



Consultation Paper

Proposed Amended Outsourcing Policy

No. 6 2016

A consultation on proposals in relation to the Outsourcing Policy to:

- › amend the scope of the policy regarding outsourced activity;
- › define key terms and include a glossary to remove ambiguity;
- › remove the distinction between delegation and outsourcing in relation to certified funds and fund services businesses;
- › make changes to the core principles to provide clarity and align with international standards;
- › provide additional guidance including FAQs;
- › restructure the format of the policy into core principles, guidance and FAQs; and
- › make minor updating and consequential changes.

Consultation Paper

Please note that terms in *italics* are defined in the Glossary of Terms.

The *Commission* invites comments on this consultation paper. **Thomas Cowsill** at *Jersey Finance* is co-ordinating an Industry response that will incorporate any matters raised by local businesses. Comments should reach *Jersey Finance* by **30 September 2016**.

Responses should be sent to:

Thomas Cowsill
Head of Technical
Jersey Finance Limited
4th Floor, Sir Walter Raleigh House
48-50 Esplanade
St Helier
Jersey
JE2 3QB

Telephone: +44 (0) 1534 836000
Facsimile: +44 (0) 1534 836001
Email: thomas.cowsill@jerseyfinance.je

Alternatively, responses may be sent directly to **Kate Berry** at the *Commission* by **30 September 2016**. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the *Commission*.

The *Commission* contact is:

Kate Berry
Senior Adviser, Policy
Jersey Financial Services Commission
PO Box 267
14-18 Castle Street
St Helier
Jersey
JE4 8TP

Telephone: +44 (0) 1534 822162
Email: k.berry@jerseyfsc.org

It is the policy of the *Commission* to make the content of all responses available for public inspection unless specifically requested otherwise.

It is the policy of *Jersey Finance* (unless otherwise requested or agreed) to collate all responses and share them verbatim with the JFSC on an anonymised basis (with reference made only to the type of respondent, e.g. individual, law firm, trust company etc.) This collated, anonymised response will, typically, be placed in *Jersey Finance's* permanent electronic archive which is currently open to all *Jersey Finance* members.

Glossary of Terms

Amended Outsourcing Policy	means the proposed amended outsourcing policy and guidance notes attached at Appendix B of this consultation paper
AML/ CFT	means anti-money laundering and countering the financing of terrorism
AML/ CFT Handbook	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Business (as may be amended by the <i>Commission</i> , from time to time) ¹
Banking Code	means the Code of Practice for Deposit-taking Business
Banking Law	means the Banking Business (Jersey) Law, 1991
Certified Fund	means a fund issued with a certificate pursuant to the Collective Investment Funds (Jersey) Law 1988
Certified Funds Code	means the Code of Practice for <i>Certified Funds</i>
Client	means a customer, investor or other <i>Person</i> in respect of whom a <i>Registered Person</i> is <i>Licensed</i> to provide products or services
COBO Conditions	means any conditions imposed by the <i>Commission</i> pursuant to its granting of a <i>COBO Consent</i>
COBO Consent	means a consent issued by the <i>Commission</i> pursuant to the Control of Borrowing (Jersey) Order, 1958
Codes of Practice (or Codes) ²	means, collectively, the <ul style="list-style-type: none"> › <i>Banking Code</i>; › <i>Certified Funds Code</i>; › <i>FSB Code</i>; › <i>GIMB Code</i>; › <i>IB Code</i>; › <i>Insurance Code</i>; › <i>MSB Code</i>; › <i>TCB Code</i>
Collective Investment Funds Law	means the Collective Investment Funds (Jersey) Law, 1988
Commission	means the Jersey Financial Services Commission
Commission Law	means the Financial Services Commission (Jersey) Law 1998
Companies Law	means the Companies (Jersey) Law, 1991
EU	means European Union
FAQs	means frequently asked questions

¹ http://www.jerseyfsc.org/anti-money_laundering/Regulated_financial_services_businesses/aml_cft_handbook.asp

² *Codes of Practice* may be prepared and issued; or revised by the *Commission* pursuant to, the *Regulatory Laws*, and the *Proceeds of Crime (Supervisory Bodies) (Jersey) Law, 2008* (in respect of *AML/ CFT* requirements).

Fit and Proper	means that a Person would meet the standards required to be fit and proper to be <i>Licensed</i> or, continue to be <i>Licensed</i> (as applicable) pursuant to the requirements of the relevant <i>Regulatory Law</i> ³
FSB Code	means the Code of Practice for <i>Fund Services Business</i>
FSC Amendment Law	means the Financial Services Commission (Amendment No. 6) (Jersey) Law 2015.
FSJL	means the Financial Services (Jersey) Law, 1998
Fund Services Business	means the <i>Regulated Activity</i> , involving the provision of services in relation to certain types of funds, which is described in Article 2(10) of the Financial Services (Jersey) Law, 1998
GIMB Code	means the Code of Practice for General Insurance Mediation Business
Governing Body	means the body within a <i>Registered Person</i> that is considered to exercise ultimate control over it. Generally, this will be (i) the directors of a company, protected cell company or the relevant cells of an incorporated cell company; (ii) the trustee of a unit trust; (iii) the general partner of a limited partnership, separate limited partnership or incorporated limited partnership; or the partners of a limited liability partnership. In the case of a sole trader, the <i>Governing Body</i> will be the sole trader
Group	means a body corporate that would be defined as a “subsidiary”, “wholly-owned subsidiary” or “holding body” of another body corporate, under the <i>Companies Law</i> irrespective of the jurisdiction of the company
IB Code	means the Code of Practice for Investment Business
Insurance Code	means the Code of Practice for Insurance Business
Insurance Law	means the Insurance Business (Jersey) Law, 1996
Jersey Finance	means Jersey Finance Limited
Licence	means the authorisation by the <i>Commission</i> to conduct <i>Regulated Activity</i> ⁴
Managed Entity	means, in the context of <i>MoME Arrangements</i> , an entity that is managed by a <i>MoME</i>
Material Activity	means any business activities which are, are part of, or are likely to have a material impact upon the carrying out of any <i>Regulated Activity</i>
MoME	means, in the context of <i>MoME Arrangements</i> , a manager of a <i>Managed Entity</i>
MoME Arrangements	means arrangements described in the <i>MoME Guidance Note</i> and pursuant to which a <i>MoME</i> falls within class ZK of <i>Fund Services Business</i> by providing certain services to a <i>Managed Entity</i>

³ See for example Article 9 of the FSJL. Note also that the Commission provides guidance as to, amongst other things, the criteria upon which it bases decisions as to whether such requirements are satisfied in the relevant Licensing Policy. http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp

⁴ Such authorisation being: (i) registration under the Banking Law; (ii) grant of a permit or certificate under the Collective Investment Funds Law; (iii) registration under the FSJL or (iv) grant of a permit under the Insurance Law

MoME Guidance Note	means the guidance issued by the <i>Commission</i> and contained in the document entitled: Guidance Note For a Manager of a Managed Entity (a “ <i>MoME</i> ”) and Certain Managed Entities (as may be amended by the <i>Commission</i> , from time to time) ⁵
Money Laundering Order	means the Money Laundering (Jersey) Order, 2008
MSB Code	means the Code of Practice for Money Service Business
OCIF Guide	means the guide which is Schedule 4 to the <i>Certified Fund Code</i> called the Guide to Jersey Open-Ended Unclassified Collective Investment Funds Offered to the General Public (as amended by the <i>Commission</i> , from time to time) ⁶
Offer Document	means a prospectus or other offering document inviting a <i>Person</i> to become an investor of a fund
Outsourcing	means an arrangement of any form between a <i>Registered Person</i> and a <i>Service Provider</i> by which the <i>Service Provider</i> performs any <i>Material Activity</i> that would otherwise be undertaken by the <i>Registered Person</i>
Outsourcing Notification	means a notification as detailed in paragraph 4.5.4 of the <i>Amended Outsourcing Policy</i>
Outsourcing Policy	means the Policy Statement and Guidance Notes on: <ol style="list-style-type: none"> (1) Outsourcing; and (2) Delegation by Jersey <i>Certified Funds</i> and <i>Fund Services Businesses</i> Published by the <i>Commission</i> in May 2011.
Person	means any natural or legal person (including a body of persons corporate or unincorporated)
Registered Person	means a <i>Person</i> that is <i>Licensed</i> or holds a permit or certificate, as applicable, under one or more of the <i>Regulatory Laws</i>
Regulated Activity	means activity conducted pursuant to the <i>Regulated Laws</i>, in respect of which a <i>Person</i> is <i>Licensed</i>
Regulatory Laws	means the <i>Banking Law</i> , the <i>Collective Investment Funds Law</i> , the <i>FSJL</i> , and the <i>Insurance Law</i>
Service Provider	means a <i>Person</i> to whom a <i>Registered Person</i> <i>Outsources</i> any <i>Material Activities</i>
Sub-contractor	means a <i>Person</i> to whom a <i>Service Provider</i> transfers the carrying out of any <i>Material Activity</i> which was <i>Outsourced</i> to the <i>Service Provider</i>
Sub-Outsourcing	means an arrangement of any form between a <i>Service Provider</i> and <i>Sub-contractor</i> pursuant to which the <i>Sub-contractor</i> performs any <i>Material Activity</i> that would otherwise be undertaken by the <i>Service Provider</i>
TCB Code	means the Code of Practice for Trust Company Business

⁵ http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp

⁶ http://www.jerseyfsc.org/the_commission/codes_of_practice/index.asp

Interpretation

In the Consultation Paper, unless the contrary intention appears:

- a. words in the singular shall include the plural and words in the plural shall include the singular.
- b. the word “include” indicates a non-exhaustive list.
- c. grammatical variations of words to which definitions are assigned shall be construed in accordance with the definitions.
- d. references to legal or regulatory requirements shall, unless the context provides otherwise, refer to such legal or regulatory requirements as may be amended from time to time.

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1 Executive Summary

1.1 Overview

- 1.1.1 The *Outsourcing Policy* is issued by the *Commission* in relation to the *Regulatory Laws* to set regulatory requirements that *Registered Persons* must comply with.
- 1.1.2 The *Commission* is responsible for the supervision of *Regulated Activity* conducted in or from within Jersey. That responsibility is discharged pursuant to, amongst other things, the *Regulatory Laws*. Under the *Regulatory Laws*, *Persons* that conduct *Regulated Activity* must be *Licensed*. Upon *Licensing*, such *Persons* will be *Registered Persons*.
- 1.1.3 Compliance with the *Outsourcing Policy* may be taken into account by the *Commission* when considering whether a person is deemed *Fit and Proper*.
- 1.1.4 A failure to comply with the *Outsourcing Policy* can result in regulatory action being taken against a *Registered Person*. The *Codes of Practice* state that *Registered Persons* must comply with the *Outsourcing Policy*. Following the recent enactment of the *FSC Amendment Law* such regulatory action can now include the imposition by the *Commission* of a civil financial penalty for significant and material contraventions of a *Code*.
- 1.1.5 *Jersey Finance* requested, on behalf of its members, that the *Outsourcing Policy* be reviewed, amended and updated. The *Amended Outsourcing Policy* linked at Appendix B has been developed after consultation with members of a *Jersey Finance* working party.

1.2 What is proposed and why?

- 1.2.1 The main changes proposed in the *Amended Outsourcing Policy* are as follows:
 - 1.2.1.1 Amend the scope of the policy to include *Outsourced* activity (regulated and non-regulated) that has a material impact on *Regulated Activity*;
 - 1.2.1.2 Removal of the distinction between “delegation” and “outsourcing” as used in the *Outsourcing Policy* in relation to *Certified Funds* and *Fund Services Businesses*;
 - 1.2.1.3 Make changes to the core principles to provide clarity and align with international standards;
 - 1.2.1.4 Define key terms and include a glossary to remove ambiguity, in particular to introduce a definition of “*material*”;
 - 1.2.1.5 Provide additional guidance, including *FAQs*;
 - 1.2.1.6 Restructure the format of the policy to separate principles from guidance and the *FAQs*; and
 - 1.2.1.7 Make minor updating and consequential changes.

1.3 Who would be affected?

- 1.3.1 The proposals in this consultation paper have the potential to affect all *Registered Persons*.

2 Consultation

2.1 Basis for consultation

- 2.1.1 The *Commission* has issued this consultation paper in accordance with Article 8 (3) of the *Commission Law* under which the *Commission* “may, in connection with the carrying out of its functions... consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate”. In addition, given that relevant *Codes of Practice* issued by the *Commission* require *Registered Persons* to comply with the *Commission’s* policy on outsourcing - and thus a change to that policy could be considered an indirect change to those *Codes* - this consultation also serves the purpose of satisfying the provisions in the *Regulatory Laws* that require the *Commission*, before revising any *Code of Practice*, to “[consult] with such *Persons or bodies as appear representative of the interests concerned*”.

2.2 Responding to the consultation

- 2.2.1 The *Commission* invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.2.2 To assist in analysing responses to the consultation paper, respondents are asked to:
- 2.2.2.1 prioritise comments and to indicate their relative importance; and
 - 2.2.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

2.3 Next steps

- 2.3.1 The intention is that the *Amended Outsourcing Policy* in the form shown in Appendix B (subject to the making of any revisions considered necessary as a result of responses to this consultation) will be issued in late Quarter 4 of 2016 and come into force two months later.

3 The Commission

3.1 Overview

- 3.1.1 The *Commission* is a statutory body corporate established under the *Commission Law*. It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 Commission's functions

- 3.2.1 The *Commission Law* prescribes that the *Commission* shall be responsible for:
- 3.2.1.1 the supervision and development of financial services provided in or from within Jersey;
 - 3.2.1.2 providing the States of Jersey, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
 - 3.2.1.3 preparing and submitting to Ministers recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
 - 3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
 - › as are required or authorised by or under any enactment, or
 - › as the States of Jersey may, by Regulations, transfer; and
 - 3.2.1.5 such other functions as are conferred on the *Commission* by any other Law or enactment.

3.3 Guiding principles

- 3.3.1 The *Commission's* guiding principles require it to have particular regard to:
- 3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of *Persons* carrying on the business of financial services in or from within Jersey;
 - 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
 - 3.3.1.3 the best economic interests of Jersey; and
 - 3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

4 Proposed Changes to the Outsourcing Policy

4.1 Introduction

- 4.1.1 This chapter describes, and explains the reasons for, the proposed changes to the *Outsourcing Policy*.
- 4.1.2 Appendix B contains the *Amended Outsourcing Policy*. Because the format of the *Outsourcing Policy* has been restructured a useful blacklined comparison of the existing policy against the amended policy is not possible. Readers are asked to note that minor typographical or clarificatory changes to the *Amended Outsourcing Policy* are not described in this consultation paper.
- 4.1.3 The *Commission* recognises that *Registered Persons* may require a lead-in period to update their internal procedures to facilitate compliance with the *Amended Outsourcing Policy*. In this regard, the *Commission's* intention is to provide for the *Amended Outsourcing Policy* to come into force two months after it is issued.
- 4.1.4 The *Amended Outsourcing Policy* does not apply retrospectively.
- 4.1.5 **Question: Do you consider a lead-in period of two months to be adequate? If you do not, please explain why and suggest an alternative time period.**

4.2 Scope of the Amended Outsourcing Policy

- 4.2.1 The *Registered Person* remains fully responsible and accountable in respect of activity for which it has been *Licensed*. The *Amended Outsourcing Policy* makes it clear that the *Registered Person* remains responsible and accountable for *Outsourcing* and *Sub-outsourcing*.
- 4.2.2 The existing *Outsourcing Policy* described *Outsourced* activity as the *Outsourcing* of any material part of a *Registered Person's* regulated function. However, it is clear that *Regulated Activity* may be impacted significantly by material *Outsourced* activities that are both regulated and non-regulated.
- 4.2.3 *Registered Persons* are ultimately responsible for delivery of their *Regulated Activity*. Since the *Registered Person* always remains responsible for their *Regulated Activity* this draws in non-regulated outsourced activity which, if disrupted, may lead to a *Registered Person* being unable to deliver its *Regulated Activity*.
- 4.2.4 The policy now makes it clear that *Material Activity* includes material regulated and non-*Regulated Activity*. See further discussion of the definition of "material" in section 4.4 below.
- 4.2.5 A list of activities that are not deemed to amount to *Outsourcing* is provided in the *Amended Outsourcing Policy* in section 1.4.2.
- 4.2.6 The *Amended Outsourcing Policy* expressly removes from its scope, areas which are not appropriate, notably:
- (i) *MoME Arrangements*;
 - (ii) situations where "reliance" is placed on third parties pursuant to Articles 16 or 16A of the *Money Laundering Order*; and

- (iii) where there is a transfer of activity between a parent and branch (or vice versa) where the parent and branch form a single legal entity.

4.2.7 The appointment of *Service Providers* to a fund may be outside the scope of the policy if certain conditions are met. This change is as a result of the removal of the distinction between delegation and *Outsourcing* in relation to *Certified Funds* and *Fund Services Businesses*, further discussed in Section 4.3 below.

4.2.8 **Question: Do you have any observations or concerns on the scope of the *Amended Outsourcing Policy*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

4.3 Removal of the Distinction between “delegation” and “outsourcing”.

4.3.1 The existing *Outsourcing Policy* distinguishes between “delegation” and “outsourcing” when applied to *Certified Funds* and *Fund Services Businesses*. This distinction was introduced to reflect an historic IOSCO⁷ recommendation. However, it has been the source of considerable confusion.

4.3.2 The *Amended Outsourcing Policy* removes altogether the concept of “delegation” being different from “outsourcing” altogether. This allows a much simpler approach pursuant to which all *Outsourcing* arrangements apply the same policy.

4.3.3 The specific issues which may arise in respect of fund authorisation, which were previously the basis for separate “delegation” provisions, are now dealt with in the Scope section. Briefly, this provides that upon establishment of a fund, the appointment by the fund of its *Service Providers* is not deemed to be *Outsourcing* if their appointment is clearly disclosed to their investors and to the *Commission*. This position is consistent with the *Commission’s* current practice in this area.

4.3.4 **Question: Do you have any observations or concerns on the removal of the distinction between delegation and outsourcing as set out in the *Amended Outsourcing Policy*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

4.4 Definition of “Outsourced Activity” and “Material”.

4.4.1 The existing *Outsourcing Policy* refers to “...outsourcing any material part of its regulated functions...”. There was confusion amongst *Registered Persons* as to the meaning of “material”. The *Amended Outsourcing Policy* retains reference to *Material Activity* in the definition of *Outsourcing*. As previously stated *Material Activity* in the *Amended Outsourcing Policy* includes “*business activities which are, are part of, or are likely to have a material impact upon the carrying out of any Regulated Activity*” which includes both material regulated and material non-regulated activity. A definition of “*Material Activity*” has been introduced so that there is a clearer understanding of the circumstances in which the *Commission* expects compliance with the *Amended Outsourcing Policy*.

4.4.2 Producing a more prescriptive definition of “*material*” in the context of “*Material Activity*” in the *Amended Outsourcing Policy* is however impractical since what is “*material*” will very much depend on the particular facts of each case. The *Amended Outsourcing Policy* provides general guidance as to how the *Commission* approaches the question of whether *Outsourced* activity is “*material*”.

⁷ IOSCO means the International Organization of Securities Commissions.

- 4.4.3 Further guidance is then given, in the *FAQs*, to assist in interpreting qualitative terms such as “appropriate”, “adequate”, “suitable”, and “effective”.
- 4.4.4 These amendments, when viewed alongside the wider changes to the *Amended Outsourcing Policy* as a whole, are intended to provide *Registered Persons* with a clearer understanding of the *Commission’s* expectations.
- 4.4.5 **Question: Do you have any observations or concerns on the definitions of “Outsourcing” and “Material Activity” as set out in the *Amended Outsourcing Policy*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

4.5 Changes to Clarify the Wording of the Core Principles.

- 4.5.1 The wording of the core principles has been amended to provide further clarification as follows:
 - 4.5.2 Original Core Principle No. 1

When a Registered Person *Outsources* any material part of its regulated functions it must first ensure that the service provider is *Fit and Proper* and can fulfil the task in a responsible, professional and suitable manner.
 - 4.5.3 New Core Principle No. 1

A *Registered Person* must satisfy itself at the outset, and on a continuing basis thereafter, that any *Service Provider* to whom it *Outsources* any *Material Activities* is *Fit and Proper* and will perform the *Material Activities* in a responsible, professional and suitable manner.
 - 4.5.4 Original Core Principle No. 2

A Registered Person must have a written agreement with the service provider that clearly specifies the terms of engagement and the levels of service to be provided by the service provider.
 - 4.5.5 New Core Principle No. 2

A *Registered Person* must have in place appropriate written agreements, with any *Service Providers* to whom it *Outsources* any *Material Activities* that clearly specify the terms of engagement and the level of services to be provided by the Service Provider.
 - 4.5.6 Original Core Principle No. 3

A Registered Person must maintain sufficient capacity (i.e. skills and knowledge) to be able to assess whether the outsourced activity is being performed adequately. It must also maintain adequate resources and establish procedures, including compliance plans, to be able to monitor the performance of the service provider.

4.5.7 New Core Principle No. 3

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

4.5.8 Original Core Principle No. 4

A Registered Person must be able to terminate the outsourcing arrangement and have contingency plans for making alternative arrangements for the performance of the outsourced function.

4.5.9 New Core Principle No. 4

A *Registered Person* must put in place arrangements that allow it to terminate its *Outsourcing* arrangements without undue delay and manage the consequences of any such termination appropriately.

4.5.10 Original Core Principle No. 5

A Registered Person must inform the *Commission* in writing of its intention to outsource any material part of its regulated functions, within a reasonable time prior to the commencement of the *Outsourcing* arrangement, in order to allow the *Commission* to consider the proposal and raise any concerns.

4.5.11 New Core Principle No. 5

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

4.5.12 Original Core Principle No. 6

Nothing in any outsourcing arrangements should prevent the *Commission* from exercising its statutory responsibilities. In particular, a Registered Person must ensure that the *Commission* is able to inspect the books and records (or copies thereof) relating to the outsourced activity upon request and without undue delay, irrespective of whether they are in the hands of the Registered Person or the service provider.

4.5.13 New Core Principle No. 6

Registered Persons must ensure that nothing in any *Outsourcing* arrangements prevents or restricts the *Commission's* ability to exercise the legal or regulatory powers it would otherwise have been able to exercise, in respect of any *Registered Persons* or *Material Activity*, had the *Outsourcing* not taken place.

4.5.14 **Question: Noting paragraph 4.4 and the meaning of *Material Activity* do you have any observations or concerns on the wording of the New Core Principles in the *Amended Outsourcing Policy*? If you do, please indicate the number of the Core Principle you are commenting on and state in detail what your observation or concern is and explain the reason for it.**

4.6 Inclusion of FAQs

- 4.6.1 The *Amended Outsourcing Policy* includes *FAQs* which provide more practical explanations and examples of how the *Commission* will, in broad terms, seek to apply the *Amended Outsourcing Policy*.
- 4.6.2 The *FAQs* have been drafted to incorporate guidance relating to issues that have been encountered by Industry seeking to comply with the *Outsourcing Policy*.
- 4.6.3 The *FAQs* have been divided into three sections in Part V:
- 4.6.3.1 General Issues;
 - 4.6.3.2 Particular Core Principles; and
 - 4.6.3.3 Particular Types of Activity.
- 4.6.4 **Question: Do you have any observations or concerns on the proposed *FAQs* as set out in the *Amended Outsourcing Policy*? If you do, please indicate the number of the *FAQ* you are commenting on and state in detail what your observation or concern is and explain the reason for it.**

4.7 Guidance on Intra-group Outsourcing

- 4.7.1 To provide clarification on the *Commission's* expectations regarding *Intra-Group Outsourcing* the *Amended Outsourcing Policy* contains guidance and related *FAQs* which are provided in respect of Core Principle 2.
- 4.7.2 Amendments have also been made to allow reliance on entities within the same *Group* in respect of shared due diligence; monitoring; and policies, procedures or contingency plans. This amendment is intended to address certain commercial practicalities. However, it is important to note that the *FAQs* make clear that such reliance can only be placed where (i) the *Registered Person* complies with applicable legal and regulatory requirements; (ii) it is in the best interests of *Clients*; and (iii) it does not give rise to any undue risks.
- 4.7.3 In addition to providing additional guidance, the *Commission* has also recognised that appropriate written *Outsourcing* agreements might, in certain circumstances within a *Group* structure, take the form of framework agreements and service level agreements (or similar arrangements).
- 4.7.4 However, in granting this concession, the *Commission* expressly requires that (i) sufficiently robust and clearly documented procedures are in place to protect *Client* interests; (ii) the other Core Principles are still satisfied; and (iii) arrangements cannot be implemented in order to circumvent the requirements of the *Amended Outsourcing Policy*.
- 4.7.5 **Question: Do you have any observations or concerns on the approach to *Intra-Group Outsourcing* as set out in the *Amended Outsourcing Policy*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

4.8 Guidance on Outsourcing Notification Information Requirements and Timeframe.

- 4.8.1 The *Commission's* information requirements for an *Outsourcing Notification* have been standardised to provide clarity to assist Industry and the *Commission*.
- 4.8.2 The *Commission* will acknowledge receipt of the *Outsourcing Notification* and will endeavour to respond within 20 business days. The response may:
- 4.8.2.1 require further action to be taken (such as a request for: a) additional information/documentation and/or b) extra time to consider the notification); or
 - 4.8.2.2 be a no objection.
- A *Registered Person* should not proceed until they have received in writing a “no objection” from the *Commission*.
- 4.8.3 **Question: Do you have any observations or concerns on the *Outsourcing Notification* information requirements, timeframe and the confirmation that a *Registered Person* cannot proceed until a “No objection” is received in writing from the *Commission* as set out in the *Amended Outsourcing Policy*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

4.9 Structural changes to the Outsourcing Policy

- 4.9.1 There was a perceived lack of clarity by Industry as to what was required because it was felt that there was insufficient separation between what was policy and what was guidance. Therefore the *Amended Outsourcing Policy* is divided into 5 parts:
- 4.9.1.1 **Part I** explains the purpose, structure, key regulatory implications and scope of the *Amended Outsourcing Policy*;
 - 4.9.1.2 **Part II** sets out the basic premises underlying the *Commission's Amended Outsourcing Policy*;
 - 4.9.1.3 **Part III** sets out the Core Principles the *Commission* expects *Registered Persons* to satisfy in complying with the *Amended Outsourcing Policy*;
 - 4.9.1.4 **Part IV** provides guidance, in general terms, as to how *Registered Persons* may satisfy these requirements; and
 - 4.9.1.5 **Part V** provides further general assistance to *Registered Persons* seeking to understand the *Commission's* expectations of them by providing responses to various *FAQs*.

5 Cost Benefit Analysis

5.1 Costs to Industry

- 5.1.1 It is not expected that the proposed changes to the *Outsourcing Policy* will result in *Registered Persons* incurring any substantive additional costs.

5.2 Costs to the Commission

- 5.2.1 Save for staff costs incurred in carrying out this consultation and the publication of the final *Amended Outsourcing Policy* in due course and consequential amendments required, no other substantive expenses are expected to be incurred by the *Commission*.

5.3 Benefits

- 5.3.1 The proposals in this paper will improve the clarity of the *Outsourcing Policy* for *Registered Persons*.

6 Summary of Questions

Reference	Question
4.1.5	Question: Do you consider a lead-in period of two months to be adequate? If you do not, please explain why and suggest an alternative time period.
4.2.8	Question: Do you have any observations or concerns on the scope of the Amended Outsourcing Policy? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.3.4	Question: Do you have any observations or concerns on the removal of the distinction between delegation and outsourcing as set out in the <i>Amended Outsourcing Policy</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.4.5	Question: Do you have any observations or concerns on the definitions of “ <i>Outsourcing</i> ” and “ <i>Material Activity</i> ” as set out in the <i>Amended Outsourcing Policy</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.5.14	Question: Noting paragraph 4.4 and the meaning of <i>Material Activity</i> do you have any observations or concerns on the wording of the New Core Principles in the Amended Outsourcing Policy? If you do, please indicate the number of the Core Principle you are commenting on and state in detail what your observation or concern is and explain the reason for it.
4.6.4	Question: Do you have any observations or concerns on the proposed <i>FAQs</i> as set out in the <i>Amended Outsourcing Policy</i> ? If you do, please indicate the number of the FAQ you are commenting on and state in detail what your observation or concern is and explain the reason for it.
4.7.5	Question: Do you have any observations or concerns on the approach to Intra-Group Outsourcing as set out in the <i>Amended Outsourcing Policy</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.8.3	Question: Do you have any observations or concerns on the <i>Outsourcing Notification</i> information requirements, timeframe and the confirmation that a Registered Person cannot proceed until a “No objection” is received in writing <i>from</i> the Commission as set out <i>in the Amended Outsourcing Policy</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.

7 Appendix A

List of representative bodies and other persons who will be sent this consultation paper

- › Association of English Solicitors Practising in Jersey
- › Chartered Institute for Securities & Investment, Jersey branch
- › Institute of Chartered Secretaries and Administrators, Jersey branch
- › Institute of Directors – Jersey branch
- › Jersey Association of Directors and Officers
- › Jersey Association of Trust Companies
- › Jersey Bankers' Association
- › Jersey Chamber of Commerce and Industry Incorporated
- › Jersey Compliance Officers Association
- › Jersey Finance Limited
- › Jersey Funds Association
- › Jersey International Insurance Association
- › Jersey Society of Chartered and Certified Accountants
- › Law Society of Jersey
- › Society of Trust and Estates Practitioners (STEP), Jersey branch

8 Appendix B

Proposed Amended Outsourcing Policy

(The Policy has discrete page numbering)

Please [click here](#) to view the proposed *Amended Outsourcing Policy*.