



# Jersey Financial Services Commission

## GUIDANCE NOTE

### NATURAL PERSONS UNDERTAKING THE ACTIVITY OF ACTING AS A DIRECTOR UNDER THE FINANCIAL SERVICES (JERSEY) LAW 1998

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### 1 Introduction

- 1.1. The primary purpose of this Guidance Note is to publish the Jersey Financial Services Commission's (the "**Commission**") interpretation of a number of areas of the Financial Services (Jersey) ~~FS(J)L~~ Law 1998 (the "**FS(J)L**") with particular reference to certain phrases within Articles 2 and 7 of the FS(J)L, which have provoked debate for a number of years (**Section 3**). The timing of this publication is driven in part by representations from both the finance industry ("**Industry**") and Jersey Finance Limited ("**JFL**") with respect to reviewing the regulatory regime for individuals acting in their personal capacity as directors.
- 1.2. As a consequence of the wide definition of trust company business, a number of exemptions were crafted in the area of acting as a director, to exclude those that the FS(J)L was not seeking to regulate. This Guidance Note includes the most relevant of those exemptions, accompanied by contextual comments to provide the Commission's interpretation of the exemptions (**Section 4**).
- 1.3. In order to facilitate the presentation of the issues involved, this Guidance Note contains the following Sections:
  - 1.3.1. Introduction (**Section 1**);
  - 1.3.2. Background (**Section 2**);
  - 1.3.3. Articles 2 and 7 of the FS(J)L - Threshold tests (**Section 3**);
  - 1.3.4. Exemptions (**Section 4**);
  - 1.3.5. Single Class of Trust Company Business (**Section 5**); and
  - 1.3.6. Conclusion (**Section 6**).

## 2 Background

- 2.1. It may be of value for the Commission to provide some background with regard to the current regulatory regime generally, with further explanations given in respect of the specific area of individuals providing trust company business services. The primary objectives of the trust company business regulatory regime are to protect the Island's reputation and to reduce the risk to the public/consumers and countering financial crime.
- 2.2. At the time of bringing trust company business into regulation, the focus of the Commission was to identify the variety of fiduciary or administration services provided to third parties. The key purpose was to ensure that those services were fully enshrined within the FS(J)L such that any service provider would be required to register under the FS(J)L and be subject to ongoing supervision by the Commission.
- 2.3. The Commission proposed a definition of trust company business that essentially replicated the profile of a mainstream trust company in terms of identifying the specific services a typical trust company would offer its clients. The list of activities that such a trust company would undertake in order to fully "service" a client are now enshrined within Article 2(4) of the FS(J)L.
- 2.4. In the main, these services are provided by trust company businesses, however, it is also recognised and acknowledged that individuals acting outside the confines of a trust company business, are also involved in the provision of directorship and to a lesser extent trusteeship services.
- 2.5. The Commission regards the provision of directorship services as an important element of trust company business. As such, the FS(J)L has been crafted and Codes of Practice developed so that anyone providing these services, whether it be within the confines of a trust company business, or as an individual acting on their own (assuming certain thresholds are met and the activity is not otherwise regarded as exempt), must be subject to a "fit and proper" determination, both on an initial and ongoing basis.
- 2.6. It has been observed that in respect of the provision of directorship services by individuals, there exists a level of difficulty in determining whether such a person needs to seek registration under the FS(J)L to undertake the activity of acting as a director, as it would appear that there are a number of areas within the FS(J)L and associated Orders that are open to a level of interpretation. In this respect, the Commission would wish to endeavour to ensure that the regulatory regime is appropriate and, most importantly, exhibits clarity.
- 2.7. In addition to the above, the Commission believes that, following representations from Industry and JFL, there is a need to review the current regulatory regime with respect to acknowledging the value afforded by individuals acting in their own capacity when acting as directors i.e. outside of the confines of a regulated trust company. These individuals are typically greatly sought after, either through their expertise in one or more specific areas e.g. property funds, hedge funds etc or as a trusted family advisor in relation to privately owned companies.

2.8. To conclude this Section, it is worth stating that the comments contained in Section 3, represent the Commission's interpretation of a specific area of the legislation, albeit an extremely important area of the regulatory regime. Without the concepts of 'by way of business' and 'holding out' being tested in Court, the areas remain open to differing interpretation and lack of certainty. The Commission's interpretation has been supported by UK Counsel.

### 3 Articles 2 and 7 of the FS(J)L - Threshold tests

3.1. A person will be required to register under the FS(J)L only if that person is 'caught' by each and every one of the following four threshold tests. To be clear, a registration is not required if any one of the four thresholds does not apply.

3.1.1. Article 2(1) - (refer to paragraph 3.2);

3.1.2. Article 2(3) - (refer to paragraph 3.16);

3.1.3. Article 2(4)(b) - (refer to paragraph 3.20); and

3.1.4. Article 7 - (refer to paragraph 3.22).

3.2. Article 2(1) states:

*"A person carries on financial service business if by way of business the person carries on investment business, trust company business, general insurance mediation business, money service business or fund services business".*

3.3. The fundamental provision within Article 2(1) is the 'by way of business' element.

3.4. The term 'by way of business' is not defined within the FS(J)L, and as such is open to interpretation. In the Commission's view, the definition would exclude those persons conducting any of the activities contained in the subsequent Article 2(4) (refer to paragraph 3.20 below), if they carried out such activities in an honorary, recreational or charitable capacity. In other words, if a person is not conducting registrable activity by way of business, then Articles 2(3) and (4) are not relevant. As a consequence, the act of receiving payment for a service would create a strong potential for an individual to meet the threshold test of 'by way of business', stated in Article 2(1). The Commission would suggest that if an individual is acting with a view for reward in the sense of fees or benefits in kind, that would be the most powerful indicator of "by way of business".

3.5. Indeed, it is worth noting that other regulatory regimes have included a definition of 'by way of business' within the legislation itself. The following is an example of such a definition 'A person who carries on financial services business shall be deemed to do so by way of business if he receives any income, fee, emolument or other consideration in money or money's worth for doing so'.

3.6. In saying this however, the Commission believes that the receiving of fees or income etc is potentially not the only characteristic of what could be considered as being by way of business. It is for this reason that the Commission is inclined not to provide such prescription within the FS(J)L.

- 3.7. Possibly the next most significant indicator is in respect of the concept of “carrying on a financial service business”. In this sense it has been suggested that an individual assuming just one directorship would perhaps not be carrying on a business, but having more than one directorship could be considered carrying on a business. In short, the number of engagements is a significant indicator when discussing the term “by way of business” in this context.
- 3.8. There may be other factors which could also indicate that a particular activity is being undertaken ‘by way of business’:
- 3.8.1. the amount of time taken to fulfil the responsibility is significant;
  - 3.8.2. the individual has no other employment;
  - 3.8.3. the level of income received (both in terms of the quantum and as a proportion of the individual’s total income) is significant;
  - 3.8.4. the existence of a business relationship through which habitual or frequent or regular appointments are introduced;
  - 3.8.5. the individual receiving significant non financial benefits / benefits in kind;
  - 3.8.6. the individual claiming business expenses within the individual’s Jersey Income Tax return;
  - 3.8.7. the individual offering or providing more than one type of trust company business activity; and
  - 3.8.8. the turnover of engagements is significant.
- 3.9. It should be stressed however that the indicators included in paragraph 3.8 above represent a non exhaustive list of considerations and the Commission would urge individuals either currently undertaking or contemplating commencing activities, who remain unsure as to whether they meet the ‘by way of business’ threshold test, to discuss their specific circumstances with the Commission.
- 3.10. As mentioned previously, the Commission has no desire for the FS(J)L to be more prescriptive in this area. The Commission would suggest however, that the greater the number of indicators an individual ‘complies with’, the greater the chance that a ‘by way of business’ determination would be made. This should culminate in an individual registering under the FS(J)L if a number of the above indicators were appropriate to that individual’s circumstance.
- 3.11. The Commission would consider that the following matters are indicative of acting in a private capacity and hence would not be regarded as “by way of business”:
- 3.11.1. directorships of private companies where the director is a 50% or more beneficial owner; and
  - 3.11.2. directorships of companies beneficially owned by family members.

- 3.12. It is important to reiterate here that if a person is not conducting financial service business, 'by way of business', as stated in Article 2(1), there is no requirement to register under the FS(J)L, notwithstanding that a person may be conducting activities specified in Articles 2(3) and 2(4).
- 3.13. As highlighted by the preceding paragraph, Article 2(1) is the key element of the 'register or not register' debate. A number of individuals have advised the Commission that as they are directors of just one or two companies, they are not conducting trust company business by way of business. Whilst having a degree of sympathy with this position, the Commission would also suggest that were a person to provide director services in relation to just one or two companies of a particular profile, their actions (or inactions) in relation to the company that is receiving their services could be equally damaging to the reputation of the Island as if they were providing their services to 50 companies. Hence the number of engagements held should not, in the Commission's view, be considered in isolation in determining whether or not to register.
- 3.14. Another issue that the Commission has been considering, is the role of the non executive director. A view communicated to the Commission on a number of occasions reflects the position that non executive directors, by definition, are not conducting trust company business 'by way of business'. As the FS(J)L does not distinguish between directors and non executive directors and each individual director is equally liable within a board context (notwithstanding the different profile of board members), the Commission would suggest that non executive directors fall into the category of being 'in business' to the same extent as executive directors.
- 3.15. The Commission acknowledges that non executive directors undoubtedly add value to Jersey's finance industry in terms of expertise and experience.
- 3.16. Article 2(3) states:
- "A person carries on trust company business if the person carries on a business that involves the provision of company administration services or trustee or fiduciary services and in the course of providing those services the person provides any of the services specified in paragraph (4)".*
- 3.17. Article 2(3) was drafted in order to describe the environment in which trust company business services are undertaken. The term 'administration' was used within Article 2(3) as a means of capturing the environmental element.
- 3.18. The term administration has not been defined within the FS(J)L and as such has potentially created uncertainty where none was intended. The natural and frequently asked question is 'can I carry out an activity listed in Article 2(4) without being caught by the provisions of Article 2(3), thus not having to register under the FS(J)L?' It is the Commission's view that it is not possible to differentiate between these two elements of Article 2 in this way.
- 3.19. In the Commission's view, (supported by UK Counsel) acting as a director would constitute the provision of fiduciary services, because a director is entrusted to manage or control the assets and interests of another person and hence is caught by the term 'fiduciary'.

3.20. As the primary subject of this Guidance Note is the activity of acting as a director, this Section will consider only the terms of Article 2(4)(b).

*“acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company”.*

3.21. The text of this Article would appear to be clear and unambiguous.

3.22. Article 7 states:

*“7 Prohibition of carrying on unauthorised financial services business*

*(1) Subject to paragraph (2) -*

*(a) a person shall not carry on financial service business in or from within Jersey; and*

*(b) a person being a company incorporated in Jersey shall not carry on such business in any part of the world,*

*unless the person is for the time being a registered person under this Law, and acting in accordance with the terms of his or her registration.*

*(2) This Law shall not apply to -*

*(a) the doing of anything by or on behalf of -*

*(i) the States, the Viscount, the Judicial Greffier or a Jurat of the Royal Court, or*

*(ii) subject to such conditions or restrictions as may be prescribed, any other prescribed person or institution;*

*(b) subject to such conditions or restrictions as may be prescribed, any prescribed transaction.*

*(3) Any person who holds himself or herself out as carrying on financial service business in or from within Jersey, and any company incorporated in Jersey which holds itself out as carrying on financial service business shall, for the purpose of this Article, be treated as carrying on such business.*

*(4) A person who contravenes this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding 7 years or a fine, or both.”*

3.23. Whereas Article 2 establishes the scope of the financial service business, Article 7 provides for the offence, should it be deemed that a person is carrying on financial service business without due authorisation. A person would be caught by the provisions of the FS(J)L only in the circumstances of that person carrying on the business in or from within Jersey (or a Jersey registered company conducting financial service business anywhere in the world).

3.24. Article 7(3) introduces the concept of ‘holding out’, which is not defined within the FS(J)L. As with any undefined term, ‘holding out’ is left open to interpretation. For instance, a person would certainly be holding out if they advertise their services or solicit

business either verbally or through print. Holding out involves actual representation to third parties. As with the concept of 'by way of business' there are other indicators of holding out that can be considered in addition to advertising. These might include:

- 3.24.1. making it known you will act;
  - 3.24.2. being equipped to act e.g. stationery, application forms, business cards, business telephone book entries, website; and
  - 3.24.3. soliciting or advertising your services (rather than being invited to act).
- 3.25. The test on holding out cannot be confined to whether advertising or solicitation takes place. If this was the case, it could for example lead to the potential for a sizeable trust company business which does not advertise and is 'closed' for new business to contend that it is not holding out and therefore does not require a registration. Clearly this would be an untenable position and would be potentially damaging for the regulatory reputation of Jersey.
- 3.26. A further undefined term mentioned within Article 7 of the Law that could benefit from some guidance from the Commission is the phrase "in or from within Jersey". For the purposes of determining whether an individual is required to register under the Law in terms of acting as a director, it is the Commission's belief that the provisions of Article 7(1)(a) were drafted to capture Jersey resident individuals. There was no intention for this provision to capture non Jersey resident directors that may attend board meetings on a periodic basis in Jersey. Similarly, a Jersey resident individual cannot claim that, as they attend board meeting held outside of the Island, they are not conducting financial services business "in or from within Jersey"<sup>1</sup>.
- 3.27. In addition, the Law was not designed to capture non Jersey resident individuals that are directors of Jersey incorporated companies, and it should also be noted that the ~~Commission is not interpreting the Law as such~~ overseas exemption detailed in Financial Services (Trust Company Business (Exemptions No. 2)) (Jersey) Order 2000 provides an exemption for UK or other non Jersey individuals attending board meetings in Jersey.

#### 4 Exemptions

- 4.1. As a consequence of the wide definition of trust company business within the FS(J)L, a number of exemptions were crafted to specifically exclude situations where certain directorship services being provided were inadvertently caught by the FS(J)L. The most

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<sup>1</sup> The Commission would suggest that acting as director is a continuous role which cannot be turned on or off depending on the physical location of the individual when attending board meetings. It is an unremitting responsibility. It would seem inconceivable that a Jersey resident director would refuse, if asked, to engage in that company's affairs because they were in Jersey and not at the board meeting. This would also be extremely unwise for that director during times when the conduct of directors including non executive directors is becoming increasingly scrutinised. It cannot be the case that acting as a director is confined to attendance at board meetings, irrespective of the frequency of such board meetings.

relevant of those exemptions are stated below, accompanied by some contextual comments to provide the Commission's interpretation and application of the exemptions.

4.2. The 'Director' exemption contained in paragraph 13 of the Schedule to the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000.

"13 *Director*

*A person, when acting as or fulfilling the function of a director of a company if in relation to that company –*

- (a) the person has neither entered into a contract for services nor is party to an arrangement for the provision of services with a registered person or a person carrying on trust company business in any part of the world;*
- (b) the majority of the board of directors are not provided by a registered person or a person carrying on trust company business in any part of the world; and*
- (c) the person does not hold himself or herself out as carrying on a business or profession in any part of the world the sole or main purpose of which is trust company business."*

4.2.1. This exemption, through the inclusion of wording associating the person with a trust company business, was intended to exempt, for example, directors of local trading companies or companies that were not providing financial services to third party clients.

4.2.2. Specifically, part (a) of the above exemption would not be available for an individual that has a number of directorships, which have been arranged through a relationship with a trust company business.

4.2.3. Part (b) of the above exemption would typically accommodate local businesses such as grocers, florists, garages etc.

4.2.4. Part (c) of the above determines that this exemption is available only to those individuals that do not 'hold themselves out' i.e. an individual that is holding out to undertake directorships cannot enjoy the above mentioned exemption.

4.2.5. ~~Notwithstanding the holding out element set out in Part (c) above, the~~The Commission is of the view that those individuals providing directorship services for the local businesses (that Part (b) was designed to exempt) will not be required to register under the Law.

4.3. The 'Director -registered person' exemption contained in paragraph 15 of the Schedule to the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000.

"15 *Director – registered person*

*A person, when acting as or fulfilling the function of a director of a company if –*

- (a) the company for which the person is acting as a director or fulfilling the function of a director is a registered person; or*

- (b) *the company for which the person is acting as a director or fulfilling the function of a director is a wholly owned subsidiary of a company referred to in sub-paragraph (a) in respect of which the person is also a director or fulfilling the function of a director.*

*Note: In this paragraph "registered person" means a person who is registered, authorized, licensed or the holder of a permit, as the case may be under –*

- (a) *the Collective Investment Funds (Jersey) Law 1988;*  
(b) *the Banking Business (Jersey) Law 1991;*  
(c) *the Insurance Business (Jersey) Law 1996; or*  
(d) *the Financial Services (Jersey) Law 1998."*

4.3.1. This exempts both directors of registered persons and directors of a collective investment fund that has been granted a permit / certificate under the Collective Investment Funds (Jersey) Law 1988. As "principal persons", these directors will have already been subject to a fit and proper determination through Article 14 of the FS(J)L, or equivalent provisions in other regulatory laws.

4.4. The 'Experienced personal adviser' exemption contained in the note to paragraph 4 of the Schedule to the Financial Services (Trust Company Business (Exemptions No 2)) (Jersey) Order 2000.

*"4 Experienced personal adviser*

*A recognized experienced personal adviser, when continuing to provide a relevant personal service that the adviser was providing immediately before the commencement of this Order.*

*Note:*

- (1) *For the purpose of this paragraph a person is not a recognized experienced personal adviser unless, on the application of the person, the Commission has recognized the person as having had substantial relevant trust company business experience.*
- (2) *For the purpose of this paragraph "relevant personal service", in respect of a recognized experienced personal adviser, means the provision by the adviser of a service specified in Article 2(4)(b) or (g) of the Law other than as part of any full time occupation the adviser may have. However it does not include acting as a sole trustee or sole director.*
- (3) *A recognized experienced personal adviser may carry on as part of a relevant personal service a service specified in Article 2(4)(b) or (g) of the Law that has been authorized by the Commission, on the application of the adviser, even though that service was not being provided by the adviser immediately before the commencement of this Order."*

4.4.1. This exemption was introduced for retired professionals who acted as director or trustee of client structures at the time this exemption came into force on 11 December 2000. In this scenario, the individual must be a co-trustee, and/or one of at least two directors.

4.4.2. As a consequence of the grandfathering nature of this exemption, the individual may not take on new business without the prior consent of the Commission.

4.5. The 'Connected persons' exemption is contained in the ~~note to paragraph 1 of the Schedule to the~~ Financial Services (Trust Company Business (Exemptions No. 4)) (Jersey) Order ~~2000:2001~~ as amended by the Financial Services (Trust Company Business) (Exemptions Amendment No 2) (Jersey) Order 201-

"1 *Connected persons*

*A person, when providing a service specified in Article 2(4) of the Law to a person connected with that person.*

Note: *For the purposes of this paragraph persons are connected if –*

- (a) *one of them is an associate of the other or, in relation to a company, an associate of a person in the same group as the other person; and*
- (b) *one of them is a company and the other, whether or not a company, is entitled (other than as a nominee shareholder) alone or with an associate to exercise or control the exercise of a majority of the voting rights attributable to the share capital and exercisable in all circumstances at a general meeting of that company or of its holding company".*

4.5.1. This exemption is designed to exempt individuals who are directors of either their own (beneficially owned) companies or ~~the~~ companies that ~~individual~~ are owned jointly ~~owns~~ with an associate e.g. a spouse.

4.6. The "de minimis" exemption is contained in the Financial Services (Trust Company Business) (Exemptions Amendment No. 2) (Jersey) Order 201- and refers to the Schedule to Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000.

The following provisions should be read in conjunction with the provisions contained in paragraph 13 of the Schedule to the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000 (section 4.2 above)

- (2) *An individual, when acting as or fulfilling the function of a director of a company, if the individual, in or from within Jersey, acts as or fulfils the function of a director of not more than 6 companies (including the first mentioned company).*
- (3) *For the purpose of sub-paragraph (2), when determining the number of companies, no account shall be taken of the individual's acting as, or fulfilling the function of, a director of a company when, in relation to the full extent of the individual's so acting or so fulfilling the function, the individual is the subject of an exemption under any one or more of the provisions of the following enactments -*
  - (a) *paragraph (1);*
  - (b) *paragraph 15;*
  - (c) *any other paragraph of this Schedule;*

- (d) *the Financial Services (Trust Company Business (Exemptions No. 2)) (Jersey) Order 2000;*
- (e) *the Financial Services (Trust Company Business (Exemptions No. 3)) (Jersey) Order 2001;*
- (f) *the Financial Services (Trust Company Business (Exemptions No. 4)) (Jersey) Order 2001;*
- (g) *the Financial Services (Trust Company Business (Exemptions No. 5)) (Jersey) Order 2001;*
- (h) *the Financial Services (Trust Company Business (Exemptions No. 6)) (Jersey) Order 2001;*
- (i) *the Financial Services (Trust Company Business (Exemptions No. 7)) (Jersey) Order 2001;*

- 4.7. In summary, an individual will be able to hold a maximum number of six directorships (in addition to any that would otherwise be exempt) before the need to register under the Law is triggered.
- 4.8. It should be noted that the “de minimis” provisions detailed above, are in relation to individual directorship positions held by a natural person and not in terms of groups of companies or engagements held in relation to one client relationship.
- 4.9. With respect to the more general question of whether there is a maximum number of directorship appointments an individual can undertake, the Commission believes prescribing an upper limit is not appropriate as the activities and complexities of companies are so varied. Whilst not prescribing a maximum number of directorships a particular individual can undertake, the Commission will review, both at application and on an ongoing basis, an individual’s capacity and ability to effectively carry out the responsibilities commensurate to that individual’s engagements. This review will include onsite examination activity.

## **5 The Registration Regime for natural persons conducting a single class of Trust Company Business**

- 5.1. If an individual is conducting a single class of trust company business, for example, acting as a director, and meets the threshold tests as set out in Section 3 of this Guidance Note and is not able to utilize any of the exemptions available in Section 4 of this Guidance Note, then that individual has an obligation to register under the FS(J)L.
- 5.2. There already exists a “lighter touch” regulatory regime applicable to individuals who are registered to undertake a single class of trust company business. This lighter touch applies to both the application process as well as the ongoing regulatory requirements.
- 5.3. Details of this lighter touch regulatory regime are contained in Appendix A of this Guidance Note. These details are extracted from the ‘Guidance Note - Natural persons

carrying on a single class of Trust Company Business' which is published on the Commission's Website<sup>2</sup>.

5.4. With effect from 1 January 2009<sup>3</sup>, the cost of this registration is as follows:

- Application Fee (one off): £550.
- Annual Fee (for 2009): £550.

*Note: Please see the Trust Company Business Fees Notice published by the Commission<sup>4</sup> for the current fees which are applicable to trust company businesses.*

## 6 Conclusion

6.1. The purpose of this Guidance Note is to offer clarity in circumstances where an individual may be uncertain as to whether they need to register under the FS(J)L as a natural person providing directorship services. It is hoped that the role indicators identified in paragraph 3.8 above will help individuals decide whether they fall inside or outside the regulatory environment. If having considered these indicators the individual remains uncertain, the Commission would encourage the person to have a meeting with a Commission officer to discuss their personal circumstances.

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<sup>2</sup> [http://www.jerseyfsc.org/trust\\_company\\_business/policy\\_statements\\_and\\_guidance\\_notes/index.asp](http://www.jerseyfsc.org/trust_company_business/policy_statements_and_guidance_notes/index.asp)

<sup>3</sup> The fees for conducting a single class of trust company business prior to 1 January 2009 were: £1,250 application fee; and £1,550 registration fee.

<sup>4</sup> [http://www.jerseyfsc.org/the\\_commission/fees\\_notices/index.asp](http://www.jerseyfsc.org/the_commission/fees_notices/index.asp)

## Appendix A

- 1 Details of this lighter touch regulatory regime are contained in the Guidance Note entitled 'Guidance Note: Natural persons carrying on a single class of Trust Company Business'. Specifically with regard to individuals acting as directors, the following is a summary of the key regulatory requirements in respect of the Application for Registration process and ongoing regulatory requirements:
- 2 This regulatory regime is considered to be 'light touch' in that a number of the regulatory requirements applicable to a full scale trust company business are not applied. After assessing the risks associated with a single class of registration, the Commission believes the lighter touch given to this particularly type of business remains appropriate.
- 3 The predominant risk mitigant is that each individual undertaking a single class of business is subject to an appropriate fitness and properness test on application to the Commission and the enforcement provisions within the FS(J)L remain applicable to those individuals.

### Application for registration requirements.

- 3.1 Professional Indemnity Insurance ("PII") - where a director meets the PII needs personally, rather than through the company for which they act, the minimum cover is reduced to £1 million.
- 3.2 Audit of financial statements - the Commission would usually accept a request to waive the requirement in the Financial Services (Trust Company and Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2007 to: a) appoint an auditor; and b) to submit audited financial statements.
- 3.3 Control of Customer Assets - the Commission would attach a condition to the registration prohibiting the control of customer assets in a sole capacity.
- 3.4 Competence - the Commission would require the person to meet the standards of qualifications and experience applicable to a Category A Trust Company Business Employee (as set out in the Codes of Practice for Trust Company Business).

### Ongoing regulatory requirements

- 3.5 An individual is required to complete an "Information Update Questionnaire for Natural persons carrying on a single class of Trust Company Business" each year, which includes a declaration that requires submission which confirms ongoing compliance with the regulatory requirements.