

# Financial Services (Jersey) Law 1998

## Code of Practice For Trust Company Business

Effective from: 1 January 2008

Last Revised: 21 March 2018

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## 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 *FS(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.

|                                   |   |
|-----------------------------------|---|
| advertisement(s)                  | means financial service advertisement (which is defined in Article 1 of the FS(J)L).  |
| ANLA                              | means Adjusted Net Liquid Assets.   |
| anti-money laundering legislation | includes the Proceeds of Crime (Jersey) Law 1999, the Money Laundering (Jersey) Order 2008, as amended (the Money Laundering Order) and the Terrorism (Jersey) Law 2002, as well as any other applicable Laws and United Nations or European Union Sanctions Orders applied within Jersey, all as amended from time to time.  |
| Code                              | means the Code of Practice for Trust Company Business.  |
| <u>complaint</u>                  | <u>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 trust company business carried on by the registered person, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.</u>   |
| CPD                               | means Continuing Professional Development.  |
| customer                          | has the same meaning as provided in Article 1 of the Financial Services (Trust Company and Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2007, namely:<br>“customer” means:<br>(a) a person who has entered into an agreement for the provision of services to be provided by the <i>registered person</i> when carrying on trust company business; or<br>(b) a person who has received or may receive the benefit of services to be provided or arranged by the <i>registered person</i> when carrying on trust company business. |

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| <u>customer money</u>                         | <u>has the same meaning as provided in Article 1 of the Financial Services (Trust Company Business (Assets – Customer Money)) (Jersey) Order 2000, as amended.</u>   |
| Exceptions Regulations                        | means the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, as amended.  |
| FS(J)L  | means the Financial Services (Jersey) Law 1998, as amended.  |
| <u>JFSC</u>                                   | <u>means the Jersey Financial Services Commission.</u>   |
| key person                                    | has the same meaning as provided in Article 1 of the FS(J)L.   |
| Money Laundering Order                        | means the Money Laundering (Jersey) Order 2008, as amended.  |
| net assets                                    | means total assets less total liabilities.   |
| PII   | means Professional Indemnity Insurance.  |
| principal person                              | has the same meaning as provided in Article 1 of the FS(J)L.   |
| registered person                             | means a person registered by the JFSC under Article 9 of the FS(J)L to carry on trust company business as defined by Article 2(3) of the FS(J)L.   |
| regulatory framework                          | means the legislative and regulatory requirements established in a jurisdiction that are relevant to a <i>registered person's</i> class(s) of trust company business.  |
| relevant AML/CFT Handbook                     | means the relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism, issued by the JFSC.   |
| TCB professional qualifications guidance note | means the Guidance Note: Professional Qualifications (Trust Company Business).   |
| <u>trust company business assets</u>          | <u>has the same meaning as provided in Article 1 of the FS(J)L.</u>  |
| trust company business employee               | <u>means</u> a person employed, either under a contract of service or a contract for services, by the <i>registered person</i> to assist in the provision of trust company business (other than solely to provide book-keeping, filing, secretarial, information technology support or any similar general support service). |

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## Introduction

### Power exercised and scope

The Code of Practice for Trust Company Business (the **Code**) is issued by the Jersey Financial Services Commission (the **JFSC**) under powers granted to it by Article 19 of the Financial Services (Jersey) Law 1998, as amended (the **FS(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 trust company business.

The Code applies to all persons registered by the JFSC under Article 9 of the FS(J)L to carry on trust company business as defined under Article 2(3) of the FS(J)L (a **registered person**).

Article 9 of the FS(J)L establishes threshold conditions that apply on an on-going basis – the fit and proper assessment – to registered persons, principal persons and key persons<sup>1</sup>. 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 registration under the FS(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 registered person by setting out actions that the registered person must or must not undertake, which it can be assessed against.

Registered persons may, on written application, be permitted to enjoy amended requirements in respect of certain sections of the Code as set out in the Third Schedule.

Where the Code requires a registered person 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.

Registered persons are reminded of the provisions of Article 7 of the FS(J)L in respect of the prohibition of carrying on of unauthorised trust company business.

### 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 registered person must conduct its business with integrity.
2. A registered person must have the highest regard for the interests of its customers.
3. 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.
4. A registered person must be transparent in its business arrangements.
5. A registered person must maintain, and be able to demonstrate the existence of, adequate financial resources and adequate insurance.

<sup>1</sup> *Registered person, principal person and key person* are defined in Article 1 of the FS(J)L and carry the same meaning in the Code.

6. A registered person must deal with the JFSC in an open and co-operative manner.
7. A registered person 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 registered persons in conjunction with the FS(J)L and its subordinate legislation, together with any conditions attached to a registration held under the FS(J)L, and the relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism, issued by the JFSC (the **relevant AML/CFT Handbook**).

It is the responsibility of a registered person 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 registered person 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. In exceptional circumstances, where strict adherence to the Code would produce an anomalous result, registered persons may apply to the JFSC for a variance from the Code; this is in addition to those areas of the Code which specifically provide for a registered person to apply for a variance to the Code.

Where a registered person has subsidiaries or branches outside Jersey, or makes services or products available outside Jersey through brokers or other intermediaries, it must ensure, as far as possible, that the Jersey regulatory framework is applied to those subsidiaries or branches or observed by the brokers and other intermediaries. Where significant differences exist between the host 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.

Failure by a registered person 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 registered person to comply with the Code, it may consider making use of its regulatory powers which, in serious cases, could include the revocation of the registration to conduct trust company business.

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 written direction under Article 23 of the FS(J)L. Such a direction might impose requirements on a registered person 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 25(a) of the FS(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 a registered person's failure to comply with the Code the JFSC places emphasis on whether or not a registered person conducts its business with integrity and deals with the JFSC in an open and co-operative manner.

Whilst Article 19(3) of the FS(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, Article 19(4) provides that, subject to a condition of registration indicating that any part or parts of the Code are to be wholly or partly disregarded by a registered person, the Code shall be admissible in evidence if it appears to the court conducting the proceedings to be relevant to any questions arising in the proceedings and shall 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 25(b) of the FS(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 19(1)(b) of the FS(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 July 2017 the JFSC published Consultation Paper No. 6, proposing a number of amendments to the Code and, in December 2017, 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 21 March 2018 for all registered persons.

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 registration may be an issue.

**John Harris**

**Director General**

3 January 2018

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## The Principles

### 1 A registered person must conduct its business with integrity.

1.1 Without limiting the scope of the above principle, a *registered person* must not:

1.1.1 act or refrain from acting; or

1.1.2 contract or have any other arrangement,

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

## 2 A registered person must have the highest regard for the interests of its customers.

- 2.1 A *registered person* must act with due skill, care and diligence to fulfil the responsibilities that it has undertaken.
- 2.2 Where a *registered person* is responsible for exercising discretion for or in relation to its *customers*, it must take all reasonable steps to obtain sufficient information in order to exercise its discretion or other powers in a proper manner.
- 2.3 A *registered person* must only exercise its power or discretion for a proper purpose and must be able to evidence, in writing, any decision made.
- 2.4 A *registered person* must ensure that adequate procedures are implemented to either: avoid any conflict of interest arising or, where conflicts arise, keep adequate records of such conflicts and address them by: disclosure; applying internal rules of confidentiality; declining to act; or otherwise as appropriate.
- 2.5 A *registered person* must transact its business (including the establishing, transfer or closing of business relationships with its *customers*) in an expeditious manner where appropriate.
- 2.6 Any delegation of duties or powers, whether by power of attorney, formal agreement or otherwise, must only be entered into with an appropriate person for a proper purpose. The *registered person* must:
- 2.6.1 ensure any delegation is for a specific purpose;
  - 2.6.2 where the delegation is irrevocable, include within the documentation either an expiry date, or a statement that the delegation will expire given specific circumstance(s) or action(s);
  - 2.6.3 where the delegation is revocable, include within the documentation an expiry date or a requirement that the relationship with the appropriate person is formally reviewed on a periodic basis;
  - 2.6.4 monitor the application of the power of attorney, formal agreement or other arrangement; and
  - 2.6.5 ensure that appropriate due diligence has been carried out on the delegatee.
- 2.7 A *registered person* must ensure that adequate procedures are implemented to ensure that detailed robust reviews are conducted at appropriate intervals in respect of the trust company business services, which it provides to its *customers*.

### 3 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.

#### 3.1 Corporate governance

- 3.1.1 A *registered person* must operate an effective corporate governance system that must include the following key elements:
- 3.1.1.1 Satisfy the *JFSC* it has an adequate regulatory span of control, at all times, appropriate to the nature of its business.
  - 3.1.1.2 Where a *registered person* is entitled to control *trust company business assets*, its regulatory span of control must comprise at least three appropriately skilled and experienced individuals.
  - 3.1.1.3 The relationship between the individuals must be such as to ensure they can all exercise independent judgement without duress or undue influence from one another.
  - 3.1.1.4 Responsibilities must be apportioned among a *registered person's* directors/partners, *key persons*, senior managers and employees in such a way that their individual responsibilities are clear.
  - 3.1.1.5 The business and affairs of a *registered person* must be adequately monitored and controlled at senior management and board level.
- 3.1.2 Specifically with respect to 3.1.1.1:
- 3.1.2.1 Those individuals comprising regulatory span of control must be actively involved in the day-to-day management of the business on a full time basis and be able to exercise executive powers on behalf of the *registered person*. Normally the individuals will be directors of the *registered person* however, 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 *registered person*.
  - 3.1.2.2 As soon as a *registered person* becomes aware that the regulatory span of control requirement will not be maintained it must notify the *JFSC* in writing. In this respect where a *registered person* has the minimum individuals comprising regulatory span of control and one of those individuals is absent from the business for a substantial period of time, the *registered person* must contact the *JFSC* to discuss its proposed arrangements such that during this period, the business is 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 A *registered person* must have documented procedures sufficient to facilitate the effective management of risk by the board of directors and senior management.
- 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

registered person'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 an organisation is directed and controlled. A corporate governance framework specifies the distribution of rights and responsibilities among different participants in the organisation and sets out the rules and procedures for making decisions. Risk management is an integral part of the corporate governance framework. In the context of Principle 3, "risk" refers to all the risks that a registered person 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. *The requirements set out under paragraph 3.1.1 deal with both financial resources and conduct of business issues referring as they do, to the management of the business of the registered person itself. As such, this is not a provision that directly governs, for instance, appropriate signatory arrangements for the execution of a specific transaction or exercise of a particular discretion.*
4. *In rare circumstances, and where a registered person requires "six-eyes", 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 regulatory span of control. In this scenario, the JFSC will consider the fitness and propriety of the senior manager using the procedure established for considering principal persons and key persons. For the purpose of regulatory span of control, the JFSC views the senior manager as materially equivalent to a director and will hold them accountable for their actions.*
5. *For the purpose of 3.1.1.4, 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. *The JFSC would expect the board of directors and/or management board of a registered person to, collectively, demonstrate appropriate qualifications, experience, competency and a broad, complementary skill set relevant to the business. In this respect reference to Table 4 Qualifications and Table 5 Qualifications as set out in the Guidance Note: Professional Qualifications (Trust Company Business) (the **TCB professional qualifications guidance note**) may be useful. Guidance notes are available from the [JFSC website](#).*
7. *For the purposes of 3.1.2.3 "close family" comprises spouses (including co-habitees), civil partners, children, dependants, parents, brothers, and sisters.*
8. *With respect to 3.1.2.2, the JFSC considers a period in excess of four weeks to constitute a substantial absence from the registered person.*

### 3.2 Internal systems and controls

#### 3.2.1 A registered person must:

- 3.2.1.1 Operate robust arrangements for meeting the standards and requirements of the *regulatory framework*, including:
  - 3.2.1.1.1 maintaining, and testing adherence to, policies and procedures covering the operation of the business;
  - 3.2.1.1.2 the appointment of a Compliance Officer;
  - 3.2.1.1.3 establishing effective *complaints* handling systems;
  - 3.2.1.1.4 adequate supervision of direct and indirect employees;
  - 3.2.1.1.5 documented systems, controls and procedures governing sole, dual or multiple authorisations for handling both the *registered person's* and *trust company business assets*, ~~for reconciling movements in trust company business assets,~~ and for guarding against involvement in financial crime (including the detection and prevention of money laundering); and
  - 3.2.1.1.6 ensuring that all transactions or decisions are appropriately authorised by persons with the requisite knowledge and experience to effect such transactions or make such decisions.
- 3.2.1.2 Keep adequate, orderly ~~and up-to-date~~ records which must include, but are not necessarily limited to:
  - 3.2.1.2.1 its business transactions;
  - 3.2.1.2.2 its financial position;
  - 3.2.1.2.3 its internal organisation;
  - 3.2.1.2.4 its risk management systems;
  - 3.2.1.2.5 its board or management minutes; and
  - 3.2.1.2.6 the relationship between the legal persons/arrangements forming part of the group subject to registration under the *FS(J)L*.
- 3.2.1.3 Ensure that adequate business resumption, disaster recovery and other contingency arrangements are in place and tested at appropriate intervals.
- 3.2.1.4 Comply with all relevant *anti-money laundering legislation* and guidance to counter money laundering and the financing of terrorism. The legislation must be observed in conjunction with the standards set out in the *relevant AML/CFT Handbook*.
- 3.2.1.5 Have due regard to the principles of the sound business practices policy<sup>2</sup> document issued by the *JFSC*, irrespective of the jurisdiction in which the entity that it is providing services to was incorporated.

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<sup>2</sup> Formerly the sensitive activities policy.

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- 3.2.1.6 Comply with the *JFSC*'s policy on outsourcing as may be updated from time to time.
- 3.2.2 Where a *registered person* is providing services defined in Article 2(4)(a) of the *FS(J)L* (namely acting as a company formation agent, a partnership formation agent or a foundation formation agent under a registration for **Class F** trust company business), it must:
- 3.2.2.1 understand, and document, the rationale for the formation of the company, partnership or foundation (as relevant); and
- 3.2.2.2 comply with relevant statutory obligations arising as a result of forming companies, partnerships or foundations in Jersey and other jurisdictions.
- 3.2.3 Where a *registered person* is providing services:
- 3.2.3.1 defined in Article 2(4)(b) of the *FS(J)L* (namely acting or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company under a registration for **Class G** trust company business):
- Or
- defined in Article 2(4)(c) of the *FS(J)L* (namely acting or fulfilling the function of or arranging for another person to act as or fulfil the function of a partner of a partnership under a registration for **Class H** trust company business):
- it must:
- 3.2.3.1.1 where arranging for another to act, take reasonable steps to ensure that those acting understand their obligations under the relevant law;
- 3.2.3.1.2 where a *registered person*, its officers or employees are acting themselves, ensure they are suitable, competent and understand their duties under the relevant laws and comply with the requirements of the relevant laws, including the Companies (Jersey) Law 1991, as amended;
- 3.2.3.1.3 be able to demonstrate that reasonable care has been taken to have knowledge of the activities of the companies or partnerships for which it acts or arranges for another to act as director or partner, and any material changes thereto;
- 3.2.3.1.4 have adequate procedures to ensure that, where appropriate, relevant documentation is subject to legal review; and
- 3.2.3.1.5 keep or satisfy itself that someone else is keeping accounting records that are sufficient to show and explain transactions, and disclose with reasonable accuracy, the financial position of the structures under administration.
- 3.2.4 Where a *registered person* is providing services defined in Article 2(4)(d) of the *FS(J)L* (namely acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a member of the council of a foundation under a registration for **Class OA** trust company business), it must:

- 3.2.4.1 where arranging for another to act, take reasonable steps to ensure that those acting understand their obligations under the relevant law;
- 3.2.4.2 where a *registered person*, its officers or employees are acting themselves, ensure that they are suitable, competent and understand their duties under the relevant laws and comply with the requirements of the relevant laws, including the Foundations (Jersey) Law 2009, as amended;
- 3.2.4.3 be able to demonstrate that reasonable care has been taken to have knowledge of the activities of the foundations for which it acts or arranges for another to act and any additional changes thereto; and
- 3.2.4.4 keep or (where permitted by legislation) satisfy itself that someone else is keeping accounting records that are sufficient to show and explain transactions and disclose with reasonable accuracy the financial position of the foundation under administration.
- 3.2.5 Where a *registered person* is providing services defined in Article 2(4)(e) of the *FS(J)L* (namely acting or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company under a registration for **Class I** trust company business), it must:
  - 3.2.5.1 where arranging for another to act, take reasonable steps to ensure that those acting understand their obligations under the relevant law;
  - 3.2.5.2 where a *registered person*, its officers or employees are acting themselves, ensure they are suitable, competent and understand their duties under the relevant laws and comply with the requirements of the relevant laws including the Companies (Jersey) Law 1991, as amended; and
  - 3.2.5.3 take reasonable steps to maintain adequate contact with the directors of the company.
- 3.2.6 Where a *registered person* is providing services defined in Article 2(4)(f) of the *FS(J)L* (namely providing a registered office or business address for a company, a partnership or a foundation under a registration for **Class J** trust company business), it must:
  - 3.2.6.1 be suitable, competent and understand its duties under, and comply with the requirements of, the laws of the countries in which the companies, the partnerships, or the foundations, for which it is acting are established;
  - 3.2.6.2 where holding correspondence (whether postal packets, electronic data or otherwise) for collection or forwarding:
    - 3.2.6.2.1 understand ~~and document~~, the rationale for the service and agree written procedures; and
    - 3.2.6.2.2 open and retain copies of relevant correspondence received and details of:
      - (a) any forwarding address; or
      - (b) if collected, the date collected, and the name and address of the person collecting the correspondence;
  - 3.2.6.3 take reasonable steps to maintain adequate contact with the directors of the company or partners of a partnership, and in the case of a

foundation where the trust company business does not also provide a council member take reasonable steps to maintain adequate contact with the council members of the foundation.

- 3.2.7 Where a *registered person* is providing services defined in Article 2(4)(g) of the *FS(J)L* (namely providing an accommodation, correspondence or administrative address for a company, a partnership or a foundation or for any other person under a registration for **Class K** trust company business), it must:
- 3.2.7.1 where holding correspondence (whether postal packets, electronic data or otherwise) for collection or forwarding:
- 3.2.7.1.1 understand, and document, the rationale for the service and agree written procedures; and
- 3.2.7.1.2 open and retain copies of relevant correspondence received and details of:
- (a) any forwarding address; or
- (b) if collected, the date collected, and the name and address of the person collecting the correspondence.
- 3.2.8 Where a *registered person* is providing services defined in Article 2(4)(h) of the *FS(J)L* (namely acting as or fulfilling or arranging for another person to act as or fulfil the function of trustee of an express trust under a registration for **Class L** trust company business), it must:
- 3.2.8.1 where arranging for another to act, take reasonable steps to ensure that those acting understand their obligations under the relevant law;
- 3.2.8.2 where a *registered person*, its officers or employees are acting themselves, ensure they are suitable, competent and understand their duties under the relevant laws and comply with the requirements of the relevant laws, including the Trusts (Jersey) Law 1984, as amended;
- 3.2.8.3 keep or satisfy itself that someone else is keeping accounting records that are sufficient to show and explain transactions, and disclose with reasonable accuracy, the financial position of the structures under administration; and
- 3.2.8.4 understand, and document, the rationale for the establishment of the trust.
- 3.2.9 Where a *registered person* is providing services defined in Article 2(4)(i) of the *FS(J)L* (namely acting as or fulfilling or arranging for another person to act as shareholder or unitholder as a nominee for another person under a registration for **Class M** trust company business), it must:
- 3.2.9.1 where arranging for another to act, take reasonable steps to ensure that those acting understand their obligations under the relevant law;
- 3.2.9.2 where a *registered person*, its officers or employees are acting themselves, ensure they are suitable, competent and understand their duties under the relevant laws and comply with the requirements of the relevant laws; and
- 3.2.9.3 be able to evidence, in writing, the nature of the nominee agreement and the identity of the person for whom the *registered person* is acting as nominee.

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- 3.2.10 Where a *registered person* is acting as the manager of a managed trust company under a registration for **Class N** trust company business, it must:
- 3.2.10.1 pay due regard to the risks that might arise from performing this role as part of its own corporate governance; and
  - 3.2.10.2 ensure that the managed trust company(ies) it manages, complies with all aspects of the *regulatory framework* in Jersey.
- 3.2.11 Where a *registered person* is carrying on **Class O** trust company business, it must comply with paragraphs 3.2.2, 3.2.5, 3.2.6 and 3.2.9 above.
- 3.2.12 Where a *registered person* is looking to satisfy itself that someone else is keeping accounting records that are sufficient to show and explain transactions, and disclose with reasonable accuracy the financial position of the structures under administration (3.2.3.1.5, 3.2.4.4 and 3.2.8.3) then in considering whether it is so satisfied the requirements of 3.7.6 must be taken into consideration in making a determination.

**Notes:**

1. *Failure to comply with legislation to counter money laundering and the financing of terrorism or the relevant AML/CFT Handbook may form the basis for regulatory action by the JFSC. This is in addition to any legal action that may be taken by the judicial authorities for failure to comply with legislation to counter money laundering and the financing of terrorism.*
2. *With respect to 3.2.1.6, the JFSC's policy on outsourcing is available from the JFSC's website.*
3. *With respect to 3.2.10, further information may be found in the JFSC's Guidance Note on Managed Trust Company Businesses.*

### 3.3 Integrity and competence

- 3.3.1 A registered person must:
- 3.3.1.1 Ensure its directors, partners, senior managers and all other employees are fit and proper for their roles.
  - 3.3.1.2 Assess and monitor the working practices, competence and probity of its directors, partners, senior managers and other employees.
  - 3.3.1.3 Obtain and retain documentary evidence, which is used by the *registered person* to assess, both initially and on an on-going basis, the competence of its employees. Evidence may include, but not be limited to:
    - 3.3.1.3.1 employer references; and
    - 3.3.1.3.2 with respect to *trust company business employees*, copies of documentary evidence of qualifications held, as appropriate.
  - 3.3.1.4 Ensure that its *trust company business employees* collectively have a balance of qualifications necessary to fulfil their technical functions and suitable skills and experience to fulfil their non-technical functions.
  - 3.3.1.5 Ensure the following competency levels are met, at all times:

- 3.3.1.5.1 75% of the Category A *trust company business employees* must be suitably qualified;
  - 3.3.1.5.2 75% of Category A and B *trust company business employees* cumulatively must be suitably qualified; and
  - 3.3.1.6 Notify the JFSC in writing if the percentage of suitably qualified Category C *trust company business employees* that are either qualified or in the process of studying towards a qualification contained in the TCB *professional qualifications guidance note* falls below 50%.
- 3.3.2 Where complex transactions are undertaken or complex structures are administered (either by the nature of the entity or the jurisdiction or the proper law or form of that entity), the *registered person* must consider requiring more specialised qualifications, experience and other competencies such that they can demonstrate that the *trust company business employees* are competent and adequately supervised.
- 3.3.3 Where a *registered person* wishes to request a variance to the professional qualifications requirements to recognise an alternative qualification, such a request must:
  - 3.3.3.1 be made in writing;
  - 3.3.3.2 include a description of the role of the individual;
  - 3.3.3.3 include an explanation as to why the *registered person* considers the alternative qualification to be appropriate for that *trust company business employee*; and
  - 3.3.3.4 include confirmation that a copy of the syllabus studied or equivalent is available to the JFSC on request.
- 3.3.4 Where a Category A, B or C *trust company business employee* is awarded a qualification other than by way of direct examination a *registered person* must notify the JFSC in writing.

**Notes:**

1. *Guidance as to the circumstances in which the JFSC will consider other written variance requests is provided in the TCB professional qualifications guidance note.*
2. *Trust company business employees include not only direct employees, but also indirect employees, such as temporary and contracted employees and other contracted service providers.*
3. *Paragraphs 3.3.1.1 and 3.3.1.2 above are subject to the Rehabilitation of Offenders (Jersey) Law 2001, which prohibits an employer requesting information from its employees and prospective employees about convictions that are “spent”. This general prohibition is subject to exceptions provided by the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, as amended (the **Exceptions Regulations**).*
4. *Regulation 21 of the Exceptions Regulations permits a registered person, applicants and those intending to apply for registration to request information about all “relevant offences”, whether “spent” or not from employees holding certain positions and applicants for such positions. 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.*
5. *Tables 1 - 3 of the First Schedule identify three categories of employee; the category into which any individual falls being determined by the most “senior” role that*

*employee performs. (For example, if an employee has substantially the role of a Category B employee but, rather than being “a decision taker” the employee is the “significant decision-taker for customer affairs”, then the employee would be regarded as a Category A employee).*

6. *With respect to “suitably qualified”, this is determined by the category into which an individual falls and is detailed in Tables 1-3 of the First Schedule.*

### 3.4 Continuing professional development (CPD)

- 3.4.1 The onus is on each *registered person* to demonstrate the adequacy of its *CPD* regime.
- 3.4.2 *CPD* is a compulsory requirement for all *trust company business employees*. A *registered person* is required to maintain *CPD* records for all such employees (although it is permissible for a *registered person* to require its employees to keep their own records and account to the *registered person* on a regular basis).
- 3.4.3 A *registered person* is responsible for ensuring that *CPD* is appropriate for its *trust company business employees* and this consideration must take into account the employee’s job description and current role and duties and may include future development needs.
- 3.4.4 A *registered person* must ensure that Category A and B *trust company business employees* undertake a minimum of 25 hours per year of *CPD*. Category C *trust company business employees* must undertake 15 hours per year of *CPD*. For all categories of *trust company business employees*: a maximum of five hours *CPD* may be relevant reading.
- 3.4.5 Where a *registered person* is only registered to carry on Class O trust company business the minimum number of *CPD* hours is reduced to 15 hours per year.

#### Notes:

1. *It is recognised that some trust company business 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 a registered person:*
  - (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 registered person’s business and may therefore be counted towards the trust company employees’ work-related CPD.*
2. *It is expected that trust company business 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.*

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

- 3.5.1 The senior management (most often the board of directors) of the *registered person* is responsible for ensuring that it has robust arrangements for compliance with the *regulatory framework*, these must include:
- 3.5.1.1 approval of a compliance policy;
  - 3.5.1.2 establishment of a permanent and effective compliance function, whose responsibilities are formally documented;
  - 3.5.1.3 assessment, on at least an annual basis, of the extent to which compliance risk is managed effectively; and
  - 3.5.1.4 appointment of an appropriately skilled and experienced person as its Compliance Officer.
- 3.5.2 The compliance function must:
- 3.5.2.1 have appropriate independence;
  - 3.5.2.2 have direct access to senior management and board of directors, or equivalent;
  - 3.5.2.3 have unfettered access to all business lines, support departments and information necessary to properly discharge the responsibilities of the function;
  - 3.5.2.4 act as the principal point of contact for employees on day-to-day regulatory matters; and
  - 3.5.2.5 be able to devote sufficient time, and have sufficient resources, to discharge properly the responsibilities of the function, including implementation of the compliance policy.
- 3.5.3 The *registered person* must ensure that the Compliance Officer is responsible for:
- 3.5.3.1 ensuring appropriate monitoring of operational performances and managing regulatory and compliance risk within the *registered person*, which includes:
    - 3.5.3.1.1 monitoring that the internal policies and procedures are being consistently and effectively adhered to;
    - 3.5.3.1.2 assessing and recommending amendments to internal systems and controls as well as policies, and procedures to facilitate compliance with the *regulatory framework*; and
    - 3.5.3.1.3 where appropriate, promptly instigating action to remedy any deficiencies in the robust arrangements;
  - 3.5.3.2 providing senior management and the board of directors of the *registered person* with regular written reports in respect of the *registered person's* compliance with the requirements of the *FS(J)L*, Orders (issued under the *FS(J)L*) and the *Code*; and

- 3.5.3.3 acting as the principal point of contact with the *JFSC* on day-to-day regulatory matters.
- 3.5.4 The Compliance Officer must:
  - 3.5.4.1 be an individual operating under a contract of employment directly with the *registered person* or another company within the same group;
  - 3.5.4.2 be based in Jersey;
  - 3.5.4.3 have sufficient experience and skills which includes, holding an appropriate compliance or other qualification or be studying towards such a qualification; and
  - 3.5.4.4 have appropriate status and authority within the *registered person* to ensure that senior management and the board of directors of the *registered person* react to and determine whether to act upon his or her recommendations.
- 3.5.5 In the event that a Compliance Officer is temporarily unable to fulfil his/her responsibilities the *registered person* must:
  - 3.5.5.1 notify the *JFSC*; **and**
  - 3.5.5.2 designate an appropriately skilled and experienced alternate.
- 3.5.6 With respect to 3.5.5, notification to the *JFSC* must be made, in writing, as soon as the *registered person* becomes aware that the Compliance Officer will be temporarily unable to fulfil their responsibilities.

**Notes:**

1. *There is no specific requirement for a registered person to be subject to an internal audit review. However, the JFSC will recognise and take comfort from those registered persons that have effective internal audit controls, or where such functions are provided from elsewhere within a group.*
2. *It is a requirement of the Money Laundering Order that a registered person must appoint a Money Laundering Reporting Officer and Money Laundering Compliance Officer. The relevant AML/CFT Handbook sets out additional requirements for registered persons. The JFSC expects the Money Laundering Compliance Officer to form part of the compliance function.*
3. *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 FS(J)L: consequently, Article 14 of the FS(J)L applies.*
4. *The Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer may be the same person. It is also recognised that there may be registered persons where the compliance function is the Compliance Officer.*
5. *Where a registered person is a managed entity, it is acceptable for the managed entity to enter into an agreement with their manager for the provision of a Compliance Officer, a Money Laundering Reporting Officer and a Money Laundering Compliance Officer.*
6. *When considering a key person application, the JFSC will not only look at the suitability of the qualifications and experience of the applicant, but will also consider this in the context of the qualification and experience of the balance of the board and/or other key persons employed by the registered person.*

7. *With respect to 3.5.5 the JFSC considers a period of in excess of four weeks to constitute temporarily unable to fulfil his/her responsibilities.*

### 3.6 Complaints

- 3.6.1 A *registered person* 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 *registered person*, including a central register that contains details of any agreed compensation or compromise;
  - 3.6.1.2 inform *customers* 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 by the complainant to the contrary 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 comply with the requirement of 5.2.9, in relation to determining whether a *complaint* gives rise to any notification requirement under its professional indemnity insurance policy; and
  - 3.6.1.8 consider the *complaints* data for patterns emerging.
- 3.6.2 As soon as it becomes aware, a *registered person* must notify the JFSC promptly, in writing, if:
- 3.6.2.1 a *complaint* is not satisfactorily resolved within three months of it being lodged;
  - 3.6.2.2 a pattern to *complaints* is identified; or
  - 3.6.2.3 any *complaint* results in a claim under the *registered person's* professional indemnity insurance policy.

**Note:**

1. *With respect to 3.6.2, "as soon as it becomes aware" applies from the point at which the registered person 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 registered person.*

### 3.7 Record keeping

**Note:**

1. *This section explains the minimum standards of record keeping that are required in respect of a registered person's own business and the trust company business services that it is providing.*

#### All records

- 3.7.1 *A registered person must ensure that it has appropriate record keeping arrangements for compliance with the applicable Laws (including *anti-money laundering legislation* and company legislation), Orders and regulatory requirements, set by the *Code* or the *relevant AML/CFT Handbook*.*
- 3.7.2 *A registered person is expected to maintain such 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 registered person 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.*
- 3.7.3 *A registered person must have a clearly documented policy and procedure regarding record retention that includes:*
  - 3.7.3.1 *periodic review of the accessibility and condition of paper and electronic records;*
  - 3.7.3.2 *the adequacy of the safekeeping of records; and*
  - 3.7.3.3 *periodic testing of procedures relating to the retrieval of records.*
- 3.7.4 *A registered person that is ceasing to conduct trust company business is required to arrange appropriate record keeping arrangements as part of a cessation of business plan.*

#### Business records

- 3.7.5 *A registered person must maintain an audit trail of material changes to the policies and procedures manual that covers the operation of the *registered person*, which is updated as required. When updates are made, the effective date of such updates must be recorded and the superseded records maintained. This is especially true in respect of 3.2.1.1.1, 3.2.1.1.5 and 3.2.1.1.6.*
- 3.7.6 *The period for which business records must be kept is the later of:*
  - 3.7.6.1 *the period required for any particular record by any law;*
  - 3.7.6.2 *the relevant AML/CFT Handbook; or*
  - 3.7.6.3 *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.*

#### Customer records

- 3.7.7 *A registered person is expected to keep adequate, orderly and up-to-date customer records which are in line with:*
  - 3.7.7.1 *the requirements, including retention period, set for any particular record by any law; and*

3.7.7.2 the requirements established by Part 4 of the *Money Laundering Order* and as set out in the *relevant AML/CFT Handbook*.

3.7.8 Where the *Code* requires *customer* 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.

3.7.9 With respect to 3.7.7, if it is the case that the record retention periods differ, the *customer* records must be retained for the longest designated period.

**Notes:**

1. *The Code does not establish any retention requirements for tape recordings of telephone conversations.*
2. *With respect to 3.7.5, a change to the policies and procedures manual that necessitates communication to impacted staff is a material change.*
3. *With respect to 3.7.6.1, the JFSC considers that laws relating to companies, tax, proceeds of crime, and data protection may be relevant.*



## 4 A registered person must be transparent in its business arrangements.

- 4.1 A *registered person* must disclose on its stationery and advertising material that it is regulated by the Jersey Financial Services Commission.
- 4.2 A *registered person* must communicate with *customers* in a way that is adequate, fair and not misleading.
- 4.3 A *registered person* must be open and transparent about its fees and charges, in relation to the provision of trust and company services, including:
- 4.3.1 in advance of taking an appointment, reaching agreement on, and documenting, the basis for its fees and charges, including the ability to make changes to the basis for determining fees;
  - 4.3.2 disclosure of all fees and charges associated with the trust company service provided, as either a monetary or percentage figure, including, but not limited to, any:
    - 4.3.2.1 group related charges;
    - 4.3.2.2 commissions (both initial and recurring); and
    - 4.3.2.3 payments to or from third parties (such as introductory fees or commission sharing arrangements);
  - 4.3.3 the manner by which fees and charges will be collected, including whether agreed fees and charges will be deducted directly from the *customer's* assets without their prior approval – effectively a “no surprises” policy; and
  - 4.3.4 in relation to the termination of services, whether fees paid in advance are refundable in the event of termination.
- 4.4 A *registered person* must accurately record the basis of any charges in respect of time spent and disbursements and make the relevant records available to *customers* upon request.
- 4.5 A registered person must supply a person to whom it provides a service set out in Article 2(4) of the FS(J)L with confirmation, in writing, of the services that it is providing as well as a contract, agreement or other written form setting out its general and specific terms associated with providing those services (accepting in the case of Article 2(4)(h) of the FS(J)L that the identity and existence of a person to whom the service is provided will be dependent upon such terms and circumstances as might prevail at any particular point during the lifecycle of an express trust). This documentation must:
- 4.5.1 be distinguishable from marketing or promotional material;
  - 4.5.2 be consistent with the Code;
  - 4.5.3 be clearly expressed in plain language that only uses technical or legal terms where absolutely necessary;
  - 4.5.4 be provided prior to the provision of any trust company business service, except when it is impractical to do so, in which case the document shall be provided at the earliest available opportunity;
  - 4.5.5 explain whether the *registered person* is acting as a principal or as the agent of the person to whom the service is provided or any other person;

4.5.6 where the *registered person* holds *customer money*, set out the terms on which that money is held;

4.5.7 include all appropriate information relevant to the service that will be provided.

**Notes:**

1. *For the purpose of 4.1, the JFSC considers that, at a minimum, "stationery" includes: headed letter paper; emails sent in lieu of a letter; and facsimiles. The JFSC does not consider the following to be stationery unless they are quite clearly being utilised in lieu of a letter or as advertising material: text messages; account statements; business cards; and compliment slips.*
2. *If, in the case of any one customer or customers, it is impractical or inappropriate to provide the information required by paragraphs 4.3 directly, it would be sufficient in such instances for the registered person to ensure that the general basis for their charges, the ability to make changes to the basis for determining fees and a scale of charges, are available on request.*

## 5 A registered person must maintain, and be able to demonstrate the existence of, adequate financial resources and adequate insurance.

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### 5.1 Financial resources

- 5.1.1 Where a *registered person* is a Jersey registered company that holds a registration to undertake deposit-taking business, and consequently provides the *JFSC* with a quarterly prudential report, the Adjusted Net Liquid Assets (**ANLA**) requirements set by the *Code* do not apply.
- 5.1.2 Where the *registered person* operates in Jersey as a branch of a legal entity registered outside Jersey that holds a registration to undertake deposit-taking business and its immediate home regulator applies Basel II prudential requirements or has implemented the 1997 Market Risk Accord then the *ANLA* requirements set by the *Code* do not apply. *Registered persons* to whom this paragraph applies must notify the *JFSC*, in writing.
- 5.1.3 Where a *registered person* is a 100% subsidiary of a Jersey incorporated company registered to carry on deposit-taking business it may apply to the *JFSC*, in writing, for a variance (exemption) from completing the *ANLA* calculation. Such a variance will only be considered if the deposit-taker provides a letter of undertaking, acceptable to the *JFSC*, in respect of providing financial support to the trust company.
- 5.1.4 A *registered person* must maintain:
  - 5.1.4.1 a minimum of £25,000 paid up share capital (or evidenced *net assets* position for non-incorporated entities) and a minimum surplus of *ANLA* over the Expenditure Requirement in the ratio of 110% in accordance with the calculation set out in the Second Schedule; and
  - 5.1.4.2 a minimum *net assets* position of £25,000 at all times.
- 5.1.5 A *registered person* must immediately notify the *JFSC* in writing if the nominal value of fully paid shares is less than £25,000. Where the *registered person* has a combination of fully paid shares and share premium that exceeds £25,000 in total, the *JFSC* may deem the *registered person* to have satisfied the first part of paragraph 5.1.4.1.
- 5.1.6 A *registered person* must perform the calculation set out in the Second Schedule as appropriate to the business, but at least once every three months. In addition, the frequency of the calculation shall increase to monthly or other such period as the *JFSC* may determine, if either:
  - 5.1.6.1 a *registered person's ANLA* falls below 130% of its Expenditure Requirement; or
  - 5.1.6.2 an event occurs which has a material adverse effect on the *registered person's* financial resources.
- 5.1.7 In respect of a *registered person* that is part of an affiliation:
  - 5.1.7.1 each affiliation member must comply with the minimum share capital requirement and with the minimum *ANLA* requirement;

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- 5.1.7.2 only the affiliation leader need comply with the minimum share capital and *ANLA* requirements provided that the affiliation leader is able to prepare consolidated financial information that enables it to perform, at least once every three months, the financial resource requirement calculation in respect of the affiliation in accordance with paragraph 5.1.4.1.
- 5.1.8 A *registered person* is required to immediately notify the *JFSC* in writing (in addition to any notification obligation under the *FS(J)L* or the *Code*):
  - 5.1.8.1 if its *ANLA* falls below 130% of its Expenditure Requirement;
  - 5.1.8.2 if its *ANLA* falls below 110% of its Expenditure Requirement; and
  - 5.1.8.3 of any transaction or situation that appears not to be catered for in, or where the application of, the Second Schedule might give a misleading impression of the adequacy of the financial resources.
- 5.1.9 The *JFSC* may, on written application by a *registered person*, consider a variance to the notification obligation as stated in 5.1.8.1.
- 5.1.10 Where a *registered person* wishes to make an application for a variation to the treatment of assets, liabilities and/or expenditure items in the *ANLA* calculation this must be made in writing to the *JFSC*.

#### Subordinated Loans

- 5.1.11 On submission of a written request, by the *registered person*, the *JFSC* will consider granting consent to exclude a long term subordinated loan as a liability within the *ANLA* calculation. Any request must be accompanied by a signed consent request checklist and such consent is only likely to be granted where:
  - 5.1.11.1 the subordinated loan is drawn up in accordance with the *JFSC*'s proforma Subordinated Loan Agreement; and
  - 5.1.11.2 the subordinated loan is made by an approved lender.
- 5.1.12 Specifically, with respect to the subordinated loan referred to in 5.1.11 the Subordinated Loan Agreement must be signed by authorised signatories of all parties to the agreement, and:
  - 5.1.12.1 be for a fixed period of not less than two years; or
  - 5.1.12.2 where no fixed term is cited, be subject to a minimum notice period of repayment of at least two years.
- 5.1.13 Where the *JFSC* has considered and granted a variance in respect of the treatment of a subordinated loan within the *ANLA* calculation, the amount deducted may not exceed the lower of:
  - 5.1.13.1 the drawn down amount of the subordinated loan; and
  - 5.1.13.2 four times the *net assets* position of the *registered person*, calculated using the *registered person's* latest audited financial statements.
- 5.1.14 The variance treatment for the subordinated loan will automatically fall away if either:
  - 5.1.14.1 the *registered person* fails to comply with any of the requirements of the subordinated loan agreement, including the notification requirements; or
  - 5.1.14.2 the subordinated loan repayment date falls due within one year.

- 5.1.15 In addition to being a signatory to the Subordinated Loan Agreement, the JFSC will place a condition on the *registered person's* registration, utilising Article 10 of the FS(J)L, requiring that they comply in full with the terms of the Subordinated Loan Agreement.

**Notes:**

1. *"net assets" is defined as total assets less total liabilities.*
2. *The JFSC has published a guidance note on the ANLA calculation which is available from the policy statements and guidance notes section of the JFSC website.*
3. *The proforma Subordinated Loan Agreement and consent request checklist are available from the JFSC website.*
4. *For the purposes of 5.1.11.2 an approved lender is:*
  - (a) *a financial service business as defined by Article 2 of the FS(J)L; or*
  - (b) *a financial service business regulated by a "relevant supervisory authority", as defined by Article 1 of the FS(J)L;*
  - (c) *a person that is registered by the JFSC to carry on deposit-taking business under Article 9 of the Banking Business (Jersey) Law 1991;*
  - (d) *a principal person of the registered person; or*
  - (e) *a person that does not meet any of the above criteria but whom has been specifically approved by the JFSC.*

## 5.2 Insurance Arrangements

- 5.2.1 A *registered person* must have and maintain adequate insurance cover at all times, commensurate with its business activities.
- 5.2.1.1 Such cover must include professional indemnity insurance (**PII**) extended to include fidelity guarantee and directors' and officers' insurance.
- 5.2.1.2 *PII* cover and extensions must include negligence and errors and omissions by the *registered person* and employee dishonesty and must, where possible, extend to all territories from which the *registered person* conducts business.
- 5.2.1.3 *PII* cover must be written on a "claims-made" basis including costs and expenses and, so far as lawful, must include:
- 5.2.1.3.1 loss or theft of documents (liability and costs of replacement, restoration or reconstruction of data);
  - 5.2.1.3.2 self-employed or contract hire persons engaged in a *registered person's* business; and
  - 5.2.1.3.3 indemnity to employees, former partners, former employees and/or consultants.
- 5.2.2 Subject to 5.2.3, the minimum indemnity limit for any one claim and in the aggregate must be the greater of:
- 5.2.2.1 three times the amount of relevant fees and commissions;

- 5.2.2.2 thirty times the amount of relevant fees and commissions from the *registered person's* single largest *customer* (including all related *customers*); or
- 5.2.2.3 £5,000,000 (five million pounds sterling only).
- 5.2.3 A *registered person* shall not be required by virtue of 5.2.2 to have aggregate insurance cover exceeding £10,000,000 (ten million pounds sterling).
- 5.2.4 In the event that a *registered person's* aggregate level of *PII* cover is depleted as a result of a claim such that it is no longer sufficient to meet the requirements set out in 5.2.2, the *registered person* must obtain re-instated cover.
- 5.2.5 Any excess (or deductible) per claim on the policy must not:
  - 5.2.5.1 exceed £20,000 (twenty thousand pounds sterling) or 3% of the annual relevant fees and commissions, whichever is greater; or
  - 5.2.5.2 reduce the limit of indemnity payable under the policy.
- 5.2.6 In the case of an affiliation, it is the responsibility of the affiliation leader to demonstrate to the *JFSC* that the insurance cover maintained meets the requirements of paragraphs 5.2.1.1, 5.2.1.2 and 5.2.2. This may be achieved by:
  - 5.2.6.1 each participating member of the affiliation complying with the *PII* requirements as though each member was a non affiliated person;
  - 5.2.6.2 each participating member of the affiliation is named on a single *PII* policy, the extent of cover being determined in accordance with paragraph 5.2.2 and is based on the aggregated affiliation relevant fees and commissions; or
  - 5.2.6.3 a combination of the alternatives set out in paragraphs 5.2.6.1 and 5.2.6.2.
- 5.2.7 As soon as it becomes aware, a *registered person* must notify the *JFSC* in writing of any material limitations in its *PII* policy, including the basis on which the limitation has been applied, in respect of matters such as:
  - 5.2.7.1 an inability to obtain *PII* cover in line with the requirements of 5.2.2 or 5.2.4;
  - 5.2.7.2 any territory in which business is or may reasonably be expected to be conducted;
  - 5.2.7.3 any exclusions applied by way of endorsements; and
  - 5.2.7.4 any retroactive date applied to the *PII* policy.
- 5.2.8 A *registered person* that is ceasing to conduct trust company business is required to arrange for appropriate "run off" *PII* cover in respect of claims arising from past acts or omissions. The level of such cover requires the *JFSC's* consent as part of a cessation of business plan.
- 5.2.9 A *registered person* must have adequate procedures in place to ensure compliance with all terms and conditions set out in its *PII* policy, particularly in relation to the timely notification of events by the *registered person* to its insurer, which may lead to a claim on the policy.

Notes:

1. *With respect to 5.2.2.1 and 5.2.2.2, “relevant fees and commissions” for PII purposes is gross income paid or payable to the registered person, which is fees, commission, brokerage, or other relevant income arising from professional business activities (regulated or not) covered under the PII policy. This applies for the last accounting year before the start or renewal of the policy, or as per the business plan for new applicants.*
2. *With respect to 5.2.7, “as soon as it becomes aware” applies from the point at which the registered person 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 registered person.*
3. *The JFSC has issued a guidance note on professional indemnity insurance, available from the policy statements and guidance notes page of the JFSC website, which a registered person may find helpful when considering the PII requirements. Specifically,*
  - (a) *with respect to the material limitations notifications required by 5.2.7, paragraph 2.1 of the guidance note provides a list of exclusions and limitations that the JFSC considers standard and therefore fall outside of the notification requirement; and*
  - (b) *paragraph 6.3.2 of the guidance note highlights the information to be submitted to the JFSC when requesting a variance to enter into a self-insurance arrangement.*
4. *With respect to PII cover for an affiliation, this may be arranged by the affiliation leader for the whole affiliation.*
5. *With respect to 5.2.8, the JFSC will generally expect to see “run off” PII cover covering a minimum period of twelve months.*

## 6 A registered person 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 registered person's relationship with the JFSC. Article 28(3) of the FS(J)L provides that a registered person or formerly registered person shall be guilty of an offence if he or she fails to provide the JFSC with any information in his or her 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 FS(J)L in relation to the registered person or formerly registered person; 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 registered person or formerly registered person.*
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 registered person 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 registered person under this Principle include the timely provision of data required in connection with a registered person's regulatory fees and the timely payment of fees due.*

### General Notifications

- 6.1 *A registered person must advise the JFSC in writing as soon as it becomes aware of any matter that might reasonably be expected to affect its registration or be in the interests of its customers to disclose. Wherever possible this notification must include details of the steps the registered person has taken, or intends to take, to mitigate the matter.*
- 6.2 *A registered person 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 registered person 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 registered person. The JFSC considers the following 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 registered person considers is material to, or may make it impractical for it to comply with, one or more of:*



- i. *the provisions of the FS(J)L or any Regulation or Order 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, key persons or trust company business employees, especially where the registered person has imposed a formal disciplinary measure or sanction.*

### Specific Notifications

6.3 A *registered person* must notify the JFSC of the following, in writing, not less than 10 business days before the change is implemented:

- 6.3.1 a change in the name of the *registered person*;
- 6.3.2 the adoption of, or a change in, any business name under which the *registered person* carries on trust company business;
- 6.3.3 a change to:
  - 6.3.3.1 the address of the principal office of the *registered person*,
  - 6.3.3.2 the address of the registered office of the *registered person*, and
  - 6.3.3.3 any address which is treated as the proper address of the *registered person* by Article 40(6) of the FS(J)L;
- 6.3.4 a change to the capital structure of a *registered person* (includes, inter alia, the issuance of preference shares and buy back of ordinary shares), in particular:
  - 6.3.4.1 where an opinion has been obtained on accounting for any aspect of the change this should be provided to the JFSC as part of the notification, and
  - 6.3.4.2 the revised capital structure must not take effect until the JFSC has provided the *registered person* with a letter of no objection in relation to the proposed structure;
- 6.3.5 the details of any loan which has been granted to a *registered person* and for which payment of the remaining balance has been waived such that the remaining balance is accounted for as a credit to reserves;
- 6.3.6 any proposal to “reinstate” a loan balance (either in full or in part) which meets the criteria set out in 6.3.5; and
- 6.3.7 the summary winding up or voluntary dissolution of a *registered person*.

6.4 A *registered person* must notify the JFSC, in writing, within a reasonable time of becoming aware of, or resolving to undertake, any of the following:

- 6.4.1 the decision to voluntarily cease a business activity, whether temporarily or permanently, where this decision involves the revocation of a registration in accordance with Article 9(4)(a) of the FS(J)L, in this case a *registered person* must complete a Cessation of Business Plan, as prescribed by the JFSC, which must include details of arrangements for the protection of *customers*, creditors and other stakeholders. ~~Before implementing a Cessation of Business Plan a *registered*~~

person must obtain written confirmation from the JFSC that it has no objection to it;

- 6.4.2 the presentation of any application to the court for *désastre*;
- 6.4.3 the summoning of any meeting to consider a resolution to wind-up a *registered person* or the winding up of the *registered person*;
- 6.4.4 the application by any person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country in respect of the *registered person*;
- 6.4.5 the making or any proposals for the making of a composition or arrangement with creditors of the *registered person*;
- 6.4.6 the imposition of disciplinary measures or disciplinary sanctions on the *registered person* or any of their *principal persons* or *key persons* by any relevant supervisory authority or professional body;
- 6.4.7 the conviction of the *registered person* or any of its *principal persons* or *key persons*, for any offence:
  - 6.4.7.1 under legislation of any jurisdiction relating to the conduct of 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
  - 6.4.7.2 involving fraud or dishonesty;
- 6.4.8 the imposition of any penalties for deliberate tax evasion on the *registered person* or any of its *principal persons* or *key persons*;
- 6.4.9 the re-registration of a *registered person* incorporated with unlimited liability as a limited liability company;
- 6.4.10 a general partner in a *registered person* becoming a limited partner;
- 6.4.11 the granting, withdrawal or refusal of any application for authorisation to carry on any regulated business in Jersey, or any jurisdiction outside Jersey, or the revocation of such authorisation;
- 6.4.12 the withdrawal of an application for membership of any professional body by the *registered person*, or *principal person* or *key person* of the *registered person*, in any jurisdiction, or refusal or revocation of such a membership;
- 6.4.13 the appointment of inspectors (howsoever named) by a statutory or other regulatory authority to investigate the affairs of the *registered person*;
- 6.4.14 any litigation following the institution of proceedings before a Court of Law:
  - 6.4.14.1 instigated by the *registered person* (or a subsidiary of the *registered person*),
  - 6.4.14.2 instigated against the *registered person*, or
  - 6.4.14.3 where the *registered person* is a party cited;
- 6.4.15 any decision relating to business activities likely to have a material effect on the *registered person* 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 the:
  - 6.4.15.1 introduction of a new business activity,

- 6.4.15.2 closure to new business,
- 6.4.15.3 formation, acquisition, disposal or dissolution of a subsidiary, associated group company or branch office, wherever situated, and
- 6.4.15.4 changes to investments held, where the *registered person* 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;
- 6.4.16 where a *registered person* is acting as a manager of a managed trust company (under a trust company business Class N registration) the intention to resign as the manager;
- 6.4.17 an intention to be appointed as a manager of a managed trust company (under a trust company business Class N registration);
- 6.4.18 where a *registered person* administers a private trust company business, changes in the status of such companies, such that:
  - 6.4.18.1 the administration is transferred to another *registered person* or *registered persons*,
  - 6.4.18.2 another *registered person* or *registered persons* are appointed to jointly provide administration services, or
  - 6.4.18.3 where a *registered person* ceases to provide administration services; and
- 6.4.19 any material changes, other than those specifically referred to in the *Code*, in the information previously submitted under the following headings, any:
  - 6.4.19.1 overseas operations through which the *registered person* carries on trust company business, irrespective of the vehicle utilised to deliver the business (branch, subsidiary, representative office or otherwise), and
  - 6.4.19.2 jurisdictions outside Jersey in which the *registered person* carries on trust company business indicating whether this is done through a branch office, a subsidiary or otherwise.
- 6.4.20 a decision by the *registered person's* auditor to qualify its audit report or to raise an emphasis of matter therein.

**Notes:**

1. With respect to 6.4, the JFSC considers
  - (a) "a reasonable time" to be five business days; and
  - (b) that "becoming aware" applies from the point at which the registered person 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 registered person.
2. With respect to 6.4.1, a full outline of the matters that must be addressed within the COBP is available from the JFSC upon request.
3. With respect to 6.4.18, it should be noted that private trust company business is defined in the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000 as meaning:

*A person being a company –*

- (a) *the purpose of which is*
    - i. *solely to provide trust company business services in respect of a specific trust or trusts; or*
    - ii. *to act for that purpose and to act as a member of the council of a foundation or of foundations (otherwise than as a qualified member, as that term is defined by the Foundations (Jersey) Law 2009);*
  - (b) *that does not solicit from or provide trust company business services to the public; and*
  - (c) *the administration of which is carried out by a registered person registered to carry out trust company business,*
- when providing a service specified in Article 2(4) of the Law where the name of the company is notified to the JFSC.*

#### Notifications arising in other parts of the Code

- 6.5 A *registered person* is required to comply with notification requirements established in other parts of the *Code*:
- 6.5.1 3.1.2.2 sets a requirement to contact the JFSC as soon as a *registered person* becomes aware that the regulatory span of control requirements will not be maintained, including where regulatory span of control is maintained with the minimum number of individuals of which one is absent for a substantial period of time;
  - 6.5.2 3.3.1.6 sets a notification requirement regarding the percentage of suitably qualified Category C *trust company business employees*;
  - 6.5.3 3.3.4 sets a notification requirement where a qualification is obtained other than by way of examination;
  - 6.5.4 3.5.5 sets a notification requirement in respect of a compliance officer being temporarily unable to fulfil his/her responsibilities;
  - 6.5.5 3.6.2 sets notification requirements in respect of *complaints*;
  - 6.5.6 5.1.2 sets a notification requirement on *registered persons* that are branches of a legal entity registered outside Jersey and the *registered person* is not required to complete the ANLA requirements of the *Code*;
  - 6.5.7 5.1.8 sets notification requirements in respect of ANLA requirements; and
  - 6.5.8 5.2.7 sets notification requirements in respect of *PII*.

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

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

6.7 If, because of a systems failure of any kind, a *registered person* 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 registered person must not make statements that are misleading, false or deceptive.

- 7.1 A registered person must take reasonable steps to ensure that its financial service advertisements (**advertisements**) are not misleading, false or deceptive. Words used in *advertisements* must be chosen carefully and certain words, such as “guarantee”, “assured”, “confidential” and “secret”, must be treated with great caution.
- 7.2 An *advertisement* must not contain:
- 7.2.1 a statement, promise or forecast unless the *registered person*, at the time the *advertisement* is made has reasonable grounds for believing, is not misleading, false or deceptive;
  - 7.2.2 a statement of opinion held by any person unless the *registered person*, at the time the *advertisement* is made has reasonable grounds for believing such statement, to be the honestly held opinion of that person at that time;
  - 7.2.3 a statement of fact unless the *registered person*, at the time the *advertisement* is made has reasonable grounds for believing such statement will continue to be true for so long as the *advertisement* continues to be made in current publications;
  - 7.2.4 a statement about the scale of activities of, or any of the activities of, or the resources of or available to, a *registered person* or that *registered person's* group or affiliation unless the *registered person*, at the time the *advertisement* is made has reasonable grounds for believing such statement, is not misleading, false or deceptive;
  - 7.2.5 a statement relating to taxation benefits unless it is clearly illustrated by example to show what it means in practice and to whom such benefits apply;
  - 7.2.6 a statement relating to *customer* confidentiality unless it is qualified to show the limits of any confidentiality assurance made;
  - 7.2.7 a statement of comparison with other entities carrying on trust company business unless the basis of comparison is clearly stated and the comparison is fair; or
  - 7.2.8 a statement implying that the service is only available for a limited period or in limited form, if such is not the case.
- 7.3 An *advertisement* made in a written or broadcast form must not contain:
- 7.3.1 a statement of fact unless the *registered person*, at the time the *advertisement* is made has reasonable grounds, supported by documentary evidence, for believing such statement to be true; or
  - 7.3.2 a statement of opinion held by any person unless the *registered person*, at the time the *advertisement* is made, has reasonable grounds, supported by documentary evidence, for believing such statement to be the honestly held opinion of that person at that time.
- 7.4 The content and format of any *advertisement* must not:
- 7.4.1 be designed so as to be likely to be misunderstood;
  - 7.4.2 be designed so as to disguise the significance of any warning statement or information, which is required to be included under the *Code*; or

7.4.3 signify in any way that the *advertisement* is approved by the JFSC.

7.5 An *advertisement* may include a quotation from a statement made by any person commending any service provided that:

- 7.5.1 where the person is an employee or associate of the *registered person*, that fact is disclosed in the *advertisement*;
- 7.5.2 the quotation is included with that person's written consent;
- 7.5.3 the statement is relevant to the service that is the subject of the *advertisement*;
- 7.5.4 where the whole of the statement is not quoted, what is quoted represents fairly the message contained in the whole of the statement; and
- 7.5.5 the statement has not become inaccurate or misleading subsequent to it being made.

7.6 The *registered person* must be able to demonstrate that adequate disclosure of the key risks and the relevant terms and conditions was made to the customer before commitment was made, so as to ensure the customer has made an informed decision.

**Notes:**

1. *Article 1 of the FS(J)L defines a "financial service advertisement" as an advertisement containing – (a) an invitation to transact financial service business; or (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the transaction of financial service business, and includes any means of bringing such an invitation or such information to the notice of any person, and a reference to an advertisement shall be construed accordingly. It is the JFSC's view that this definition covers written, broadcast and oral advertisements.*
2. *For the purpose of Principle 7, "written" and "broadcast" have the same meaning as provided by Article 1 of the Financial Services (Advertising) (Jersey) Order 2008.*
3. *Under Article 39L of the FS(J)L, it is an offence for any person to knowingly or recklessly make a misleading, false or deceptive statement, promise or forecast for the purpose of inducing another person to enter into, or to refrain from entering into, an agreement for the provision of financial service business.*
4. *The requirements in Principle 7 are not intended to capture advertising or promotional literature forwarded by the registered person to its customers on behalf of third parties.*
5. *Advertisements that meet the exempt criteria set out in Article 2(2) of the Financial Services (Advertising) (Jersey) Order 2008 are also exempt from the requirements of Principle 7.*
6. *For the avoidance of doubt, the FS(J)L does not require advertisements to be approved by the JFSC and accordingly the JFSC would not normally contribute to any review or vetting process. In serious cases, however the JFSC will consider exercising its powers of direction to have an advertisement amended or withdrawn.*
7. *It may not be possible or practicable to list within an advertisement all areas of risk that might apply to a particular product or service. Similarly, it may not be possible or practicable to specify all of the relevant terms and conditions. The necessary extent to which the risk warnings and the terms and conditions are specified in an advertisement will be dependent upon the nature of the products or services being advertised.*

## The First Schedule

### Trust Company Business Employee Categories and Qualifications

The definition of a *trust company business employee* is [given in the Glossary to the Code](#).

*The following notes apply to Category, A, B and C trust company business employees:*

1. *It is the responsibility of the registered person to determine and document what constitutes “relevant experience”.*
2. *Continuing Professional Development (CPD) should be “appropriate” i.e. have regard to the employee’s job description and duties possibly including future development needs. CPD may include up to a maximum of five hours reading. Further guidance on CPD is provided in paragraph 3.4 of the Code.*
3. *The JFSC has published the TCB professional qualifications guidance note which provides details of qualifications acceptable to the JFSC for trust company business employees (Table 4 and Table 5) along with details in respect of applying to the JFSC for a variance from the standard requirements.*

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**Deleted:** provided as part of the TCB Fees Notice available from the JFSC website: [Click here for JFSC Fees Notices](#). For the purposes of the Code, part (a) of the definition is relevant.

Table 1

#### Category A Employee Role Indicators

|  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>› <i>Principal person</i></li> <li>› Overall responsibility for the activities and decisions of all employees</li> <li>› Makes “significant” decisions in respect of trust company business <i>customer</i> affairs</li> </ul> |
|--|---|

#### Overall Requirement and Suitably Qualified

In accordance with paragraph 3.3.1.5.1, 75% of a registered person’s Category A trust company business employees must be suitably qualified.

A Category A trust company business employee is suitably qualified if they:

- (i) Have a minimum of five years relevant experience, AND
- (ii) Hold a “Table 4” Qualification as detailed in the *TCB professional qualifications guidance note*.

In addition, all Category A trust company business employees must complete 25 hours CPD per annum.

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Table 2

| Category B | Employee Role Indicators  |
|------------|---|
|            | <ul style="list-style-type: none"> <li>› Compliance officer</li> <li>› Responsible to a <i>principal person</i> (other than as a Category C Employee)</li> <li>› Responsible for the activities of Category C Employees reporting to him/her</li> <li>› Makes other than “significant” decisions (Refer Category A) in respect of trust company business <i>customer</i> affairs</li> </ul> |

#### Overall Requirement and Suitably Qualified

In accordance with paragraph 3.3.1.5.2, 75% of Category A and B trust company business employees cumulatively must be suitably qualified.

A Category B trust company business employee is suitably qualified if they comply with either Scenario 1 or 2 below.

##### Scenario 1

- (i) Have three years relevant experience, AND
- (ii) Hold a “Table 4” Qualification as detailed in the *TCB professional qualifications guidance note*.

##### Scenario 2

- (i) Have five years relevant experience, AND
- (ii) Hold a “Table 5” Qualification as detailed in the *TCB professional qualifications guidance note*.

In addition, all Category B trust company business employees must complete 25 hours CPD per annum.



**Table 3**
**Category C Employee Role Indicators**

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>› Work is supervised and reviewed directly by a Category A or B employee</li> <li>› Performing a professional administrative (as distinct from clerical) role, but dependent on superiors for decisions on technical matters or trust company business decisions</li> </ul> |
|--|--|

**Overall Requirement and Suitably Qualified**

In accordance with paragraph 3.3.1.6, if less than 50% of the Category C trust company business employees are either qualified with, or in the process of studying for, a “Table 4” or “Table 5” Qualification, as detailed in the TCB professional qualifications guidance note, then the JFSC must be notified.

Category C suitably qualified criteria:

- (i) No prescribed minimum relevant experience
- (ii) Hold a “Table 5” Qualification as detailed in the TCB professional qualifications guidance note

In addition, all Category C trust company business employees must complete 15 hours CPD per annum.

## The Second Schedule

### Financial Resource Requirements

The following table sets out the methodology for calculating the Adjusted Net Liquid Assets and Expenditure Requirement. The applicable definitions and guidance can be found in the JFSC publication: Definitions and Guidance on the Adjusted Net Liquid Assets (**ANLA**) Calculations. In the Resource Requirement Table the column headed "GN ref" highlights the relevant item in section 5 of the guidance note.

Details regarding the frequency and scope of the calculation are set out in paragraph 5.1 of the Code and sections 2 and 3 of the ANLA guidance note.

### Resource Requirement Table

| Assets:                                 | £ | £ | £   | GN ref |
|---|---|---|-----|--------|
| <b>Total Fixed Assets</b>               |   | X |     |        |
| <b>Current Assets:</b>                  |   |   |     |        |
| Work in progress                        | X |   |     |        |
| Debtors and prepayments                 | X |   |     |        |
| Amounts due from related parties        | X |   |     |        |
| Cash at bank and in hand                | X |   |     |        |
| Investments                             | X |   |     |        |
| Other                                   | X |   |     |        |
| <b>Total Current Assets</b>             |   | X |     |        |
| <b>Total Assets</b>                     |   |   | X   | 1      |
| <b>Illiquid Asset Adjustments:</b>      |   |   |     |        |
| Fixed assets                            |   | X |     | 2      |
| Debtors > 90 days                       |   | X |     | 3      |
| Work in progress > 90 days              |   | X |     | 4      |
| Prepayments > 90 days                   |   | X |     | 5      |
| Amounts due from related parties        |   | X |     | 6      |
| Any other relevant items <sup>3</sup>   |   | X |     |        |
| <b>Total Illiquid Assets Adjustment</b> |   |   | (X) |        |
| <b>Adjusted Total Assets</b>            |   |   | X   |        |

<sup>3</sup> The *registered person* must exercise appropriate judgement to include any items here that may not be covered by the defined categories of illiquid asset adjustment but would be considered to be illiquid.

| Liabilities:                                 | £ | £   | £ | GN ref |
|--|---|-----|---|--------|
| <b>Current Liabilities:</b>                  |   |     |   |        |
| Trade creditors and accruals                 | X |     |   |        |
| Bank overdraft                               | X |     |   |        |
| Bank loans < 1 year                          | X |     |   |        |
| Lease obligations < 1 year                   | X |     |   |        |
| Taxation obligations < 1 year                | X |     |   |        |
| Deferred Income                              | X |     |   |        |
| Amounts due to related parties <1 year       | X |     |   | 7      |
| Subordinated loan < 1 year to run            | X |     |   |        |
| Other < 1 year                               | X |     |   |        |
| <b>Total Current Liabilities</b>             |   | X   |   |        |
| <b>Long Term Liabilities:</b>                |   |     |   |        |
| Bank loans > 1 year                          | X |     |   |        |
| Lease obligations > 1 year                   | X |     |   |        |
| Taxation obligations > 1 year                | X |     |   |        |
| Amounts due to related parties > 1 year      | X |     |   | 7      |
| Subordinated loan > 1 year                   | X |     |   |        |
| Other > 1 year                               | X |     |   |        |
| <b>Total Long Term Liabilities</b>           |   | X   |   |        |
| <b>Total Liabilities</b>                     |   |     | X | 8      |
| <b>Adjustments to Total Liabilities:</b>     |   |     |   |        |
| PII excess                                   |   | X   |   | 9      |
| Additional excess on PII                     |   | X   |   | 10     |
| Guarantees and/or charges over assets        |   | X   |   | 11     |
| Deferred Income                              |   | (X) |   | 13     |
| Allowable subordinated loan > 1 year         |   | (X) |   | 14     |
| Allowable undrawn credit facility            |   | (X) |   | 15     |
| Bank loans > 1 year                          |   | (X) |   |        |
| Lease obligations > 1 year                   |   | (X) |   |        |
| Taxation obligations > 1 year                |   | (X) |   |        |
| Any other relevant items                     |   | (X) |   |        |
| <b>Total Adjustment to Total Liabilities</b> |   |     | X |        |
| <b>Adjusted Total Liabilities</b>            |   |     | X |        |
| <b>Adjusted Net Liquid Assets (ANLA)</b>     |   |     | X |        |

| Calculation of Expenditure Requirement (ER):   | £ | £   | £      | GN ref |
|--|---|-----|--------|--------|
| Operating expenses   |   | X   |        |        |
| Depreciation   |   | X   |        |        |
| Finance costs  |   | X   |        |        |
| Tax expense  |   | X   |        |        |
| Other expenses   |   | X   |        | 16     |
| <b>Total actual expenditure</b>  |   |     | X      | 17     |
| <b>Adjustments to actual expenditure:</b>  |   |     |        | 18     |
| Discretionary bonuses/profit share   |   | (X) |        | 19     |
| Bad debt expense   |   | (X) |        |        |
| Exceptional costs  |   | (X) |        | 20     |
| Other  |   | (X) |        | 21     |
| <b>Total adjustments to total actual expenditure</b>   |   |     | X      |        |
| <b>Adjusted total actual expenditure</b>   |   |     | Y      |        |
| <i>Compare to:</i>   |   |     |        |        |
| <b>Budget expenditure for the current year</b> (net of forecast discretionary bonuses and bad debt expenses) |   |     | Z      | 22     |
| <i>Take the higher:</i>  |   |     |        |        |
| <b>Relevant Annual Expenditure (RAE)</b>   |   |     | Y or Z | 23     |
| <b>Expenditure Requirement (ER) @25% of RAE</b>  |   |     | X      |        |
| <b>Ratio of ANLA/ER (Notify the JFSC if either &lt; 110% or &lt; 130%)</b>                                   |   |     | X%     |        |

*Note:*

1. The ANLA must be maintained at a minimum level of 110% of the expenditure requirement. A registered person is required to notify the JFSC if the ANLA falls below the level of 130% and 110%.

## The Third Schedule

### Variances from the Code in respect of registered persons conducting a single class of trust company business

The variances described in the Third Schedule do not apply to natural persons conducting a single class of trust company business. The regulatory requirements for such natural persons are contained in a Guidance Note entitled "Natural Persons carrying on a single class of trust company business".

| Class   | Variance from the Code  |
|---|---|
| <p><b>(F)</b><br/>acting as a company formation agent, a partnership formation agent or a foundation formation agent;</p> <p><b>(I)</b><br/>acting or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company;</p> <p><b>(J)</b><br/>providing a registered office or business address for a company, a partnership or a foundation;</p> <p><b>(K)</b><br/>providing an accommodation, correspondence or administrative address for a company, a partnership or a foundation or for any other person;</p> | <p>If providing only Class F, Class I, Class J and/or Class K services - then:</p> <p><b>Regulatory span of control</b> (paragraph 3.1.1.1) - minimum of "4 eyes".</p> <p><b>Employee qualifications &amp; relevant experience</b> (Paragraph 3.3) - <i>trust company business employees</i> who might otherwise be required to hold a qualification contained in "Table 4" of the <i>TCB professional qualifications guidance note</i> may, instead, hold, as a minimum, a qualification contained in "Table 5" of the <i>TCB professional qualifications guidance note</i>.</p> <p><b>Capital</b> - a minimum of £5,000 paid up share capital. The <i>registered person</i> must maintain a minimum <i>net assets</i> position of £5,000 at all times.</p> <p><b>P11</b> - same calculation basis as paragraph 5.2.2 but with the minimum requirement scaled down to £1,000,000 (one million pounds sterling)</p> |

| Class   | Variance from the Code  |
|---|---|
| <p><b>(O)</b></p> <p>▼</p> <p><u>(1) Providing a service specified in Article 2(4)(a), (e), (f) or (i) of the FS(J)L ('the specified service') to a person who is</u></p> <p>=</p> <p><u>(a) an individual ordinarily resident in Jersey; or</u></p> <p><u>(b) a company incorporated under the Companies (Jersey) Law 1991 all the beneficial owners of which are –</u></p> <p><u>(i) individuals ordinarily resident in Jersey,</u></p> <p><u>(ii) companies incorporated under that Law the beneficial owners of which are all individuals ordinarily resident in Jersey, or</u></p> <p><u>(iii) both such individuals and companies,</u></p> <p><u>where the provision of the specified service to that person by the provider does not require the provider to handle or control the person's trust company business assets except as a necessary result of providing the specified service.</u></p> | <p>If providing only Class O services then:</p> <p><b>Regulatory span of control</b> (paragraph 3.1.1.1) - minimum of "2 eyes", providing proper provision for succession exists.</p> <p><b>Employee qualifications &amp; relevant experience</b> (Paragraph 3.3) - <i>trust company business employees</i> who might otherwise be required to hold a qualification contained in "Table 4" of the <i>TCB professional qualifications guidance note</i> may, instead, hold, as a minimum, a qualification contained in "Table 5" of the <i>TCB professional qualifications guidance note</i>.</p> <p><b>Capital</b> - a minimum of £5,000 paid up share capital. The <i>registered person</i> must maintain a minimum <i>net assets</i> position of £5,000 at all times.</p> <p><b>PII</b> - same calculation basis as paragraph 5.2.2 but with the minimum requirement scaled down to £2,000,000 (two million pounds sterling).</p> <p><b>Audit Requirement</b> – waived.</p> |

**Deleted:** Providing a service specified in Article 2(4)(a), (e), (f) or (i) of the FS(J)L ("the specified service") to a person (whether or not a natural person) where:¶  
(a) that person is resident for tax purposes in the Island; and¶  
(b) the provision of the specified service to that person by the provider does not require the provider to handle or control trust company business assets of the person other than those the provider handles or controls as a necessary result of providing the specified service.

## Notes:

1. Other than these variances, the remainder of the provisions of the Code applies.
2. These variances are only available upon written application to the JFSC by the registered person. The JFSC would not ordinarily anticipate recognising such variances where the applicant is a participating member of an affiliation, unless all members of the affiliation were eligible for similar variances.
3. Registered persons that only conduct one or more of the classes of trust company business listed in the Third Schedule are prevented from holding or controlling customer assets.

## The Fourth Schedule

### Table of Consents

The following table summarises those variances which are specifically referred to in the *Code* as being available, on application in writing, from the *JFSC*.

| Control and Risk Management   |         |   |
|---|---------|---|
| Introduction:<br>Power exercised<br>and scope<br>(paragraph 5 on<br>page 7) | Consent | Persons registered to conduct a single class of trust company business may, on written application, be permitted to enjoy amended requirements in respect of certain sections of the <i>Code</i> as set out in the Third Schedule.  |
| 3.3.3   | Consent | Where a <i>registered person</i> wishes to request a variance to the professional qualifications requirements to recognise an alternative qualification, such a request must: <ul style="list-style-type: none"><li>› be made in writing;</li><li>› include a description of the role of the individual;</li><li>› include an explanation as to why the <i>registered person</i> considers the alternative qualification to be appropriate for that <i>trust company business employee</i>; and</li><li>› includes confirmation that a copy of the syllabus studied or equivalent is available to the <i>JFSC</i> on request.</li></ul> |

| Financial Resources |         |  |
|---------------------|---------|--|
| 5.1.3               | Consent | Where a <i>registered person</i> is a 100% subsidiary of a Jersey incorporated company registered to carry on deposit-taking business it may apply to the <i>JFSC</i> , in writing, for a variance (exemption) from completing the <i>ANLA</i> calculation. Such a variance will only be considered if the deposit-taker provides a letter of undertaking, acceptable to the <i>JFSC</i> , in respect of providing financial support to the trust company. |
| 5.1.9               | Consent | The <i>JFSC</i> may, on written application by a <i>registered person</i> , consider a variance to the notification obligation as stated in 5.1.8.1.   |
| 5.1.10              | Consent | Where a <i>registered person</i> wishes to make an application for a variation to the treatment of assets, liabilities and/or expenditure items in the <i>ANLA</i> calculation this must be made in writing to the <i>JFSC</i>   |

| Financial Resources |         |  |
|---------------------|---------|--|
| 5.1.11              | Consent | <p>On submission of a written request, by the <i>registered person</i>, the <i>JFSC</i> will consider granting consent to exclude a long term subordinated loan as a liability within the <i>ANLA</i> calculation. Any request must be accompanied by a signed consent request checklist and such consent is only likely to be granted where:</p> <ul style="list-style-type: none"> <li>› the subordinated loan is drawn up in accordance with the <i>JFSC's</i> proforma Subordinated Loan Agreement; and</li> <li>› the subordinated loan is made by an approved lender.</li> </ul> |