
STATES OF JERSEY



SUNSTONE HOLDINGS LTD. AND DE LEC LTD. – *EX GRATIA* PAYMENTS TO INVESTORS (P.90/2013) – FURTHER REPORT OF THE COUNCIL OF MINISTERS

**Presented to the States on 10th March 2015
by the Council of Ministers**

STATES GREFFE

REPORT

Background

On 4th June 2014 the States Assembly rejected P.90/2013 in full. P.90/2013 [Sunstone Holdings Ltd. and De Lec Ltd. – *ex gratia* payments to investors] was a proposition calling for compensation to be paid to investors who had lost money due to investments in what transpired to be fraudulent property schemes in respect of 2 companies – Sunstone Holdings Limited and De Lec Limited.

In advance of that matter being debated, the Council of Ministers presented additional comments on P.90/2013 (attached as **Annex 1** to this report), following the publication of an expert report on the matter prepared by Mr. David Thomas¹ (also attached as the Appendix to **Annex 1**).

In paragraph 12 of those comments, the following statement was made –

“The Council of Ministers are, however, aware from the report that there is the suggestion that a number of investors might not have invested money or increased an existing investment if issues had come into the public domain in early 2007 which would have had a significant impact on the reputations of Cameron, Foot and Lewis. It is for consideration whether in the light of this a case can be made for this group of investors to be recompensed in some way and the Chief Minister will undertake to report the outcome of further work on this matter to the States at the earliest opportunity.”

Further report by David Thomas

Following the rejection of P.90/2013 by the States, Mr. Thomas was asked to carry out further work on this matter. The terms of reference as to that further work are attached to this Report at **Annex 2**.

Mr. Thomas delivered his further report in December of last year.

Mr. Thomas wrote to all of the investors who had been identified in the work leading up to his previous report. Mr. Thomas received in response 5 claims from investors who said they had put in new money after 31st March 2007. The date 31st March 2007 is based on the conclusions that were reached in paragraph 9.4 of Mr. Thomas’ original report.

The total of these claims was £269,834, of which one claim is for £134,691. Mr. Thomas was able to satisfactorily establish the claims with evidence in 4 out of the 5 cases. The fifth case (of an investment of £10,143) would have to be established with further evidence if *ex gratia* payment was to be made.

¹ David Thomas is an experienced financial ombudsman. After practising for 28 years as a Solicitor, he was appointed the Banking Ombudsman in the UK in 1997. He then became Principal Ombudsman and subsequently Chief Ombudsman of the Financial Ombudsman Service. At the time of undertaking both the initial report and the further report, he was acting as a part-time consultant to the new Chief Ombudsman in the UK with the title of Lead Ombudsman (Strategy). He has more recently been appointed Chairman of the Channel Islands Financial Ombudsman Service.

Therefore the total amount in consideration for *ex gratia* payment would range between £259,691 and £269,834 – depending on whether the fifth claim could be verified.

Consideration of *ex gratia* payment

Mr. Thomas was asked to carry out his further report so that the Council of Ministers could be fully informed with all information when considering whether a case can be made for any group of investors to be recompensed *ex gratia* from the public purse.

As was stated by the Council of Ministers in their comments relating to P.90/2013: “any decision on whether the taxpayer should compensate the investors should depend upon whether the circumstances can be seen as sufficiently exceptional in terms of the hardship suffered to justify public support.” The matter of an *ex gratia* payment has been considered with this constantly in mind.

Although the position of individual investors is not known, it is understood that some of the 50 investors defrauded in relation to Sunstone and De Lec have suffered hardship and difficulty as a result of the fraudulent activities of those responsible for these schemes. However, while there are 5 investors who may not have made an investment if they had had earlier information, there is no evidence available to suggest that they have suffered greater hardship than other investors.

In the view of the Council of Ministers, when considering the position of all 50 investors involved in the schemes, making a decision to compensate 5 of those investors based solely on whether they invested before or after a certain date would be unfair on a large group of investors, and in particular those who may have suffered greater hardship.

In order to justify the high test for *ex gratia* compensation from the public purse, the situation must be sufficiently exceptional in terms of the hardship suffered to justify support. The Council of Ministers are of the view that this requirement is not met in this case, and share the view expressed by the Council of Ministers last year that an *ex gratia* payment to any of the investors cannot be justified.

The Council of Ministers appreciates that the conclusion reached in this matter will be disappointing to a number of investors in these schemes. However, the Council of Ministers are firmly of the opinion that *ex gratia* compensation from the public purse should be reserved for only the most exceptional cases where it would not be deemed unfair or discriminatory.

10th March 2015

NOTE: Mr. David Thomas' further report

Due to the fact that Mr. Thomas' further report contained specific confidential information regarding individual investments and evidence obtained to establish claims, it is not appropriate for the further report to be published. The overall conclusions of that report are, however, contained in this report.

STATES OF JERSEY



SUNSTONE HOLDINGS LTD. AND DE LEC LTD. – *EX GRATIA* PAYMENTS TO INVESTORS (P.90/2013) – COMMENTS

Presented to the States on 29th May 2014
by the Council of Ministers

STATES GREFFE

2013

Price code: D

P.90 Com.(2)

ADDITIONAL COMMENTS

1. In September 2013 the States debated a proposition lodged by Senator A. Breckon (P.90/2013) that –
 - *ex gratia* compensation should be paid to investors who suffered financial loss as a result of investments in Sunstone and/or De Lec;
 - the compensation should be subject to a maximum of £48,000 per investor (100% of the first £30,000 lost and 90% of the next £20,000);
 - the compensation should be paid from central reserves, but legislation should be introduced to recover it from the Jersey Financial Services Commission (JFSC); and
 - the Chief Minister should bring forward proposals under Article 27 of the Financial Services (Jersey) Law 1998 to establish an Investor Compensation Scheme in Jersey.
 2. The debate was adjourned on the grounds that a number of States members did not feel they had sufficient information upon which to base a decision and the Chief Minister indicated that in the light of this he would initiate an independent review to clarify various points raised in the debate.
 3. In November 2013, the Chief Minister invited David Thomas, who has held the position of Chief Ombudsman of the UK Financial Ombudsman Service and other relevant roles, to undertake an enquiry. The terms of reference were agreed with Senator Breckon and were, whether –
 - the JFSC should have been aware of warning signs/irregularities, and taken action concerning, the incorporation/operation of Sunstone Holdings Ltd. and De Lec Ltd. by the regulated Principals;
 - the JFSC were aware and should have taken action before 2008. In particular whether 2 investors expressed concerns to the JFSC in 2006 or 2007;
 - if the JFSC should have been aware and should have taken action before January 2008, that would have made any difference to the loss incurred by investors; and
 - there were regulatory breaches on behalf of Goldridge Stone, and whether the JFSC enforcement actions were sufficient.
 4. All the investors were given an opportunity to make representations to David Thomas.
 5. His report is attached as an **Appendix** to these comments. In response to the terms of reference, and also to points that Members raised in the debate, his conclusions are summarised as follows –
-

- **Did 2 investors express concerns to JFSC in 2006 or 2007?**

No

- **Was JFSC aware, and should it have taken action before 2008?**

No

- **Should JFSC have been aware of warning signs/irregularities, and taken action concerning the incorporation/operation of Sunstone and De Lec by the regulated Principals [Cameron, Foot and Lewis]?**

No

- **Were there regulatory breaches on behalf of Goldridge?**

I am prevented by law from adding to the JFSC's 2008 statement (in Annex A).

- **Were JFSC enforcement actions in respect of Goldridge sufficient?**

If JFSC had taken timely and sufficient action, issues including Goldridge (unconnected with Sunstone/De Lec) would have been likely to become public by January 2007.

If JFSC had possessed a wider range of graduated powers these issues could have become public at a much earlier date.

- **If JFSC should have been aware and should have taken action in respect of Goldridge before January 2008, would that have made any difference to the loss incurred by investors in Sunstone and De Lec?**

Investors would have been unlikely to invest, or increase an existing investment in Sunstone and De Lec after March 2007; but it would have made little or no difference to the losses incurred by those who had already invested by March 2007; and (for the removal of any doubt) it would have made little or no difference to those who had invested by March 2007 but rolled over their existing investments at a later date.

6. To gain access to restricted information held by the JFSC, David Thomas was appointed as an agent of the Commission. He could not look into the JFSC's actions without studying information received by the JFSC that is legally confidential. It would be a criminal offence for him to disclose that information and so it is not possible for him to include in his report the full reasons for some of his conclusions. Nothing in the report should be interpreted as constituting such confidential information, or disclosing the existence or absence of such information.

7. The comments of the Council of Ministers on P.90/2013 in September 2013 are attached. Ministers remain of the view that –
- the circumstances of the Alternate Insurance Services Limited case are so significantly different from those of Sunstone and De Lec that the former does not establish a precedent of which advantage can be taken in the case of the latter;
 - the JFSC acted immediately upon notice in January 2008;
 - when investment is contemplated in high risk areas such as off-plan foreign property purchases, investors should always seek independent advice separate from those promoting the investment scheme. The fact that the principals marketing the scheme had been separately approved by the JFSC as ‘fit and proper’ for different regulated purposes is not a sufficient reason for not taking proper investment advice, nor for justifying compensation by the taxpayer if the investment decisions taken should prove to be faulty;
 - as the JFSC has no statutory responsibility for the scheme there is no case for the Commission to be called on to meet the claim for compensation; and
 - any decision on whether the taxpayer should compensate the investors should depend upon whether the circumstances can be seen as sufficiently exceptional in terms of the hardship suffered to justify public support.
8. In their previous comments the Council of Ministers expressed the view that it was extremely unlikely that, if the same circumstances had prevailed in the UK, compensation would have been forthcoming under the UK investor protection scheme. On the information that David Thomas had available to him, that was not available to the Council of Ministers at the time that previous comments were lodged, it appears a group of investors might have been subject to compensation under the UK investor protection scheme if the same circumstances had prevailed in the UK. This is detailed in Section 5.5-5.7 of the Report.
9. Jersey currently does not have an investor protection scheme. The reasons why an investor protection scheme has not been introduced in Jersey to date were set out in the comment of the Council of Ministers in September 2013. In summary such a scheme, if it is to be funded by investment advisers, could force many out of business and in the absence of a similar scheme in competitor jurisdictions, such as Guernsey and the Isle of Man, business would be lost. For these reasons the introduction of an investor protection scheme in Jersey is not supported at the present time.
10. It is therefore the view of the Council of Ministers that, notwithstanding that it could be said that some of the investors may have fallen within the UK investor protection scheme if their same circumstances had prevailed in the UK, this is not sufficient grounds for suggesting they be compensated in Jersey. Compensation would set a precedent for introducing an investor

protection scheme in Jersey which is undesirable for the reasons outlined above. Alternatively, compensation in this matter could set a precedent which would lead to future applications being made to the States Assembly to effectively act as a compensation scheme funded by the taxpayer. The Council of Ministers are of the view this would be fundamentally wrong.

11. **In the light of the foregoing the Council of Ministers remain of the view that P.90/2013 as presented should be rejected.**
12. The Council of Ministers are, however, aware from the report that there is the suggestion that a number of investors might not have invested money or increased an existing investment if issues had come into the public domain in early 2007 which would have had a significant impact on the reputations of Cameron, Foot and Lewis. It is for consideration whether in the light of this a case can be made for this group of investors to be recompensed in some way and the Chief Minister will undertake to report the outcome of further work on this matter to the States at the earliest opportunity.



Sunstone and De Lec Inquiry

Report by David Thomas

Commissioned by the
Chief Minister of the States of Jersey

May 2014

David Thomas
PO Box 70723
London
EC1P 1GX

Senator Ian Gorst
Chief Minister of Jersey
Cyril Le Marquand House
St Helier
Jersey
JE4 8QT

21 May 2014

Dear Senator Gorst

Sunstone and De Lec Inquiry

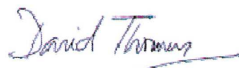
You instructed me to carry out an independent inquiry in accordance with the terms of reference that are set out in annex B. I now enclose my report.

In the course of my inquiry I have studied a considerable quantity of material, but I have tried to keep my report succinct and to-the-point.

I would like to express my sympathy for those who lost money, and to record my gratitude to all of those who have provided evidence or assisted my inquiry.

The staff in your office provided practical assistance to me, for which I am grateful, but the report and its conclusions are entirely mine.

Yours sincerely



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1 Interpretation

1.1 The following abbreviations are used in this report:

- BVI = British Virgin Islands
- Benessia = Benessia Global Limited, incorporated in BVI
- Cameron = James Shaw Cameron
- Christmas = Ian Michael Christmas
- De Lec = De Lec Limited, incorporated in Jersey
- FCA = Financial Conduct Authority, in the United Kingdom
- Foot = Russell Phillip Foot
- FSCS = Financial Services Compensation Scheme, in the United Kingdom
- FSCJ Law = Financial Services Commission (Jersey) Law 1998
- FSJ Law = Financial Services (Jersey) Law 1998
- Goldridge = Goldridge Stone Limited, incorporated in Jersey
- JFSC = Jersey Financial Services Commission
- Lewis = John Tasker Lewis
- Sunstone = Sunstone Holdings Limited, incorporated in Jersey
- Sunstone Global = Sunstone Global Property Limited, incorporated in BVI

1.2 In relation to 'investors':

- Following the terminology which is used in the terms of reference that I was given, I use 'investors' to include those who contributed money by joint venture agreement or promissory note.
- Strictly speaking, they are not 'investors' within the terms of the Financial Services (Jersey) Law 1998 (FSJ Law), because joint venture agreements and promissory notes are not 'investments' within the terms of the FSJ Law.
- In this report, I have counted couples who invested together as one investor, rather than two. So (for example) where I refer to 53 investors, this includes a number of couples and comprises 80 people in all.

2 Background

- 2.1 James Shaw Cameron (Cameron), Russell Phillip Foot (Foot) and John Tasker Lewis (Lewis) were involved with Goldridge Stone Limited (Goldridge), a firm of investment advisers:
- In Mar 1998 Foot and Lewis incorporated Goldridge as a company in Jersey. It took over from a previous partnership.
 - In Jun 2004 Cameron became a director of Goldridge. He had been a member of the previous partnership, but did not join Goldridge at the outset.
- 2.2 Goldridge became regulated by the Jersey Financial Services Commission (JFSC):
- In Mar 1999 certain provisions of the FSJ Law 1998 [then known as the Investment Business (Jersey) Law 1998] came into force.
 - These required firms conducting investment business to apply, within four months, to the Jersey Financial Services Commission (JFSC) for registration.
 - In Jun 1999 Goldridge applied to JFSC for registration. There was a lengthy transitional period for firms that applied.
 - In Jan 2001 JFSC registered Goldridge to carry on class D investment business (under which it was not allowed to hold client money).
- 2.3 In Feb 2004 De Lec Limited (De Lec), a property company, was incorporated as a company in Jersey:
- It was set up by Lewis, Ian Michael Christmas (Christmas) and a third person.
 - Christmas was not involved with Goldridge. He was an Assistant Magistrate.
 - The third person, who later left, was not implicated in the matters covered by this report.
- 2.4 In Feb 2005 Sunstone Holdings Limited (Sunstone), a property company, was incorporated as a company in Jersey. It was set up by Lewis, Cameron and Foot. In Jan 2007 Sunstone Global Property Limited (Sunstone Global) was incorporated as a company in the British Virgin Islands (BVI).
- 2.5 Sunstone and De Lec were not subject to regulation by JFSC under the FSJ Law 1998.
- 2.6 Broadly, Sunstone and De Lec Sunstone operated in the same way:
- In return for a small deposit, they reserved 'off plan' new houses that were to be constructed in the United States, mainly in Florida.
 - The purchases were then to be financed (partly) by money from Jersey investors and (mainly) by mortgage loans obtained in the United States.
 - The expressed intention was to let the houses for two years or so (for United States tax reasons) and then sell them, in expectation of making a profit for investors.
- 2.7 As the Jersey Court of Appeal subsequently said in its judgment on 18 Apr 2013:
- A total of 90 properties were reserved or purchased (usually in the names of Cameron, Foot or Lewis) and mortgages of \$16,500,000 were raised.
 - The more properties that were purchased, the more money that was needed to pay the mortgages and other outgoings, and to pay returns to investors.
 - Both Sunstone and De Lec made losses. These would have been greater still but for money fraudulently obtained from Jersey investors.
 - Though some investors were told they were buying a share in a particular property, their money was often used for different purposes.

- 2.8 Some of the investors began pressing for their money, but were fobbed off. Eventually, at the turn of 2007/2008 one of them commenced civil proceedings in the Royal Court.
- 2.9 In Jan 2008 JFSC commenced an investigation. In Feb 2008 it alerted Jersey Police about the fraud. In Jul 2008 Goldridge was closed down, as a result of action by JFSC. JFSC issued a public statement, a copy of which is in annex A.
- 2.10 In 2012 Cameron, Foot, Lewis and Christmas appeared before the Royal Court to answer a number of criminal allegations relating to alleged fraudulent inducement to invest or lend money. These allegations were connected with the purchase and sale of property in the United States of America, in association with De Lec or Sunstone.
- 2.11 The outcome was:
- Cameron was convicted on 16 counts totalling £943,000 and sentenced to imprisonment for a total of 54 months;
 - Foot was convicted on 13 counts totalling £678,000 and sentenced to imprisonment for a total of 54 months;
 - Lewis was convicted on 13 counts totalling £785,000 and sentenced to imprisonment for a total of 54 months; and
 - Christmas was convicted on one count involving £100,000 and sentenced to imprisonment for 15 months.
- 2.12 These counts appear to have related to 17 investors.
- 2.13 In Apr 2013 the Court of Appeal heard appeals:
- Cameron, Foot, Lewis and Christmas appealed against their convictions. The Court quashed one of the counts against Cameron, and upheld all of the other convictions.
 - Cameron and Christmas appealed against their sentences. The Court dismissed those appeals.

3 This inquiry

- 3.1 In Jul 2013 Senator Alan Breckon lodged a proposition with the States that:
- ex gratia compensation should be paid to investors who suffered financial loss as a result of investments in Sunstone and/or De Lec;
 - the compensation should be subject to a maximum of £48,000 per investor (100% of the first £30,000 lost and 90% of the next £20,000);
 - the compensation should be paid from central reserves, but legislation should be introduced to recover it from JFSC; and
 - the Chief Minister should bring forward proposals under article 27 of the FSJ Law to establish an Investor Compensation Scheme in Jersey.
- 3.2 Following an initial debate in the States in Sep 2013, the proposition currently stands adjourned.
- 3.3 In Nov 2013, to assist future consideration of the proposition by the States, the Chief Minister asked me to conduct an inquiry into whether or not JFSC should have taken earlier action in relation to Goldridge concerning Sunstone and De Lec. Fuller details of the terms of reference of the inquiry and my credentials are set out in annex B.
- 3.4 It is important to note that:
- My role is to inquire into what happened. What action (if any) should be taken in the light of my conclusions is a matter for the States.
 - Where I have come to factual conclusions, I have done so on the balance of probabilities in the light of the available evidence.
 - I could not look into JFSC's actions without studying information received by JFSC that is legally confidential, under article 37 of the JFS law.
 - It would be a criminal offence for me to disclose that information, and so I am legally constrained as to the extent to which I can give reasons for some of my conclusions.
 - Nothing in my report should be interpreted as constituting such confidential information, or disclosing the existence or absence of such information.
- 3.5 I would like to express my sympathy for all of those who lost money. And I would like to express my thanks to all of those who have assisted my inquiry.
- 3.6 JFSC cooperated with my inquiry:
- It made available to me 24 storage boxes of files potentially relevant to JFSC's supervision of Goldridge, and it answered the large number of questions that I put to it.
 - I considered what points would have been made on behalf of investors if they had been able to see the confidential information that I saw.
 - I put those points to JFSC in writing. It provided me with its response, which included additional evidence.
 - The Director-General certified to me in writing that (to the best of his knowledge, information and belief) JFSC had disclosed to me all the relevant information it has.
- 3.7 Jersey Police (through the Joint Police and Customs Financial Crime Unit) also cooperated with my inquiry. With the consent of relevant investors, they placed substantial information at my disposal – including witness statements made by most of those investors.

- 3.8 With the assistance of Senator Breckon, JFSC and the Jersey Police, I attempted to trace any investors who might have been affected by the relevant activities, whether or not their circumstances were covered by the criminal prosecutions.
- 3.9 Sadly, three investors had died. I wrote to 53 investors (this included a number of couples and comprised 80 people in all) asking them some relevant questions and indicating that I was also available to speak to them. A copy of my letter to the investors is in annex C.

4 Investors

- 4.1 The police statements of 47 investors were released to me, with the consent of the investors.
- 4.2 35 of the 47 investors said that they had previously been normal investment clients of Goldridge. Of these:
- 10 of the investors said that they had followed Cameron, Lewis or Foot to Goldridge from a previous firm;
 - 6 of those 10, plus 2 others – making 8 in total – said that they had become friends of Cameron, Lewis or Foot;
 - 22 of the investors accepted that they were told by Cameron, Lewis or Foot that Sunstone/De Lec was separate from Goldridge; and
 - 8 of the investors said they surrendered existing conventional (regulated) investments, some of them incurring losses, in order to invest in Sunstone/De Lec.
- 4.3 12 of the 47 investors did not appear to have been normal investment clients of Goldridge. They were looking to invest money (usually in property), sometimes following friends or relatives who had already done so, and were introduced to Cameron, Lewis or Foot.
- 4.4 Some investors said their meetings with Cameron, Lewis or Foot were at the offices of Goldridge. Others said that meetings were at their homes or elsewhere.
- 4.5 In my letter to investors (quoted in annex C) I asked them to let me know if they had ever received a letter about Sunstone or De Lec on the letterhead of Goldridge, or an email about Sunstone or De Lec from the email address of Goldridge.
- 4.6 Sunstone and De Lec usually used the same postal address as Goldridge. But all of the relevant letters I have seen were in the name of Sunstone or De Lec, and not in the name of Goldridge.
- 4.7 In relation to the emails I have seen from Cameron, Lewis or Foot about Sunstone or De Lec:
- most of them came from their private email addresses; but
 - one investor showed me three emails from Foot using the Goldridge email address;
 - these three emails dated from Sep 2007, Oct 2007 and Jan 2008.
- 4.8 These emails from the Goldridge email address included a standard statement that they were from Goldridge and that it was regulated by JFSC – which could lead the recipient of such an email to believe they were dealing with Goldridge as a regulated business.
- 4.9 In addition, one investor showed me a receipt for his investment, handwritten on a Goldridge compliments slip. He said that Cameron's secretary had written this.

5 Investment

- 5.1 Most of the investors put money into Sunstone/De Lec (directly or indirectly) in one of two ways: as a loan or as a joint venture:
- Where the investors put money in as a loan, the transaction was evidenced by a promissory note – providing for repayment, usually with interest. A typical Sunstone promissory note (anonymised) is set out in annex D.
 - Where the investors put money in as a joint venture, the transaction was evidenced by a joint-venture agreement – providing for the money to buy a share of a property and its future proceeds. A typical Sunstone joint-venture agreement (anonymised) is set out in annex E.
- 5.2 In relation to these promissory notes and joint-venture agreements:
- In some of these, the party receiving the money was a nominee for Sunstone or De Lec, rather than Sunstone or De Lec itself.
 - Some investors said they paid over their money before seeing the documents. Others said they did not read the documents, relying instead on what they were told. Cameron, Lewis and Foot seem to have been plausible and persuasive.
 - As can be seen from the samples in annexes D and E, it is reasonably apparent to anyone who actually reads the documents that they are promissory notes or joint-venture agreements, rather than a form of conventional investment.
- 5.3 A few of the investors were supposed to receive shares in an investment company called Benessia Global Limited (Benessia):
- Benessia was a BVI investment company, intended only for very rich investors. The proprietors of Benessia were not implicated in the matters covered by this report.
 - Some Jersey investors provided cash. Some rolled-over debts from previous promissory notes or joint-venture agreements with Sunstone/De Lec.
 - Most, but not all, of the Jersey investors who were supposed to receive shares in Benessia later got their original money back as a result of intervention by JFSC.
- 5.4 If equivalent transactions:
- had taken place in the United Kingdom, where investors are covered by a Financial Services Compensation Scheme (FSCS); and
 - the investor acted in reliance on advice from an authorised financial services firm (or someone acting as an officer, employee or authorised representative of such a firm);
- my understanding is that there would have been differing outcomes.
- 5.5 *Investors who surrendered conventional (regulated) investments:* FSCS would have been likely to compensate them for any losses they incurred on the surrender (subject to FSCS's maximum limit).
- 5.6 *Investors who put funds (directly or indirectly) into Sunstone/De Lec under promissory notes or joint-venture agreements:* FSCS would have been unlikely to compensate them – because the promissory notes and joint-venture agreements were not conventional (regulated) investments.
- 5.7 *Investors who bought shares in Benessia (for cash or by roll-over from a promissory note or joint-venture agreement):* FSCS would have been likely to compensate them for any losses they incurred (subject to FSCS's maximum limit).

5.8 FSCS's maximum limit, in respect of investments, is:

- for firms declared in default *before* 1 Jan 2010, 100% of the first £30,000 and 90% of the next £20,000 (up to £48,000) per investor – [as in Senator Breckon's proposition];
- for firms declared in default *from* 1 Jan 2010, 100% of the first £50,000 per investor.

6 Powers of JFSC

- 6.1 The actions of JFSC must be judged against the background of the functions that are allocated to it and powers that it is given in order to fulfil those functions.
- Annex F summarises relevant provisions in the Financial Services Commission (Jersey) Law 1998 (FSCJ Law).
 - Annex G summarises relevant provisions in the Financial Services (Jersey) Law 1998 (FSJ Law).
- 6.2 JFSC has power to issue codes of practice, under article 19 of the FSJ Law.
- Failure to follow a code of practice does not, of itself, render anyone liable to any kind of proceedings nor invalidate any transaction.
 - But any code of practice is admissible in evidence if it appears to the Court to be relevant, and will be taken into account in the Court's decision.
 - Annex H summarises relevant provisions from JFSC's Investment Business Codes of Practice.
- 6.3 If anyone breaches the FSJ Law or the Investment Business Codes of Practice, this can result in JFSC applying sanctions – such as (in appropriate cases):
- revoking a licence (under Article 9 of the FSJ Law);
 - issuing a direction (under Article 23 of the FSJ Law); and/or
 - issuing a public statement (under Article 25 of the FSJ Law).
- 6.4 In exercising its powers of sanction, JFSC must have regard to the European Convention on Human Rights, which has applied to Jersey since 1954 and was subsequently incorporated in the Human Rights (Jersey) Law 2000. Firms, as well as individuals, have rights under these.
- 6.5 In 2008 the FSJ Law was amended to give a right of appeal to court against a proposed public statement. Before that, these rights inhibited JFSC's ability to issue a public statement if the statement was not linked to regulatory action that itself carried a right of appeal to court.
- 6.6 JFSC does not possess as wide a range of powers as are available, for example, to the Financial Conduct Authority (FCA) in the United Kingdom. For example, FCA has power to make legally-binding rules for financial businesses and to impose financial penalties for any breach. JFSC does not have equivalent powers.
- 6.7 Because JFSC has a narrower range of powers than FCA, JFSC is less able to make a graduated response to shortcomings in authorised firms. Some of JFSC's powers are 'nuclear options', requiring compelling reasons before they can be deployed.
- 6.8 I have considered whether JFSC's actions were reasonable or unreasonable in the light of the information that was available to it at the relevant time. I have taken into account:
- the need to avoid the application of hindsight to any judgements that JFSC made;
 - JFSC's need to focus its available resources on a risk-based basis; and
 - the regulatory climate (in Jersey and worldwide) before the world financial crisis.

7 Was JFSC told before Jan 2008?

- 7.1 When did JFSC first become aware of concerns about activities of Cameron, Foot, Lewis or Goldridge in relation to United States properties?
- 7.2 JFSC's Director-General certified to me in writing that (to the best of his knowledge, information and belief) JFSC first became aware of these concerns on 18 Jan 2008. This was as a result of court proceedings brought by an investor against Foot, Lewis, Sunstone and Sunstone Global.
- 7.3 Following that, JFSC took appropriate enforcement action that led to the closing down of Goldridge – and JFSC cooperated with Jersey Police, leading to the prosecutions of Cameron, Foot, Lewis and Christmas.
- 7.4 But it was suggested by some that JFSC had, in fact, been informed of these concerns at an earlier stage – perhaps in 2006 and 2007. JFSC said that it could find no record of this.
- 7.5 I found no evidence of any such contact in the information made available to me by investors, Jersey Police or JFSC.
- 7.6 My letter to investors (quoted in annex C) specifically asked them to tell me if they, or anyone else to their knowledge, had raised any such concerns with the JFSC before January 2008.
- 7.7 One investor told me that she had contacted JFSC. She had no record of the date, but thought it was probably in Dec 2007. JFSC produced various documents, including dated emails exchanged with this investor. These recorded the initial contact from this investor, and a subsequent meeting with her and her husband. They demonstrated conclusively that the initial contact was not until 25 Jan 2008.
- 7.8 None of the other investors said that they themselves had contacted JFSC before Jan 2008. But, at various stages, I was given the names of seven people. My informants, doubtless in good faith, thought these people might have raised relevant concerns with JFSC before Jan 2008.
- 7.9 I contacted all seven of the people named – six investors and one financial services professional. They have satisfied me that, in fact, they did not raise relevant concerns with JFSC before January 2008.
- 7.10 I conclude that there is no evidence that anyone communicated concerns to JFSC about activities of Cameron, Foot, Lewis or Goldridge in relation to United States properties before Jan 2008.

8 Should JFSC have realised before Jan 2008?

- 8.1 Should JFSC itself have identified concerns about the activities of Cameron, Foot, Lewis or Goldridge in relation to United States properties before Jan 2008 – arising from:
- the formation of De Lec in Feb 2004;
 - the formation of Sunstone in Feb 2005; or
 - JFSC’s supervision of Goldridge?
- 8.2 JFSC maintains the register of companies incorporated in Jersey, and vets shareholdings under the Control of Borrowing (Jersey) Order 1958.
- JFSC’s company registration department was aware of the formation of De Lec, and of the identities of its directors and shareholders. Neither Cameron nor Foot was involved.
 - JFSC’s company registration department was aware of the formation of Sunstone, and of the identities of its directors and shareholders.
 - Neither Sunstone nor De Lec was required to register under the FSJ Law, and so neither was subject to ongoing JFSC supervision in the way that Goldridge was.
- 8.3 In the light of the information available to JFSC at the time, including the information that JFSC received about the purposes for which Sunstone and De Lec were established, I do not consider that JFSC should have been put on alert by the formation of either company.
- 8.4 I have studied the extensive records concerning JFSC’s supervision of Goldridge:
- These disclose significant interactions between JFSC (in its role as supervisor) and Goldridge.
 - But I found no evidence that the activities of Sunstone or De Lec should have been apparent to JFSC from those interactions or from Goldridge’s files and records.
 - Indeed there is evidence that Goldridge took care to keep files and records relating to Sunstone/De Lec separate.
- 8.5 I found no evidence that JFSC itself should have identified concerns about the activities of Cameron, Foot, Lewis or Goldridge in relation to United States properties before Jan 2008
- 8.6 My letter to investors (quoted in annex C) specifically asked them to let me know of any information that they considered demonstrated that the JFSC should have been aware. I did not receive any.
- 8.7 I conclude that there is no evidence that JFSC itself should have identified concerns about the activities of Cameron, Foot, Lewis or Goldridge in relation to United States properties before Jan 2008 – either arising from the formation of Sunstone and De Lec or from JFSC’s supervision of Goldridge.

9 Should JFSC have taken earlier action on Goldridge?

- 9.1 Were there regulatory breaches by Goldridge? If there were, did JFSC take timely and sufficient enforcement action in respect of Goldridge?
- 9.2 Whether or not JFSC took timely and sufficient action in respect of Goldridge is a question of judgment – rather than a question of fact. In my opinion, however, JFSC did not take timely and sufficient enforcement action in respect of Goldridge.
- 9.3 I note that in the public statement issued by JFSC in 2008 (see annex A) JFSC said – “*The Principals are unfit to be employed by a registered person.*” With that conclusion I strongly agree.
- 9.4 In my opinion, if JFSC had taken timely and sufficient action in respect of Goldridge:
- issues concerning Goldridge (unconnected with Sunstone/De Lec) would have been likely to become public by Jan 2007;
 - those issues would have been likely to have a significant impact on the reputations of Cameron, Foot and Lewis; and
 - (allowing time for news to spread) investors would have been unlikely to invest, or increase an existing investment, in Sunstone and De Lec after Mar 2007; but
 - it would have made little or no difference to the losses incurred by the majority who had already invested by Mar 2007; and
 - (for the removal of any doubt) it would have made little or no difference to those who had invested by Mar 2007 but rolled-over their existing investments at a later date.
- 9.5 I note:
- There is no suggestion that JFSC acted otherwise than in good faith at all times;
 - As set out in paragraph 8.5, I found no evidence that JFSC should have identified concerns relating to United States properties before January 2008;
 - these matters appear to have been dealt with by executive staff, and were not considered by JFSC’s board;
 - at the material time, JFSC was burdened by a large number of difficult and significant cases in which it did take decisive action;
 - any failure by JFSC in the period I examined is not indicative of the capacity of today’s JFSC, which has significantly enhanced enforcement resources;
 - if JFSC had possessed a wider range of graduated powers (such as possessed by FCA) the relevant issues could have become public at a much earlier date.

10 Summary of conclusions

- 10.1 I have reached my conclusions on the balance of probabilities, in the light of the evidence and for the reasons explained above.
- 10.2 Before I deal with the specific questions raised by my terms of reference, it may be helpful if I summarise a few other conclusions from my report.
- 10.3 In relation to the investments:
- About three-quarters of the investors were previously investment clients of Goldridge. About one-sixth became friends, but had been clients first.
 - Just under half of the investors told Jersey Police that they were told by Cameron, Lewis and Foot that Sunstone/De Lec was separate from Goldridge.
 - About a sixth of the investors said they surrendered existing conventional (regulated) investments, some of them incurring losses, in order to invest in Sunstone/De Lec.
 - Cameron, Foot and Lewis appear to have been plausible and persuasive – and investors took what they said on trust.
 - The nature of the promissory notes and joint-venture agreements should have been reasonably apparent to anyone who read them.
- 10.4 In relation to compensation if equivalent transactions had taken place in the UK, and if the investors had relied on regulated advice:
- Only some of the investors would have been likely to be compensated by FSCS (subject to the FSCS maximum limit).
 - Investors who surrendered conventional (regulated) investments would have been likely to be compensated for losses they incurred on the surrender.
 - And investors who 'bought' shares in Benessia (for cash or by roll-over) would have been likely to be compensated for losses in respect of those shares.
 - But investors who put funds (directly or indirectly) into Sunstone/De Lec under promissory notes or joint-venture agreements would have been unlikely to be compensated.
- 10.5 In relation to the specific questions raised by my terms of reference (but in a different order) I summarise my conclusions as follows –
- 10.6 *Did two investors express concerns to JFSC in 2006 or 2007?*
No.
- 10.7 *Was JFSC aware, and should it have taken action before 2008?*
No.
- 10.8 *Should JFSC have been aware of warning signs/irregularities, and taken action concerning, the incorporation/operation of Sunstone and De Lec by the regulated Principals [Cameron, Foot and Lewis]?*
No.
- 10.9 *Were there regulatory breaches on behalf of Goldridge?*
I am prevented by law from adding to JFSC's 2008 statement (in annex A).

10.10 *Were JFSC enforcement actions in respect of Goldridge sufficient?*

- If JFSC had taken timely and sufficient action, issues including Goldridge (unconnected with Sunstone/De Lec) would have been likely to become public by Jan 2007.
- If JFSC had possessed a wider range of graduated powers these issues could have become public at a much earlier date.

10.11 *If JFSC should have been aware and should have taken action in respect of Goldridge before January 2008, would that have made any difference to the loss incurred by investors in Sunstone and De Lec?*

- Investors would have been unlikely to invest, or increase an existing investment in Sunstone and De Lec after Mar 2007.
- But it would have made little or no difference to the losses incurred by those who had already invested by Mar 2007.
- And (for the removal of any doubt) it would have made little or no difference to those who had invested by Mar 2007 but rolled-over their existing investments at a later date.

Annex A: JFSC 2008 public statement

Jersey Financial Service Commission Public Statement

Goldridge Stone Limited ("Goldridge") James Shaw Cameron, Russell Philip Foot, John Tasker Lewis (together the "Principals") Financial Services (Jersey) Law 1998 (the "Law")

The Jersey Financial Services Commission (the "**Commission**") issues this public statement under Article 25(a) of the Law.

Following an investigation into the fitness and propriety of the Principals, it appears to the Commission to be reasonable and necessary to issue each of the Principals with directions under Article 23 of the Law preventing each of them from engaging in any employment with any registered person as defined under the law. The Principals have been issued with equivalent directions under each of the regulatory laws.* The directions shall remain in force until such time as the Principals satisfy the Commission that there are no longer any grounds justifying the directions, in which case the directions may be withdrawn or varied.

The reasons for the directions arise from the Principals' conduct between February 2005 and March 2008 whilst they were Principal persons of Goldridge and simultaneously directors and shareholders of Sunstone Holdings Limited ("**Sunstone**"). Goldridge was authorised by the Commission to provide investment advice. Sunstone is a Jersey company whose activities do not fall within the regulatory responsibilities of the Commission. The Principals of Goldridge operated Sunstone primarily for the purposes of investing in property in the United States of America. In concluding that the Principals are unfit to be employed by a registered person, the Commission has considered the conduct of all three Principals as directors of Goldridge and of Sunstone.

The Principals will commit an offence, under Article 23(15) of the Law, in the event that they take employment with a registered person. Any person with information to indicate that such an offence has been committed is asked to contact the Commission.

On 27 June 2008, the Commission revoked Goldridge's registration under the Law and, with the cooperation of the Principals, is supervising the closure of the company. The Principals are no longer registered to provide investment advice.

* The Collective Investment Funds (Jersey) Law 1988, as amended
The Insurance Business (Jersey) Law 1996, as amended
The Banking Business (Jersey) Law 1991, as amended

Annex B: terms of reference

In a letter of 4 Nov 2013 to the members of the States of Deliberation, the Chief Minister said –

When P90/2013, concerning the making of ex gratia payments to investors in Sunstone Holdings Ltd and De Lec Ltd, was debated on the 25th September members sought further information which I indicated would be obtained through an inquiry carried out by an independent person.

I am pleased to tell you that David Thomas has agreed to undertake the inquiry. After practising for 28 years as a Solicitor, he was appointed the Banking Ombudsman in the UK in 1997. He then became Principal Ombudsman and subsequently Chief Ombudsman of the Financial Ombudsman Service. He is currently acting as a part time consultant to the new Chief Ombudsman with the title of Lead Ombudsman (Strategy).

He would be undertaking the inquiry in a personal capacity. He will be appointed as an agent of the Jersey Financial Services Commission (JFSC) under Article 10 of the Financial Services Commission Law but the cost of his engagement will be met by the Chief Minister's Department. Only by being appointed as an agent of the JFSC, can he have lawful access to restricted information within the JFSC.

As agent he will be covered by a statutory limitation of liability. As agent, he will be bound by confidentiality. This will not restrict him in the publication of his general findings based on his access to details of the regulatory history but he will be precluded from publishing those details.

The terms of reference agreed with Senator Breckon are to undertake an inquiry into whether –

- *the JFSC should have been aware of warning signs/irregularities, and taken action concerning, the incorporation/operation of Sunstone Holdings Ltd and De Lec Ltd by the regulated Principals;*
- *the JFSC was aware and should have taken action before 2008. In particular, whether two investors expressed concerns to the JFSC in 2006 or 2007;*
- *if the JFSC should have been aware and should have taken action before January 2008, that would have made any difference to the loss incurred by Investors;*
- *there were regulatory breaches on behalf of Goldridge Stone, and whether the JFSC enforcement actions were sufficient.*

All the investors will be given an opportunity to make representations to David Thomas if they want to do so.

Annex C: my letter to investors

In a letter of 17 Feb 2014 to investors, I said –

My name is David Thomas. I am conducting an inquiry for the Chief Minister into whether or not the Jersey Financial Services Commission (JFSC) should have taken earlier action in relation to Goldridge Stone Limited concerning Sunstone Holdings Ltd and De Lec Limited. Fuller details of the inquiry and my credentials are overleaf [as in annex B].

I am sorry to trouble you about a topic that may well have painful memories for you, but I need your help in relation to the inquiry.

I am writing to all those whose names and addresses I have and who may have put money into De Lec Limited, Sunstone Holdings Limited, Sunstone Global Property Limited or Benessia Global Limited (which I refer to in this letter as the 'property companies') – directly or through Messrs Cameron, Foot or Lewis.

If you know of anyone else who put money in, I would be glad if you would draw this letter to their attention – in case I do not have their details and have not written directly to them.

Here are the points on which I need your help –

- 1 If you (or anyone else to your knowledge) raised any concerns with the JFSC about the activities of Goldridge Stone Limited (or Messrs Cameron, Foot and Lewis) in relation to the property companies before January 2008, please tell me.*
- 2 If you have any other information that you consider demonstrates that the JFSC should have been aware of the activities of Goldridge Stone Limited (or Messrs Cameron, Foot and Lewis) in relation to the property companies before January 2008, please tell me.*
- 3 If you ever received a letter about the property companies on the letterhead of Goldridge Stone Limited, or an email about the property companies from the email address of Goldridge Stone Limited, I would be glad to see a copy.*

If you do have relevant information on any of these three points, please let me know by Friday 7 March 2014 – using the postal or email address at the top of this letter.

If you do not have relevant information on any of these three points, please do not trouble to reply.

I have already read through the relevant supervision files at JFSC and the relevant information held by the Jersey Police Financial Crime Unit – including the statements of all those witness who have agreed to my seeing their statements.

So I already have lots of information about the case, including its impact on those who put money into the property companies. And it will be for the States (not me) to decide what action, if any, to take in the light of my conclusions about the actions of the JFSC.

But, if there is any specific item of information that you need to communicate to me, I will be available in Jersey during the week Monday to Friday 10 to 14 March 2014. You can arrange a meeting or phone conversation with me using the contact details above.

Annex D: typical promissory note**Promissory note**

[amount]

Jersey this [date]

On demand we, Sunstone Holdings Limited, of 5 Britannia Place Bath St in the Parish of St Helier, Island Jersey ('the Borrowers') promise to pay [name and address of lenders] or his/her heirs, executors, administrators or assigns ('the Lenders') the sum of [amount] (the capital sum), for a loan advance of today's date for the same value, and until such demand is made, or repayment made by us jointly or severally in full, together with all interest and legal costs incurred), to abide by, and pay the following:-

- 1 *To repay the Capital sum at the end of three years from this date;*
- 2 *To pay interest at the rate of 7% (seven per cent per annum) this amount to be paid by standing order to an account of the lenders choosing in twelve monthly instalments starting one month from this date.*

SIGNED by the Borrowers

For and on behalf of Sunstone Holding Limited [signatures]

Dated [date]

Upon the above terms, [names of lenders] have agreed to remit the loan funds for use for acquisition and associated costs of properties to be held by Sunstone Holdings Limited, of 5 Britannia Place Bath St in Parish of St Helier, Jersey. To [bank: name, address and sort code]. [account number]. Account name Sunstone Holdings Limited.

SIGNED by the Lenders [signatures]

Dated [date] 2006

Annex E: typical joint-venture agreement

THIS AGREEMENT is made and entered into at Jersey this day [date] **BY AND BETWEEN** [customer name and address] (hereinafter referred to as [customer initials]) of the first part and Sunstone Holdings Limited of 5 Britannia Place, St Helier, Jersey, of the second part (hereinafter referred to as 'SHL')

WHEREAS:

- A** THAT the parties hereto have agreed that by way of joint venture they shall jointly purchase from [developer] (hereinafter referred to as 'the Developer') the property known as [address] for [price] (hereinafter referred to as 'the Property') in the development known as [development] (hereinafter referred to as 'the Development') situated in [location], USA.
- B** THAT the parties are required to pay a deposit (hereinafter referred to as 'the Initial Deposit') to secure the Property.
- C** THAT [customer initials] has agreed to provide an Initial Deposit of [amount] on the terms hereinafter set out.

NOW THIS AGREEMENT WITNESSETH as follows: -

JOINT VENTURE:

- 1** THAT the parties hereto agree that they shall purchase the Property for the consideration set out in the Schedule hereto. The Property shall be purchased in the name of [nominee]. The property was acquired in the name of [nominee] and cannot be changed and it is understood that [nominee] holds the property for and on behalf of Sunstone Holdings Limited and [customer name].
- 2** THAT the Initial Deposit, as in C above, shall be paid forthwith upon the signing of this agreement.
- 3** THAT the Property will be sold upon completion of the Development or may be retained after completion of the Development upon such terms as may be agreed between the parties.

FUNDING:

- 4.1.1** THAT [customer initials] will provide the Initial Deposit in the sum of [amount A] on the following terms and conditions.
- 4.2** THAT the capital as aforesaid shall be repaid in full to [customer initials] out of the net proceeds of sale of the Properties [sic] before and **DIVISION OF PROFITS**.
- 5** THAT upon the sale of the Property the proceeds of sale shall be applied as follows (in order of priority): -
- (i) Towards the cost and expenses incurred in connection with the acquisition and disposal of the Property (including with [sic] prejudice to the generality of the foregoing any legal or estate agents fees, any taxes or duties payable either in connection with the acquisition or disposal of the Property);
 - (ii) Towards any further costs and expenses incurred in connection with the Joint Venture or the maintenance of the parties' interest in the Properties [sic] from the date of payment of the Initial Deposit until the date of disposal;

- (iii) Towards repayment to [customer initials] of the Initial Deposit as provided in Clause 4 of this Agreement.
- (iv) The balance then remaining (if any) shall be divided between the parties on the following basis.

50% [customer initials]
50% SHL
- (v) In the event that it becomes necessary to pay further fees and deposits following the said initial deposit it is agreed that the profit split will be adjusted to reflect the pro-rata investment of any additional investor. This would be agreed between the above parties prior to seeking further investment.

GENERAL PROVISIONS

6 THAT if any of the parties hereto so require, the parties shall cause to be prepared a financial statement of the dealings of the parties in relation to the joint venture and in any event such a statement will be prepared and agreed between the parties upon the sale of the Property.

RELEVANT LAW

7 THAT this agreement shall be governed by and construed in accordance with the Law of Jersey.

IN WITNESS whereof the parties hereto have set their hand the day and year first above written.

Signed by the said [customer name] [signature]

Signed by and on behalf of Sunstone Holdings Limited [signature and seal]

Annex F: relevant provisions in the FSCJ Law

These are summaries (not quotations) as at 1 Jan 2002 unless stated otherwise

Article 1(1): definitions

'Financial services' includes carrying on, or providing services in relation to, the businesses of:

- *banking*
- *insurance*
- *investment*
- *asset management*
- *trusteeship and company administration*
- *provision and administration of corporate and other business structures*
- *any matters ancillary to such businesses or structures*

Article 2(4): establishment

JFSC is independent of the Finance & Economics Committee¹ and the States. Neither is liable for any act, omission or obligation of JFSC.

Article 5(1): functions

JFSC responsibilities include:

- *supervision of financial services provided in or from Jersey*
- *recommendations to the Finance & Economics Committee² on legislation for:*
 - *financial services*
 - *companies*
 - *other business structures*

Article 7: guiding principles

JFSC shall have regard to:

- *reducing risk to the public of financial loss due to:*
 - *dishonesty*
 - *incompetence*
 - *malpractice*
 - *financial unsoundness**of persons carrying on the business of financial services in or from Jersey*
- *protection/enhancement of the reputation/integrity of Jersey in commercial/financial matters*
- *best economic interests of Jersey³*

Article 8(1): general powers

JFSC has power to do anything:

- *calculated to facilitate or*
- *incidental or conducive to*

performance of any of its functions

¹ Later changed to *Minister of Economic Development* and later still changed to *Chief Minister*.

² Later changed to *the Minister*.

³ On 14 Nov 2007 *need to counter financial crime in Jersey and elsewhere* was added.

Article 8(2): general powers [NB added 14 Nov 2007]

JFSC's powers include, as part of routine examination of a supervised entity, to require the entity to:

- *supply information in a format and time specified*
- *provide answers to questions*
- *allow officers/agents to enter the entity's premises*

Article 9: limitation of liability

(Amongst others) no officer/servant/agent of JFSC shall be liable for acts/omissions in discharge (or purported discharge) of any function under, or authorized by or under, this law or any other enactment – unless the act/omission was in bad faith.

Article 13(1): publication of information and advice

JFSC may:

- *publish information*
- *give advice*

with respect to (amongst other things) any matters relating to financial services where this is desirable for:

- *reducing risk to the public of financial loss due to:*
 - *dishonesty*
 - *incompetence*
 - *malpractice*
 - *financial unsoundness*
- *of persons carrying on the business of financial services in or from Jersey*
- *protection/enhancement of the reputation/integrity of Jersey in commercial/financial matters*
- *best economic interests of Jersey*

Annex G: relevant provisions in the FSJ Law

These are summaries (not quotations) as at 1 Jan 2002 unless stated otherwise

Article 1(1): definitions

'Associate' includes:

- husband/wife/child/stepchild⁴
- partner
- any company of which the person is a director

'Client', in respect of a registered person, means a person, whether resident on or off Jersey, with or for whom the registered person transacts or has transacted investment business⁵

'Investment' means (subject to any order under article 4) an asset, right or interest within schedule 1

[NB added 23 May 2008]

'Key person' means any of:

- compliance officer
- money laundering compliance officer
- money laundering reporting officer

'Principal person' means, in relation to a company

- a director
- a shadow director
- some who, alone or with any associate(s):
 - directly/indirectly holds 10% or more of the issued share capital
 - can exercise/control 10% or more of the votes in a general meeting
 - has a holding which makes it possible to exercise significant control over management

'Registered person' means a person registered by JFSC under article 9

Article 2(1): financial services

Financial services business includes investment business⁶

Article 2(2): investment business

Investment business includes:

- dealing (including selling) investments as principal or agent
- gives investment advice to (potential) investors on the merits of:
 - buying/selling/subscribing/underwriting a particular investment
 - exercising a right to acquire/dispose of/underwrite/convert the investment

Article 6: limitation of liability

(Amongst others) no officer/servant/agent of JFSC shall be liable for acts/omissions in discharge (or purported discharge) of any function under this law or any other enactment (purportedly) made under this law – unless the act/omission was in bad faith.

⁴ On 2 Apr 2012 civil partner was added.

⁵ Later changed to 'Client' means anyone where the registered person: transacts, or has transacted, financial services business; or gives, or has given, advice; other than trust company business.

⁶ The wording remained unchanged, but additional classes of financial service business were added later.

Article 9(4): revocation of registration

Grounds on which JFSC may revoke a registration at any time include grounds similar to those for refusal under article 9(3) including any of:

- JFSC is not satisfied the person is fit and proper, having regard to information on:
 - integrity
 - competence
 - financial standing
 - structure and
 - organization
- JFSC is not satisfied the person is fit and proper, having regard to information on employees/associates/principal persons
- the person has provided JFSC with untrue or misleading information
- it is in the best interests of persons who may transact investment business with the registered person⁷ or [provisions about trust company business]
- in order to protect the reputation and integrity of Jersey in financial and commercial matters
- in the best economic interests of Jersey

Article 10(2): conditions of registration

JFSC may attach conditions to the registration of a registered person and may from time to time vary any such condition or attach new conditions.⁸

Article 11: procedure on revocation/conditions

JFSC shall give a written statement of its reasons for its decision. [(2)]

The revocation/condition shall not take effect until after:

- one month after written notice from JFSC
- conclusion of any appeal to the Court

unless the Court, on application from JFSC, orders otherwise [(1) + (4)]

Any person aggrieved may appeal to the Court, within a month, that JFSC's decision was unreasonable having regard to all the circumstances of the case [(3)]

Article 13: objection to principal persons/key persons

If it appears to JFSC (having regard to the matters in article 9(3)) that a principal person⁹ is not fit and proper, JFSC may direct that they shall not (continue to) be a principal person.¹⁰ [(1)]

The objection shall not take effect until after:

- one month after written notice from JFSC
- conclusion of any appeal to the Court

unless the Court, on application from JFSC, orders otherwise [(3) + (4)]

⁷ Later changed (to reflect a widening of the range of regulated financial services business) to *it is in the best interests of persons who may transact financial services business (other than trust company business) with the registered person.*

⁸ On 21 Jan 2005 changed to *JFSC may attach conditions to the registration of a registered person and may from time to time amend, vary, substitute or revoke any such condition or attach new conditions.*

⁹ On 23 May 2008 *or key person* was added.

¹⁰ On 23 May 2008 *or key person* was added.

Any person aggrieved may appeal to the Court, within a month, that JFSC's decision was unreasonable having regard to all the circumstances of the case [(10)]

Article 19: codes of practice

After consultation, JFSC may prepare/issue/revise codes of practice to establish sound principles for the conduct of financial services business. [(1)]

Failure to follow a code of practice shall not, of itself, render any person liable to any kind of proceedings nor invalidate any transaction. [(3)]

Any code of practice is admissible in evidence if it appears to the Court to be relevant, and shall be taken into account in the Court's decision.

Article 23: directions

JFSC may give directions to a financial services business where it appears to JFSC that any of the following apply:

- *any requirements of the registration of a registered person are no longer satisfied*
- *it is in the best interest of:*
 - *persons who may transact investment business with the registered person*
 - *creditors of the registered person*
 - *[provisions about trust company business]*
- *it is desirable to protect the reputation/integrity of Jersey in financial/commercial matters*
- *it is in the best economic interests of Jersey*
- *any issued/proposed advertisement is misleading or undesirable.¹¹ [(1)]*

Any person aggrieved may appeal to the Court, within a month, that JFSC's decision was unreasonable having regard to all the circumstances of the case [(8) to (10)]

¹¹ On 23 May 2008 changed to *JFSC may give directions to a financial services business where it appears to JFSC that any of the following apply:*

- *any requirements of the registration of a registered person are no longer satisfied*
- *it is in the best interest of:*
 - *creditors of the registered person*
 - *persons with whom it has or may transact financial services (other than trust company) business*
 - *[provisions about trust company business]*
 - *one or more registered persons*
- *it is desirable to protect the reputation/integrity of Jersey in financial/commercial matters*
- *it is in the best economic interests of Jersey.*

Article 25: public statements¹²

JFSC may issue a public statement concerning a person who:

- *appears to have committed a contravention in relation to:*
 - *carrying on business whilst unauthorised*
 - *breach of a condition of registration*
 - *failing to provide information or providing false information*
 - *misleading statements and practices*
 - *advertising requirements*
 - *a direction issued by JFSC*
 - *any Regulation or Order under this law*
- *has failed to comply with a Code of Practice*
- *it believes to be carrying on financial service business, in Jersey elsewhere, and it is in interests of the public*

If the statement concerns a registered person, a former registered person or a principal person, JFSC shall give them 7 days written notice of the proposed statement and the reasons for it.

Article 26: power of intervention

JFSC may apply to the Court. If the Court is satisfied that both:

- *(amongst other things) a registered person is not fit and proper*
- *it is desirable for the protection of:*
 - *persons with whom it has or may transact investment business¹³*
 - *[provisions about trust company business]*

the Court may make the registered person's business subject to supervision, restraint or conditions.

Article 27: compensation schemes

The States may make Regulations to establish schemes for classes of investment business¹⁴ providing compensation in cases where (former) registered persons are (likely to be) unable to satisfy claims for any description of civil liability.

¹² On 23 May 2008 replaced by articles 25 to 25C providing that JFSC may issue public statements on:

- *any direction under articles 16 or 23*
- *a contravention in relation to:*
 - *carrying on business whilst unauthorised*
 - *breach of a condition of registration*
 - *failing to provide information or providing false information*
 - *advertising requirements*
 - *insider dealing*
 - *market manipulation and misleading information*
- *a person's failure to comply with a Code of Practice*
- *a person has been carrying on financial services business in or outside Jersey and it is in the best interests of:*
 - *persons with whom it has or may transact financial services (other than trust company) business**
 - *persons who have or may enter into agreements for trust company business**
 - *persons who have or may receive the benefit of trust company services* or*
 - *the public [25]*

JFSC must, in most circumstances, give prior notice of the statement [25A]

Any person aggrieved may appeal to the Court, within a month, that JFSC's decision was unreasonable having regard to all the circumstances of the case [25C]

[text substituted/inserted from 9 Jan 2009]*

¹³ On 21 Jan 2005 changed to *financial service business*.

¹⁴ On 21 Jan 2005 changed to *financial service business (other than trust company business)*.

Article 32: provision of information and documents¹⁵

JFSC may serve notice on any:

- *existing or former registered person*
- *existing or former principal person*
- *associate of a principal person*

The notice may require:

- *production of specified documents/information*
- *attendance to answer questions*

(apart from legally-privileged information) relating to:

- *the financial services business of the existing/former registered person*
- *the integrity, competence, financial standing or organisation of:*
 - *that person*
 - *any existing/former principal person*
 - *associate of a principal person*
- *compliance by any of those with this law or any regulation, order or code of practice made under this law.*

Article 33: investigations

If it appears to JFSC desirable in the interests of persons

- *with whom a registered person has or may transact investment business¹⁶*
- *[provisions about trust company business]*

JFSC may appoint one or more competent persons to investigate and report to JFSC on:

- *the nature/conduct/state of any aspect of a registered person's financial services business*
- *the registered person's integrity/competence/financial standing/organisation*
- *the integrity/competence/financial standing of a principal person or associate*
- *compliance with:*
 - *this law and any regulation, order or code of practice made under this law*
 - *a condition or direction under this law.*

¹⁵ On 23 May 2008 changed to *JFSC (or any duly authorized officer/agent) may serve notice on any:*

- *existing or former registered person*
- *existing or former principal person*
- *existing or former key person*
- *associate of a principal person*

The notice may require:

- *production of specified documents/information*
- *attendance to answer questions*

(apart from legally-privileged information) relating to:

- *the financial services business of the existing/former registered person*
- *the integrity, competence, financial standing or organisation of:*
 - *that person*
 - *any existing/former principal person*
 - *any existing/former key person*
 - *associate of a principal person*
- *compliance by any of those with this law or any regulation, order or code of practice made under this law.*

¹⁶ On 21 Jan 2005 changed to *financial service business.*

Article 37: restricted information

It is a criminal offence to disclose information relating to the business or other affairs of any person

- *received under or for the purposes of this law or*
- *received directly or indirectly from a person who received it under or for the purposes of this law*

without the consent of:

- *the person to whom it relates and*
- *where applicable, the person from whom it was received*

unless the information:

- *is already available to the public from other sources*
- *forms part of a summary/collection framed so that information about a particular person cannot be ascertained or*
- *is disclosed for official purposes under article 38*

Annex H: relevant provisions in the Investment Business Codes of Practice

These are summaries (not quotations) as at 1 Jan 2002 unless stated otherwise

Introduction

Where JFSC has reason to believe that a registered person has failed to follow the codes, it may revoke the registration.

Where it appears to JFSC that a person has failed to comply with these codes, it may issue a public statement concerning that person.

Failure to comply with the codes may support a decision by JFSC to issue a direction under article 20 of the JFS Law. In appropriate circumstances, that can be made public.

Failure to follow the codes shall not of itself create civil liability, but shall be admissible in evidence if it appears to the Court to be relevant and shall be taken into account in deciding an issue.

Principle 2.2

Where a registered person provides advice (or exercises a discretion) for a client, it must be able to demonstrate in writing that the advice (or exercise) is appropriate for a particular client, its stated risk profile and investment requirements.

Principle 2.3

Where a registered person provides advice (or exercises a discretion) for a client, it must seek from the client information on financial situation, investment experience and objectives – with documentary evidence to be maintained in respect of this.

Principle 2.5

A registered person must only advise a client to switch investments, or exercise a discretion to do so, in circumstances when it is in the client's interest to do so.

Principle 2.6

A registered person should avoid any conflict of interest or ensure fair treatment by disclosure, internal rules of confidentiality, declining to act or otherwise. A registered person should not unfairly place its interests above those of its customers.

Principle 3.1.1

A registered person must ensure its directors, senior managers and all other staff (including self-employed representatives and corporate agents) are fit and proper for their roles

Principle 3.1.2

A registered person must have procedures in place to vet and monitor working practices, competence and probity of its directors, senior managers and other staff, as well as, in some cases, their financial position.

Principle 3.1.3

A registered person must apportion responsibilities among its senior managers and directors so that their individual responsibilities are clear; and the business and affairs of the registered person are adequately monitored and controlled at senior management and board level.

Principle 3.1.4

A registered person must operate robust arrangements for meeting the standards and requirements of the regulatory system, including: adequate supervision of investment employees; dual or multiple authorisations for handling client assets; and for guarding against financial crime (including money laundering).

Principle 3.1.5

A registered person must keep adequate and orderly records of its business and internal organisation.

Principle 3.4

Principle 3.1.2 requires a registered person to assess the competence of staff. Principle 3.4 sets out the minimum examinations and experience requirements expected of investment employees.

Principle 3.6

To comply with principle 3.1.4, a registered person must designate as its compliance officer a person suitable by experience and/or examination. The compliance officer is responsible (amongst other things) for securing appropriate monitoring of operational performance and promptly instigating action to remedy and deficiencies [3.6.2.2].

Principle 4.2

A registered person must communicate information to clients in a way that is adequate, fair and not misleading. This includes explaining whether it is acting as principal, as agent of the client or as agent of any other person. It must also provide legible confirmation of any transaction effected for the client.

Principle 5

A registered person must maintain, and be able to demonstrate the existence of, both adequate financial resources and adequate risk management arrangements.

For class D, this requires at least £10,000 paid up share capital [5.2.1] and the maintenance of sufficient assets to meet liabilities as they fall due [5.2.2].

A registered person must maintain certain professional indemnity insurance (PII) cover, to include negligence and errors and omissions by the registered person and employee dishonesty. So far as lawful, extensions must include:

- *legal defence costs*
- *retroactive cover in respect of claims arising from work carried out in the past by the registered person*
- *loss of documents (liability and costs of replacement, restoration or reconstruction)*
- *self-employed or contract hire persons engaged in the registered person's business*
- *indemnity to employees, former employees and/or consultants.*

The minimum aggregate cover must exceed the greater of:

- *three times relevant fees and commissions*
- *1/10th of controlled assets or*
- *£1,000,000 (one million)*

subject to a maximum of £5,000,000 (five million)

Any excess per claim on the policy should not exceed the total of £5,000 plus (0.75% of the aggregate cover in excess of £1,000,000).

Principle 6.1

There is a need for candour with JFSC. Registered persons are required to advise the Commission promptly of any matter that might reasonably be expected to affect their registration or be in the interests of investors to disclose. This extends to non-regulated activities and other members of the corporate group.

Principle 6.3.2

A registered person must notify JFSC immediately in writing of (amongst other things):

- *making, or proposing to make, a composition or arrangement with creditors [6.3.2.3]*
- *any matter material to the requirements of the registered person, any of its principal persons or any of its investment employees to be fit and proper.*

Terms of Reference

These terms of reference constitute an amendment to the contract between the authority and the consultant dated 3rd March 2014 (“the contract”). They should therefore be read in conjunction with and in addition to the contract.

The Terms of Reference follow the debate and rejection of P.90/2013 by the States Assembly on 4th June 2014. As part of the process of P.90/2013 a report was produced by Mr. David Thomas (“the Report”).

In comments presented to the States Assembly by the Council of Ministers on 29th May 2014 the following was stated –

“The Council of Ministers are , however, aware from the report that there is the suggestion that a number of investors might not have invested money or increased an existing investment if issues had come into the public domain in early 2007 which would have had a significant impact on the reputations of Cameron, Foot and Lewis. It is for consideration whether in the light of this a case can be made for this group of investors to be recompensed in some way and the Chief Minister will undertake to report the outcome of further work on this matter to the States at the earliest opportunity.”

Part 9 of the Report deals with the question: “Should JFSC have taken earlier action on Goldridge?”. Paragraph 9.2 states: “Whether the JFSC took timely and sufficient action in respect of Goldridge is a question of judgment – rather than a question of fact. In my opinion, however, JFSC did not take timely and sufficient enforcement action in respect of Goldridge.”.

Paragraph 9.4 of the Report states –

“In my opinion, if JFSC had taken timely and sufficient action in respect of Goldridge:

- *Issues concerning Goldridge (unconnected with Sunstone/De Lec) would have been likely to become public by Jan 2007;*
- *Those issues would have been likely to have significant impact on the reputations of Cameron, Foot and Lewis; and*
- *(allowing time for news to spread) investors would have been unlikely to invest, or increase an existing investment, in Sunstone or De Lec after Mar 2007 but;*
- *It would have made little or no difference to the losses incurred by the majority who had already invested by Mar 2007; and*
- *(for the removal of any doubt) it would have made little or no difference to those who had invested by Mar 2007 but rolled-over their existing investments at a later date.”.*

The terms of reference for the further work noted in the Council of Ministers' statement of 29th May 2014 are as follows –

- To identify individually those investors who invested in Sunstone or De Lec for the first time after 31st March 2007 and itemise the value and timing of their investment? Identification should be limited to those investors who have already been identified through the course of the initial inquiry (from the papers provided by the JFSC, from papers provided by the States of Jersey Police and through Senator Breckon).
- To identify individually those investors who increased/added to an existing investment in Sunstone or De Lec after 31st March 2007 and itemise the value and timing of their investment. This excludes those who had invested by March 2007 but rolled-over their investments at a later date.
- To independently verify the value and timing of the investments through access to Sunstone/De Lec documentation or other relevant documentation?
- To investigate whether and to what extent investors who invested for the first time or increased/added to an existing investment after 31st March 2007 reclaimed any of the funds invested? This should involve not simply an examination of the documentation already available but investigation with any other official bodies that the consultant feels is appropriate.

During the course of this further work, and where it is considered the investigations would be assisted thereby, all relevant investors should be given an opportunity to make representations.

3rd July 2014