



## Jersey Financial Services Commission

# GUIDANCE NOTE: Distinguishing between the authorisation requirements of a Managed Trust Company and a Participating Member within an affiliation

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### 1 Introduction

- 1.1 The Commission has, at times, been requested to authorise applicants to conduct trust company business (as defined in Article 2 of the Law), in exercise of its powers under Articles 8 and 9 of the Law, which are not comfortably positioned within the confines of either a managed trust company (*non-affiliated person*) or as a *participating member*, within an *affiliation* (terms in italics are defined in the Trust Company Business Fees Notice).
- 1.2 In these terms, the Commission believe that sufficient authorisation precedents have now been set to enable some generic guidance to be published to assist applicants in this regard during the authorisation process.

### 2 Background - the concept of an affiliation

- 2.1 The concept of an affiliation originated from the need to craft a registration process capable of capturing the activities of a business' principal trading entity along with those of its "creature companies" - e.g. the companies that undertake the specific functions set out under Article 2(4) of the Law - i.e. corporate directors, nominee companies, corporate secretary etc. There was also a need to accommodate the extremely varied ownership structures within the trust company business industry.

2.2 The purpose of this Guidance Note is to confirm the distinction between a participating member and managed trust company and to set out the criteria that the Commission will consider in determining a registration of same.

### **3 Background - Managed Trust Companies**

3.1 From time to time, new businesses wish to establish a presence in Jersey and an application is submitted to the Commission for consideration. The framework for determination of the application is enshrined in the Law, Orders and Codes of Practice, predominantly in terms of meeting the tests of integrity, competence, financial standing, structure/organisation (both of businesses and persons associated with businesses). Particular attention is paid to the identity and integrity of the owner/controllers and an assessment made as to whether they are properly accountable under the regulatory regime (in essence there is a risk in the Commission granting authorisation to an applicant that cannot be effectively supervised). Additionally, the Commission's licensing policy is applied to ensure that the cornerstones of the licensing criteria are met, namely:

3.1.1 local management and control (heart and mind of management);

3.1.2 financial standing;

3.1.3 accountability of controllers of the business/assessment of fit and proper status of the shareholders/controllers; and

3.1.4 transparency of ownership.

3.2 The position becomes a little more complicated when a new applicant is at a stage of development that does not merit the financing of a full operation at the outset and may need a period of time to recoup pre-operational expenses. It could also be the case that the applicant would wish to "test" the jurisdiction before committing greater capital. For many years, Jersey has accepted the concept of a "managed presence", particularly in relation to banks. This concept has naturally been extended to cover both investment businesses and trust company businesses.

3.3 In the circumstances of a managed enterprise, the Commission would permit the new applicant to meet the real presence standards by relying upon the established presence of its manager. In such circumstances local staff, systems and controls, premises, etc are provided by the manager under an agreement with an established and regulated local trust company business. Local businesses wishing to provide such a service are required to first obtain a Class N "Acting as a Manager" registration.

3.4 To further secure accountability and establish a connection of substance with the ultimate shareholders, the board of a managed trust company would normally have the "six eyes" met locally (by the manager) and in addition include one or possibly two directors from the parent board.

#### **4 Difference between a Managed Trust Company and a Participating Member**

- 4.1 The fundamental difference between a managed trust company and a participating member is that a managed trust company is an externally driven business, often subject to different ultimate beneficial ownership, which relies upon a local “host”. In contrast, a participating member is an integral part of the local business necessary for that local business to execute the full range of trust company business activities on behalf of its customers.
- 4.2 The Commission recognises the fact that registered persons may wish to ring fence within a participating member, clients that are introduced from a specific source or intermediary. This would be acceptable provided that the ultimate ownership and control of the ring fenced company, remains within the affiliation.

#### **5 Participating Member Registration Requirements**

- 5.1 The following criteria will be considered by the Commission when considering the authorisation of an applicant as a participating member. The list below should not be considered exhaustive and it is reasonable for the Commission to consider other aspects of an application not covered within the list below. Any issues raised with regard to the application would of course be communicated to the applicant at an early stage of the application process.

5.1.1 Common beneficial ownership to the affiliation leader;

5.1.2 Common management, controls, systems, staff pool;

5.1.3 All client agreements are with the affiliation leader (any other agreements would only be between the creature companies and the affiliation leader e.g. not between a participating member and client direct);

5.1.4 Any “branding” must clearly identify with the affiliation leader;

5.1.5 It is for the board of the affiliation leader, by way of its executive and non-executive directors, to manage the affairs of the affiliation and in this respect, there must be no influence exerted by an outside third party, for example, by way of either:-

5.1.5.1 presence on the board of directors of that company;

5.1.5.2 shareholding; or

5.1.5.3 the existence of an option in whatever form which enables a third party to either purchase shares in the company or have the ability to move administration of the company to an alternative service provider;

5.1.5.4 the Company must be covered by the affiliation leader’s professional indemnity insurance;

5.1.5.5 the Company’s audited accounts should be dealt with in the same way as the other participating member companies, for example if the

affiliation has consolidated accounts, then the Company's accounts should also be consolidated.

## **6 Managed Trust Company Registration Requirements**

- 6.1 In instances where the business relationship or structure of an applicant does not meet the Participating Member Registration Requirements listed in point 5. above, then the Commission will consider the application in the context of being either a managed trust company or a new self standing affiliation.
- 6.2 A managed trust company would be determined for licensing on the basis that it will operate as a fully fledged stand alone operation albeit that the real presence aspects of the Licensing Policy (management and control located in Jersey) would be provided by a locally registered manager.
- 6.3 A managed trust company would be expected to meet the financial resource requirements (as detailed in Principle 5 of the Trust Company Business - Codes of Practice) on a standalone basis, although the Commission would acknowledge that professional indemnity insurance may also be provided by the Jersey based manager, as the management, control and decision making process would be undertaken by the Jersey based directors rather than the owners of the managed trust company.

## **7 Existing Arrangements and New Applications**

### **Existing Arrangements**

- 7.1 Any existing arrangements that have been approved as participating member companies, notwithstanding the existence of an option arrangement, will not be affected by this policy so long as any option agreement that may be in place is not exercised and so long as the participating member in question, remains part of the affiliation within which it received registration.

### **Transfer of Existing Arrangements/Exercise of Option**

- 7.2 If the Commission is requested to approve the change of ownership of an existing arrangement, for example where an option is being exercised and/or where the participating member company is being moved to another trust company affiliation, then the terms of this Guidance Note will be applied.

### **New Arrangements**

- 7.3 Any new arrangements will be treated strictly in accordance with this Guidance Note.

### **Earn Out Arrangements**

- 7.4 In the case of an acquisition of a book of business, it is acknowledged that the acquired business may be subject to an "earn out arrangement", whereby the "former owners" retain an interest in the business that has been acquired. The Commission will consider situations where such an arrangement conflicts with this policy on a case by case basis.