



Jersey Financial
Services Commission

Property Managers and Letting Agents Themed Examination Programme Findings

Issued: August 2019

Glossary of terms

The following terms are used in this themed examination feedback:

FS(J)L	Financial Services (Jersey) Law 1998, as amended
the FS (TCB) Exemptions Order	Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000
GIMB	General insurance mediation business, as defined and more particularly described under Article 2(7) of the FS(J)L
IR	Information request
JFSC	Jersey Financial Services Commission
the Persons	Property Managers and Letting Agents (including individual practitioners)
POC Law	Proceeds of Crime (Jersey) Law 1999
POCSB Law	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
TCB	Trust Company Business, as defined and more particularly described under Article 2(3) and (4) of the FS(J)L
Regulatory Framework	Comprises: <ul style="list-style-type: none"> › legislation (e.g. Laws, Regulations and Orders) › Codes of Practice (issued by the JFSC) and › Guidance Notes (issued by the JFSC)

Contents

1	Introduction.....	4
2	Scope and regulatory requirements	4
3	Limitations.....	5
4	Methodology	5
5	Summary of findings	6
6	Guidance	7

1 Introduction

- 1.1 As communicated in August 2018, the Jersey Financial Services Commission (**JFSC**) set out in high level terms its planned thematic examination programme for the coming months. The programme included a discovery themed examination with persons that conduct property management and letting agent business (**the Persons**).
- 1.2 The primary audience for this report are the Persons and therefore it is focused on the services specifically offered by this sector.
- 1.3 The purpose of this thematic examination was for the JFSC to better understand the sector and determine whether Persons are carrying on any activity for which registration is required under either the:
 - › Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (**POCSB Law**); and/or
 - › Financial Services (Jersey) Law 1998 (**FS(J)L**).
- 1.4 This discovery themed examination provided valuable insight into the services being provided *by way of business*, in or from within Jersey.
- 1.5 Article 2(1) of the FS(J)L states:
 - › A person carries on financial service business if **by way of business** the person carries on investment business, trust company business, general insurance mediation business, money service business or fund services business.
- 1.6 Whilst the JFSC considers **by way of business** to be the receiving of fees, income or any other consideration in money or money's worth for doing so, it also considers other factors that may indicate a particular activity is being undertaken by way of business such as, inter alia, whether the amount of time taken to fulfil a responsibility is significant, the level of income received, and if the individual is offering more than one type of service.
- 1.7 The JFSC recognises the importance of the need for clarification and each Person participating in this thematic review will be provided with an individual report detailing specific matters relating to their business in addition to the feedback provided in this paper.
- 1.8 Where it is identified that a Person may be required to register with the JFSC they will need to familiarise themselves with the regulatory framework relating to the activities for which registration may be required.

2 Scope and regulatory requirements

- 2.1 Using publicly available information at the time, the JFSC identified 22 Persons who it believed were undertaking property management and/or letting agency services and were not also carrying on estate agency services. These 22 Persons were the scope of this themed examination.
- 2.2 Those Persons who are in the business of providing estate agency services, as defined in paragraph 3 of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999 (**POC Law**), and who also provide property management services, were not in scope for this themed examination.

- 2.3 The JFSC reviewed and assessed the extent to which these 22 Persons were carrying on financial services business, by way of business:
- › Accountancy services
 - › Investing, administering or managing funds or money on behalf of third parties
 - › Trust Company Business, and
 - › General Insurance Mediation Business
- 2.4 Whilst undertaking the review, the JFSC also considered the extent to which Persons were utilising relevant legislative registration exemptions.

3 Limitations

- 3.1 The JFSC regularly undertakes thematic reviews to assess the extent to which the regulatory framework is being complied with. The thematic reviews provide direct feedback to those within scope and a public feedback document which generally contains guidance for the wider industry. In considering compliance, a thematic review includes determining whether exemptions are being correctly relied upon.
- 3.2 The purpose of this paper is to summarise the key findings from this themed examination. It is not intended to comprehensively describe all risks that may be associated with non-adherence to the regulatory framework and not all Persons within scope face the issues described below.

4 Methodology

- 4.1 This themed examination was conducted in two phases:
- 4.2 **Phase One** – this was by way of a formal information request (**the IR**) sent to the identified Persons. Each were asked to provide the following:
- › the nature of services provided to customers (such as preparation of accounts, bookkeeping, rent collection, tenancy deposit collection, property maintenance, debt collection, payment of expenses (other than maintenance charges), company incorporation, company secretary, registered office, correspondence address, arranging insurance cover etc.)
 - › terms of business (copy requested)
 - › fee charging structure (copy requested)
 - › number of customers
 - › location of customers and/or customers' property
 - › customer money handling procedures (copy requested)
 - › signatory powers over customer bank accounts.
- 4.3 **Phase Two** – Having reviewed and analysed the information submitted under Phase One, the JFSC met separately with each person to discuss the information provided and ask supplementary questions as necessary.
- 4.4 In the event that any findings were identified these were based upon information provided by the Persons under Phase One and Phase Two of the themed examination. Those findings are

being separately addressed through the issue of an individual report to each Person setting out remedial action to be taken.

- 4.5 In terms of the individual Persons, following conclusion of the thematic examinations work the JFSC has concluded that either:
- › there are no matters identified for a Person which need attention as the services provided all sit outside the scope of the regulatory framework
 - › a Person is correctly relying on an exemption, or
 - › the services offered by a Person fall within the regulatory framework and registration is required but the Person is unaware.
- 4.6 The JFSC takes this opportunity to thank those participating in this review for providing a response to the Phase One IR and for being open and transparent with the JFSC during Phase Two such that we were able to better understand the sector.

5 Summary of findings

Schedule 2 Service: Paragraph 7(1)(n) of Part B of Schedule 2 to the POC Law: **Otherwise investing, administering or managing funds or money on behalf of third parties**

- 5.1 The JFSC identified that 17 of the 22 Persons were **administering or managing funds or money on behalf of third parties** by the:
- › collection of rent only - 2
 - › collection of deposits only (including depositing to the MyDeposit scheme) - 2
 - › collection of both rent and deposits - 12
 - › third party payments (non-incidental) - 1
- 5.2 It was apparent that Persons were either not aware of the potential requirement to register, or were misguidedly utilising the exemption that exists under paragraph 7(2) of Part B of Schedule 2 to the POC Law (See Section 6.1).
- 5.3 The services identified which support this position are:
- › 16 of the 22 Persons were collecting, managing and/or maintaining rent and deposits from customers for and on behalf of a third party.
 - › One Person was making separate (non-incidental) third party payments.
- 5.4 By collecting the rent directly into a Person's own bank account and not into the landlord's account, these Persons are considered to be **otherwise investing, administering or managing funds or money on behalf of third parties** and the activity requires registration under the POCSB Law.
- 5.5 The same is true for Persons that bank a tenant's deposit into their own account before onward payment to the MyDeposits Jersey Scheme.
- 5.6 The thematic identified that a significant number of the sector collected rent from tenants and paid the expenses from the rent before passing the money over to the landlord.

Trust Company Business Article 2(3) and (4) of the FS(J)L

- 5.7 The JFSC identified that 5 of the 22 Persons appeared to be carrying on, and/or holding out to provide, TCB services in or from within Jersey, by way of the provision of:
- › company secretarial services – 5
 - › registered office and correspondence address services to their customers – 4
- 5.8 Persons were either not aware of the potential requirement to register or were misguidedly utilising the exemption that exists and that sets out the services that can be provided to third parties without the need for registration.
- 5.9 Article 2 of the FS(J)L defines what falls within financial services business. This includes TCB services, inter alia, but not limited to:
- › Acting as a formation agent, arranging for the registration/formation/incorporation of Companies/Partnerships/Foundations
 - › Acting as/fulfilling the function of or arranging for another person to act as/fulfil the function of Director/Alternate Director for a Company; or Partner of a Partnership; or a Member of the Council of a Foundation
 - › Acting as, or arranging for another person to act as, Secretary/Alternate/Assistant/Deputy Secretary of a Company; or Trustee of an Express Trust; or Shareholder/Unitholder as a Nominee for another person
 - › Providing a Registered Office or Business Address for a Company/Partnership/Foundation
 - › Providing an Accommodation/Correspondence/Administrative Address for a Company/Partnership/Foundation/any other person.
- 5.10 Whilst the JFSC included the extent to which Persons are offering General Insurance Mediation Business (**GIMB**) and External Accountancy services in the scope of the themed review, there were no findings in this area.

6 Guidance

Schedule 2 Service: Paragraph 7(1)(n) of Part B of Schedule 2 to the POC Law:

Otherwise investing, administering or managing funds or money on behalf of third parties

- 6.1 Whilst a limited exemption exists from the requirement to register under the POCSB Law under paragraph 7(2) of Part B Proceeds of Crime (Jersey) Law 1999 (**POC**) in respect of:
- › The provision of the services of collecting, administering and disbursing service or maintenance charges (however described) in connection with immovable property situated in Jersey.
- This applies **solely** to the handling of maintenance and service charges, such as cleaning services, upkeep of the grounds, lift maintenance, utilities, and emergency repairs (See Section 6.2).
- 6.2 The JFSC therefore wishes to make it clear that the following charges are acceptable to be categorised as *service and maintenance charges*:
- › Cleaning expenses
 - › Expenses relating to the upkeep of the grounds, e.g. gardening expenses

- › Lift maintenance expenses
 - › General expenses relating to the upkeep of the building, e.g. refurbishments and renovations
 - › General maintenance costs, e.g. plumbing, painting and electrical works
 - › Utilities (e.g. water, electricity, Parish/Foncier rates)
 - › Insurance premiums
 - › Emergency repair costs
 - › Expenses relating to fire and safety precautions.
- 6.3 Persons that are **solely** collecting, administering and disbursing money from third parties in relation to the above listed service and maintenance charges would not usually be required to hold a registration under the POCSB Law.
- 6.4 It is important to note that the exemption is limited in that the property must be located in Jersey. The customer can be UK-based, but the property must be based in Jersey. The exemption cannot be used for a Jersey based company owning a property in the UK.

Trust Company Business Article 2(3) and (4) of the FS(J)L

- 6.5 The incidental providers of TCB services exemption as set out under Article 7 of the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000 (**the FS (TCB) Exemptions Order**) may be relied upon in the case of:
- › A Person who is carrying on a business or profession the sole or main purpose of which is not trust company business, when carrying out a service specified in Article 2(4) of the FS(J)L for which the person is not separately remunerated, which the person does not separately hold himself or herself out as providing and which is carried out as an incident of the Person's business or profession.
- 6.6 Each case of a Person claiming the benefit of the exemption will be assessed on a case-by-case basis by the JFSC and consideration may be given to:
- › whether the activity is restricted to the holding of Jersey property
 - › how much of the overall business activity of the Person is taken up by TCB related services
 - › whether this is becoming the sole and main purpose of the business or does it remain ancillary
 - › if the Person is holding out to provide TCB services
 - › whether the Person is being separately remunerated for the provision of TCB services.
- 6.7 By way of background in 2013 following correspondence with Property Managers, the JFSC's Supervision Executive reviewed the potential risks with the provision of TCB services (as defined in Article 2(3) to 2(6) of the FS(J)L).
- 6.8 In considering the responses received, the JFSC's Executive reviewed the applicability of the incidental providers of services exemption set out in Article 7 of the FS (TCB) Exemptions Order.
- 6.9 The JFSC's view was that where TCB services are also being provided by Persons exclusively to customers that they provide property management services to, the JFSC will not object to the exemption being utilised.

- 6.10 However, the JFSC strongly recommended that where TCB services are being provided, that Persons carefully consider whether the requirements of the exemption are met and that it was important to note that several factors may cause the JFSC to reconsider, on a case by case basis, whether the exemption applies.
- 6.11 In June 2013 the JFSC informed Persons that where there was uncertainty as to whether the requirements of the exemption are met, the JFSC urged the sector to seek independent legal advice.
- 6.12 It is the view of the JFSC that the Persons potentially offering TCB services should review the requirements of the exemption.

Schedule 2 service: Accountancy services: paragraph 2 of Part B of Schedule 2 to the POC Law

- 6.13 It was identified that where a Person is either correctly relying on the maintenance and service charges exemption or is administering third party payments (they will need to account for those monies).
- 6.14 The JFSC considers that Persons would provide a report (statement/account) of monies collected and monies disbursed. In producing such a report it is expected that they will need to keep records and reconcile bank statements.
- 6.15 The JFSC considers this is not the same as providing external accountancy services as defined in paragraph 2 of Part B of Schedule 2 to the POC Law.
- 6.16 If, however, a Person is also providing their customer with financial statements relating to a company holding a property and those statements are then being presented for tax purposes this may be argued as being akin to providing an external accountancy service.