Revised Outsourcing Policy will be effective from 1 January 2024



Purpose of the Outsourcing Policy (OSP)

- › The OSP sets Core Principles and Guidance in relation to Outsourced Activity to help a Business to identify if we must be notified of an activity that it Outsources
- › The OSP explains the Core Principles that a Business must comply with where a Service Provider performs Outsourced Activity for it
- › Compliance with the OSP is a requirement under the Codes for Conduct and Prudential and the Handbook for AML/CFT/CPF



Seven core principles in the Revised Outsourcing Policy

1. A Business is responsible for and accountable to the JFSC for any Outsourced Activity
2. A Business must ensure that any Service Provider performing Outsourced Activity is Fit and Proper
3. A Business must put in place an Outsourcing Agreement with the Service Provider before the start of the Outsourced Activity
4. A Business must maintain adequate capacity and resources to implement all necessary policies and procedures to ensure that a Service Provider continues to be Fit and Proper
5. A Business must maintain suitable contingency plans in case a Service Provider's performance suffers a material disruption, or ends unexpectedly, for any reason
6. Except for where the OSP specifically provides otherwise, a Business must complete and upload an Outsourcing Notification before they appoint a Service Provider; the Service Provider must not start performing the Outsourced Activity until the Business receives a No Objection, and we must be notified of any subsequent material change to the Outsourced Activity as soon as the Business becomes aware
7. A Business must ensure that there is nothing in the Service Provider's performance of the Outsourced Activity that would prevent or restrict our regulatory powers in respect of the Business, or the Outsourced Activity



Newly caught outsourced activity

- › Schedule 2 Supervised Persons
- › Funds
- › Cloud, Data, Cyber and Digital ID Services



Schedule 2 Supervised Persons

As a general rule, all Supervised Persons from 1 January 2024 are subject to the OSP in relation to the provision of AML/CFT/CPF services. This includes those Supervised Persons who are not subject to any other Regulatory Laws other than the Supervisory Bodies Law i.e. FIs, DNFBPs and VASPs etc. This is an improved position and aligns with the application of the AML/CFT/CPF Handbook to all Supervised Persons.

It is worth bearing in mind still that for Schedule 2 Supervised Persons who are not otherwise regulated by us or supported by an Anti-Money Laundering Services Provider (**AMLSP**), the application of the OSP is limited to Outsourced Activity arising from its obligations pursuant to the Supervisory Bodies Law, for example, where those Supervised Persons outsource AML/CFT/CPF compliance services such as client onboarding due diligence, monitoring etc.



Funds

The OSP now also applies to alternative investment funds (**AIFs**), unregulated funds and private funds including a Jersey Private Fund (**JPF**) and a Non-Jersey JPF with Jersey governing body in relation to the provision of AML/CFT/CPF services.

The OSP also applies to a Designated Service Provider (**DSP**) of a JPF except in relation to AMLSP services it provides to the JPF (except where the JPF is Non-Jersey JPF with Non-Jersey governing body) as AMLSP services are exempt from the OSP.



Cloud, Data, Cyber and Digital ID services

As a general rule, Cloud Services except for some standardised email services, Data Services, Cyber Services and/or Digital-ID services that are provided to help the Business meet its obligations pursuant to the Supervisory Bodies Law should be notified to us but will not require a No Objection from us.

We are starting to capture data around these newly caught types of Outsourced Activity in line with International Standards in order to identify Outsourcing risks, such as concentration risks.

Other regulators go further than us and, for example, require to be notified of the use of standardized Cloud email services.



Newly exempt outsourced activity

- › Managed Trust Company Business
- › Telecommunication Services
- › Standardised and pre-packaged Cloud-based email services
- › Sub Outsourcing of Cloud, Data Centre, Cyber and Digital ID Services
- › Category A Permit holder Insurance Business
- › Anti-Money Laundering Services Provider
- › Third-party AML/CFT/CPF screening systems
- › Non-Jersey Fund with non-Jersey governing body



Managed Trust Company Business

In line with the exempt treatment of Manager of a Managed Entity (**MoME**) business under Fund Services Business, Managed Trust Company Business (**MTCB**) is now also exempt from the application of the Revised OSP. Rationale, they are subject to a separate regulatory approval process.

Telecommunication services

Where a Service Provider performs Outsourced Activity in the form of Telecommunication Services on behalf of a Business as part of its **non-Regulated Activity**, such Outsourced Activity is not caught by the OSP.



Standardised and pre-packaged Cloud-based email services

No Outsourcing Notification is required in respect of Outsourced Activity in the form of Cloud-based email services which are standardised and pre-packaged services that are available to the general public, such as Microsoft 365.

Sub-Outsourcing of Cloud, Data Centre, Cyber and Digital ID Services

No Outsourcing Notification is required in respect of Sub-Outsourcing in the form of Cloud Services, Data Centre Services Cyber Security Services or Digital ID Services.



Category A permit holder Insurance Business

Category A permit holder Insurance Business is now expressly exempt from the OSP to reflect the position in the Code of Practice for Insurance Business which provides that only Category B permit holders are subject to the OSP.

Anti-Money Laundering Services Provider (AMLSP)

Where a Service Provider which is an AMLSP performs Outsourced Activity (i.e. AMLSP services) this is exempt. The eligibility criteria has been set which requires the AMLSP to be a TCB or FSB.



Third-party AML/CFT/CPF screening systems

Third-party AML/CFT/CPF screening systems, including employee screening systems, are exempt provided the Business retains the decision making over the take on of the prospective Client/employee (and not the Service provider).

Non-Jersey Fund with non-Jersey governing body

A non-Jersey domiciled fund with its governing body and management and control outside of Jersey and where only admin services to the fund are provided by a Jersey FSB and/or TCB are exempt (in alignment with the position under re-cast Schedule 2).



Other key changes

- › Guidance: on each Core Principle, Sub-Outsourcing, Group Outsourcing, Cloud Services and the Outsourcing Notification process
- › Group Outsourcing - Post event Outsourcing Notification permitted in limited circumstances
- › Clarification, simplification and general updates
 - › Legacy transitional provisions removed
 - › Content re-structured to read more easily and be more user-friendly
 - › Updated to align with current regulatory landscape



Revised Outsourcing Notification

- › Follows sequence of paragraph 6.1.1 of the OSP, setting out the information that must be included in an Outsourcing Notification
- › Sets out the 7 Core Principles of the OSP at the top of the Notification and makes it a requirement for a Business to have read and understood the OSP prior to submitting the Outsourcing Notification
- › Outsourcing Agreement to be submitted in draft with Outsourcing Notification or in final signed form on receipt on No Objection unless the Outsourced Activity is not Regulated Activity
- › Para 3.6.5 of OSP – Outsourcing Notification required for most Cloud, Data-Centre, Cyber Security and Digital ID Services but Business is not required to wait for a No Objection
- › Para 3.6.5 of OSP – No Outsourcing Notification required for standardised and pre-packaged Cloud-based email services available to the public, such as Microsoft 365.
- › Para 3.6.6 of OSP - no Outsourcing Notification is required in respect of Sub-Outsourcing in the form of Cloud, Data Centre, Cyber Security or Digital ID Services
- › Still aim to respond within 20 business days' following receipt of Outsourcing Notification with No Objection



New Material Change to Outsourcing Notification

Should be completed where the Material Change relates to any of the following:

- › Material change to Service Provider/Group Service Provider
- › Material change to Sub-Contractor
- › Material disruption to or sudden or unexpected end to Outsourcing/Sub-Outsourcing/Group Outsourcing causing contingency plans to be put in place
- › Orderly termination of Outsourcing
- › Orderly termination of Sub-Outsourcing
- › Orderly termination of Group Outsourcing
- › Other material change to Outsourcing/Sub-Outsourcing/Group Outsourcing

N.B. Where there is new Outsourced Activity, a new Outsourcing Notification and a new No Objection is required

