Effective Dates

 › New *Outsourcing* arrangements 1 June 2017
 › Deadline for all *Outsourcing* arrangements 1 June 2018

This Policy applies to all new *Outsourcing* arrangements between a *Registered Person* and a *Service Provider* three months from the date of publication of this Policy, being 1 June 2017.

*Registered Persons* with existing *Outsourcing* arrangements may adopt this Policy three months from the date of publication of this *Policy*, being 1 June 2017. Please note the *JFSC*’s expectations in paragraph 3.3.5 below. *Registered Persons* with existing *Outsourcing* arrangements must adhere to this *Policy* fifteen months from the date of publication of this *Policy* (the “OSP Deadline”), being 1 June 2018. For the avoidance of doubt *Registered Persons* with existing *Outsourcing* arrangements means all existing *Outsourcing* arrangements entered into before 1 June 2017 and includes any arrangements which under the 2011 *Policy* may not have been considered as an *Outsourcing* arrangement but are under this *Policy*.

*Registered Persons* may opt to adhere to this *Policy* and file the *Outsourcing Notification* form after publication of this *Policy* and prior to three month transition period expiring on 1 June 2017, providing that the *Registered Person*: (i) confirms in writing that it will adhere to this *Policy*; and (ii) agrees to be supervised by the *JFSC* as if this *Policy* applies to the proposed *Outsourcing* arrangement.
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Glossary of terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011 Policy</td>
<td>means the JFSC’s Policy Statement and Guidance Notes on: (1) Outsourcing; And (2) Delegation by Jersey Certified Funds and Fund Services Businesses Published by the JFSC in May 2011</td>
</tr>
<tr>
<td>AML/CFT</td>
<td>means anti-money laundering and countering the financing of terrorism</td>
</tr>
<tr>
<td>AML/CFT Handbook</td>
<td>means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Business (as may be amended by the JFSC, from time to time)¹</td>
</tr>
<tr>
<td>Banking Code</td>
<td>means the Code of Practice for Deposit-taking Business</td>
</tr>
<tr>
<td>Banking Law</td>
<td>means the Banking Business (Jersey) Law, 1991</td>
</tr>
<tr>
<td>Certified Fund</td>
<td>means a fund issued with a certificate pursuant to the Collective Investment Funds (Jersey) Law 1988</td>
</tr>
<tr>
<td>Certified Funds Code</td>
<td>means the Code of Practice for Certified Funds</td>
</tr>
<tr>
<td>Client</td>
<td>means a customer, investor or other Person in respect of whom a Registered Person is Licensed to provide products or services</td>
</tr>
<tr>
<td>COBO Conditions</td>
<td>means any conditions imposed by the JFSC pursuant to its granting of a COBO Consent</td>
</tr>
<tr>
<td>COBO Consent</td>
<td>means a consent issued by the JFSC pursuant to the Control of Borrowing (Jersey) Order, 1958</td>
</tr>
</tbody>
</table>
| Codes of Practice (or Codes)² | means, collectively, the  
  › Banking Code;  
  › Certified Funds Code;  
  › FSB Code;  
  › GIMB Code;  
  › IB Code;  
  › Insurance Code;  
  › MSB Code;  
  › TCB Code |
| Collective Investment Funds Law | means the Collective Investment Funds (Jersey) Law, 1988                                                                                                                                                         |
| JFSC                      | means the Jersey Financial Services Commission                                                                                                                                                             |
| Companies Law             | means the Companies (Jersey) Law, 1991                                                                                                                                                                     |
| FAQs                      | means frequently asked questions                                                                                                                                                                           |


² Codes of Practice may be prepared and issued; or revised by the JFSC pursuant to, the Regulatory Laws, and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law, 2008 (in respect of AML/CFT requirements).
Fit and Proper means that a Person would meet the standards required to be fit and proper to be Licensed or, continue to be Licensed (as applicable) pursuant to the requirements of the relevant Regulatory Law\(^3\).

FSB Code means the Code of Practice for Fund Services Business.

FSJL means the Financial Services (Jersey) Law, 1998.

Fund Services Business means the Regulated Activity, involving the provision of services in relation to certain types of funds, which is described in Article 2(10) of the FSJL.


Governing Body means the body within a Registered Person that is considered to exercise ultimate control over it. Generally, this will be (i) the directors of a company, protected cell company or the relevant cells of an incorporated cell company; (ii) the trustee of a unit trust; (iii) the general partner of a limited partnership, separate limited partnership or incorporated limited partnership; or the partners of a limited liability partnership. In the case of a sole trader, the Governing Body will be the sole trader.

Group means a body corporate that would be defined as a “subsidiary”, “wholly-owned subsidiary” or “holding body” of another body corporate, under the Companies Law irrespective of the jurisdiction of the company.

IB Code means the Code of Practice for Investment Business.


Insurance Law means the Insurance Business (Jersey) Law, 1996.

Licence means the authorisation by the JFSC to conduct Regulated Activity\(^4\).

Managed Entity means, in the context of MoME Arrangements, an entity that is managed by a MoME.

MoME means, in the context of MoME Arrangements, a manager of a Managed Entity.

MoME Arrangements means arrangements described in the MoME Guidance Note and pursuant to which a MoME falls within class ZK of Fund Services Business by providing certain services to a Managed Entity.

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\(^3\) See for example Article 9 of the FSJL. Note also that the JFSC provides guidance as to, amongst other things, the criteria upon which it bases decisions as to whether such requirements are satisfied in the relevant Licensing Policy.

http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp

\(^4\) Such authorisation being: (i) registration under the Banking Law; (ii) grant of a permit or certificate under the Collective Investment Funds Law; (iii) registration under the FSJL or (iv) grant of a permit under the Insurance Law.
MoME Guidance Note means the guidance issued by the JFSC and contained in the document entitled: Guidance Note For a Manager of a Managed Entity (a “MoME”) and Certain Managed Entities (as may be amended by the JFSC, from time to time)

Money Laundering Order means the Money Laundering (Jersey) Order, 2008

MSB Code means the Code of Practice for Money Service Business

OCIF Guide means the guide which is Schedule 4 to the Certified Funds Code called the Guide to Jersey Open-Ended Unclassified Collective Investment Funds Offered to the General Public (as amended by the JFSC, from time to time)

Offer Document means a prospectus or other offering document inviting a Person to become an investor of a fund

Outsourcing means an arrangement of any form between a Registered Person and a Service Provider by which the Service Provider performs any activity, that would otherwise be undertaken by the Registered Person, where a Service Provider’s failure to perform or inadequate performance of such activity would materially impair the continuing compliance of the Registered Person’s Regulated Activity, with the requirements of the Regulatory Laws

Outsourcing Notification means a notification as detailed in paragraph 4.6.4

Outsourcing Policy/this Policy/the Policy means this document

Person means any natural or legal person (including a body of persons corporate or unincorporated)

Registered Person means a Person that is Licensed or holds a permit or certificate, as applicable, under one or more of the Regulatory Laws

Regulated Activity means activity conducted pursuant to the Regulatory Laws, in respect of which a Person is Licensed

Regulatory Laws means the Banking Law, the Collective Investment Funds Law, the FSJL, and the Insurance Law

Service Provider means a Person to whom a Registered Person Outsources activities

Sub-contractor means a Person to whom a Service Provider transfers the carrying out of any Outsourced activity to the Service Provider

Sub-Outsourcing means an arrangement of any form between a Service Provider and Sub-contractor pursuant to which the Sub-contractor performs any Outsourced activity that would otherwise be undertaken by the Service Provider

TCB Code means the Code of Practice for Trust Company Business

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7 For the avoidance of doubt “requirements of the Regulatory Laws” includes compliance with all secondary legislation, Notices, and Codes of Practice made pursuant to the Regulatory Laws.
Interpretation

In the Outsourcing Policy and Guidance Notes, unless the contrary intention appears:

a. Words in the singular shall include the plural and words in the plural shall include the singular.

b. The word “include” indicates a non-exhaustive list.

c. Grammatical variations of words to which definitions are assigned shall be construed in accordance with the definitions.

d. References to legal or regulatory requirements shall, unless the context provides otherwise, refer to such legal or regulatory requirements as may be amended from time to time.
Part I

1. Introduction

1.1 Purpose

1.1.1 The purpose of the Outsourcing Policy and Guidance Notes ("Outsourcing Policy") is to assist Registered Persons in understanding what the JFSC expects of them if they Outsource activities.

1.2 Structure

The Outsourcing Policy and Guidance Notes are divided into five parts:

1.2.1 Part I explains the purpose, structure, and key regulatory implications of the Outsourcing Policy;

1.2.2 Part II sets out the basic premises underlying the JFSC’s Outsourcing Policy;

1.2.3 Part III sets out the Scope, Effective Dates and Transitional Provisions as well as the Core Principles the JFSC expects Registered Persons to satisfy in complying with the Outsourcing Policy;

1.2.4 Part IV provides guidance, in general terms, as to how Registered Persons may satisfy these requirements; and

1.2.5 Part V provides further general assistance to Registered Persons seeking to understand the JFSC’s expectations of them by providing responses to various FAQs.

1.3 Key regulatory implications

1.3.1 The JFSC is responsible for the supervision of Regulated Activity conducted in or from within Jersey. That responsibility is discharged pursuant to, amongst other things, the Regulatory Laws. Under the Regulatory Laws, Persons that conduct Regulated Activity must be Licensed. Upon Licensing, such Persons will be Registered Persons.

1.3.2 Compliance with the Outsourcing Policy and Guidance Notes may be taken into account by the JFSC when considering whether a Person is deemed Fit and Proper in terms of its structure and organisation.

1.3.3 The JFSC is empowered by the Regulatory Laws to “… prepare and issue a Code of Practice setting out the principles and detailed requirements that must be complied with in the conduct of financial services business”. The Codes require Registered Persons to comply with the Outsourcing Policy, the requirements of which are therefore incorporated by reference as Codes requirements.
1.3.4 The appropriate measures to be taken by a Registered Person that is considering Outsourcing will depend upon the particular facts of each case. The guidance contained in this document presents examples of when the Outsourcing Policy may apply and ways of complying with the Outsourcing Policy but is not exhaustive. The Outsourcing Policy should always be considered in conjunction with all relevant legal or regulatory requirements and anyone who is uncertain of these requirements should seek appropriate professional advice. The Outsourcing Policy and Guidance Notes are not intended to provide legal advice.
Part II

2. Basic premises underlying the Outsourcing Policy

2.1 The Outsourcing Policy is based on the basic premises that:

a) A Registered Person remains fully responsible and accountable to the JFSC for (and the JFSC’s powers in relation to the Registered Person may, if appropriate, be exercised in respect of) any Outsourced activity to the same extent as if the Outsourced activities were not Outsourced.

b) A Registered Person must not, as a consequence of any Outsourcing arrangements, become devoid of functions to the extent that it becomes a “letter box” entity.

2.2 A Registered Person should therefore ensure that it takes reasonable steps to avoid its Outsourcing arrangements giving rise to any undue risks and the JFSC expects adherence to the Core Principles of its Outsourcing Policy will be essential in this regard. The relevant Codes of Practice require adherence with this policy.
Part III

3. The Outsourcing Policy

3.1 Definition of Outsourcing

3.1.1 Outsourcing means an arrangement of any form between a Registered Person and a Service Provider by which the Service Provider performs any activity, that would otherwise be undertaken by the Registered Person, where a Service Provider’s failure to perform or inadequate performance of such activity would materially impair the continuing compliance of the Registered Person’s Regulated Activity, with the requirements of the Regulatory Laws.

3.2 Scope

3.2.1 The Outsourcing Policy applies to all Registered Persons, in respect of Outsourcing; irrespective of whether it is Outsourced to Persons within the same Group, or to third parties. Registered Persons should ensure that the same requirements are met in respect of any Sub-Outsourcing arrangements as would apply in respect of any Outsourcing arrangements.

3.2.2 The following activities are not deemed to amount to Outsourcing for the purposes of this Outsourcing Policy:

3.2.2.1 The provision, to a Registered Person, of advisory services and other services which do not form part of the Regulated Activity in respect of which it is Licensed, including:

 › the provision of legal advice to the Registered Person;
 › the purchase of investment advisory services where investment advice is not part of the Registered Person’s Regulated Activity;
 › the training of personnel of the Registered Person;
 › the provision of billing services;
 › the security of the Registered Person’s premises and personnel; or
 › the purchase of standardised services including market information services and the provision of price feeds.

3.2.2.2 The performance of activity that would otherwise be Outsourcing by different elements of the same legal person, i.e. (i) a branch on behalf of its head office; or (ii) a branch on behalf of another branch, in both scenarios where all elements are parts of the same legal person.

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8 For the avoidance of doubt “requirements of the Regulatory Laws” includes compliance with all secondary legislation, Notices, and Codes of Practice made pursuant to the Regulatory Laws.

9 Refer to paragraph 3.2.2.2. regarding a branch.

10 Refer to FAQ 7.2, in Part V.
3.2.2.3 Where a custodian (including a prime broker) acting in relation to a Certified Fund is a member of an international corporate Group, and the sub-custodians engaged by the custodian are also members of the same Group. This is on the basis of the JFSC’s guidance on the Certified Funds Prospectus Order (letter 31 May 2012)\(^{11}\) and the JFSC would not expect the fund prospectus to list or describe each sub-custodian separately. References can simply be made in the fund prospectus to the use of members of the same corporate Group to act as sub-custodians.

3.2.2.4 Based on the JFSC’s existing working practice in relation to the Trust Company Business where a Trustee regulated for Trust Company Business appoints a third party to act in relation to an individual Trust (save for where the Trust is a Certified Fund or Recognized Fund where the provisions of paragraph 3.2.2.5 below apply) this Policy does not apply.

Where a regulated Trustee appoints a Service Provider to generally act in relation to its Clients, rather than acting in relation to an individual Trust such proposed appointment and ongoing Outsourcing needs to be considered in accordance with the Policy. For example the global Outsourcing of accountancy services or IT Services may be caught.

3.2.2.5 The JFSC does not expect a Registered Person which is a fund\(^{12}\) or a Service Provider that provides services in relation to a fund to comply with the Outsourcing Policy; provided that certain conditions are met. The conditions that should be met are that:

› The Service Providers who will provide services to the fund are clearly disclosed to the JFSC and the fund’s investors’ in an Offer Document prior to these arrangements being implemented.\(^{13}\)

› A change of Service Providers post authorisation of the fund where the Offer Document is not to be updated and where the consent of the investor to the change in Service Provider is not required should be notified to the investors (the “Investor Notification”).\(^{13}\)

› The Offer Document/Investor Notification or other documents seeking the consent of the investor to a change in Service Provider makes clear and unequivocal, in a manner that is suitable to the level of the fund’s investors’ financial sophistication.\(^{14}\)

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\(^{11}\) Available from the Policy Statements and Guidance Notes page of the JFSC website:
http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp

\(^{12}\) This is the case whether or not the fund is a company, trust or form of partnership. Note also that, in all cases, it is the Governing Body which is ultimately responsible for the selection, appointment and monitoring of its fund service providers.

\(^{13}\) In some cases alternative documentation may be acceptable to the JFSC, but the Registered Person should seek the JFSC’s confirmation of this on a case by case basis.

\(^{14}\) For example, if investors are retail investors the expectation is that more explanation is needed than would be required in the case of professional investors.
› The nature of any activity to be undertaken by such Service Providers;

› Any material risks connected with the activity (including any conflicts of interest); and

› Where the fund’s investors should deal directly with those Service Providers in respect of the activities they carry out.

3.2.2.6 The JFSC deems that MoME Arrangements, which are consistent with the standards set out in its MoME Guidance Note, are not subject to the Outsourcing Policy.

3.2.3 For the avoidance of doubt, in relation to a fund:

3.2.3.1 if such Service Providers appointed in compliance with the conditions in paragraph 3.2.2.5 above should then propose to Outsource activity; and/or

3.2.3.2 the conditions outlined in paragraph 3.2.2.5 above are not met, such Outsourcing will be subject to the Outsourcing Policy.

3.2.4 In exceptional circumstances, where strict adherence with the Outsourcing Policy would produce an anomalous result, Registered Persons may apply to the JFSC for a variance to the requirements of the Outsourcing Policy.

3.3 Effective Dates and Transitional Provisions

Effective Dates

3.3.1 This Policy applies to all new Outsourcing arrangements between a Registered Person and a Service Provider three months from the date of publication of this Policy, being 1 June 2017.

3.3.2 Registered Persons with existing Outsourcing arrangements may adopt this Policy three months from the date of publication of this Policy, being 1 June 2017. Please note the JFSC’s expectations in paragraph 3.3.5 below. Registered Persons with existing Outsourcing arrangements must adhere to this Policy fifteen months from the date of publication of this Policy (the “OSP Deadline”), being 1 June 2018. For the avoidance of doubt Registered Persons with existing Outsourcing arrangements means all existing Outsourcing arrangements entered into before 1 June 2017 and includes any arrangements which under the 2011 Policy may not have been considered as an Outsourcing arrangement but are under this Policy.

Transitional Provisions

3.3.3 Any new arrangements entered into after the Policy is published and until the three months transition period has expired, on 1 June 2017, are subject to the 2011 Policy (the “Interim Period”). However, these arrangements will need to be updated before the expiry of the fifteen months period on 1 June 2018 referred to in paragraph 3.3.2 so that they comply with this Policy. Therefore, any Service Provider may wish to ensure that any Outsourcing arrangements entered into during the Interim Period are compliant with this Policy.
3.3.4 Registered Persons may opt to adhere to this Policy and file the Outsourcing Notification form after publication of this Policy and prior to three month transition period expiring on 1 June 2017, providing that the Registered Person: (i) confirms in writing that it will adhere to this Policy; and (ii) agrees to be supervised by the JFSC as if this Policy applies to the proposed Outsourcing arrangement.

3.3.5 Insofar as existing Outsourcing arrangements are concerned, including those arrangements that may not have previously been considered Outsourcing under the 2011 Policy, Registered Persons are expected to review and update these arrangements after 1 June 2017 in accordance with paragraphs 3.3.5.1 or 3.3.5.2 and in both cases before the OSP Deadline:

3.3.5.1 in the ordinary course of their business when the existing arrangements are reviewed or updated; or

3.3.5.2 upon the annual review of the Outsourcing Arrangement in accordance with the 2011 Policy.

For consistency and continuity at the time the Outsourcing Arrangement is conformed to the Policy an Outsourcing Notification should be made to the JFSC in relation to those existing arrangements that are now subject to this Policy which have never previously been notified to the JFSC.

3.4 Core Principles

Core Principle No. 1

A Registered Person must satisfy itself at the outset, and on a continuing basis thereafter, that any Service Provider to whom it Outsources activities is Fit and Proper and will perform the Outsourced activities in a responsible, professional and suitable manner.

Core Principle No. 2

A Registered Person must have in place appropriate written agreements, with any Service Providers to whom it Outsources activities that clearly specify the terms of engagement and the level of services to be provided by the Service Provider.

Core Principle No. 3

A Registered Person must maintain the (i) capacity; (ii) resources; and (iii) policies and procedures to monitor, assess and ensure that any Outsourced activities are being performed adequately and the Service Provider remains Fit and Proper.

Core Principle No. 4

A Registered Person must put in place arrangements that allow it to terminate its Outsourcing arrangements without undue delay and manage the consequences of any such termination appropriately.
Core Principle No. 5

A Registered Person must provide the JFSC with adequate prior written notice of its intention to Outsource activities or make material changes to any existing Outsourcing arrangements. A Registered Person must not enter into any Outsourcing arrangement (save for contingency arrangements) until it has received prior written confirmation from an officer of the JFSC that the JFSC has no objection to such Outsourcing arrangements.

Core Principle No. 6

A Registered Person must ensure that nothing in any Outsourcing arrangements prevents or restricts the JFSC’s ability to exercise the legal or regulatory powers it would otherwise have been able to exercise, in respect of any Registered Persons or Outsourced activity, had the Outsourcing not taken place.
Part IV

4. Guidance notes

4.1 Guidance notes on Scope

4.1.1 Please see in Appendix 1 a flow chart to assist Registered Persons in determining whether an activity is subject to this Policy. This flow chart is for guidance only and is not intended to provide legal advice.

4.2 Guidance on Core Principle No. 1

4.2.1 A Registered Person should conduct suitable due diligence itself or, where appropriate through another member of the same Group, in order to satisfy itself that:

4.2.1.1 adequate measures have been taken to counter any material risks relating to the Outsourcing arrangements; and

4.2.1.2 its Service Providers are Fit and Proper; and possess adequate capacity and resources to perform the Outsourced activity.

4.2.2 Determining what amount to “adequate measures”, “material risks” or “adequate capacity and resources”, for the purposes of Core Principle No. 1, will depend on the particular facts of each case. A Registered Person should consider, amongst other things, any factors that may adversely impact upon the finances, reputation or operations of the Registered Person and its Clients.

4.2.3 Factors to consider when determining what amount to “material risks” may include any relevant:

4.2.3.1 conflicts of interest;\(^{15}\)

4.2.3.2 concentration risks (i.e. risks which might arise if multiple Registered Persons use a common Service Provider which results in the Service Provider lacking the capacity and resources to service them all properly); and

4.2.3.3 jurisdictional risks.

4.2.4 Factors to consider, when determining whether a Service Provider has adequate capacity and resources to perform Outsourced activities, may include the level of the Service Provider’s:

4.2.4.1 Human resources (e.g. the substance and reputation of the Service Provider and whether staff are suitably qualified; experienced; well-trained; and are employed in sufficient numbers);

\(^{15}\) For example, conflicts of interest might arise in respect of undisclosed fee arrangements; transactions involving third parties; where companies have common directors and in other circumstances which benefit the Registered Person, but are prejudicial to its Clients’ best interests.
4.2.4.2 Technical resources (e.g. whether effective, reliable and robust systems and controls are in place that can, amongst other things, monitor and control the volume of anticipated activity and handle the complexity and nature of the Outsourced activity without prejudice to the Client’s interests); and

4.2.4.3 Financial resources (e.g. whether the Service Provider is solvent and in good standing; has appropriate insurance; and has sufficient access to capital or credit).

4.2.5 The JFSC expects that any Regulated Activity which is Outsourced will be Outsourced to a Service Provider that is itself regulated for the conduct of such activity and acting in accordance with any applicable legal or regulatory requirements. This assessment should also form part of the Registered Person’s due diligence.

4.2.6 It is possible that activity which is Outsourced may materially impair the continuing compliance of the Registered Person’s Regulated Activity, with the requirements of the Regulatory Laws whilst not amounting to Regulated Activity. This will always turn on the particular facts of each case. However, where Outsourced activity does not amount to Regulated Activity, the expectation that the Service Provider should itself be regulated for the conduct of the Outsourced activity would not apply.

4.2.7 A Registered Person should be able to provide the JFSC with clear evidence that suitable due diligence has been conducted on their Service Providers, upon request.

4.3 Guidance on Core Principle No. 2

4.3.1 Subject to paragraph 4.3.4 (below), the JFSC expects a Registered Person to enter into written, legally binding agreements with its Service Providers that reflect the risks; size; and complexity of the Outsourcing arrangements.

4.3.2 Subject to paragraph 4.3.4 (below), the JFSC would normally expect such agreements to include enforceable and clearly defined provisions covering:

4.3.2.1 The function(s) to be Outsourced;

4.3.2.2 The rights, obligations and liabilities of all relevant parties to the agreement;

4.3.2.3 Whether any Sub-Outsourcing is allowed and if so, in what circumstances;

4.3.2.4 The performance standards to be met by the Service Provider;

4.3.2.5 The reporting requirements of the Service Provider to the Registered Person in respect of:

› Its obligations under the agreement;

› Any breaches, errors or other events that undermine its performance; and
› Any other relevant information concerning its conduct of the
Outsourced activities.

4.3.2.6 An annual review (at a minimum) of the relationship;

4.3.2.7 Termination provisions;

4.3.2.8 Access rights for the JFSC, Registered Person and any other relevant
third parties (e.g. auditors) to information (including records) relating
to the Outsourced16 activity;

4.3.2.9 Data protection standards that comply with any applicable legal or
regulatory requirements; and

4.3.2.10 Protection of the Registered Person’s confidential and other
proprietary information or materials and, where relevant, that of its
Clients. Where appropriate, such provisions should cover, amongst
other things, the destruction or return of any such information or
materials upon termination of the Outsourcing arrangements.

4.3.3 The practice of Sub-Outsourcing should be considered carefully by Outsourcing
parties. The Registered Person should ensure that the Service Provider cannot in
turn Outsource the functions Outsourced unless the Sub-contractor has been
approved by the Registered Person. Sub-Outsourcing must not undermine the
ability of the Registered Person or the JFSC properly to monitor compliance with
regulatory requirements.

4.3.4 Where the Service Provider is an entity within the same Group as the Registered
Person, which provides specialised central support functions to entities within the
same Group of companies, the JFSC’s expectation of “appropriate written
agreements” may not amount to a written, legally binding agreement that covers
the specific nature of the Outsourcing in as much detail as would otherwise be
required.

4.3.4.1 Provided that (in all such exceptional circumstances):

› the Registered Person is still able to provide the JFSC with evidence
  of sufficiently robust and clearly documented procedures which
  properly protect its Clients’ interests;

› the other Core Principles can still be satisfied;

› there is no question of such arrangements having been
  implemented to circumvent the requirements of the Outsourcing
  Policy; and

› It meets all other regulatory and legal requirements.

16 In cases where Registered Persons may be unable to secure access for the JFSC to information about Service
Providers’ “Outsourced activities” Registered Persons should seek the JFSC’s confirmation as to whether
alternative arrangements may be acceptable, on a case by case basis.
4.4 Guidance on Core Principle No. 3

4.4.1 A Registered Person should be able to provide the JFSC, upon request, with evidence that it has itself or, where appropriate through another member of the same Group:

4.4.1.1 Effective policies and procedures to monitor and assess its Service Providers’ performance of any Outsourced activities. The JFSC may request or review on a supervisory examination the results of such monitoring and assessment; and

4.4.1.2 Adequate capacity and resources\(^\text{17}\) to implement any such policies and procedures.

4.5 Guidance on Core Principle No. 4

4.5.1 A Registered Person should be able to terminate an Outsourcing arrangement and the existing Outsourcing arrangements should not be terminated (save in exceptional circumstances as described in paragraph 4.6.7.) until the JFSC is notified either:

4.5.1.1 that the Registered Person intends to undertake the Outsourced activity itself; or

4.5.1.2 of the new Outsourcing arrangements in accordance with this policy and a written no objection has been received from an officer of the JFSC.

4.5.2 A Registered Person should either itself or, where appropriate through another member of the same Group, establish and maintain appropriate contingency plans that enable alternative arrangements to be set up without undue delay and with minimum disruption to its business; if the Outsourcing ends suddenly or unexpectedly or, there is a significant interruption.

4.5.3 Contingency plans should be documented and, where appropriate, include provisions that allow the Registered Person or another member of the same Group to (i) take over day-to-day control of any Outsourced activity; or (ii) transfer its conduct to another suitable Service Provider.

4.5.4 The JFSC’s expectation is that the contingency plans will be periodically tested. The JFSC may request or review on a supervisory examination the results of such testing.

4.6 Guidance on Core Principle No. 5

4.6.1 The Registered Person should communicate with the JFSC in respect of any proposals to Outsource or make material changes to existing Outsourcing arrangements. It is necessary to seek the JFSC’s prior confirmation that it has “no objection” to such proposals. However, the JFSC may, if it sees fit, object to proposals or require further action to be taken where it has regulatory concerns.

\(^{17}\) Note the guidance in respect of Core Principle 1 on the meaning of “adequate capacity and resources”.
4.6.2 Registered Persons should provide the JFSC with sufficient time to review and assess the possible regulatory implications of any Outsourcing proposals. The JFSC’s general expectation is that proposals to Outsource activity will be communicated to it at an early stage.

4.6.3 Determining what amounts to “sufficient time” or, an “early stage”, for the purposes of Core Principle No. 5, will depend upon the particular facts of each case. Factors that may be relevant include: (i) the size, risk and complexity of the proposed Outsourcing; (ii) the Service Providers and jurisdictions to which it is proposed to Outsource; and (iii) the ability of the Registered Person to comply with the Outsourcing Policy should the proposals be implemented.

4.6.4 The JFSC would expect the notification of proposed Outsourcing to include the following information (for ease the JFSC provides an Outsourcing Notification form on the JFSC website):

4.6.4.1 Name and address of the proposed Service Provider
4.6.4.2 Regulatory status of the proposed Service Provider
4.6.4.3 Summary of the Outsourced activity
4.6.4.4 Whether the Service Provider is related to the Registered Person (i.e. subsidiary, part of the same Group or other connection)
4.6.4.5 Reasons for the Outsourcing
4.6.4.6 Summary of how the Outsourcing impacts on Regulated Activities including a summary of the risk assessment
4.6.4.7 Confirmation due diligence has been performed on the proposed Service Provider in connection with the Fit and Proper test as required by Core Principle No.1
4.6.4.8 Confirmation that there are no barriers to accessing records and data protection requirements have been considered
4.6.4.9 Summary of how the Outsourced activity will be monitored on an ongoing basis
4.6.4.10 Details of contingency plans that exist in the event the Service Provider fails to perform
4.6.4.11 Whether Sub-Outsourcing is permitted and provide relevant details of the Sub-Outsourcing
4.6.4.12 Confirmation that the Registered Person will comply with each of the six Outsourcing Core Principles
4.6.4.13 A copy of the agreement should be provided if the Outsourced activity is a Regulated Activity
4.6.4.14 Any other relevant information

4.6.5 The JFSC may request further information, including the Outsourcing agreement in relation to unregulated activity.
4.6.6 Upon receipt of the Outourcing Notification the JFSC will acknowledge receipt confirming the date of receipt and indicate that the JFSC will use its best endeavours to respond within 20 business days of the date of receipt. Where the Outourcing Notification is part of an application to authorise a Certified Fund or a Fund Services Business (where the Outsourcing arrangement is not exempt) no acknowledgement will be sent and the JFSC will endeavour to process the Outourcing Notification in accordance with the published timeframes for the relevant Certified Fund or Fund Services Business. Where the Outsourcing arrangement is not exempt and concerns a Certified Fund or a Fund Services Business, the JFSC will endeavour to respond within 10 business days of receipt of the Outourcing Notification. The JFSC response may be:

4.6.6.1 a request for further action to be taken such as:
   › the provision of further information and/or documentation; and/or
   › confirmation that additional time is required to consider the Outourcing Notification; or

4.6.6.2 a “no objection”.

The Registered Person should not enter into an Outsourcing arrangement until a “no objection” is received in writing from the JFSC.

4.6.7 In exceptional circumstances where the Registered Person has to invoke its Outsourcing contingency plans and prior notice to the JFSC is not possible, the JFSC should be notified as soon as practicably possible afterwards. Such notification should also include:

4.6.7.1 an explanation as to why the Outsourcing arrangements have ended unexpectedly/been significantly interrupted;

4.6.7.2 provide details of the Outsourcing contingency plan implemented together with confirmation that its existing Outsourcing contingency plan was and remains adequate; and

4.6.7.3 confirm the time period that the Outsourcing contingency plan will be in place and when it is anticipated the replacement Outsourcing arrangements will be put in place.

4.7 Guidance on Core Principle No. 6

4.7.1 A Registered Person should ensure that its Outsourcing proposals do not defeat the purpose of regulation. Whatever the nature of any Outsourcing arrangements, the Registered Person should ensure that:

4.7.1.1 The provisions of any Regulatory Laws or other regulatory requirements (e.g. Licence conditions, COBO Conditions or Code(s) requirements) which apply to a Registered Person, prior to any Outsourcing, shall continue to apply upon such Outsourcing arrangements taking effect; and
4.7.1.2 The JFSC is able to exercise its supervisory and other regulatory functions effectively. In order to facilitate this requirement the Registered Person should procure that the JFSC is able to access, promptly upon request, any books, records or other sources of information relevant to its regulatory oversight.
Part V: FAQs

5. FAQs relating to general issues

5.1 Where terms such as “appropriate”, “adequate”, “suitable”, “effective” or other similar qualitative terms are used how should these be interpreted by a Registered Person?

5.1.1 A Registered Person is expected to apply its own judgement to the particular facts of each case in order to determine what might be “appropriate”, “adequate”, “suitable”, “effective” etc. In applying its judgement, the Registered Person is expected to be mindful of its obligations to comply with any applicable legal or regulatory requirements.

5.1.2 Where the JFSC provides specific guidance as to what it would normally consider “appropriate”, “adequate”, “suitable”, “effective” etc. then, in the absence of such steps being taken, the JFSC would expect a Registered Person to either take equivalent alternative steps or, be able to provide evidence to the JFSC explaining why it did not deem such steps to be necessary.

5.1.3 Similarly, where these FAQs provide further explanations of the JFSC’s general understanding of certain aspects of the Outsourcing Policy and Guidance Notes; the JFSC’s expectation is that Registered Persons will adopt an approach that is consistent with these FAQs where relevant to the particular circumstances of any Outsourcing arrangements they may become involved in.

5.1.4 It should also be noted that where reference is made to policies and procedures being “effective”\(^{18}\) or to plans being “appropriate”\(^{19}\); the JFSC expects that a Registered Person will, as part of the ongoing monitoring of its Outsourcing arrangements, periodically test whether such policies, procedures or plans comply with the Core Principles of the Outsourcing Policy. The frequency of such testing will depend on the particular facts of each case and should reflect the size, risk and complexity of the Outsourcing arrangements.

5.2 Why does the JFSC include, within the definition of “Outsourcing”, activity that may not actually be regulated by the JFSC?

5.2.1 Activity which the JFSC does not regulate may materially impair the continuing compliance of the Registered Person’s activity that is regulated by the JFSC. The JFSC takes such activity into account when deciding whether to grant or revoke Licences and similarly, such activity may be a relevant consideration in respect of any Outsourcing arrangements.

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\(^{18}\) See for example, the Guidance on Core Principle No. 3, paragraph 4.4., in Part IV.

\(^{19}\) This is relevant to the discussion of “contingency plans” in the Guidance on Core Principle No. 4 paragraph 4.5., in Part IV.
5.2.2 Two examples are provided below, to illustrate how this approach might be applied:

5.2.2.1 By way of example, if a Registered Person (e.g. a trust company business or a Fund Services Business), Outsources accounting functions to a Service Provider that are critical in supporting the performance of the Regulated Activity for which it is Licensed (e.g. the valuation of its assets); a failure to perform those accounting functions properly could result in the Registered Person failing to properly conduct the Regulated Activity for which it is Licensed.

5.2.2.2 By way of further example, if a money service business Outsources IT functions that are critical in facilitating the transmission of funds by electronic means, a failure in the IT system could result in the Registered Person failing to properly conduct the money service business for which it is Licensed.

5.2.3 However, the Outsourcing Policy is not intended to increase the amount of activity that is regulated. In other words, activity that is not relevant in determining whether a Regulated Activity is being performed properly does not fall within the scope of the Outsourcing Policy.

5.2.4 The JFSC has also expressly excluded certain types of activity from the scope of the Outsourcing Policy and Guidance Notes at paragraph 3.2.2 of Part II (i.e. the provision of advisory services and standardised services etc.).

5.3 What does the JFSC mean when it uses phrases such as “any applicable legal or regulatory requirements” without explaining what these might be?

5.3.1 It is the responsibility of a Registered Person to determine the legal or regulatory requirements which apply to it. The JFSC’s intention in using such phrasing is to emphasise that compliance with the Outsourcing Policy is in addition to any other legal or regulatory requirements which might apply to a Registered Person. The application of the Outsourcing Policy does not remove any such obligations.

5.3.2 By way of example, additional legal or regulatory requirements (outside of the Outsourcing Policy) might include requirements such as those contained in:

5.3.2.1 the OCIF Guide (e.g. in respect of the independence of the manager and trustee/ custodian);

5.3.2.2 the Codes of Practice for Alternative Investment Funds and AIF Services Business (e.g. in respect of “delegation”);

5.3.2.3 Other requirements of the Codes of Practice, such as requirements relating to Corporate Governance; and

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20 Under Article 2(9)(c) of the FSIL, transmitting or receiving funds by wire or other electronic means is deemed to be money service business, which means you must be Licensed to carry out this activity in or from within Jersey.
5.3.2.4 The Money Laundering Order (e.g. requiring the appointment of a Money Laundering Compliance Officer and Money Laundering Reporting Officer of “appropriate level of seniority”).

5.3.3 For the avoidance of doubt, in cases where a Registered Person places reliance on a “relevant person” or a Person carrying on “equivalent business” pursuant to Article 16 or 16A of the Money Laundering Order, the JFSC does not deem this to be Outsourcing. Accordingly, the Outsourcing Policy and Guidance Notes do not apply to such circumstances. However, Registered Persons must still comply with any applicable provisions of the Money Laundering Order and any other relevant legal or statutory requirements.

5.3.4 Finally, it should be noted that, a Registered Person may have made contractual agreements, representations or other binding commitments to Clients’. The JFSC expects Registered Persons to honour such commitments. Depending on the facts, Outsourcing arrangements that breach such commitments may also breach applicable regulatory requirements, such as the requirements under the Codes of Practice for a Registered Person to conduct its business with integrity and where applicable act in the best interests of its Client.

5.4 Should the Governing Body formally consider and document its consideration of any Outsourcing arrangements through board minutes (or, where appropriate, other similar documents formally recording its decision)?

5.4.1 The Outsourcing Policy is premised on an understanding that, amongst other things, Registered Persons remain fully responsible and accountable to the JFSC for any Outsourced activity. Since the Governing Body is ultimately responsible for the management and conduct of a Registered Person’s affairs; the JFSC would expect to see, upon request, board meeting minutes of the Governing Body evidencing that it had carefully considered any Outsourcing arrangements it implemented.

5.4.2 In certain circumstances, it may be sufficient for a Governing Body to approve a general Outsourcing Policy and delegate the handling of specific Outsourcing arrangements to particular individuals or committees. However, the JFSC would still expect to see, upon request, board meeting minutes of the Governing Body evidencing that it had carefully considered the activities of the particular individuals or committees in respect of the particular Outsourcing arrangements. In all cases, Registered Persons must be able to demonstrate to the JFSC that any Outsourcing arrangements are effective, reliable and robust and comply with the Core Principles of the Outsourcing Policy.

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21 As such terminology is understood within the context of the Money Laundering Order.
22 See paragraph 12 of section 5.1 of the AML/CFT Handbook.
23 Of particular importance are AML/CFT Handbook: (i) section 2.4.4 which addresses outsourcing and (ii) paragraph 5 of section 9 which clarifies that for the purpose of screening, awareness and training of employees, the term “employees” will include temporary and contract employees, and the employee of any external party fulfilling a function in relation to a relevant person under an outsourcing agreement.
5.4.3 For the avoidance of doubt, the JFSC would expect the Governing Body to adopt the approach, outlined above, in cases where it was Outsourcing within its Group to a “specialised central support function” (as described at paragraph 6.3 of Part V).

5.5 What are the JFSC’s expectations in the event that Outsourced Activities are Sub-Outsourced?

5.5.1 The JFSC expects Registered Persons to ensure that the same requirements are met in respect of any Sub-Outsourcing arrangements as would apply in respect of any Outsourcing arrangements.

5.5.2 Registered Persons contractual arrangements with their Service Providers should cover possible Sub-Outsourcing arrangements (including where they are prohibited).

5.5.3 For the avoidance of doubt,

5.5.3.1 Sub-Outsourcing includes arrangements with a Sub-contractor that is within the same Group or is a third party which is not in the same Group as the Service Provider. Again, in such cases, the same principles should be applied as would be applied if the Sub-Outsourcing arrangements were Outsourcing arrangements.

5.5.3.2 the premise underlying the Outsourcing Policy and Guidance Notes that Registered Persons remain fully responsible and accountable to the JFSC for any Outsourced activity which they may Outsource continues to apply (to the Registered Person) in circumstances where Outsourced activity has been Sub-Outsourced.
6. FAQs relating to particular core principles

6.1 Why does the JFSC provide that a Registered Person should conduct due diligence; have effective policies and procedures; or maintain appropriate contingency plans either itself or “where appropriate through another member of the same Group” (Core Principle No.’s 1, 3 and 4 Guidance in paragraphs 4.2, 4.4, and 4.5, respectively of Part IV)?

6.1.1 The JFSC recognises that, in certain circumstances, Registered Persons may enter into Outsourcing arrangements, pursuant to which monitoring or due diligence is conducted; policies, and procedures are implemented and contingency plans are maintained by other Group members.

6.1.2 In such circumstances, Registered Persons may rely upon such activities being carried out by other Group members provided that they can demonstrate that the Outsourcing arrangements:

6.1.2.1 Comply with any applicable legal or regulatory requirements;

6.1.2.2 Are in their Clients’ best interests; and

6.1.2.3 Do not give rise to any undue risks having regard to, amongst other things, the Service Provider and its jurisdiction.

6.1.3 The ability to rely on members of a Group, as described above, only applies to structures involving bodies corporate. Should a Registered Person consider another structure, involving different entities (i.e. not bodies corporate), that does not fall within these parameters is equivalent to a Group structure, it may approach the JFSC to determine whether it is able to place reliance on other members of such a “group” in the same way.

6.1.4 For the avoidance of doubt, Registered Persons remain fully responsible and accountable to the JFSC in respect of any Outsourced activity irrespective of whether they rely on a third party to conduct due diligence on their behalf. The Registered Person has to be able to demonstrate its oversight of these Outsourced arrangements.

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24 Registered Persons should be able to provide the JFSC with documentary evidence demonstrating the rationale and procedures pursuant to which they satisfied themselves that the Outsourcing arrangements were appropriate.

25 By way of example, where a Registered Person relies on another Group member to monitor Outsourcing arrangements, the Registered Person should still satisfy itself that effective monitoring is in fact taking place (e.g. by appropriate internal auditing).

26 The definition of “Group” in the Glossary is based on the Companies Law definition which relates to body corporates.
6.2 What does the JFSC mean when it suggests that, in cases where the Service Provider is an entity within the same Group as the Registered Person, “the JFSC’s expectation of appropriate written agreements may not amount to a written, legally binding agreement that covers the specific nature of the Outsourcing in as much detail as would otherwise be required” (Core Principle No. 2 Guidance in paragraph 4.3.4 of Part IV)?

6.2.1 The specific nature of such agreements will always depend on the particular facts of each case. By way of example, such less detailed agreements may be appropriate in circumstances where there is some form of overarching framework agreement between the Registered Person and the Service Providers which provides robust and enforceable procedures pursuant to which particular Outsourcing arrangements may be entered into pursuant to service level agreements. The Registered Person does however need to consider whether the documentation relating to the arrangements adequately protect its Client’s interests and meet all other relevant legal and regulatory requirements.

6.3 What is meant by “specialised central support functions” (Core Principle No. 2 – Guidance in paragraph 4.3.4 of Part IV)?

6.3.1 What the JFSC has in mind are so-called “centres of excellence” and other similar entities or arrangements which are normally used by large banking and other financial institutions. These are specific entities within a large Group of companies to which all entities in that Group Outsource specific activities (e.g. IT, finance-related or other functions).

6.3.2 It should be noted that use of such “centres of excellence” may not always be appropriate because the legal, tax or regulatory framework in their jurisdiction prevents this or presents a significant impediment to such Outsourcing.

6.3.3 Where a Registered Person intends to use such a specialised central support function as its Service Provider, the guidance at paragraph 6.2.1 applies.

6.3.4 Registered Persons seeking to use such specialised central support functions are reminded that they remain fully responsible and accountable to the JFSC for any activity which is Outsourced and they should also be able to satisfy themselves that the other Core Principles are still satisfied and all other relevant legal and regulatory requirements.

6.4 What is the timeframe in which a Registered Person should be able to implement its contingency plans if its Outsourcing arrangements are terminated or suffer a significant interruption (Core Principle No. 4 – Guidance in paragraph 4.5 of Part IV)?

6.4.1 The specific timeframe will depend on the facts of each case, but, in all cases, the JFSC expects Registered Persons to implement any such contingency plans as quickly as is reasonably possible having regard to those particular facts.
6.5 What constitutes a “significant interruption” (Core Principle No. 4 – Guidance in paragraph 4.5 of Part IV)?

6.5.1 The JFSC considers a “significant interruption” to be any interruption that has a serious and adverse impact on the performance of any Outsourced activity (e.g. a natural disaster or, major failure of the IT network).

6.6 When the JFSC responds that it has “no objection”, to an Outsourcing Notification by the Registered Person of its proposed Outsourcing arrangements does this mean that the JFSC has implicitly approved the proposals (Core Principle No. 5 – Guidance on paragraph 4.6 of Part IV)?

6.6.1 No. Unless the JFSC provides express written confirmation that it has approved any proposed Outsourcing arrangements, then no such approval should be implied. A Registered Person should however await a “no objection” in writing from an officer of the JFSC before entering into an Outsourcing arrangement.

6.7 What “further action” might the JFSC require a Registered Person to take in respect of its Outsourcing proposals (Core Principle No. 5 – Guidance in paragraph 4.6 of Part IV)?

6.7.1 Any required further action will depend on the particular facts of each case. For example, the JFSC may require the Registered Person to provide its Clients’ or the JFSC with further information about the nature of the Outsourced activity; the Service Provider; or other relevant aspects of the proposed Outsourcing arrangements.

6.8 What might prevent the JFSC from exercising its supervisory functions effectively (Core Principle No. 6 – Guidance in paragraph 4.7 of Part IV)?

6.8.1 Again, this will depend on the particular facts of each case. For example, where Outsourcing arrangements involve foreign jurisdictions, the JFSC will need to be able to continue to effectively supervise the arrangements. This ability might be impaired by factors such as increased supervision costs; data protection, secrecy or other laws in the foreign jurisdiction that might prevent the JFSC from obtaining information; or a lack of mutual co-operation arrangements between the JFSC and regulatory authorities in the Service Provider’s jurisdiction. Registered Persons should be able to demonstrate to the JFSC that, where relevant, adequate measures are in place to address any such risks.

6.8.2 By way of example, where financial records or other information which the JFSC might need to obtain in order to exercise its supervisory or enforcement powers is transferred to a jurisdiction which has secrecy laws the Registered Person should take adequate steps to ensure that such laws will not be used to prevent the JFSC accessing such information and should periodically test whether these measures are effective.
6.8.3 *Registered Persons* should also be mindful of the fact that they are always accountable to the JFSC for any regulatory breaches in respect of their *Regulated Activity*. 
7. **FAQs relating to particular types of activity**

7.1 **Funds:** where an entity is Licensed as a fund, and the appointment of a Service Provider is exempt from this policy by virtue of compliance with the conditions set out in paragraph 3.2.2.5 what responsibility does the fund have regarding the Service Providers?

7.1.1 It should be noted that the fund’s *Governing Body* is ultimately responsible for the selection, appointment and monitoring of its *Service Providers*. This means that the fund should, amongst other things, monitor, conduct due diligence and implement policies and procedures in respect of the *Service Providers*.

7.1.2 The provisions of any *Regulatory Laws* (which includes the *Codes*) or any other regulatory requirements (e.g. such as *Licence conditions* or *COBO Conditions*) which apply to a *Registered Person* shall continue to apply notwithstanding whether such activity is caught by this Policy or not.

7.2 **Branches: How does the Outsourcing Policy apply between elements of the same legal person (i.e. where a head office conducts activity for its branch or a branch conducts activity for another branch)?**

7.2.1 Where activity the performance of which would materially impair the continuing compliance of the *Registered Person’s Regulated Activity* with the requirements of the *Regulatory Laws* is performed by a head office on behalf of its branch or a branch for another branch (or vice-versa) (“elements of a legal person”), this falls outside the scope of the *Outsourcing Policy*. This is because the branch and the head office, or both branches, are the same legal person. However, it is important that *Registered Persons* recognise that they are still bound by other legal and regulatory requirements, including the *Codes of Practice* and the *AML/CFT Handbook*.27

7.2.2 For the avoidance of any further doubt, if the *Registered Person*’s legal person *Outsources* activity of the *Registered Person* to another legal person (i.e. a *Service Provider*), all such *Outsourced* activity will be caught by the *Outsourcing Policy*.

7.2.3 Pursuant to Principle 3 of the *Codes of Practice*:

7.2.3.1 The *Registered Person* is required, amongst other things, to adequately monitor and control its business. Accordingly, in cases where a *Registered Person* conducts its business in such a way that one element of a legal person carries out activity (that save for the exemption referred to in paragraph 3.2.2.2 would be *Outsourced* activity), on behalf of another, proper corporate governance

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27 Note, for example, that the *AML/CFT Handbook* makes reference to the requirement under the *Money Laundering Order* for a Jersey body corporate or other legal person registered in Jersey that carries on Financial Services Business through an overseas branch to comply with the *Money Laundering Order*. 
mechanisms must be implemented by the Registered Person to ensure that such business is adequately monitored and controlled.  

7.2.3.2 The JFSC does not expect elements of a legal person to conduct due diligence on each other or to enter into binding legal agreements. Further, the JFSC recognises that elements of a legal person may rely upon each other to conduct compliance monitoring and due diligence; implement policies and procedures; and carry out other activity (that save for the exemption referred to in paragraph 3.2.2.2 would be Outsourced activity).

7.2.3.3 Where elements of a legal person rely on each other to carry out activity (that save for the exemption referred to in paragraph 3.2.2.2 would be Outsourcing activity), the branch or head office (as applicable) should be able to demonstrate to the JFSC that its senior management or, Governing Body has adequate capacity, resources and systems and controls in place to ensure that the conduct of any such activity (that save for the exemption referred to in paragraph 3.2.2.2 would be Outsourced activity) being relied upon:

› Complies with any applicable legal or regulatory requirements;

› Is in the interests of any Clients’ of the Jersey branch or head office (as applicable); and

› have properly identified the risks including, the effect that such arrangements might have on AML/CFT risks, and is properly mitigating such risks.

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28 For the avoidance of doubt, it should be remembered that this is the activity conducted in or from within Jersey in respect of which the Registered Person is Licensed (by the JFSC) i.e. the carrying out, by the head office or other branch, of other functions which do not affect the activity which is regulated by the JFSC will not be relevant.

29 Where the branch is relying on the head office or another branch of the same legal person.

30 Where the head office is relying on the branch.

31 Regard should be had to Principle 2 of the relevant Code of Practice.
Appendix 1

Guidance on whether an activity is within the scope of the Outsourcing Policy ("OSP").

Is the Registered Person subject to one of the Regulatory Laws?

Yes

Review the exemptions in the OSP. Is the Outsourced activity excluded from the scope of the OSP?

No

Carry out a risk assessment regarding the Outsourced activity and ask the question - if the Service Provider was to fail to or inadequately perform the Outsourced activity could this materially impair the Registered Person being able to continue:

i) to carry out its Regulated Activity in compliance with regulatory requirements (for the avoidance of doubt includes compliance with all secondary legislation, Notices and Codes of practice made pursuant to the Regulatory Laws)? and/or
ii) to provide services for which it is regulated to its customer(s)?

No

Then not covered by the OSP. But consider other regulatory or legal requirements i.e. Anti-Money Laundering Legislation and Corporate Governance requirements in the Codes.

Yes

Then subject to the OSP. Also consider Corporate Governance requirements in the Codes and other regulatory or legal requirements i.e. Anti-Money Laundering Legislation.

Complete and submit the Outsourcing Notification.

Wait to receive a "no objection" from the JFSC.

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32 This flow chart is for guidance only and is not intended to provide legal advice.