

# Summary Table

Summary table setting out updates to the Codes in Consultation Paper No.6 2017 and relevant feedback notes.

COP REF.	TOPIC	CONSULTATION PAPER UPDATE	CONSULTATION PAPER FEEDBACK NOTES
All Codes, section 3	<b>Corporate Governance</b>	TCSPs will be required to regularly review their Corporate Governance arrangements.	<p>Industry noted that the Board may not always be able to review its effectiveness impartially and consequently a “self-assessment” may not identify relevant issues.</p> <p>The JFSC recognized a self-assessment may not always be the most appropriate form of review and so will amend the Codes to state:</p> <p>“All aspects of corporate governance arrangements must be subject to appropriately regular review to ensure their continuing adequacy in light of the registered person’s business activities and risk profiles and include a periodic self-assessment, or external assessment, of the board’s effectiveness.”</p> <p>The frequency of the assessment will depend on the complexity of the registered person’s business activities and risk profiles. Registered persons should prepare a rationale to justify the frequency of review that it decides upon.</p> <p>The JFSC has confirmed that it does not propose to issue specific guidance on what a self-assessment should consider as there is much guidance already in the public domain.</p> <p>In respect of the Banking Code, the above requirement will only apply to a Jersey-incorporated bank.</p>
All Codes, section 6	<b>Audit notifications</b>	TCSPs will be required to notify the JFSC on a timely basis of any decision by its auditor to qualify its audit report or raise an emphasis of matter item.	<p>This is a GIFCS Standard and the JFSC has highlighted that due to the large number of financial statements it receives, a separate notification, to enable the JFSC to prioritize financial statement review in line with its risk based approach to supervision, is required.</p> <p>For the sake of clarity an “emphasis of matter” is defined in International Standard on Auditing 706 as, “a paragraph included in the auditor’s report that refers to a matter appropriately presented or disclosed in the financial statements that, in the auditor’s judgment, is of such importance that it is fundamental to users’ understanding of the financial statements.” A paragraph will usually be added to the auditor’s report to indicate a significant uncertainty or other matter (for example going concern or accounting treatments). The emphasis of matter paragraph does not qualify the auditor’s opinion.</p>

All Codes, section 3	<b>Record keeping</b>	TCSPs will be required to maintain “adequate, orderly and up-to-date records.” (the wording “up-to-date” was previously not included although this was implied).	No comments.
All Codes, section 3	<b>Complaints</b>	<p>Definition of a complaint added to the Codes to give greater certainty in this area.</p> <p>The new definition is:</p> <p>“any oral or written expression of dissatisfaction whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide a service that relates to [the type of regulated business] carried on by the registered person”.</p>	<p>As a result of industry feedback, the JFSC has confirmed it will amend the definition of a complaint to ensure that it is substantively the same as that used by CIFO:</p> <p>“any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of a person about the provision of, or failure to provide a service that relates to [the type of regulated business] carried on by the registered person, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.”</p> <p>The adoption of this wording is intended to avoid firms having to notify what might otherwise be considered trivial matters and to provide a measure of objectivity to the definition.</p>
All Codes, section 3	<b>Risk management</b>	Section 3.1 of the Codes will be amended to emphasize that, in the context of Principle 3, “risk” refers to all the risks that a registered person faces, or may face, as a business enterprise. (in the past, some registered persons have interpreted this to just mean ML/FT specific risks).	<p>In its feedback paper, the JFSC clarified that the JFSC expects registered persons to periodically undertake a risk assessment covering not only its money laundering and terrorist financing risks but also its other risks. This risk assessment does not need to follow the same format as the AML Business Risk Assessment (as required by the JFSC AML/CFT Handbook) but should be documented to include the risks and what mitigating measures have been put in place.</p> <p>As with the corporate governance arrangements, the JFSC does not propose issuing specific guidance on risk management.</p>
All Codes, section 6	<b>Notifications</b>	The JFSC considers that the obligations of a registered person under Principle 6 include the timely provision of data required in connection with a registered person’s regulatory fees and the timely payment of fees due. Principle 6 has been updated to reflect this.	No material comments.
All Codes, section 6	<b>Cessation of Business Plans</b>	With regard to the requirements around Cessation of Business Plans, the JFSC has included a requirement to obtain a written confirmation of no objection prior to implementing a Cessation of Business Plan.	No material comments.

All Codes, section 6	<b>Online portal notifications</b>	<p>Use of the JFSC's online portal will now be included in the Codes to include a requirement to make notifications using the online portal (where the JFSC so specifies in the Codes or otherwise).</p> <p>In addition, in the event that a registered person cannot access the online portal due to a system failure, the registered person must notify the JFSC within one business day.</p>	<p>The notification obligation will apply even if the registered person considers the failure to be at its end. Notifications are not expected in the event of minor system errors however, the JFSC has noted it would appreciate being advised of such matters so that they can be resolved in a timely manner.</p> <p>The JFSC is planning to extend the functionality of the online portal in 2018 to allow access by more than one person per firm.</p>
Banking Code, section 5	<b>ICAAPs</b>	<p>Paragraph 5.2.2 of the Banking Code will be amended to remove the requirement for an ICAAP document to be provided to the JFSC when it is revised.</p> <p>Should the JFSC wish to see a bank's current ICAAP document, it will request it.</p>	No material comments.
FSB Code, section 5	<b>Financial resources</b>	<p>Currently the FSB Code requires the trustee to a closed-ended fund to have paid up share capital and non-distributable reserves, and a minimum net assets position of not less than £250,000.</p> <p>However, there is no equivalent requirement for a custodian or depository to a closed-ended fund (other than the default £10k requirement). Therefore, the Code will be amended to require a custodian to have paid up share capital and non-distributable reserves, and a minimum net assets position of not less than £250,000.</p>	<p>A managed entity under the FSB Code is established for the purpose of acting for Qualifying Funds and therefore is subject only to the core principles of the FSB Code to the extent described in the Guidance Note for a Manager of a Managed Entity and Certain Managed Entities issued by the JFSC. The definition of a Qualifying Fund under the FSB Code does not include a related Jersey Private Fund.</p> <p>The JFSC Funds Authorization Team will consider and confirm in writing that a managed entity will continue to be subject only to the core principles of the FSB Code (therefore will not be subject to this requirement).</p> <p>Any amendment to the FSB Code or the Jersey Private Fund Guide in relation to this query will be considered during Phase II of the Funds Regime Review.</p>
FSB Code, section 6	<b>Notification</b>	Section 6 of the FSB Code will be amended to require a registered person to notify the JFSC in writing (within 10 business days) of ceasing to act for a non-Jersey domiciled fund.	No material comments.
IB Code, section 4	<b>Client money</b>	Additional regulatory requirement introduced (in line with GIFCS Standard) to require the registered person to disclose to clients the terms on which money is held under the client money requirements.	The JFSC confirmed that notification of interest rates on request will be acceptable. Disclosure should include at a minimum, advising clients whether or not client money will earn interest, whether interest will be paid to clients and if so, the frequency of the payment.

Insurance Code, section 6	<b>Notification</b>	Minor correction to amend Note 1 to Principle 6 (A permit holder must deal with the JFSC in an open and co-operative manner) to cross-refer to Article 15(2) of the IBJL, rather than Article 38(2).	No material comments.
MSB Code, section 5	<b>Outsourcing</b>	The MSB Code does not currently include a requirement to comply with the JFSC's outsourcing policy. This will be amended so that MSBs will also need to comply with the JFSC's outsourcing policy and procedure.	No material comments.
TCB Code, section 3	<b>Rationale for company incorporation etc...</b>	Further requirements have been introduced for TCSPs to understand and document the rationale for the formation of companies/trusts etc. and/or service under the various TCB licenses (F, J, K and L classes).	<p>The JFSC clarified that the current wording in the Code requires a registered person to "understand" the rationale (in respect of registered office, or business address and accommodation, correspondence or administrative address services) therefore the amendment is simply requiring the registered person to "document" that understanding.</p> <p>The TCB Code will also be updated to require firms to understand and document the rationale for the formation of a company or the establishment of a trust, both of which were absent from the previous Code.</p>
TCB Code, section 3	<b>Customer assets</b>	<p>The Financial Services (TCB (Assets – Customer Money) (Jersey) Order 2000 requires the reconciliation of customer money however, it does not cover assets in the broader sense.</p> <p>The TCB Code will be amended to require a TCB to maintain documented systems, controls and procedures for "reconciling movement in trust company business assets."</p>	The JFSC clarified that a "movement" is a transaction (such as a sale, purchase or transfer to another person). It does not include changes in the value of an asset.

TCB Code, section 4	<b>Disclosure of terms of business</b>	<p>New paragraph inserted requiring TCSPs to disclose general and specific terms associated with providing those services to customers. The documentation must:</p> <ul style="list-style-type: none"> <li>▪ be distinguishable from marketing or promotional material;</li> <li>▪ be consistent with the Code;</li> <li>▪ be clearly expressed in plain language that only uses technical or legal terms where absolutely necessary;</li> <li>▪ be provided prior to the provision of any trust company business service, except when it is impractical to do so, in which case the document shall be provided at the earliest available opportunity;</li> <li>▪ explain whether the registered person is acting as a principal or as the agent of the customer or any other person;</li> <li>▪ where the registered person holds customer money, set out the terms on which that money is held; and</li> <li>▪ include all appropriate information relevant to the service that will be provided.</li> </ul>	<p>Industry feedback raised concerns that the current definition of “customer” in the TCB Code may prove problematic as it could cover a broad range of parties. The wording ultimately proposed limits the definition to contracting parties.</p> <p>As a result, the revised TCB Code will require that terms of business are supplied to, “a person to whom [the TCB] provides a service set out in Article 2(4) of the FS(J)L .... (accepting in the case of Article 2(4)(h) of the FS(J)L that the identity and existence of a person to whom the service is provided will be dependent upon such terms and circumstances as might prevail at any particular point during the lifecycle of an express trust).”</p>
TCB Code, section 6	<b>Notification</b>	Section 6 will be amended to state that certain notifications must be provided to the JFSC within a reasonable time of “becoming aware” of the particular matter which is in line with the approach taken in other Codes.	No material comments.
TCB Code, section 6	<b>The Third Schedule</b>	A minor amendment will be made to reflect the amended definition of Class O business implemented by the Financial Services (Financial Service Business) (Amendment No. 2) (Jersey) Order 2017.	No material comments.