



Jersey Financial  
Services Commission

**Policy Statement: Licensing Policy in respect of those activities that require registration under the Financial Services (Jersey) Law 1998**

Issued: 17 December 2010

**Glossary of terms:**

The following table provides a glossary of terms used in this policy statement

applicant	the person applying for registration under the FS(J)L
the Commission	The Jersey Financial Services Commission
financial service business	as defined by Article 2(1) of the FS(J)L
GIMB	General Insurance Mediation Business
key person	as defined in Article 1 of the FS(J)L
the FS(J)L	Financial Services (Jersey) Law 1998
licence	The registration certificate issued to a person that is registered to undertake financial service business under Article 9 of the FS(J)L
principal person	as defined in Article 1 of the FS(J)L
registered person	a person registered by the Commission under Article 9 of the FS(J)L
regulated activities	Undertaking one of the following financial service business activities: <ul style="list-style-type: none"> <li>• Investment Business as defined by Article 2(2) of the FS(J)L</li> <li>• Trust Company Business as defined by Article 2(3) of the FS(J)L</li> <li>• General Insurance Mediation Business as defined by Article 2(7) of the FS(J)L</li> <li>• Money Service Business as defined by Article 2(9) of the FS(J)L</li> <li>• Fund Services Business as defined by Article 2(10) of the FS(J)L</li> </ul>
relevant Codes of Practice	<ul style="list-style-type: none"> <li>• Codes of Practice for Fund Services Business</li> <li>• Codes of Practice for General Insurance Mediation Business</li> <li>• Codes of Practice for Investment Business</li> <li>• Codes of Practice for Money Service Business</li> <li>• Codes of Practice for Trust Company Business</li> </ul>
respective Accounts, Audits and Reports Orders	<ul style="list-style-type: none"> <li>• Financial Services (Fund Services Business (Accounts, Audits and Reports)) (Jersey) Order 2007</li> <li>• Financial Services (General Insurance Mediation Business (Accounts, Reports and Solvency)) (Jersey) Order 2005</li> <li>• Financial Services (Trust Company and Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2007</li> </ul>

*In addition to this Policy, the Commission has also published the following relevant Policy Statements and Guidance Notes which can be found on the Commission's website*

*[http://www.jerseyfsc.org/the\\_commission/general\\_information/policy\\_statements\\_and\\_guidance\\_notes/index.asp](http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp) :*

- *Distinguishing between the authorisation requirements of a Managed Trust Company and a Participating Member within an Affiliation*
- *Natural persons carrying on a single class of Trust Company Business*
- *The Commission's Decision-Making Process*
- *Various Guidance Notes in relation to the Jersey Funds Sector*

*The Commission has revoked the Guidance Note with respect to Span of Control following the publication of revised Codes of Practice effective from 1 July 2014. Regulatory span of control requirements can be found under Principle 3 of the relevant Codes of Practice.*

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## **PART 1: Introduction, Regulation and Scope**

### **1. Introduction**

- 1.1 For more than 40 years, Jersey has been involved in the international financial services sector. Over this period the Island has monitored developments in the international sector and encouraged the breadth and depth of the range of services offered by Jersey organisations.
- 1.2 Consequently, Jersey remains at the forefront of offshore financial centres, a position which has recently been recognised in the 2008 research conducted by Citywealth, which according to leading advisers and wealth managers, recommends Jersey as one of the top three global financial centres.
- 1.3 Jersey is committed to maintaining its international status and to attracting higher value-added inward investment. The States of Jersey, the Island's government, have appointed a Director within the Enterprise and Business Development team whose role is to develop international trade and inward investment and to facilitate new business seeking to establish in the Island.
- 1.4 For those considering the conduct of financial service business in Jersey the following may be useful websites:
  - 1.4.1 States of Jersey – <http://www.gov.je/Industry/Pages/default.aspx>; and
  - 1.4.2 Jersey Finance Limited - <http://www.jerseyfinance.je>.
- 1.5 Additionally, where an applicant is considering operating in Jersey as either:
  - 1.5.1 a managed entity acting for a collective investment fund; or
  - 1.5.2 a managed Trust Company Business,
  - 1.5.3 section 12 of this policy statement on Managed Businesses, will be of particular interest.

### **2. Regulation**

- 2.1 In common with many international finance centres the provision of certain financial services in or from within Jersey is subject to regulation and supervision by an independent authority. A regulatory framework has been established which sets requirements for both the independent authority and those providing financial services who are subject to regulation and supervision.
- 2.2 In Jersey the independent authority is the Jersey Financial Services Commission (the "**Commission**") and the financial services subject to regulation and supervision by the Commission are set out in the following primary legislation:
  - 2.2.1 Collective Investment Funds (Jersey) Law 1988;
  - 2.2.2 Banking Business (Jersey) Law 1991;
  - 2.2.3 Insurance Business (Jersey) Law 1996; and

- 2.2.4 Financial Services (Jersey) Law 1998 (“**the FS(J)L**”), the scope of which is:
  - 2.2.4.1 Investment Business (Article 2(2));
  - 2.2.4.2 Trust Company Business (Article 2(3) to 2(6));
  - 2.2.4.3 General Insurance Mediation Business (“**GIMB**”) (Article 2(7) & (8));
  - 2.2.4.4 Money Service Business (Article 2(9)); and
  - 2.2.4.5 Fund Services Business (Article 2(10)).
- 2.3 The Jersey regulatory framework comprises the following:
  - 2.3.1 Primary legislation – sets legal obligations, and is adopted by the States of Jersey sanctioned by the Privy Council, registered in the Royal Court and then brought into force in one of two ways:
    - 2.3.1.1 on a date or dates specified in the Law; or
    - 2.3.1.2 on a date or dates determined by an Appointed Day Act passed by the States.
  - 2.3.2 Secondary legislation – sets detailed legal obligations in specific areas but can only be utilised when primary legislation provides for its use,
    - 2.3.2.1 in the form of a Regulation which is made by the States of Jersey; or
    - 2.3.2.2 in the form of an Order which is made by the relevant Minister<sup>1</sup>.
  - 2.3.3 Notices – provide detail on specific matters as required by legislation, and are issued by the Commission or other government agencies, for example: notices issued in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998 in respect of fees.
  - 2.3.4 Policy statements – set the Commission’s policy in respect of some aspects of legislation.
  - 2.3.5 Codes of Practice – establish sound principles for the conduct of financial service business and in some instances repeat a number of legislative requirements. Codes of Practice are issued by the Commission using powers provided in the laws listed in 2.2.
  - 2.3.6 Guidance notes – set out a methodology for complying with either a legislative or regulatory requirement.

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<sup>1</sup> Regulatory legislation falls within the remit of the Minister for Economic Development whereas legislation relating to the countering of money laundering and the financing of terrorism is within the remit of either the Minister for Treasury & Resources or the Minister for Home Affairs.

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2.4 The regulatory framework described in 2.3 includes documentation designed to counter money laundering and the financing of terrorism including the *Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business regulated under the Regulatory Laws*.

### 3. Scope of this policy statement

3.1 Dependent upon the type(s) of financial service to be provided, a person may need to make an application for registration to the Commission under at least one of the laws listed in 2.2<sup>2</sup>. This policy statement applies to persons wishing to make an application to undertake financial service business that falls within the scope of the FS(J)L (2.2.4) and considers the “fit and proper” assessment of an applicant entity. It is not a policy statement on assessing the “fit and proper” status of the principal persons and key persons<sup>3</sup> of an applicant, as required by Article 13 of the FS(J)L.

3.2 Where a person wishes to make an application to undertake business that is within the scope of one of more of 2.2.1 to 2.2.3 reference should be made to the relevant licensing policy<sup>4</sup> or Funds Guide.

3.3 An application for registration should be made to the Commission in accordance with Article 8 of the FS(J)L using the relevant application form (see Part 3 of this policy statement, page 19). Article 9 of the FS(J)L provides the Commission with the power to either:

3.3.1 register a person with or without attaching a condition; or

3.3.2 refuse to register a person.

3.4 In determining whether to register or refuse to register an applicant the Commission is required to consider a number of specific areas. Article 9(3) of the FS(J)L sets out the grounds, one or more of which may give the Commission cause to refuse to register a person.

3.5 Specifically, Article 9(3)(a) of the FS(J)L requires that the Commission satisfies itself that the applicant is a fit and proper person to be licensed having regard to the information before it as to the:

3.5.1 integrity, competence, financial standing, structure and organisation of the applicant;

3.5.2 persons employed by or associated with the applicant for the purposes of the applicant’s business or principal persons in relation to the applicant; and

3.5.3 description of the business which the applicant proposes to carry on.

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<sup>2</sup> If in doubt regarding the scope of regulated activities in Jersey, please contact the Commission – details provided in section 15 of this policy statement.

<sup>3</sup> Principal person and key person are defined terms in Article 1 of the FS(J)L.

<sup>4</sup> Policies have been published in respect of undertaking deposit-taking and insurance business in Jersey.

- 3.6 Should the Commission consider that, based on the information available for consideration, it may not grant a licence to an applicant, the process to be followed in determination of the application is published in the Guidance Note on *The Commission's Decision-Making Process*. This process includes a provision for the applicant to comment on the facts underlying the Commission's concerns and to address any misunderstanding.
- 3.7 The Commission has set out the policies in this statement within the context of an application. However, Article 9(4) of the FS(J)L sets out the circumstances in which the Commission may revoke a registration, paragraph (e) of Article 9(4) states: "... on one or more of the grounds set out in paragraph (3), which shall apply in such a case with the substitution for references to the applicant of references to a registered person". Therefore, unless the context precludes such construction, where this paper refers to an applicant it should also be read that, except as varied by the Commission, the policy is a continuing obligation on a person granted a licence to undertake a financial service business.
- 3.8 This remainder of this policy statement is set out as follows:
- 3.8.1 Part 2: the Commission's "fit and proper" assessment covering the following areas:
- 3.8.1.1 Integrity (section 5);
  - 3.8.1.2 Competence (section 6);
  - 3.8.1.3 Financial Standing (section 7); and
  - 3.8.1.4 Structure/Organisation (section 8).
- 3.8.2 Part 3: Application for a licence: provides the general criteria applied by the Commission when assessing an application as well as links to the application forms available on the Commission website.

## **PART 2: The Commission's "fit and proper" assessment**

### **4. General**

- 4.1 It is the Commission's starting point that an applicant be able to demonstrate (either in its own name or in the name of its immediate parent) that it meets all of the criteria set out in 4.1.1 to 4.1.3. However the criteria should be considered in conjunction with 4.2 to 4.4 and each application is considered on its own merits:
- 4.1.1 demonstration of a minimum of 3 years relevant and satisfactory track record as a person supervised by a relevant supervisory authority<sup>5</sup>;
  - 4.1.2 a satisfactory audit history, as demonstrated by the audit reports provided on its, or its immediate parent's financial statements; and
  - 4.1.3 a well established and stable management team with the necessary developed capability in respect of corporate governance and conduct of business matters relevant to the proposed regulated activity(ies) and risk profile of the applicant.
- 4.2 With respect to 4.1, where an applicant is unable to demonstrate a corporate track record, either on its own or through its immediate parent, it is the policy of the Commission that an applicant may provide evidence for consideration which aims to establish that the proposed shareholders and directors meet the policy, as stated, in terms of their own experience. This may be the case where, for example, a managed entity is being considered for either Fund Services Business or Trust Company Business, or the entity is recently formed.
- 4.3 In the context of an applicant whose ultimate beneficial owner is a person connected with a higher risk jurisdiction<sup>6</sup>, the applicant will be expected to demonstrate a longer relevant and satisfactory track record and mature relationship with a relevant supervisory authority.
- 4.4 When determining an application, it is the Commission's policy to consider the risk profile of the applicant, including the nature of the activities that are to be provided and the intended customer base, having particular regard to protecting and enhancing the reputation and integrity of Jersey.
- 4.5 The fit and proper determination is both an initial and ongoing assessment in relation to the conduct of the applicant and those persons employed by or associated with the applicant. This means that the criteria set out below will apply to an existing registered person where there is a material change in its circumstances, e.g. it is anticipating a change of ownership (see 11.8).
- 4.6 For the purposes of this policy statement, the Commission interprets "associated with the applicant" to include both natural persons and bodies corporate that might affect the "fitness and propriety" of the applicant and therefore may encompass the following persons:

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<sup>5</sup> "relevant supervisory authority" is as defined in the Financial Services (Jersey) Law 1998.

<sup>6</sup> In assessing which jurisdictions may present a "higher risk", the Commission will have regard to Appendix D (lists 1 and 2) of the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism together with objective data published by such sources as are listed on the [Commission's website](#).

- 4.6.1 those that will perform functions on behalf of the applicant through the presence of an outsourcing or service level agreement;
  - 4.6.2 those that meet the definition of a key person set out in Article 1 of the FS(J)L and which are not employed by the applicant, e.g. where an individual holds the position of a key person but is employed by an entity that is a sister<sup>7</sup> or parent entity of the applicant;
  - 4.6.3 bodies corporate that are a subsidiary or sister company of the applicant;
  - 4.6.4 bodies corporate where the applicant owns or controls 20%, or more, of the voting rights; and
  - 4.6.5 those that have close business links with the applicant, for example acting as a business introducer or an entity that has common ownership but no legal structural interaction.
- 4.7 As stated in 3.1, this policy statement concentrates on the assessment of the applicant, not the principal and key persons; however, it is inevitable that in smaller organisations it will be extremely difficult to distinguish between the two for the purposes of the Commission's assessment process.
- 4.8 Where the applicant is a company part (b)(iii) of the definition of principal person in Article 1 of the FS(J)L states: *"a person in accordance with whose directions, whether given directly or indirectly, any director of the company, or director of any other company of which the company is a subsidiary, is accustomed to act (but disregarding advice given in a professional capacity)"*. On occasion these controllers may not be immediately apparent as they may not be a member of the company board e.g. those that are principal persons by virtue of shareholding. The Commission expects an applicant to be transparent in its application, especially in respect of its structure and organisation including governance, and any controllers falling within this definition should submit a personal questionnaire to the Commission for consideration.

## 5. Integrity

- 5.1 To a very large extent, the integrity of an applicant, especially where an applicant is a small or medium sized organisation, is a reflection of the individuals employed by or associated with the applicant.
- 5.2 An applicant must be able to demonstrate that it intends to, and on an ongoing basis through compliance with the relevant Codes of Practice, will:
- 5.2.1 conduct its business with integrity;
  - 5.2.2 have due regard for the interests of its customers; and
  - 5.2.3 provide appropriate supervision and training to those employed by or associated with it.

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<sup>7</sup> An entity within the same group as the applicant.

- 5.3 In assessing the integrity of an applicant and those persons employed by or associated with it, it is the Commission's policy to consider whether any of their past actions or conduct impact on their ability to meet the expected standards in respect of integrity. Further information in this area may be found in the application form relevant to the proposed regulated activity of the applicant (see section 14 of this paper for links to the application forms).
- 5.4 The Commission considers the provision of information that is both complete and accurate to be an indication that an applicant is acting with integrity. Failure of an applicant to complete any form or supply any information required in respect of an application in an honest manner, or the intentional omission of any relevant material, will be taken into account by the Commission.

## **6. Competence**

- 6.1 Competency, with respect to those employed by or associated with an applicant may be evidenced by the attainment of relevant qualifications or by having sufficient relevant experience for the function they are charged with performing.
- 6.2 An applicant must be able to demonstrate that it is, and will have procedures that will assist it to remain, competent to undertake its regulated activities, including the ability to comply with the aspects of the regulatory framework relevant to the proposed regulated activities of the applicant.
- 6.3 An applicant must be able to demonstrate appropriate supervision and training of both entities and individuals charged with performing particular functions.
- 6.4 The Commission has specific interest in the collective competence of those that govern the entity, for example, the Board of the applicant; a Board (or its equivalent) should comprise individuals with a wide range of relevant skills and competence.
- 6.5 In assessing the competence of an applicant, the Commission will consider the particular regulated activities it proposes to undertake, in particular the volume and type of business and the jurisdictions in which it will be offering its services.
- 6.6 Further information in respect of competency is provided in the relevant Codes of Practice.

## **7. Financial Standing**

- 7.1 An applicant will be expected to maintain, and be able to demonstrate the existence of, adequate financial resources in terms of capital adequacy, solvency and professional indemnity insurance.
- 7.2 It is the Commission's policy that after taking account of contingent liabilities, a registered person must be, and be likely to remain, a going concern.
- 7.3 The Commission considers that adequate financial standing is not merely a matter of meeting liabilities as they fall due, but of maintaining adequate financial resources to enable a registered person to survive periods of business slow down or market disruption.

- 7.4 Systems and controls associated with managing the financial risks of the applicant, including liquidity management and proper care of customers' money and assets, are also important considerations.
- 7.5 Details of the financial resource requirements for each registered person can be found in section 5 of the relevant Codes of Practice<sup>8</sup>.

## **8. Structure/Organisation**

- 8.1 The Commission considers that the structuring and organisation of an applicant are essential elements of an applicant's ability to satisfy the Commission that it is a fit and proper person to hold a licence.
- 8.2 This section has been divided into three separate elements:
- 8.2.1 Structure, including access to resources (section 9);
  - 8.2.2 Systems and controls (section 10); and
  - 8.2.3 Transparency of ownership (section 11).

## **9. Structure**

- 9.1 An applicant will be expected to restrict its activities to the regulated activities<sup>9</sup> for which it holds licences and other activities that are wholly associated with or allied to the licensed business. When determining an application it is the Commission's policy to consider the activities of associated persons (see 4.6) to assess whether they may negatively impact on the applicant.
- 9.2 In terms of physical structure it is the policy of the Commission that an applicant should have the resources or access to the resources necessary to perform its regulated activities and to manage its risk profile. In particular, if an applicant intends to provide services to customers who are themselves connected with a higher risk jurisdiction or for whom structures are established which will engage in activities with such jurisdictions, additional specialist resources would be expected to be deployed.
- 9.3 Additionally, the applicant must be structured and organised in such a way that will enable the Commission to fulfil its oversight function with respect to the regulatory framework.
- 9.4 The Commission considers that an applicant can demonstrate availability of resources in one of three ways:
- 9.4.1 operate in Jersey maintaining staff and business premises (see also 9.6);

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<sup>8</sup> With the exception of the Codes for Money Service Business, as no financial resource requirement has been determined. In addition, in the case of managed entities applying to register for fund services business, there is less prescription as to how the requirements for financial standing may be met.

<sup>9</sup> For the purposes of this section regulated activities should be read to also include the activities of deposit-taking and insurance as defined by the Banking Business (Jersey) Law 1991 and Insurance Business (Jersey) Law 1996 respectively.

- 9.4.2 operate in Jersey as a managed entity utilising the services of a manager that is physically located in Jersey and, where relevant, has been licensed by the Commission to act in the capacity of manager of another business (see also section 12); or
- 9.4.3 operate in Jersey through an organisation that is regulated and supervised by a relevant supervisory authority for the provision of services that correspond to the definition of GIMB provided in Article 2(7) of the FS(J)L (see also 9.9 and 9.10).
- 9.5 Whichever of the options set out in 9.4 is selected, an applicant must be able to demonstrate that it will have, and will be able to maintain:
- 9.5.1 sufficient management oversight and control of its regulated activities;
- 9.5.2 comprehensive operational records, relating to its regulated activities, which must be readily accessible in Jersey;
- 9.5.3 comprehensive financial information setting out its financial position, which must be readily accessible in Jersey. Further information on the form of the accounts/financial statements may be found in the respective Accounts, Audits and Reports Orders that, inter alia, determine the accounting records to be kept by a registered person<sup>10</sup>;
- 9.5.4 appropriate systems and controls relating to its regulated activities and risk profile; and
- 9.5.5 relevantly qualified and experienced staff to competently deliver the financial services it offers which may include the use of third party service providers or resources from other entities within the same group<sup>11</sup>.
- 9.6 With respect to 9.4.1 it is the Commission's policy that an applicant should be able to demonstrate the characteristics shown below; however, this list is neither prescriptive nor exhaustive as the Commission will assess each applicant on a case by case basis:
- 9.6.1 *Local management and control (heart and mind of management)*: This requirement should be read in conjunction with the specific requirements contained within Section 3<sup>12</sup> of the relevant Codes of Practice. In most cases an applicant will demonstrate local management and control if the balance of the board are

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<sup>10</sup> The exception to this is Money Service Business where no Order in respect of Accounts, Audits and Reports has been made. The accounting record requirements for a Money Service Business applicant are those that apply to any business taking the same form as the applicant, e.g. Companies (Jersey) Law 1991, **or** those applicable as a result of other regulated activities undertaken by the applicant, e.g. deposit-taking business.

<sup>11</sup> Reference should be made to the Commission's policy statement and guidance note on Outsourcing.

<sup>12</sup> Section 3 of the Codes of Practice states: "A registered person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems".

resident in Jersey and the Jersey element of the board are actively engaged in the governance of the business<sup>13</sup>.

- 9.6.2 Where an applicant is the Jersey subsidiary of an international regulated financial services group, the Commission considers it desirable that at least one board member of the Jersey entity should be an individual who also sits on the board of a regulated parent.
- 9.6.3 Whilst the term “director” is a defined term in the FS(J)L, with respect to directors of an applicant, the Commission’s policy is to accept only ‘natural persons’ to act in such a capacity.
- 9.7 In an age of increasing specialism, globalised corporate operations and information technology, the Commission recognises that applicants may wish to utilise group resources outside the Island or outsource certain functions to external third parties able to offer particular expertise. However, it is the Commission’s policy that even where functions have been outsourced the applicant remains accountable to the Commission for all regulatory matters.
- 9.8 Where elements of the applicant’s systems, controls or functions are to be outsourced, the Commission will consider whether such arrangements are in compliance with the guidelines set out in the Commission’s published policy on Outsourcing and whether any conflicts arising from such outsourcing arrangements are addressed in accordance with the relevant Codes of Practice.

#### General Insurance Mediation Business

- 9.9 Increasingly, general insurance products are promoted by GIMBs via telephone or on-line facilities using computerised systems that provide both quotations and administration facilities. In these circumstances, it is not unusual for a GIMB to operate outside the vicinity of its customers as it is not essential for the proper operation of its business that it has face-to-face contact with its customers.
- 9.10 When determining a GIMB application, where the applicant does not propose establishing a physical presence in Jersey, the Commission will consider the extent to which it is able to supervise the regulated activities of the applicant by reference to the effectiveness of the regulatory environment to which the applicant is already subject - the “home” jurisdiction.

### **10. Systems and controls**

- 10.1 It is the Commission’s policy that an applicant must be able to demonstrate:
- 10.1.1 the existence of adequate risk management systems; and
- 10.1.2 the existence of systems and controls designed to manage its affairs effectively for the proper performance of its regulated activities, including those that evidence transparency in its business arrangements.

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<sup>13</sup> Where the applicant’s presence in Jersey is through a “branch” rather than a Jersey body corporate the Commission recognises that the balance of the board, of which the Jersey operation is a “branch”, will not be present in Jersey.

- 10.2 The Commission will look for evidence that the applicant will have adequate systems and controls in place and is adequately resourced, in terms of both staff and/or service providers and financial resources, to conduct the regulated activities and to manage its risk profile.
- 10.3 If an applicant intends to provide services to customers who are themselves connected with a higher risk jurisdiction or for whom structures are established which will engage in activities with such jurisdictions, it must be able to demonstrate that it has the scale and depth of resources pertinent to the customer base together with sufficiently developed systems and controls which are sophisticated enough to adequately deal with the enhanced risk profile of such customers.
- 10.4 An applicant will also be expected to satisfy the Commission that it will have in place, and will systematically apply, robust systems and controls to enable it to comply with the relevant Codes of Practice relating to the regulated activities it proposes to undertake. Reference should be made to Section 3 of the relevant Codes of Practice.

## **11. Transparency of Ownership**

- 11.1 In considering the ownership structure of an applicant, the Commission must be able to identify the individuals who ultimately own the business and who exercise control over the appointment of the management team as well as the management team and any individuals who will have significant powers and responsibilities in relation to the regulated activities.
- 11.2 The Commission should be able to look through the ownership structure and, if an ownership structure is unduly complex and/or lacks transparency, it would expect the applicant to explain and justify the rationale for having such a structure, particularly when the proposed structure falls outside that described in 11.3.
- 11.3 For regulatory purposes, the most desirable ownership structure involves the applicant being directly owned by either natural persons (either subject to relevant regulatory supervision elsewhere, or resident in Jersey) or by an entity or entities that are currently appropriately regulated elsewhere.
- 11.4 In the case of an applicant which is ultimately owned by persons connected with a higher risk jurisdiction, an applicant's ownership structure will be subject to heightened scrutiny.
- 11.5 Any other ownership structure will be considered on a case by case basis. In reaching its decision, the Commission will assess whether the introduction of additional safeguards at each point in the proposed ownership chain, which falls outside of the ideal circumstances set out in 11.3, would be sufficient to ensure that regulatory supervision remains effective.
- 11.6 It is possible that the exercise of a company's share options may have an impact on the controlling interests of that company. Consequently, it is the Commission's policy that an applicant must declare any option arrangements in its application as the Commission will need to consider the terms of any such options when assessing the structure and organisation of the applicant. On an ongoing basis, the Commission should be notified of the exercise of, proposed pledge of, offer of options over, or options granted in respect of, any shares of a registered person, except that this should not stand in the way of any commercial loan arrangements.

- 11.7 Where the share capital of an applicant is held by one or more nominees, the Commission would expect the applicant to disclose the relevant nominee agreement evidencing the identity of the beneficial owner of the shares and the terms of the nominee agreement. Where the nominee holding meets the definition of a principal person then the Commission will apply the fit and proper test to both the nominee shareholders and the beneficial owners of the shares.
- 11.8 Inter alia, the Commission considers an application for a licence on the basis of the ownership structure and persons employed by or associated with the applicant (see 4.6) at the time the application is made. Any subsequent change to that structure may alter the Commission's assessment of the registered person as a fit and proper person. Consequently, potential amendments to the structure of the registered person should be advised to the Commission sufficiently in advance such that it has the opportunity to properly consider the proposals and determine whether to object. Any such structural amendments should be notified in accordance with Article 14 of the FS(J)L.
- 11.9 The Commission can require the removal of any principal person or key person in the event that it concludes that their continued presence in the structure is no longer compatible with the registered person being considered as fit and proper.
- 11.10 Ownership by a Trust
- 11.10.1 Dependent on its position in the ownership structure, the presence of a trust in the ownership structure may not, of itself, disqualify the applicant from being granted a licence. However, such an arrangement does not sit comfortably with the most desirable ownership structure set out in 11.3. One particular difficulty is that trustees have a duty to act in the best interest of the trust beneficiaries. This duty may at times be in conflict with a trustee's obligations, as a principal person of a registered person, to act in accordance with the regulatory framework. Accordingly, such ownership may present an additional hurdle in obtaining regulatory consent.
- 11.10.2 In considering any such ownership structures, the Commission will need to identify those persons who control and/or exercise significant influence over the applicant.
- 11.10.3 The Commission would ordinarily expect the trustee(s) of a trust that owns an applicant<sup>14</sup> to be regulated by a relevant supervisory authority for the purposes of preventing and detecting money laundering and the financing of terrorism.
- 11.10.4 In such cases, the Commission will wish to examine the trust deed and any other documents it considers relevant. In addition, the applicant would be expected to provide full details of the rationale, including the commercial reasons for using a trust in its ownership structure.

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<sup>14</sup> There may be cases where an applicant can demonstrate a clear rationale for being owned by a trust with an unregulated/non-Jersey trustee. The Commission will consider such situations on a case by case basis and will pay particular regard to the professional background and experience of any nominated trustee and the extent to which the other requirements of this policy are satisfied.

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11.10.5 In respect of 11.10.2, the Commission expects to be satisfied that all persons that control or exercise significant influence over the applicant meet the fit and proper criteria, in the case of a trust, this includes:-

11.10.5.1 the trustee(s) of a trust which owns the applicant, whether as the holder(s) of shares in the capital of the applicant, or otherwise;

11.10.5.2 any person whose directions or instructions in relation to the applicant, its administration or its ownership, the trustee(s) follows excluding a person who gives advice in a professional capacity only); and

11.10.5.3 the settlor, protector and beneficiaries of the trust, depending on their formal powers and/or level of influence over the trustees.

## **12. Managed Businesses**

12.1 As noted at 9.4 of this policy statement the Commission recognises that there are circumstances in which an applicant will be able to undertake its business in reliance on resources which do not include fully staffed premises of its own in Jersey. One such circumstance is where the business of the applicant is to be managed in Jersey by another registered person, which has been, where relevant, licensed by the Commission to act in the capacity of manager of another business<sup>15</sup>.

12.2 Under 9.4.2 resources are to be provided to the managed business under a written agreement with a registered person. It is important to note that, once licensed, the managed business is a registered person in its own right and must comply with the applicable regulatory framework, including the relevant Codes of Practice.

12.3 In assessing the fitness and propriety of an applicant that wishes to operate as a managed business, it is the Commission's policy to apply the same standards as an applicant that maintains staff and business premises in Jersey. However, the Commission will additionally consider carefully the arrangements under which the proposed manager (registered person) intends to carry out its management function of the managed business. Specifically, in relation to the provision of services to customers connected with higher risk jurisdictions, further explanation is provided at paragraph 12.6 below.

12.4 In assessing an applicant that is applying to operate as a managed business, the Commission must satisfy itself that it will be able to exercise sufficient regulatory control over the managed entity. Although the managed business may rely to a large extent on the proper exercise of the functions of the manager, the managed business itself will ultimately remain accountable to the Commission for the regulated activity(ies) it undertakes.

12.5 All records relating to the managed business must be readily accessible in Jersey.

12.6 Should a managed business intend to provide services to customers who are themselves connected with a higher risk jurisdiction or for whom structures are established which will engage in activities with such jurisdictions, the Commission will carefully review its

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<sup>15</sup> This option is only available for the regulated activities of Fund Services Business and Trust Company Business.

“fit and proper” assessment of the proposed manager in light of the application. In the context of such an application the Commission will consider such factors as:

- 12.6.1 The number and ratio of executive directors to be provided by the proposed manager;
  - 12.6.2 The quality of the risk assessment undertaken by the proposed manager of the applicant;
  - 12.6.3 The overall framework of systems and control to be implemented by the proposed manager;
  - 12.6.4 Resources to be deployed by the proposed manager, including specific additional compliance resource with requisite experience and expertise to oversee the managed business; and
  - 12.6.5 The financial resources available to the proposed manager.
- 12.7 In a case where paragraph 12.6 applies, where such an application is successful, the Commission is likely to exercise its power (referred to in 3.3.1) to grant a registration with conditions attached. One likely condition would be not to permit the manager to terminate its appointment without first receiving the prior written consent of the Commission. Such consent would only be granted where the proposed new manager is deemed acceptable to the Commission.

### **PART 3: Application for a licence**

#### **13. General**

- 13.1 The Commission recognises that the particular circumstances of each applicant will not be identical. Notwithstanding this it is the Commission's policy that all applicants will be assessed against the same standards. In considering an application against the requirements of this policy, the Commission will seek to identify and mitigate any regulatory risks arising either from the nature of the regulated activities to be undertaken, or from the particular circumstances of an applicant.
- 13.2 It is the Commission's policy that each application will be considered on its own merits and that information relating to an applicant and available to the Commission during the assessment process will be taken into account, including any other relevant information such as the authorisation guides relating to the Collective Investment Funds (Jersey) Law 1988, as appropriate.
- 13.3 It is the Commission's policy to make all enquiries it considers necessary, such as regulator to regulator enquiries and police checks, to determine an application especially if it appears that a particular applicant poses a risk in terms of the guiding principles<sup>16</sup> the Commission is required to consider in pursuance of its functions<sup>17</sup>.
- 13.4 In the circumstances where the applicant is either a subsidiary or branch of an overseas financial services group, the Commission will consider the adequacy of legislation to counter money laundering and terrorist financing that is applicable to that group, and also home supervisor oversight of compliance with that legislation in determination of the application.
- 13.5 In line with Article 9(3) of the FS(J)L an applicant should satisfy the Commission that it is fit and proper to undertake the proposed regulated activities. It is not for the Commission to prove it is not.
- 13.6 Information supplied to the Commission and statements made by the applicant must not be false or misleading and in this regard the provisions of Article 28 of the FS(J)L in respect of false and misleading statements should be noted.
- 13.7 With reference to the statement in 5.1, it is important to note that all individuals wishing to become principal persons or key persons of an applicant are required to complete and submit to the Commission a personal questionnaire. This document can be found on the Commission's website at:  
[http://www.jerseyfsc.org/the\\_commission/general\\_information/forms/index.asp](http://www.jerseyfsc.org/the_commission/general_information/forms/index.asp).
- 13.8 Many of the questions asked in section 4 of the personal questionnaire identify the areas the Commission would, amongst others, consider when determining whether an individual is fit and proper.

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<sup>16</sup> The guiding principles of the Commission are set out in Article 7 of the Financial Services Commission (Jersey) Law 1998.

<sup>17</sup> The functions of the Commission are set out in Article 5 of the Financial Services Commission (Jersey) Law 1998.

13.9 When considering financial matters, applicants must refer to the respective Accounts, Audit and Reports Orders, which, inter alia, require the submission to the Commission of audited annual financial statements<sup>18</sup>.

#### 14. Application forms

14.1 Application forms in respect of specific regulated activities may be found on the Commission website using the following links:

14.1.1 Fund Services Business:

[http://www.jerseyfsc.org/funds\\_securities\\_issues/forms/index.asp](http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp)

14.1.2 General Insurance Mediation Business:

[http://www.jerseyfsc.org/insurance\\_business/general\\_insurance\\_mediation/forms/index.asp](http://www.jerseyfsc.org/insurance_business/general_insurance_mediation/forms/index.asp)

14.1.3 Investment Business:

[http://www.jerseyfsc.org/investment\\_business/forms/index.asp](http://www.jerseyfsc.org/investment_business/forms/index.asp)

14.1.4 Money Service Business:

[http://www.jerseyfsc.org/money\\_service\\_business/forms/index.asp](http://www.jerseyfsc.org/money_service_business/forms/index.asp)

14.1.5 Trust Company Business:

[http://www.jerseyfsc.org/trust\\_company\\_business/forms/index.asp](http://www.jerseyfsc.org/trust_company_business/forms/index.asp)

#### 15. Contacting the Commission

15.1 Having considered this policy statement should an applicant wish to discuss any aspect of applying for a licence the Commission can be contacted as follows:

PO Box 267  
14 - 18 Castle Street  
St Helier  
Jersey  
JE4 8TP

Telephone: **01534 822000**  
Facsimile: **01534 822047**  
Email: [info@jerseyfsc.org](mailto:info@jerseyfsc.org)

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<sup>18</sup> The exception to this is Money Service Business, where no Accounts, Audits and Reports Order has been made. Financial matters for a Money Service Business applicant are those that apply to any business taking the same form as the applicant, e.g. Companies (Jersey) Law 1991, or those applicable as a result of other financial service activities undertaken by the applicant, e.g. deposit-taking business.