Jersey Financial Services Commission

# Insurance Business (Jersey) Law 1996

## Code of Practice

## For Insurance Business

Effective from: 1 January 2008

Last Revised: 1 January 2021

# Contents

Page

**Glossary** 3

**Introduction** 5

**The Principles**

1. A permit holder must conduct its business with integrity. 8
2. A permit holder must have due regard for the interests of its policyholders. 9
3. A permit holder must organise and control its affairs effectively for the proper performance of its business and be able to demonstrate the existence of adequate risk management systems.

Corporate Governance (3.1) 11

Internal Control Systems (3.2) 13

Compliance function, Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer (3.3) 16

Record Keeping (3.4) 18

Derivatives and off-balance sheet items (3.5) 19

Complaints (3.6) 20

Integrity and Competence (3.7) 21

Continuing Professional Development (**CPD**) (3.8) 23

Payment of financial penalties (3.9) 24

4. A permit holder must be transparent in its business arrangements. 25
5. A permit holder must maintain and be able to demonstrate the existence of adequate capital resources to enable it to meet its insurance liabilities. 27
6. A permit holder must deal with the JFSC in an open and co-operative manner. 30
7. A permit holder must not make statements that are misleading, false or deceptive. 34

# Schedules

**First Schedule** - Proforma for the Annual Declaration as required by 3.2.2.13 of the Code of Practice for Insurance Business 36

# Glossary

Unless otherwise defined, the following terms when used in the *Code* shall have the meanings set out below. If not defined below or elsewhere in the *Code*, terms, where relevant, have the same meanings as are ascribed to them in the *IB(J)L*.

All terms which appear in this Glossary are reflected in the *Code* utilising *italic* text. Guidance to the *Code* in the form of "Notes" has been placed in a box to highlight its status.

| | |
|---|---|
| Anti-money laundering legislation | Includes the Proceeds of Crime (Jersey) Law 1999, the Money Laundering (Jersey) Order 2008 (the **Money Laundering Order**) and the Terrorism (Jersey) Law 2002, as well as any other applicable Laws, all as amended from time to time. It also includes the international sanctions regimes implemented through the Sanctions and Asset-Freezing (Implementation of EU Regulations) (Jersey) Order 2020 and equivalent legislation relating to the implementation of UK sanctions. The legislation must be observed in conjunction with the requirements of the Prevention and Detection of Money Laundering, the Countering of Terrorist Financing and Countering of Proliferation Financing, issued by the JFSC. |
| COBP | Means the Cessation of Business Plan |
| Code | Means the Code of Practice for Insurance Business |
| Complaint | Means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a service that relates to insurance business carried on by the *permit holder*, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience. |
| CPD | Means Continuing Professional Development |
| Exceptions Regulations | Means the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, as amended |
| IB(J)L | Means the Insurance Business (Jersey) Law 1996, as amended |
| JFSC | Means Jersey Financial Services Commission. |
| Key person | Has the same meaning as provided by Article 1 of the *IB(J)L* |
| Long term business | Has the same meaning as provided by Article 1 of the *IB(J)L* |
| Money Laundering Order | Means the Money Laundering (Jersey) Order 2008, as amended |
| Net free assets | Means total assets less total liabilities |
| Permit holder | Means a person granted a permit under Article 7 of the *IB(J)L* to carry on insurance business in or from within Jersey |
| Principal person | *Means:* |

| | |
|---|---|
| | › A chief executive and shareholder controller as defined in Article 1 of the *IB(J)L*;<br>› The actuary appointed in line with Article 25 of the *IB(J)L*; AND<br>› Any person intending to act as a director. |
| Regulatory framework | Means the legislative and regulatory requirements established in a jurisdiction that are relevant to a *permit holder* |
| AML/CFT/CPF Handbook | Means the Handbook for the Prevention and Detection of Money Laundering, the Countering of Terrorist Financing and Countering of Proliferation Financing, issued by the *JFSC* |
| Solvency Order | Means the Insurance Business (Solvency Margin) (Jersey) Order 1996, as amended from time to time |

# Introduction

## Power exercised and scope

The Code of Practice for Insurance Business (the **Code**) is issued by the Jersey Financial Services Commission (the **JFSC**) in accordance with the powers given to it by Article 42 of the Insurance Business (Jersey) Law 1996, as amended (the **IB(J)L**). The Code has been prepared and issued for the purpose of setting out the principles and detailed requirements that must be complied with in the conduct of insurance business.

The Code applies to persons granted a permit under Article 7 of the IB(J)L to carry on insurance business in or from within Jersey (a **permit holder**).

Article 7 of the IB(J)L establishes threshold conditions that apply on an on-going basis – the fit and proper assessment – to permit holders and Category B principal persons with the exception of the actuary. This assessment process includes consideration of integrity, competence, financial standing, structure and organisation.

The JFSC has published a Policy Statement: *Licensing Policy in respect of those that require a permit under the IB(J)L.* Part 2 of which provides further information on *The JFSC's "fit and proper" assessment*, and paragraph 4.5 of which highlights the continuing nature of the fit and proper assessment. The Code assists the JFSC with its on-going consideration of the fitness and propriety of a permit holder by setting out actions that a permit holder must or must not undertake, which it can then be assessed against.

Where the Code requires a permit holder to provide information to the JFSC, such requirement is established in accordance with the powers provided by Article 8 of the Financial Services Commission (Jersey) Law 1998.

## Arrangement of the Code

The Code provides enforceable requirements in the form of high level principles supported by detailed rules in the areas of corporate governance, conduct of business and prudential matters and are arranged under seven principles, as described below:

## The Principles

1. A permit holder must conduct its business with integrity.
2. A permit holder must have due regard for the interests of its policyholders.
3. A permit holder must organise and control its affairs effectively for the proper performance of its business and be able to demonstrate the existence of adequate risk management systems.
4. A permit holder must be transparent in its business arrangements.
5. A permit holder must maintain and be able to demonstrate the existence of adequate capital resources to enable it to meet its insurance liabilities.
6. A permit holder must deal with the JFSC in an open and co-operative manner.
7. A permit holder must not make statements that are misleading, false or deceptive.

Each section of the Code is designed to be understood by reference to its full text including any notes.

## Compliance with the Code

The Code should be read by permit holders in conjunction with the IB(J)L and its subordinate legislation, together with any conditions attached to a permit held under the IB(J)L, and Handbook

for the Prevention and Detection of Money Laundering, the Countering of Terrorist Financing and Countering of Proliferation Financing, issued by the JFSC , (the **AML/CFT/CPF Handbook**).

It is the responsibility of a permit holder not only to comply with the Code, but also to implement such additional practices as it considers necessary for the proper management and control of its business. Where a permit holder considers that it may not be able to achieve full compliance with the Code for a temporary period (for example, for a short period after first being licensed) it should, in advance, agree a plan of action (to include timescales) with the JFSC to bring itself into full compliance with the Code. However, in circumstances where strict adherence to the Code would be at variance with regulatory requirements in the home jurisdiction (Category A permit holders) or produce an anomalous result, permit holders may apply to the JFSC for a variation from the Code; this is in addition to those areas of the Code which specifically provide for a permit holder to apply for a variance to the Code.

Methods of compliance with the provisions of the Code will vary depending on the type of insurance business permit held, the home jurisdiction of a permit holder, the classes of business written and the extent of the permit holder's physical presence in the Island:

1. A Category A permit holder will be subject to the regulatory framework prescribed in its home jurisdiction and that of Jersey. As a result it must therefore satisfy itself that its conduct, procedures, controls and risk management systems comply with the regulatory framework of its home jurisdiction and that of Jersey. Compliance with the home regulatory framework will usually be sufficient to meet a permit holder's obligations in Jersey. However, should any significant differences emerge between requirements of the home jurisdiction and that of Jersey, which would result in non-compliance with the Code; they must be brought to the attention of the JFSC for discussion and resolution.
2. A Category B permit holder that has subsidiaries or branches outside Jersey, or that makes its products available outside Jersey, must ensure, as far as possible, that Jersey's regulatory framework, including the provisions of the Code, are applied to those subsidiaries or branches. In the event that the regulatory framework in the jurisdiction outside Jersey prevents compliance with the Code, this must be brought to the attention of the JFSC for discussion and resolution.

Failure by a permit holder to comply with the Code represents grounds for the JFSC to take regulatory action. Where the JFSC has reason to believe that at any time there has been a failure on the part of a permit holder to comply with the Code, it may consider making use of its regulatory powers, which, in serious cases, could include the cancellation of the insurance business permit.

In addition, failure to comply with the Code may support a decision by the JFSC that, for example, continued non-compliance or other failure to remedy the circumstances giving rise to the breach, may be addressed by the issue of a specific, additional permit condition under Article 7 of the IB(J)L or by a direction issued under Article 36 of the IB(J)L. Such a permit condition or direction might impose requirements on a permit holder to do or not to do specified things, including the removal of specified individuals or the cessation of business. In appropriate circumstances a direction can be made public by virtue of Article 43(2)(a) of the IB(J)L. The JFSC also has the power under Article 21A of the Financial Services Commission (Jersey) Law 1998 to impose financial penalties for significant and material contraventions of the Code.

When considering the failure of a permit holder to comply with the Code the JFSC places emphasis on whether or not a permit holder conducts its business with integrity and deals with the JFSC in an open and co-operative manner.

Whilst Article 42(3) of the IB(J)L provides that the contravention of the Code shall not of itself render any person liable to proceedings of any kind (excluding regulatory action that may be taken by the

JFSC in response to a contravention) or invalidate any transaction, the Code shall be admissible in evidence in any proceedings. Article 42(5) clarifies that where a Code provision appears to a court, conducting civil proceedings, to be relevant to any questions arising in the proceedings, it may be taken into account in determining any such questions.

Where it appears to the JFSC that a person has failed to comply with the Code, it may issue a public statement under Article 43(2)(b) of the IB(J)L.

In a number of places the Code requires the JFSC to be advised of a matter "in writing". For the avoidance of doubt, a notification given by email, or by means of the JFSC's online portal, will be considered by the JFSC to meet that requirement (unless the particular Code requirement specifies otherwise how a notification "in writing" must be given).

### Revision of the Code

In accordance with Article 42(1)(b) of the IB(J)L, the JFSC may, after consultation with such persons or bodies as appear to be representative of the interests concerned, revise the Code by revoking, varying, amending or adding to its provisions.

In November 2018 the JFSC published Consultation Paper No. 10, proposing a number of amendments to the Code and, in March 2019, published a feedback paper summarising respondents' comments and the JFSC's responses.

Rather than detail the amendments here, the JFSC has published a version of the Code that highlights the amendments applied.

### Effective Date

This revised Code is effective from 1 June 2019 for all permit holders.

Any person that has made an application to the JFSC which is currently under consideration, should review the Code and contact the JFSC to discuss any areas where compliance on grant of a permit may be an issue.

# The Principles

## 1 A permit holder must conduct its business with integrity.

1.1 Without limiting the scope of this principle, a *permit holder* must not:

1.1.1 Act or refrain from acting; or

1.1.2 Contract or have any other form of arrangement,

So as to avoid, or seek to avoid, any regulatory responsibilities that it may have under the *Code* and the full consequences at law of not following them unless the *Code* expressly permits any such avoidance.

# 2 A permit holder must have due regard for the interests of its policyholders.

2.1 A *permit holder* must act with due skill, care and diligence to fulfil the responsibilities that it has undertaken and the obligations of the policies that it has accepted.

2.2 Where a *permit holder* is responsible for providing advice or exercising discretion for or in relation to its policyholders, it must:

2.2.1 Be able to demonstrate that it has provided the best advice, or exercised the necessary discretion, that is appropriate to the needs of its policyholders; and

2.2.2 Seek from them such information regarding their financial situation and objectives as may be appropriate with regard to the services requested. Documentary evidence must be maintained in this respect.

2.3 The requirements of 2.2 must be undertaken at a minimum when a contract of long term insurance is provided to the public either through a tied agent or direct sales force. In addition the documentation referred to must include:

2.3.1 A fact-finding exercise that is recorded in writing and is carried out to identify the most appropriate policy for the applicant's needs; and

2.3.2 A written statement that explains the reasons why a policy is being recommended to an applicant, which is signed by both parties, and a copy made available to the policyholder prior to the policy being taken out.

2.4 Where an applicant:

2.4.1 Does not wish to provide the information necessary for the completion of a full fact-finding exercise (2.3.1), with the result that a written statement cannot be produced of the reasons why a particular policy is being recommended (2.3.2), the *permit holder* must confirm in writing to the applicant that no advice has been given or sought and that the policy has been provided on an "execution only" basis; or

2.4.2 Provides only partial information, the *permit holder* must provide written confirmation that the policy has been provided following "limited advice".

2.5 A *permit holder* must only exercise its power or discretion for a proper purpose.

2.6 A *permit holder* must ensure that adequate procedures are implemented to either avoid any conflict of interest arising or, where conflicts do occur, address such conflicts by disclosure, applying internal rules of confidentiality, declining to act or otherwise, as appropriate. A *permit holder* must not unfairly place its interests above those of its policyholders and, where a properly informed policyholder would reasonably expect that the *permit holder* would place his or her interests above its own, the *permit holder* must live up to that expectation.

2.7 A *permit holder* must transact its business (including the establishment, maintenance, transfer or closure of business relationships with its policyholders) in an expeditious manner, keeping proper records of clients' affairs, including client documentation.

2.8 Any delegation of obligations or responsibilities, whether by power of attorney, formal agreement or otherwise, must only be entered into with an appropriate person for a proper purpose. A *permit holder* must:

2.8.1 Ensure any delegation is for a specific purpose and have an expiry date;

2.8.2 Monitor the application of the power of attorney, formal agreement or other arrangement; and

2.8.3 Ensure that appropriate due diligence has been carried out on the delegatee.

2.9 A *permit holder* must ensure that adequate procedures are implemented to ensure that the insurance services that it provides to policyholders are regularly reviewed at appropriate intervals.

# 3 A permit holder must organise and control its affairs effectively for the proper performance of its business and be able to demonstrate the existence of adequate risk management systems.

## 3.1 Corporate Governance

3.1.1 A *permit holder* must operate an effective corporate governance system that must include the following key elements:

3.1.1.1 An adequate regulatory span of control must exist, at all times, that is appropriate to the nature of the business. *Permit holders* must be controlled by at least three appropriately qualified and experienced people.

3.1.1.2 The relationship of directors and managers within the company must be such as to ensure that they can all exercise independent judgement without duress or undue influence from one another in the best interests of policyholders, and so as to secure compliance with the *IB(J)L*, any Orders made under it, and the *Code*.

3.1.1.3 The apportionment of responsibilities among directors (executive and non-executive), *key persons*, senior managers and employees must be such that their individual responsibilities are clear, there are separated critical functions and the business of the *permit holder* is adequately monitored and controlled at the appropriate level.

3.1.1.4 The procedures for the appointment of directors must be documented and in line with the stated structure, functions and accountabilities of the board of directors.

3.1.2 With respect to 3.1.1, for Category B *permit holders*:

3.1.2.1 Those individuals comprising the regulatory span of control must be actively involved in the day-to-day management of the *permit holder* and be able to exercise executive powers on behalf of the *permit holder*. As such, any directors that are not actively involved, "non-executives", or those who are not locally based, may not form part of the regulatory span of control of a *permit holder*.

3.1.2.2 As soon as a *permit holder* becomes aware that the regulatory span of control requirement will not be maintained they must notify the *JFSC* in writing. In this respect, where a *permit holder* has the minimum individuals comprising the regulatory span of control and one of those individuals is absent from the *permit holder* for a substantial period of time, the *permit holder* must contact the *JFSC* to discuss its proposed arrangements such that during this period, the *permit holder* remains managed and controlled by an appropriate number of locally based individuals.

3.1.2.3 Where close family members are eligible to form part of the regulatory span of control, only one member may be counted.

3.1.3 Clearly defined procedures must be in place so that there is appropriate oversight by the board of directors and senior management in order to address the underlying principles of risk management:

3.1.3.1 The management must assess the risks present in the business, and they must be documented, as must the ways in which these are monitored and controlled;

3.1.3.2 Investment, valuation, liquidity and underwriting rules must be documented that set out the limits by type appropriate to the class and volume of business undertaken so as to provide the necessary basis for decisions on individual limits;

3.1.3.3 The approval of exposure limits and investment procedures must be the responsibility of the Board;

3.1.3.4 The *permit holder* must maintain accurate and reliable information systems and timely and appropriate management reporting; and

3.1.3.5 In addition to assessing the risks present within the business, the *permit holder* must also carry out a regular review and assessment of the industry conditions and market environment in which it operates, and take appropriate action where necessary.

3.1.4 All aspects of corporate governance arrangements must be subject to appropriately regular review to ensure their continuing adequacy in light of the *permit holder's* business activities and risk profiles, and include a periodic self-assessment, or external assessment, of the board's effectiveness.

*Notes:*

1. *Corporate governance is the system by which a company is directed and controlled. A corporate governance framework specifies the distribution of rights and responsibilities among different participants in the company and sets out the rules and procedures for making decisions. Risk management is an integral part of a corporate governance framework. In the context of Principle 3, "risk" refers to* ***all*** *the risks that a permit holder faces, or may face, as a business enterprise.*
2. *Article 74(1) of the Companies (Jersey) Law 1991 states:*

   *"A director, in exercising the director's powers and discharging the director's duties, shall –*

   *(a) Act honestly and in good faith with a view to the best interests of the company; and*

   *(b) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.*
3. *Depending on the circumstances of the permit holder, the JFSC may permit the inclusion of an individual who is actively involved in the day-to-day management of the business (a senior manager) when considering span of control. In this scenario, the JFSC will consider the fitness and propriety of senior managers using the procedure established for considering principal persons and key persons.*
4. *Where the size of the permit holder's business warrants it, a separate risk management function and a risk management committee should be established.*
5. *With respect to 3.1.1.3, all individuals having up to date job descriptions may best evidence apportionment of responsibilities. However, the terms of reference relating*

*to particular offices or committees, or Board resolutions, may also demonstrate apportionment of responsibilities.*

6. *With respect to 3.1.2.2, the JFSC considers a period in excess of four weeks to constitute a substantial absence from the permit holder.*

7. *For the purposes of 3.1.2.3, "close family" comprises spouses (including co-habitees), civil partners, children, dependants, parents, brothers, and sisters.*

## 3.2 Internal systems and controls

3.2.1 A *permit holder* must maintain effective, documented internal systems and controls (policy and procedures manual) that cover its operations.

3.2.2 A *permit holder's* internal systems and controls must ensure that:

3.2.2.1 The business is planned and conducted prudently, and in an orderly manner, in accordance with management policies.

3.2.2.2 Transactions and commitments are entered into in accordance with laid down general or specific authority.

3.2.2.3 The assets of the *permit holder* are safeguarded and the liabilities controlled through measures designed to minimise the risk of loss from irregularities, error and fraud, and to identify any such occurrences promptly.

3.2.2.4 Adequate, orderly and up-to-date records are kept which must include, but are not necessarily limited to:

3.2.2.4.1 Its business transactions;

3.2.2.4.2 Its financial position;

3.2.2.4.3 Its internal organisation;

3.2.2.4.4 Its risk management systems;

3.2.2.4.5 Its board or management minutes; and

3.2.2.4.6 The relationship between the legal persons/ arrangements forming part of the group subject to registration under the *IB(J)L*.

3.2.2.5 The accounting and other records of the *permit holder* capture and record on a timely basis and in an orderly fashion every transaction and commitment into which the *permit holder* has entered and can be used to compile financial statements, management information and returns in line with the requirements of the *IB(J)L* and any Orders made under it. Specifically, they must contain sufficient information to explain:

3.2.2.5.1 The nature and purpose of the transaction or commitment;

3.2.2.5.2 Any asset or liability, actual or contingent, that arises or may arise; and

3.2.2.5.3 Any income or expenditure, current or deferred, that arises or may arise.

3.2.2.6 With respect to 3.2.2.5.1, the records must contain sufficient information to identify:

3.2.2.6.1 The parties;

3.2.2.6.2 Amount and currency, and the frequency of payment;

3.2.2.6.3 The contract, value and maturity dates;

3.2.2.6.4 The exchange rate of any foreign exchange transaction or commitment;

3.2.2.6.5 The contracted commission or fee payable or receivable;

3.2.2.6.6 The nature and current value of any assets that specifically support any liability, the physical location of such assets and the appropriate documentation; and

3.2.2.6.7 In the case of any borrowing, whether it is subordinated, and the nature and value of any asset upon which the borrowing is secured.

3.2.2.7 Financial and business information can be extracted promptly to enable directors and senior management to:

3.2.2.7.1 Identify, measure, monitor and control the quality of the *permit holder's* assets and safeguard them;

3.2.2.7.2 Identify, measure, monitor and control its obligations to policyholders;

3.2.2.7.3 Identify, measure, monitor and control its exposure to liquidity, foreign exchange, timing differences and other market risks;

3.2.2.7.4 Monitor its solvency and its reserves;

3.2.2.7.5 Monitor the performance of all aspects of its business on an up-to-date basis; and

3.2.2.7.6 Make timely and informed decisions.

3.2.2.8 Management is able to monitor the adequacy and quality of the *permit holder's* assets, liabilities, liquidity and profitability.

3.2.2.9 Management is able to identify, regularly assess, and where appropriate quantify, the risk of loss in the business so that any necessary provisions can be made for bad or doubtful debts and for any other exposures both on and off balance sheet.

3.2.2.10 Adequate business resumption, disaster recovery and contingency arrangements are in place and are tested at appropriate intervals.

3.2.2.11 Sufficient access controls exist to protect the confidentiality and integrity of electronic data.

3.2.2.12 The *permit holder* complies with the *Code* and other regulatory requirements, specifically that it complies with all relevant legislation and guidance to counter money laundering, the financing of terrorism and proliferation financing with respect to long term insurance business. The legislation must be observed in conjunction with the standards set out in the *relevant AML/CFT/ CPF Handbook*.

3.2.2.13 A Category B *permit holder* must provide an annual declaration to the *JFSC*, with its audited financial statements, which is signed by a Director, on behalf of the *permit holder*, and presented using the

template attached as the First Schedule to the *Code*. The declaration must confirm that the *permit holder* has complied, or if not in compliance the details of the non-compliance, in respect of:

3.2.2.13.1 The relevant regulatory and anti-money laundering legislation;

3.2.2.13.2 The AML/CFT/CPF Handbook;

3.2.2.13.3 Other regulations and guidelines, and the *Code*.

3.2.2.14 Adequate procedures are in place for controlling changes to systems and records to ensure that only valid changes are made.

3.2.2.15 A Category B *permit holder* must comply with the *JFSC's* policy on outsourcing as may be updated from time to time.

3.2.3 Under no circumstances shall a *permit holder* provide loans to an independent intermediary or to any of that intermediary's directors or staff. (In the case of Category A *permit holders*, this provision is only relevant to Jersey-based independent intermediaries or to any of those intermediaries' directors or staff). Any gifts or entertainment provided by a *permit holder* must be limited in value and frequency so as not to be construed as an inducement for the provision of insurance business to the detriment of the principle of best advice to policyholders.

3.2.4 Where a *permit holder* provides seminars and other training to the directors and staff of intermediaries for the purpose of ensuring that policies are properly sold, such training may include associated travel and accommodation costs.

3.2.5 A Category B *permit holder* must maintain an effective, documented system of internal control including, where appropriate, operations manuals for employees, in English and kept within Jersey.

3.2.6 The control objectives in section 3.2.1 above apply equally to the operations undertaken in both manual and electronic environments. Special controls are required to address the unique risks encountered with computer systems, although these risks are not exclusive to the area of computer operations.

3.2.7 In respect of 3.2.2, the internal systems and controls must facilitate preparation of information for directors and management so that they can monitor, assess and control the performance of the *permit holder*, the state of its affairs and the risks to which it is exposed. Information must be prepared on an individual business basis and, where appropriate, on a consolidated basis. Management information must be prepared:

3.2.7.1 To show the state of affairs of the *permit holder*;

3.2.7.2 To show the overall solvency of the *permit holder*;

3.2.7.3 To show the operational results of the *permit holder* both on a cumulative basis and by discrete period, and to give a comparison with budgets and relevant previous periods;

3.2.7.4 To provide an analysis of assets and liabilities, showing how they have been valued;

3.2.7.5 To provide an analysis of any off-balance sheet positions, showing how they have been valued;

3.2.7.6 To provide an analysis of income and expenditure, showing how the income and expenditure relates to the different categories of asset and liability and to policyholders' and shareholders' funds; and

3.2.7.7 To show the *permit holder's* exposure to each type of risk, compared to the relevant limits set by management.

*Notes:*

1. *The JFSC will recognise and take comfort from those permit holders that do have effective internal audit controls or where such functions are provided from elsewhere within a group. The JFSC may require access to internal audit reports, and requires that such reports are made available to external auditors.*
2. *With respect to 3.2.2.15, the JFSC's policy on outsourcing is available from the JFSC's website.*
3. *In relation to paragraphs 3.2.3 and 3.2.4 above, the provisions are intended to apply to Category B permit holders who make their insurance products available to the general public, through brokers or other intermediaries, and Category A permit holders who offer their insurance products to Jersey residents through brokers or intermediaries.*
4. *Failure to comply with legislation to counter money laundering,the financing of terrorism, proliferation financing or the relevant AML/CFT/CPF Handbook may form the basis for regulatory action by the JFSC. This is in addition to any legal action that may be taken by judicial authorities.*
5. *A proforma for the annual declaration, as required by paragraph 3.2.2.13, can be found in the First Schedule to the Code.*
6. *With respect to the various risk management provisions under principle 3 of the Code, particularly 3.1, 3.2 and 3.4, it is expected that a permit holder will have specifically considered, amongst other risks, the risk of a cyber security incident, and have in place a corresponding documented policy to identify assets and risks, to protect them, to quickly detect potential cyber security incidents, to respond to contain the impact of an incident and to recover from it.*

## 3.3 Compliance function, Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer

3.3.1 The senior management (most often the board of directors) of the *permit holder* is responsible for ensuring that it has robust arrangements for compliance with the *regulatory framework*. These must include:

3.3.1.1 Approval of a compliance policy;

3.3.1.2 Establishment of a permanent and effective compliance function, whose responsibilities are formally documented;

3.3.1.3 Assessment, on at least an annual basis, of the extent to which compliance risk is managed effectively; and

3.3.1.4 Appointment, as its Compliance Officer, of an appropriately skilled and experienced person.

3.3.2 The compliance function must:

3.3.2.1 Have appropriate independence;

3.3.2.2 Have direct access to the *permit holder's* Jersey management board or equivalent;

3.3.2.3 Have unfettered access to all business and support departments and information necessary to properly discharge their responsibilities;

3.3.2.4 Act as the principal point of contact for employees on day-to-day regulatory matters; and

3.3.2.5 Be able to devote sufficient time and have sufficient resources to discharge properly the responsibilities of the function, including implementation of the compliance policy.

3.3.3 The *permit holder* must ensure the Compliance Officer is responsible for:

3.3.3.1 Ensuring the appropriate monitoring of operational performance and managing regulatory and compliance risk within the *permit holder* including:

3.3.3.1.1 Monitoring that the internal policies and procedures are being consistently and effectively adhered to;

3.3.3.1.2 Assessing, and recommending amendments to, internal systems, controls, policies and procedures which facilitate compliance with the *regulatory framework*; and

3.3.3.1.3 Where appropriate, promptly instigating action to remedy any deficiencies in such arrangements;

3.3.3.2 Providing senior management and the board of directors of the *permit holder* with regular reports in respect of the *permit holder's* compliance with the requirements of the *IB(J)L*, Orders (issued under the *IB(J)L*) and the *Code*; and

3.3.3.3 Acting as the principal point of contact with the *JFSC* on day-to-day regulatory matters, unless otherwise agreed with the *JFSC*.

3.3.4 The Compliance Officer must:

3.3.4.1 Be based in Jersey, except for Category A *permit holders* where the Compliance Officer may be based in the home jurisdiction;

3.3.4.2 Be an individual operating under a contract of employment directly with the *permit holder* or another company within the same group;

3.3.4.3 Have sufficient experience and skills, which includes holding an appropriate compliance qualification or other qualification, or be studying towards such a qualification; and

3.3.4.4 Have appropriate status and authority within the *permit holder* to ensure that senior management and the board of directors of the *permit holder* react to and determine whether to act upon his or her recommendations.

3.3.5 In the event that a Compliance Officer is temporarily unable to fulfil his or her responsibilities, the *permit holder* must notify the *JFSC* **and** designate an appropriately skilled and experienced alternative. Notification must be made, in writing, as soon as the *permit holder* becomes aware that the compliance officer will be temporarily unable to fulfil their responsibilities.

*Notes:*

1. *For Category B permit holders, where the permit holder has a limited or inexperienced compliance resource, or limited physical presence in Jersey, the JFSC expects the permit holder to support this area of operation as necessary either by importing*

*specialist skills or through the use of group resources or by outsourcing to a management company, if one has been retained.*

2. *With respect to 3.3.5, the JFSC considers a period in excess of four weeks to constitute being temporarily unable to fulfil his/her responsibilities.*
3. *It is a requirement of the Money Laundering Order that a permit holder that carries on long term insurance business must appoint a Money Laundering Reporting Officer and a Money Laundering Compliance Officer. The relevant AML/CFT/CPF Handbook sets out additional requirements for permit holders.*
4. *The roles of Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer meet the definition of a key person as defined by Article 1 of the IB(J)L; consequently, for Category B permit holders Article 23 of the IB(J)L applies.*
5. *Where operating volumes are at a level for it to be appropriate, the Compliance Officer, Money Laundering Reporting Officer and the Money Laundering Compliance Officer may be the same person. It is also recognised that there may be permit holders where the compliance function is the Compliance Officer.*

## 3.4 Record Keeping

### All records

3.4.1 A *permit holder* must ensure that it has appropriate record keeping arrangements for compliance with the applicable legislation (including *anti-money laundering legislation* and company legislation) and regulatory requirements, set by the *Code* or the *relevant AML/CFT/CPF Handbook*.

3.4.2 A *permit holder* is expected to maintain its books and records in a language understood by the employees of the business. These must be translated into English at the request of the *JFSC*. A *permit holder* must be able to readily retrieve them in Jersey and, if kept otherwise than in legible form, maintain them so as to be readable at a computer terminal in Jersey so that they may be produced in legible form without delay.

3.4.3 A *permit holder* must have a clearly documented policy and procedure regarding record retention that includes:

3.4.3.1 Periodic review of the accessibility and condition of paper and electronic records;

3.4.3.2 The adequacy of the safekeeping of records; and

3.4.3.3 Periodic testing of procedures relating to the retrieval of records.

3.4.4 A *permit holder* that is ceasing to conduct insurance business is required to arrange appropriate record keeping arrangements as part of a cessation of business plan.

### Business records

3.4.5 A *permit holder* must maintain an audit trail of material changes to the policies and procedures manual that covers the operation of the business, which is updated as required. When updates are made, the effective date of such updates must be recorded and the superseded records maintained.

3.4.6 The period for which business records must be kept is the later of:

3.4.6.1 The period required for any particular record by any law;

3.4.6.2 The relevant AML/CFT/CPF Handbook; or

3.4.6.3 Where records relate to significant corporate governance matters, such as management meeting minutes and risk assessment matters, or are records relating to requirements established by the *Code* - ten years from the date of the record.

### Policyholder records

3.4.7 A *permit holder* is expected to keep adequate, orderly and up-to-date policyholder records which are in line with the requirements established by Part 4 of the *Money Laundering Order* for *long term business* and as set out in the *relevant AML/CFT/CPF Handbook*.

3.4.8 Where the *Code* requires policyholder related records to be kept, which are in addition to the records required by the *Money Laundering Order*, these must be kept for at least five years from the date of the event to which the record relates.

*Notes:*

1. *The IB(J)L is silent as to the form that records should take but the JFSC expects that permit holders will use available technology to retain and facilitate access to these records. Legal advice may need to be taken regarding the types of records that are admissible in a court of law.*
2. *The Code does not establish any retention requirements for tape recordings of telephone conversations.*
3. *With respect to 3.4.5, a change to the policies and procedures manual that necessitates communication to impacted staff is a material change.*
4. *With respect to 3.4.6.1, the JFSC considers that laws relating to companies, tax, proceeds of crime, and data protection may be relevant.*

## 3.5 Derivatives and other off-balance sheet items

*Notes:*

1. *This section only applies to a Category B permit holder that utilises derivatives and other off-balance sheet items.*

3.5.1 Where this section applies, Category B *permit holders* must have in place an appropriate policy for the use of derivatives, formulated, approved and regularly reviewed for adequacy by the board of directors. The policy must be consistent with the *permit holder's* activities, its overall strategic investment policy, its asset/liability management strategy and its risk tolerance.

3.5.2 The policy must address:

3.5.2.1 The purposes for which derivatives may be used;

3.5.2.2 The establishment of appropriately structured exposure limits, taking into account the uncertainty caused by market, credit, liquidity, operational and legal risk;

3.5.2.3 The extent to which the holding of some types of derivative is restricted, for example where the potential exposure cannot be reliably measured, where independent verification of pricing is not available or where the product may not easily be marketable (as may be the case with over the counter derivatives);

3.5.2.4 The responsibilities of the directors and management with regard to the use of derivatives, and the necessary qualifications and experience required of those directors and staff managing and dealing with such transactions;

3.5.2.5 A framework of accountability for derivatives functions, so that such activities are properly overseen and regularly reviewed by the board and by internal and external audit; and

3.5.2.6 The appropriate segregation of duties between those staff who initiate derivative transactions and those who measure, monitor and settle them. Pricing must follow market conventions, and be independently verified where the use of over the counter derivatives is permitted.

3.5.3 A Category B *permit holder* must have comprehensive systems in place, forming part of its wider investment risk management systems, for the identification, measurement, control and reporting of derivatives and other assets and/or liabilities that the *permit holder* is required to publicly disclose.

3.5.4 A Category B *permit holder* must have systems in place that:

3.5.4.1 Analyse and monitor derivatives individually and in aggregate, enabling exposures and associated risks to be regularly assessed; and

3.5.4.2 Enable the *permit holder* to provide, on an accurate and timely basis, the information required by the *JFSC* as a condition of its consent for the use of derivatives.

## 3.6 Complaints

3.6.1 A *permit holder* must establish and maintain an effective *complaint* handling system and procedures and in particular must:

3.6.1.1 Maintain adequate records of *complaints* against the *permit holder*, including a central register that contains details of any agreed compensation or compromise;

3.6.1.2 Inform policyholders of how *complaints* may be made and how they may expect these to be responded to;

3.6.1.3 Handle *complaints* transparently, competently, diligently, and impartially;

3.6.1.4 Provide, in writing, within five business days, unless expressly agreed to the contrary with the complainant, an acknowledgement that their *complaint* has been received and confirm that the *complaint* is being considered;

3.6.1.5 Keep the complainant informed about the progress of their *complaint*, including details of any actions being taken to resolve their *complaint*;

3.6.1.6 Advise the complainant in writing when the *complaint* is considered closed, and where the *complaint* is not upheld, clearly state the reason(s) for rejecting the *complaint*;

3.6.1.7 At the same time, advise the complainant in writing:

3.6.1.7.1 That if they are dissatisfied with its response to the *complaint*, the complainant may be able to refer the *complaint* to the Channel Islands Financial Ombudsman;

3.6.1.7.2 Of the contact details for the Channel Islands Financial Ombudsman (namely its website address, postal address, email address and telephone number); and

3.6.1.8 Consider the *complaints* data for patterns emerging.

3.6.2 As soon as it becomes aware, a *permit holder* must notify the *JFSC*, in writing, if:

3.6.2.1 A *complaint* is not satisfactorily resolved within three months of it being lodged;

3.6.2.2 The Channel Islands Financial Ombudsman, using the powers it has under Article 16 of the Financial Services Ombudsman (Jersey) Law 2014, requires the *permit holder* to pay compensation to a complainant or directs the *permit holder* to take other specified steps in relation to a complainant; or

3.6.2.3 A pattern to *complaints* emerges.

3.6.3 A *permit holder* must deal with the Channel Islands Financial Ombudsman in an open and co-operative manner.

*Notes:*

1. *With respect to 3.6.1, a permit holder may wish to consider adopting and following the "Model complaint-handling procedure for financial services providers" published by the Channel Islands Financial Ombudsman.*
2. *With respect to 3.6.1.3, the JFSC considers that it would be inconsistent with that requirement if a permit holder were to act in a way that may undermine the integrity of the complaints-resolution framework provided under the Financial Services Ombudsman (Jersey) Law 2014, such as:*
   - *(a) Making a settlement offer that is conditional upon the complainant not referring the matter to the Channel Islands Financial Ombudsman. (The complainant may want to seek independent advice from the Channel Islands Financial Ombudsman before deciding whether or not to accept the offer.) This would not preclude a permit holder – if it has fully informed the complainant of their right to refer their complaint to the Channel Islands Financial Ombudsman – asking the complainant to sign a full and final release as part of the settlement if the offer is accepted;*
   - *(b) Misleading a complainant about their right to refer a complaint to the Channel Islands Financial Ombudsman;*
   - *(c) Offering a view as to the likelihood of the Channel Islands Financial Ombudsman ruling in favour of the complainant.*
3. *With respect to 3.6.2, "as soon as it becomes aware" applies from the point at which the permit holder knows, or has reasonable grounds for believing, that any of the matters stated has occurred or may be about to occur, even where it is outside the control of the permit holder.*

## 3.7 Integrity and Competence

3.7.1 A *permit holder* must ensure that its directors, senior managers and all other employees are fit and proper for their roles. The term "employees" includes not only staff directly employed by the *permit holder* but also indirect staff such as temporary or contracted employees and other contracted service providers.

3.7.2 A permit holder must:

3.7.2.1 Operate robust arrangements for meeting the standards and requirements of the regulatory system;

3.7.2.2 Establish adequate supervision of employees, and procedures governing sole, dual or multiple authorisations for handling business assets; and

3.7.2.3 Guard against involvement in financial crime (including the detection and prevention of money laundering), and ensure that all transactions and decisions are properly authorised by persons with the requisite knowledge and experience to effect such transactions or make such decisions.

3.7.3 A *permit holder* must assess and monitor the competence and probity of its directors, senior managers and other employees, and ensure that trainees are properly supervised.

3.7.4 A *permit holder* must ensure that:

3.7.4.1 It has a clear, written policy regarding the identification, notification and handling of any conflicts of interest that its directors and employees may encounter during the normal course of their employment in the *permit holder's* business; and

3.7.4.2 It has a clear, written policy regarding private transactions, self-dealing, preferential treatment and other transactions of a non-arm's length nature.

3.7.5 A *permit holder* is responsible for ensuring that its employees are competent on an on-going basis and trained adequately and appropriately, and must document the basis upon which such competency has been assessed. Competence comprises a balance between relevant qualifications held, training received and experience gained, having regard, amongst other things, for the nature of the work being carried out by the employees and the level of their responsibility.

3.7.6 A *permit holder* must ensure that there is a sufficient number of staff, at all levels, with adequate qualifications and experience. Directors and/or senior management, who form part of the regulatory span of control, must always hold appropriate qualifications to enable them to demonstrate the technical competence to perform such a senior role.

3.7.7 A *permit holder* must ensure that it obtains and retains copies of documentary evidence of qualifications held by employees where such qualifications have been determined by the *permit holder* to be a requirement for the role involved.

3.7.8 A *permit holder* must have in place a proper documented remuneration policy for directors and employees, and must review it periodically. Such a policy must ensure that remuneration has due regard to the *permit holder's* financial position as well as the personal performances of directors and employees, and that any incentive schemes are properly managed so as to avoid any encouragement of improper or imprudent behaviour.

*Notes:*

1. *Paragraph 3.7.1 above is subject to the Rehabilitation of Offenders (Jersey) Law 2001, which prohibits an employer requesting information from employees and prospective employees about convictions that are "spent". This general prohibition is subject to*

*exceptions provided for by the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, as amended (the **Exceptions Regulations**).*

2. *Regulation 21 of the Exceptions Regulations permits permit holders, applicants and those intending to apply for a permit to request information about all "relevant offences", whether "spent" or not, from employees holding certain positions and applicants for such positions.*

3. *To be consistent with the Code, it is necessary for employers to make use of such exceptions when screening employees who are subject to these exceptions.*

## 3.8 Continuing Professional Development (CPD)

3.8.1 A *permit holder* is responsible for ensuring that the opportunity is available to all employees who are engaged in insurance-related activity or who hold the compliance officer position to continue their professional development as part of their normal working environment.

3.8.2 A *permit holder* is responsible for ensuring that the *CPD* is appropriate and relevant to such employees, taking into account their job descriptions, current duties and future development needs.

3.8.3 For Category B *permit holders* that employ such staff in Jersey, the minimum recommended *CPD* is 25 hours per year, including technical and professional reading (for which a maximum of five hours is permitted), and research. Category A *permit holders* must ensure that *CPD* is undertaken in accordance with the *regulatory framework* of their home jurisdiction.

3.8.4 A *permit holder* must maintain *CPD* records for all such employees (although it is permissible for the *permit holder* to require employees to keep their own records and account to the *permit holder* on a regular basis).

*Notes:*

1. *It is recognised that some employees may be members of professional bodies that have their own CPD requirements as a condition of continued membership. In these circumstances, it is a matter for the permit holder:*

   *(a) Firstly, to ensure that the necessary opportunity is given to such employees to enable them to comply with these professional requirements; and,*

   *(b) Secondly, to take a view on the extent to which such professional CPD is relevant to the permit holder's business and may therefore be counted towards the employees' work-related CPD.*

2. *Courses in key subjects, such as anti-money laundering, data protection, health and safety, and IT, should be part of every employee's training programme in addition to those courses specifically related to insurance.*

3. *As a guide for the purposes of paragraph 3.7.6 and 3.8, a permit holder should encourage staff to undertake courses and qualifications provided by institutions that are appropriate to employees' seniority and experience, such as the Chartered Insurance Institute (**CII**). For example, staff might undertake the following insurance-specific qualifications, as part of a development programme:*

   *(a) Junior employees CII Foundation Insurance Test*

   *(b) Administrative staff CII Certificate in Insurance (Cert. CII)*

*(c) More experienced staff CII Diploma in Insurance (Dip. CII)*

*(d) Middle management CII Advanced Diploma in Insurance (ACII)*

*(e) Senior Management/Directors ACII or FCII*

*4. Qualifications from other professional institutes may also be acceptable when combined with practical experience of the insurance industry. These include, but are not limited to:*

*(a) The Institute and Faculty of Actuaries;*

*(b) The International Compliance Association;*

*(c) The Chartered Institute of Bankers;*

*(d) The Chartered Institute for Securities and Investment[i]; and*

*(e) The various accountants' institutes.*

*5. It is expected that employees will achieve their CPD targets by adhering to the requirements of their own relevant professional body. However, where the relevant professional body does not prescribe how CPD should be achieved, there are a number of acceptable ways to attain the minimum CPD requirement, including, but not restricted to:*

*(a) Studying for further qualifications;*

*(b) In-house training, seminars, conferences and product presentations;*

*(c) Computer-based training;*

*(d) One-to-one tuition;*

*(e) Reading relevant professional and trade magazines;*

*(f) Personal structured study; and*

*(g) Attending external training courses.*

## 3.9 Payment of financial penalties

3.9.1 A *permit holder* must not pay a financial penalty imposed by the *JFSC* on any other person.

3.9.2 A *permit holder* must not enter into, arrange, claim on or make a payment under a contract of insurance that is intended to have, or has or would have, the effect of indemnifying any person against all or part of a financial penalty imposed by the *JFSC*.

*Notes:*

*1. Paragraph 3.9.2 is not intended to prevent a permit holder from entering into, arranging, claiming on or making any payment under a contract of insurance which indemnifies any person against all or part of the costs of defending JFSC enforcement action or any costs the person may be ordered to pay to the JFSC.*

# 4 A permit holder must be transparent in its business arrangements.

4.1 A *permit holder* must inform its policyholders that it is regulated by the regulatory authority in its home jurisdiction. For a Category B *permit holder,* this is the JFSC.

4.2 A *permit holder* must communicate information to policyholders in a way that is adequate, fair and not misleading. Advertising and promotional literature must be clear, fair and reasonable, and must not be deceptive or misleading (advertising requirements are contained in Section 7 of the *Code*).

4.3 Where a *permit holder* is providing insurance directly to the general public or through a tied agent or direct sales force, it must state whether such insurance can only be provided from a restricted range of products or product providers.

4.4 A *permit holder* must inform its policyholders of any policyholder protection arrangements that are applicable to the policy, or the absence of any such arrangements.

4.5 A *permit holder* must provide confirmation, in legible form, of any contract or transaction effected with its policyholders. This will usually take the form of a policy document and, for policies with an investment element or benefits that vary over time, a regular statement.

4.6 A *permit holder* must provide to its policyholders, in writing, the terms and conditions applying to the insurance services provided by the *permit holder*. These terms and conditions must be:

4.6.1 Distinguishable from marketing or promotional material;

4.6.2 Consistent with the *Code*;

4.6.3 Clearly expressed in plain language that only uses technical or legal terms where absolutely necessary; and

4.6.4 Provided before the contract of insurance becomes legally binding on the parties, except when it is impractical to do so, in which case the terms and conditions shall be provided at the earliest opportunity.

4.7 In relation to long term insurance business, the *permit holder* must provide a “cooling-off” notice to a policyholder, explaining that the policyholder may cancel the policy within at least fourteen calendar days of the date of receipt of such notice if he or she has a change of mind. This applies not only in relation to new policies, but also to existing policies where premium amounts are increased by more than 25% and the provisions for such increments are not included within the original insurance contract particulars.

4.8 In relation to long term insurance business, the *permit holder* must include the following information in its terms and conditions, or in the policy information provided to policyholders, or by separate communication:

4.8.1 The nature and amount of all standard fees and charges associated with the policy;

4.8.2 The amount of any commission or other remuneration paid to a broker or intermediary for the introduction or arrangement of, or any other services in connection with, the policy;

4.8.3 The manner and notice period in which the policyholder will be informed of changes to the terms and conditions of the policy and, where appropriate, any alterations to fees, charges and bonus rates;

4.8.4 The options currently available to policyholders upon the renewal or maturity date of the policy, and the consequences, financial and otherwise, of early termination;

4.8.5 The frequency with which policy statements will be provided; and

4.8.6 Specific risks that may be associated with the type of policy provided.

4.9 A *permit holder* must, upon request, provide a policyholder with the information held about that policyholder to which the policyholder is legally entitled. The *permit holder* may recover its reasonable costs of supplying such information to the policyholder.

4.10 A *permit holder* must inform policyholders, brokers and other intermediaries if it has a policy of recording telephone conversations with them for monitoring or training purposes. This may be achieved by including an appropriate statement in the *permit holder's* terms of business, marketing and promotional material and regular statements provided to policyholders, or by advising callers at the start of any telephone conversation.

4.11 A *permit holder* must only accept and act upon the instructions of a broker or intermediary in relation to a policyholder's long term insurance where such insurance includes the management of a portfolio of investments, if it possesses written confirmation signed by the policyholder that the broker or intermediary has been formally authorised to act on the policyholder's behalf in this regard.

*Note:*

*1. The requirements described in paragraphs 4.1, 4.4, 4.6 and 4.10 above will be satisfied by the inclusion of the information on the permit holder's letterhead, or its marketing or advertising literature, or its policy documentation, as appropriate.*

# 5 A permit holder must maintain and be able to demonstrate the existence of adequate capital resources to enable it to meet its insurance liabilities.

*Note:*

1. *This section describes the minimum required solvency margin and the types of invested asset that are admissible to cover insurance liabilities. It is therefore only applicable to Jersey incorporated entities that hold a Category B Insurance Business Permit. Holders of a Category A Insurance Business Permit will be subject to the equivalent requirements laid down in its home jurisdiction.*

5.1 A *permit holder* must maintain at all times a level of capital adequacy sufficient to meet its insurance liabilities (technical provisions) and the minimum solvency margin requirement.

5.2 As a rule, the minimum amount of share capital required for a *permit holder* is £100,000 (one hundred thousand pounds), but the *JFSC* has the ability to amend this, both upwards and downwards, should it feel that this amount is inappropriate in the circumstances of the *permit holder's* business.

5.3 Where a *permit holder* wishes to issue preference shares or other forms of capital, such as a subordinated loan, this must be discussed with the *JFSC* in advance and *JFSC* approval received prior to the issuance taking place.

5.4 With reference to 5.3 and the issuance of a subordinated loan, a *permit holder* must comply with the following for the *JFSC* to consider approving its issuance. The subordinated loan must be:

5.4.1 Drawn up in accordance with the *JFSC's* proforma Subordinated Loan Agreement;

5.4.2 Made by an approved lender;

5.4.3 Signed by authorised signatories of all parties to the agreement;

5.4.4 For a fixed period of not less than two years or, where no fixed term is cited, it must be subject to a minimum notice period of repayment of two years; and

5.4.5 Submitted to the *JFSC* accompanied by a signed consent request checklist.

5.5 The required minimum solvency margins for long term and for general insurance business are those prescribed in Article 4 of the Insurance Business (Solvency Margin) (Jersey) Order 1996, as amended from time to time (the **Solvency Order**).

5.6 The approved types of assets admissible for the purposes of assessing capital adequacy are listed in Article 2 of the *Solvency Order*. These assets are typically those applicable to a general insurance business so, upon application by the *permit holder*, the *JFSC* may approve additional types of asset as admissible for capital adequacy purposes, either on an unrestricted basis or to a specified maximum amount, usually expressed as a percentage of the total invested assets.

5.7 A *permit holder* must ensure that quoted investments are quoted on one of the recognised stock exchanges (as defined in Article 1 of the *Solvency Order*). Upon application by the *permit holder*, the *JFSC* may approve, as provided by part (c) of the recognized stock exchange definition, other exchanges as recognised for this purpose, but only where the use of such an exchange is considered necessary for the proper performance of the *permit holder's* business.

5.8 Derivatives and other off-balance sheet items are not approved assets under the provisions of the *Solvency Order*, but their use may be approved by the *JFSC* in appropriate circumstances to an agreed extent on application by a Category B *permit holder*.

5.9 A *permit holder* must ensure that its insurance liabilities (technical provisions) are calculated and monitored on a continuous basis. Such liabilities must be calculated according to generally accepted insurance industry principles and accounting standards, and the calculations must be made available to the *JFSC* for review upon request. In the case of long term insurance, the technical provisions must be calculated and certified as correct by a qualified actuary. The *JFSC* also encourages general insurance companies to use qualified actuaries for the purpose of calculating its technical provisions.

5.10 Where the *JFSC* has approved the issuance of a subordinated loan and has also agreed the treatment of the subordinated loan in the solvency margin calculation, the maximum a *permit holder* may deduct from liabilities is four times the *net free asset* position of the *permit holder*. The *net free asset* position must be calculated using the *permit holder's* latest audited financial statements.

5.11 The variance treatment for the subordinated loan will automatically fall away if either:

5.11.1 The *permit holder* fails to comply with any of the requirements of the subordinated loan agreement, including the notification requirements; or

5.11.2 The subordinated loan repayment date falls due within one year.

5.12 In addition to being a signatory to the Subordinated Loan Agreement, the *JFSC* will place a condition on the permit, utilising Article 7 of the *IB(J)L*, requiring that the *permit holder* comply in full with the terms of the Subordinated Loan Agreement.

5.13 Details of any re-insurance arrangements made by a *permit holder* must be disclosed to the *JFSC*. The *JFSC* has the right to assess such arrangements, and to require a *permit holder* to make alternative arrangements, or to limit the use of a specific re-insurer, should it feel that the conditions are not suitable with regard to the insured risks.

5.14 Taking into account the nature of the risks that have been re-insured, and the overall financial position of the re-insurance company, the *JFSC* may determine whether all or only a part of the amounts recoverable under re-insurance arrangements may be allowed as reductions of technical provisions.

5.15 Where re-insurance arrangements have been made, the amounts recoverable must be disclosed in the financial statements of the *permit holder* by including amounts gross and net of re-insurance.

5.16 Although a *permit holder* is required to submit to the *JFSC* at six-monthly intervals financial statements that show the company's ability to meet its liabilities and its minimum solvency margin requirement, it is the responsibility of the *permit holder* to ensure that this position is maintained at all times. Should the *permit holder* become aware that it is unable to comply

with this requirement, the *JFSC* must be informed immediately in writing. The *permit holder* will be required to produce a plan to the *JFSC* for the restoration of solvency. Should the plan not be forthcoming, or be deemed inadequate, the *JFSC* may impose its own conditions, financial or otherwise, for the return of the business to acceptable solvency levels.

5.17 In order to properly control its assets, liabilities and its solvency position, a *permit holder* must:

5.17.1 Have in place effective procedures for monitoring and managing the asset/liability position, in order to ensure that investments (the types of asset, their currency and liquidity) are appropriate for the liability profiles;

5.17.2 Ensure that the directors review the adequacy of the overall investment policy on a regular basis in the light of the company's activities, its overall risk tolerance, its long-term requirements and its solvency position;

5.17.3 Undertake regular resilience testing for a range of market scenarios and changing investment and operating conditions in order to assess the appropriateness of its management policies; and

5.17.4 Have in place contingency plans to mitigate against the effects of deteriorating business conditions.

*Notes:*

1. *"net free assets" is defined as total assets less total liabilities.*
2. *With respect to 5.4, the proforma Subordinated Loan Agreement and consent request checklist are available from the JFSC website.*
3. *For the purpose of 5.4.2 an approved lender is:*
   - *(a) A financial service business regulated by a "relevant supervisory authority", as defined by Article 1 of the IB(J)L;*
   - *(b) A principal person of the permit holder; or*
   - *(c) A person that does not meet any of the above criteria but has been specifically approved by the JFSC.*

# 6 A permit holder must deal with the JFSC in an open and co-operative manner.

*Notes:*

1. *There is a need for candour and co-operation in a permit holder's relationship with the JFSC. Article 15(2) of the IB(J)L provides that a permit holder, or former permit holder, shall be guilty of an offence if it fails to provide the JFSC with any information in its possession, knowing or having reasonable cause to believe that or being reckless as to whether –*

   *(a) The information is relevant to the exercise by the JFSC of its functions under the IB(J)L in relation to the permit holder or former permit holder; and*

   *(b) The withholding of the information is likely to result in the JFSC being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to the permit holder or former permit holder.*

2. *The scope of Principle 6 is extended to the provision of information and the notification of events concerning non-regulated activities and other members of the corporate group, to the extent that such information or events might reasonably be expected to have a material impact on the permit holder in Jersey.*

3. *Notification to the Companies Registry does not constitute notification to the JFSC for the purposes of this principle.*

4. *The JFSC considers that the obligations of a permit holder under this Principle include the timely provision of data required in connection with a permit holder's regulatory fees and the timely payment of fees due.*

## General notifications

6.1 A *permit holder* must advise the *JFSC* promptly, in writing as soon as it becomes aware of any matter that might reasonably be expected to affect its permit or be in the interests of its policyholders/investors to disclose. Wherever possible, this notification must include details of the steps the *permit holder* has taken, or intends to take, to mitigate the matter.

6.2 In addition to the requirements of the relevant law, a *permit holder* must allow, and shall procure that any agent or subcontractor of the *permit holder* also allows, inspections by or on behalf of the *JFSC* of any part of the activities in relation to which the *permit holder* has been granted a permit under the *IB(J)L*. The *permit holder* must provide all reasonable assistance in connection with any such inspection and shall procure that any such agents or subcontractors also provide all reasonable assistance.

6.3 A *permit holder* must comply with the notification requirements of the *JFSC's* policy on outsourcing as may be updated from time to time.

*Note:*

1. *With respect to 6.1, "as soon as it becomes aware" applies from the point at which the permit holder knows, or has reasonable grounds for believing, that any of the matters referred to have occurred or may be about to occur, even where it is outside the control of the permit holder. The JFSC considers the following to be indicative that notification is necessary. Any matter which:*

(a) *Is material to the JFSC's ability to undertake its function of supervision of financial services provided in or from within Jersey;*

(b) *The permit holder considers is material to, or may make it impractical for it to comply with, one or more of:*

i. *The provisions of the IB(J)L or any Regulations or Orders made under it;*

ii. *Compliance with a registration condition;*

iii. *Compliance with a direction issued by the JFSC;*

iv. *The Code;*

v. *The fitness and propriety of its principal persons or key persons, especially where the permit holder has imposed a formal disciplinary measure or sanction.*

### Specific notifications

6.4 A *permit holder* must notify the *JFSC* of the following, in writing, not less than ten business days before the change is implemented, except for Category A Insurance Business *permit holders* who must notify the *JFSC* within 28 calendar days of the granting of the necessary approval by the home regulator:

6.4.1 A change of name of the *permit holder*;

6.4.2 The adoption of, or a change in any business or trading name under which the *permit holder* carries on insurance business;

6.4.3 A change to:

6.4.3.1 The address of the principal office of the *permit holder*,

6.4.3.2 The address of the registered office of the *permit holder*,

6.4.3.3 Any address which is treated as the proper address of the *permit holder* by Article 44(3) of the *IB(J)L*; and

6.4.4 The summary winding up or voluntary dissolution of a *permit holder*.

6.5 A *permit holder* must notify the *JFSC*, in writing, within a reasonable time of becoming aware of, or having resolved to undertake, any of the following:

6.5.1 The decision to voluntarily cease writing new insurance business, whether temporarily or permanently, where this decision involves the cancellation of a permit in accordance with Article 7(9) of the *IB(J)L*. A *permit holder* must complete a Cessation of Business Plan (**COBP**), as prescribed by the *JFSC*, which must include details of arrangements for the protection of policyholders, creditors and other stakeholders. Before implementing a COBP a *permit holder* must obtain written confirmation from the *JFSC* that it has no objection to it.

6.5.2 The presentation of any application to the court for désastre.

6.5.3 The summoning of any meeting to consider a resolution to wind up a *permit holder* or the winding up of the *permit holder*.

6.5.4 The application by any person for the commencement of any insolvency proceedings, the appointment of any receiver, administrator or provisional liquidator under the law of any jurisdiction in relation to the *permit holder*.

6.5.5 The making of or any proposals for the making of a composition or arrangement with the creditors.

6.5.6 The imposition of disciplinary measures or sanctions on the *permit holder* or any of their directors, chief executive, shareholder controllers, actuaries or *key persons* in relation to its insurance business by any relevant supervisory authority or professional body.

6.5.7 A conviction of the *permit holder* or any of its directors, chief executive, shareholder controllers, actuaries or *key persons*, for any offence:

6.5.7.1 Under the legislation of any jurisdiction relating to the conduct of insurance or other financial services business (includes legislation relating to: banking, building societies, collective investment funds, companies, credit unions, consumer credit, friendly societies, insolvency, insurance, industrial and provident societies and trust companies); or

6.5.7.2 Involving fraud or dishonesty.

6.5.8 The imposition of any penalties for deliberate tax evasion on the *permit holder* or any of its directors, chief executive, shareholder controllers, actuaries or *key persons*.

6.5.9 Any litigation following the institution of proceedings before a Court of Law, where any amount claimed or disputed is likely to exceed 5% of the *permit holder's* admissible assets as applicable to the *permit holder's* solvency margin calculation, which is:

6.5.9.1 Instigated by the *permit holder* (or a subsidiary of the *permit holder*);

6.5.9.2 Instigated against the *permit holder*; or

6.5.9.3 Where the *permit holder* is a party cited.

6.5.10 The granting, withdrawal or refusal of any application for authorisation, to carry on any regulated financial services business in Jersey or any jurisdiction outside of Jersey, or the revocation of such authorisation.

6.5.11 The refusal of any application for membership of any trade or professional body by the *permit holder*, a director, chief executive, *key person* or actuary of the *permit holder*, in any jurisdiction, or refusal or revocation of such a membership.

6.5.12 The appointment of inspectors (howsoever named) by a statutory or other supervisory authority to investigate the affairs of the *permit holder*.

6.5.13 Any decision relating to business activities likely to have a material effect on the *permit holder* or its profitability (notifications must specify, as applicable, the name of any company and its principal business). Such decisions include, but are not limited to:

6.5.13.1 Closure to new business;

6.5.13.2 The formation, acquisition, disposal or dissolution of a subsidiary, associated group company or branch office, wherever situated; and

6.5.13.3 Changes to investments held, where the *permit holder* acquires or disposes, for its own benefit, of a holding of more than half in nominal value of the equity share capital of a company, specifying the name of the company and its principal business.

6.5.14 Any material changes, other than those specifically referred to in the *Code*, in the information previously submitted under the following headings, any:

6.5.14.1 Overseas operations through which the *permit holder* carries on insurance business, irrespective of the vehicle utilised to deliver the business (branch, subsidiary, representative office or otherwise); and

6.5.14.2 Jurisdictions outside Jersey in which the *permit holder* carries on insurance business, indicating whether this is done through a branch office, a subsidiary or otherwise.

6.5.15 A decision by the *permit holder's* auditor to qualify its audit report or to raise an emphasis of matter therein.

*Notes:*

*1. With respect to 6.5 the JFSC considers:*

*(a) "a reasonable time" to be five business days; and*

*(b) That " becoming aware" applies from the point at which the permit holder knows, or has reasonable grounds for believing, that any of the matters stated has occurred or may be about to occur, even where it is outside of the control of the permit holder.*

*2. With respect to 6.5.1, a full outline of the matters that must be addressed within the COBP is available from the JFSC upon request.*

## Notifications arising in other parts of the Code

6.6 A *permit holder* is required to comply with notification requirements established in other parts of the *Code*:

6.6.1 3.3.5 sets a notification requirement in respect of a compliance officer being temporarily unable to fulfil his/her responsibilities;

6.6.2 3.6.2 sets notification requirements in respect of *complaints*;

6.6.3 5.16 sets a notification requirement in respect of failure to meet the solvency margin requirement; and

6.6.4 7.5 sets a notification requirement on Category B *permit holders* on each occasion that they intend to issue new or amended product related advertisements or promotional literature.

## Notifying or providing information via the JFSC's online portal

6.7 Where the *JFSC* so specifies (whether in the *Code* or otherwise) a *permit holder* must notify or provide information by means of the *JFSC's* online portal.

6.8 If, because of a systems failure of any kind, a *permit holder* is unable to access the online portal to make a relevant notification or provide required information it must notify the *JFSC* in writing within one business day of the systems failure being identified.

# 7 A permit holder must not make statements that are misleading, false or deceptive.

*Note:*

*1. These advertising requirements apply to all Category B permit holders who make insurance products available to the general public. In the case of those Category A permit holders who offer their insurance products to Jersey residents, these requirements apply only where they do not conflict with any regulatory requirements in the home jurisdiction of those permit holders.*

7.1 A *permit holder* must ensure that its advertising and promotional literature is clear, fair and reasonable, and is free of misleading, false or deceptive statements. Words used in advertisements must be chosen carefully and certain words, such as "guarantee" and "assured" must be treated with caution.

7.2 Where tables are used within literature to indicate the performance of a long term fund, or the possible investment return from such a fund, the tables must be clearly annotated to explain that past experience is no guarantee of the level of future returns and that the value of investments may go down as well as up. They must also show the notional annual rates of return that have been used as examples, highlighting that these are merely examples, not the returns that the policyholder can necessarily expect.

7.3 A Category A *permit holder* must comply with such advertising guidelines as may exist in its home jurisdiction. It should make reference to its home regulatory authority in the product-related documentary marketing and sales material that it publishes or causes to be published.

7.4 A Category B *permit holder* must state that it is regulated by the Jersey Financial Services JFSC in the product-related documentary marketing and sales material that it publishes or causes to be published.

7.5 A Category B *permit holder* must notify the *JFSC* on each occasion that it intends to issue new or amended product-related advertising or promotional literature. The *JFSC* may wish to review and approve such advertising and promotional literature to be issued by Category B *permit holders*.

7.6 An advertisement must not contain:

7.6.1 A statement, promise or forecast that is untrue or misleading;

7.6.2 A statement of fact that a *permit holder* does not have reasonable grounds, supported by documentary evidence, for believing to be true at the time when the advertisement is issued;

7.6.3 A statement of opinion by any person that the *permit holder* does not have reasonable grounds, supported by documentary evidence, for believing to be the honestly held opinion of that person at the time when the advertisement is issued;

7.6.4 A statement of fact that the *permit holder* does not, at the time the advertisement is issued, have reasonable grounds for believing will continue to be true for so long as the advertisement continues to be issued in current publications;

7.6.5 A misleading statement about the activities of, or the scale of the activities of, or the resources of or available to, the *permit holder* or its group or affiliates;

7.6.6 A statement relating to taxation benefits unless it is properly qualified to show what it means in practice and to whom such benefits apply;

7.6.7 A statement relating to policyholder confidentiality unless it is properly qualified to show the limits of any confidentiality assurance made;

7.6.8 A comparison with other entities that carry on insurance business unless the basis of comparison is clearly stated, and the comparison is fair; and

7.6.9 A statement implying that the product or service involved is only available for a limited period or in limited form, if such is not the case.

7.7 The content and format of any financial service advertisement must not:

7.7.1 Be so designed as to be likely to be misunderstood;

7.7.2 Be so designed as to disguise the significance of any warning, statement or information that is required to be included under the *Code*;

7.7.3 Be presented in such a way that it is not clearly identifiable as an advertisement; and

7.7.4 Signify in any way that the advertisement has been approved by the *JFSC* (this rule applies even if the *JFSC* has been consulted with regard to the specific advertisement).

7.8 An advertisement may include a quotation from a statement made by any person commending any product or service of the *permit holder* provided that:

7.8.1 Where the person is an employee or associate of the *permit holder*, that fact is disclosed in the advertisement;

7.8.2 The quotation is included with that person's written consent, if applicable;

7.8.3 The statement is relevant to the product or service that is the subject of the advertisement;

7.8.4 Where the whole of the statement is not quoted, what is quoted fairly represents the message contained in the whole of the statement; and

7.8.5 The statement has not become inaccurate or misleading since it was originally made, because of the passage of time.

7.9 An advertisement that only specifies some of the terms and conditions that attach to a product or service, but excludes others, must indicate this fact. Where those terms and conditions that are specified give only a partial indication of the nature of the product or service being offered, the advertisement must refer to how all the terms and conditions may be obtained. Where no details of terms and conditions are given, the insurance advertisement must contain information as to how all such terms and conditions may be obtained.

7.10 An advertisement must disclose all specific areas of risk that may relate to the product or service advertised. It may not be possible to list within the advertisement all the risks that might apply, but the objective of the *Code* is to ensure that prospective policyholders are fully appraised of the key risks associated with the product or service prior to a commitment being given in order that they can make informed decisions. The need for such risk warnings will be dependent upon the nature of the products and services being advertised.

# First Schedule

**Proforma for the Annual Declaration as required by 3.2.2.13 of the Code of Practice for Insurance Business**

Jersey Financial Services Commission

PO Box 267

14-18 Castle Street

St Helier

JE4 8TP

Dear Sirs

**Annual Declaration under 3.2.2.13 of the Code of Practice for Insurance Business issued pursuant to Article 42 of the Insurance Business (Jersey) Law 1996**

In accordance with 3.2.2.13 of the Code of Practice for Insurance Business, I confirm that [insert name of p*ermit holder*] has complied with the relevant regulatory and anti-money laundering legislation, the Handbook for the Prevention and Detection of Money Laundering, the Countering of Terrorist Financing, and the Countering of Proliferation Financing for Financial Services Business Regulated under the Regulatory Laws, other regulations and guidelines, and the Code of Practice for Insurance Business [except as set out below].

*[List here material exceptions and action taken to ensure that these exceptions are not repeated]*

Yours faithfully

**Director**

**Date**

[i] Previously called the Securities Institute.