

both adequate financial resources and adequate insurance – this requires a minimum paid up share capital of £25,000 and a surplus of liquid assets over expenditure requirements to meet a minimum of three months operations, and professional indemnity insurance to a minimum of £5 million.

6) A registered person is expected to deal with the Commission and other Jersey authorities in an open and cooperative manner – registered persons are required to cooperate with the JFSC promptly in matters that might affect their registration.

Span of Control

A significant part of the licensing procedure is focused on the persons who exercise control in the business. The JFSC requires that the business should have at least three principal persons who are qualified and competent. These principal persons must be actively involved in the day-to-day management of the business and be able to exercise executive powers on behalf of the registered person. Normally such persons will be directors or partners. However, senior staff may be included if they hold relevant professional qualifications.

Conclusion

The codifying of best practice is designed to raise the quality of the Trust Company business sector in Jersey. The regulatory regime introduces a review process conducted by the JFSC, and supervision of the conduct of the sector.

International clients can gain confidence that through the fiduciary relationship being regulated, they gain monitoring of the conduct of the business, which is to their benefit and their protection. Professionals looking for a service provider can minimise the introduction risk by being able to recommend Jersey as a well-regulated jurisdiction with licensed service providers.

More Information

For more information, or to discuss how the expertise of Key Trust Company Limited can assist, please contact our Managing Director, John Perkins, at the address details below or by email: john.perkins@key-trust.com

This note is given on the basis that no liability is accepted for any errors of fact or opinion and that professional advice must be obtained before applying the information to particular circumstances.

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Key Trust Company Limited is licensed by the Jersey Financial Services Commission to undertake Trust Company business.



Key Trust Company

The regulation of Trust Company business in Jersey

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The Jersey authorities want to be able to demonstrate that professional practice in Jersey meets the highest international standards. Jersey also recognises that the Trust Company business sector is a major employer and a significant source of banking, fund and investment business, and is important to the economy of the Island.

In order to enforce high standards, Jersey introduced Financial Services legislation to regulate Trust Company businesses. The Financial Services Law requires the Jersey Financial Services Commission (JFSC) to be satisfied with the quality and conduct of the business providers. The JFSC is empowered to licence approved Trust Companies. The FSC is also given the capacity to issue secondary legislation in the form of Orders and Codes of Practice that govern Trust Company business.

The new law was approved as an extension to the Investment Business (Jersey) Law 1998, and together with the Financial Services (Extension) (Jersey) Law 2000 have merged to become the Financial Services (Jersey) Law 1998.

The Law

The Law requires the JFSC to be "satisfied" initially and on an ongoing basis that the Trust Company licence holder:-

- 1) Is solvent;
- 2) Is competent;
- 3) Has integrity;
- 4) Has strong structure and organisation.

To achieve these objectives, the Law gives the JFSC powers to issue licence conditions, directions, or public statements; powers to commence investigations, co-operate with other regulatory bodies, require persons to attend and answer questions, and, ultimately, powers to withdraw a licence.

The Subordinate Legislation

The criteria on which the JFSC base their assessment of a business are set out in two tiers of directives. The first tier comprises a series of Orders which are compulsory, and the second tier sets out Codes of Practice which detail the way a licence holder is expected to satisfy the JFSC that it is a fit and proper business to undertake fiduciary work.

The Orders

The Orders that must be followed are:-

- **Accounts, Audits & Reports Order** – Ensures all licence holders are subject to audit and places obligations on the auditors to declare to the Commission that it has not found any evidence of Orders or Codes being breached.
- **Exemptions Order** – Allows certain activities to be exempt from the need to register or from the Law.

- **Register & Fees Order** – Provides the mechanism for the Commission to charge fees and sets out the classes of business for which the Trust Company is licensed to carry on business. Clients are able to check that the firm they are dealing with is authorised to act in the capacity the client requires.
- **Trust Company Business Assets Order** – Ensures all client monies are effectively segregated and identified. The licence holder must have robust systems to manage its client's money securely.
- **Appointment of Manager Order** – "Rescue" powers for the Commission in the event of a Trust Company business experiencing difficulty.
- **Advertising Order** – Sets out standards of fair and truthful advertising. Licence holders must not mislead customers.

The Codes of Practice

The objective is to establish best practice. The Codes are defined as being persuasive, but in fact the Codes form the criteria by which the JFSC appraise the business when they make an inspection. There are six areas covered by the Codes, namely:-

- 1) **A registered person must conduct its business with integrity** – this Code defines the responsibilities to be fulfilled, requires transparency in procedures and costs, and requires proper handling of conflicts.

- 2) **A registered person must have the highest regard for the interests of its customers** – this deals with the requirement to exercise due skill, care and diligence to fulfil the responsibilities undertaken.
- 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** – apart from having adequate procedures to vet and monitor competence and probity, this also requires that all the persons acting are proven to be fit and proper for their respective roles.
- 4) **A registered person must be transparent in its business arrangements** – information should be communicated in a way that it is adequate, fair and not misleading. Charges and fees should be open and transparent. The registered person must disclose on its stationery that it is regulated by the Commission.
- 5) **A registered person must maintain, and be able to demonstrate the existence of,**