

Consultation on amendments to the Codes of Practice

A consultation on maintenance amendments to the Codes of Practice, and other amendments to address regulatory concerns and to ensure Jersey's compliance with international regulatory standards.

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Consultation Paper

The Jersey Financial Services Commission (JFSC) invites comments on this consultation paper.

Comments should reach Jersey Finance Limited (JFL) by 18 October 2017.

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Alternatively, responses may be sent directly to the JFSC by 18 October 2017. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the JFSC.

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

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



Glossary of Terms

AIF Code	Code of Practice for Alternative Investment Funds
AIF Regulations	Alternative Investment Funds (Jersey) Regulations 2012
Banking Code	Code of Practice for Deposit-taking Business
BBJL	Banking Business (Jersey) Law 1991
Certified Funds Code	Code of Practice for Certified Funds
CIFJL	Collective Investment Funds (Jersey) Law 1988
Codes of Practice (or Codes)	 AIF Code; Certified Funds Code; Banking Code; FSB Code; GIMB Code; IB Code; Insurance Code; MSB Code; TSB Code.
Commission Law	Financial Services Commission (Jersey) Law 1998
FCA	Financial Conduct Authority of the <i>UK</i>
FSB Code	Code of Practice for Fund Services Business
FSJL	Financial Services (Jersey) Law 1998
GIFCS	Group of International Finance Centre Supervisors
GIFCS Standard	Standard on the Regulation of Trust and Corporate Service Providers issued by the GIFCS ¹
GIMB Code	Code of Practice for General Insurance Mediation Business
JFSC	Jersey Financial Services Commission

¹ See http://www.gifcs.org/images/GIFCSStandardonTCSPs.pdf



IBJL	Insurance Business (Jersey) Law 1996
ICAAP	Internal capital adequacy assessment process
Insurance Code	Code of Practice for Insurance Business
MSB	money service business
MSB Code	Code of Practice for Money Service Business
registered person	a person who is registered, or holds a permit or certificate, as applicable, under one or more of the <i>regulatory laws</i>
regulatory laws	the AIF Regulations, the BBJL, the CIFJL, the FSJL and the IBJL
ТСВ	trust company business
TCB Code	Code of Practice for Trust Company Business
TCSPs	trust and company service providers
UK	United Kingdom



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1 Executive Summary

1.1 Background

- 1.1.1 The Codes of Practice are issued by the JFSC under provisions in the regulatory laws and set regulatory requirements that registered persons must comply with.
- 1.1.2 The contravention of a Code of Practice can result in regulatory action being taken against a registered person.
- 1.1.3 The regulatory laws provide that the Codes can be revised by the JFSC following consultation with such persons or bodies as appear representative of the interests of registered persons.

1.2 What is proposed and why?

- 1.2.1 The amendments to the Codes proposed in this paper fall, broadly, into three categories:
 - 1.2.1.1 amendments that could be termed 'routine maintenance' for example, to improve the clarity of certain provisions in the Codes;
 - 1.2.1.2 amendments that will modify regulatory requirements in order to address issues that the JFSC has identified during the course of supervising registered persons; and
 - 1.2.1.3 amendments to ensure that the JFSC's regulatory requirements comply with international regulatory standards.

1.3 Who would be affected?

1.3.1 The proposals in this consultation paper have the potential to affect all registered persons.



2 Consultation

2.1 Basis for consultation

2.1.1 The JFSC has issued this consultation paper in accordance with provisions in the regulatory laws that require it, before revising any Code of Practice, to, "[consult] with such persons or bodies as appear representative of the interests concerned".

2.2 Responding to the consultation

2.2.1 The JFSC invites comments in writing from interested parties on the proposals set out in this consultation paper.

2.3 Next steps

2.3.1 The intention is that amended Codes of Practice in the form shown in Appendices B to J (subject to the making of any revisions considered necessary as a result of responses to this consultation) will be issued during Q4 2017 and come into force two months after issue.



3 The JFSC

3.1 Overview

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

3.2 JFSC's functions

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

3.3 Guiding principles

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



4 Proposed amendments to the Codes

4.1 Introduction

- 4.1.1 This chapter describes, and explains the reasons for, the proposed amendments to the Codes.
- 4.1.2 Where the same (generic) amendment to all (or most2) of the Codes is proposed it is described in section 4.2. The other sections in this chapter describe changes to be made to individual Codes.
- 4.1.3 Appendices B to J contain red-lined versions of the Codes showing all of the proposed amendments. Readers are asked to note that minor typographical or clarificatory changes to the Codes are not described in this consultation paper but, in the interests of full transparency, are shown in the red-lined version of each Code in the appendices.
- 4.1.4 A number of amendments are proposed in order to address requirements of the GIFCS Standard, the international regulatory standard for the regulation of TCSPs. The JFSC's regulatory standards will be independently assessed against the requirements of the GIFCS Standard in Q4 2017.
- 4.1.5 The requirements of the GIFCS Standard primarily impact on the content of the TCB Code. However, some of the amendments made to the TCB Code to meet the GIFCS Standard have also been replicated in other Codes, in cases where the GIFCS Standard is considered to represent best regulatory practice for other types of financial service business as well.

4.2 Generic amendments to the Codes

Reviewing corporate governance arrangements

- 4.2.1 The GIFCS Standard mandates that a TCSP should be required to regularly review its corporate governance arrangements, including carrying out a periodic self-assessment of the effectiveness of its board of directors.
- 4.2.2 Section 3 in the TCB Code has been amended to incorporate such a requirement.
- 4.2.3 In addition, because this requirement in the GIFCS Standard is considered to represent best regulatory practice for other types of financial service business as well, Section 3 in the other Codes have been amended likewise.3

Notification of qualified audit

4.2.4 The GIFCS Standard mandates that TCSPs should be required to notify its regulator, on a timely basis, of any decision by its auditor to qualify its audit report on the TCSP's financial statements or to raise a matter of emphasis therein.

² There are a small number of exceptions, which are identified in section 4.2.

³ With the exception of the *AIF Code*, given that the primary purpose of that code is to implement, in Jersey, European Union regulatory requirements. Note that the *Banking Code* already contains such a review requirement (paragraph 3.1.11): it will be amended slightly to add the requirement for a Jersey-incorporated bank to carry out a periodic self-assessment of the effectiveness of its board of directors.



4.2.5 Because this requirement in the GIFCS Standard is considered to represent best regulatory practice for all types of financial service business, Section 6 in each of the Codes4 will be amended to set such a notification obligation on a registered person.

Maintenance of "up-to-date" records

- 4.2.6 The GIFCS Standard mandates that TCSPs should be required to maintain up-to-date records. Whilst paragraph 3.2.1.2 of the TCB Code already requires "adequate and orderly" records to be maintained it does not explicitly states that they should be up to date, even if it is perhaps implicit. To put the position beyond doubt, that paragraph will be amended to require "adequate, orderly and up-to-date" records to be maintained.
- 4.2.7 In addition, because this requirement in the GIFCS Standard is considered to represent best regulatory practice for other types of financial service business as well, Section 3 in the other Codes have been amended in the same manner.5

Definition of "complaint"

- 4.2.8 All of the Codes set complaint-handling requirements on registered persons.

 However, at the moment, the Codes do not expressly set out what the JFSC considers to be a complaint. From time-to-time, this has resulted in differences of opinion between the JFSC and a registered person as to whether or not a matter should have been formally handled as a complaint or not.
- 4.2.9 To give greater certainty in this area, the Codes6 will be amended to include a formal definition of complaint as, "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".
- 4.2.10 This definition is closely modelled on that used by the FCA in the UK.

Risk identification and management

- 4.2.11 Principle 3 of the Codes7 requires, amongst other things, that a registered person be able to demonstrate the existence of adequate risk management systems.
- 4.2.12 Some registered persons have, erroneously, regarded the reference in Principle 3 to "risk" to only cover risk related to money laundering or terrorist financing.

⁴ With the exception of: the *AIF Code*, given that the primary purpose of that code is to implement, in Jersey, European Union regulatory requirements; and the *MSB Code*, given the absence of a requirement for money service businesses to file audited financial statements with the *JFSC*.

⁵ With the exception of: the *AIF Code*, given that the primary purpose of that code is to implement, in Jersey, European Union regulatory requirements; the *MSB Code*, which already requires, "the accounting and other records of the *registered person* …" to be , "complete, accurate and timely" (paragraph 3.2.3.3); and the *Certified Funds Code* which already requires a fund to keep, "adequate, orderly and up-to-date records …" (paragraph 3.6.1.2).

⁶ With the exception of: the *AIF Code* given that the primary purpose of that code is to implement, in Jersey, European Union regulatory requirements.

⁷ Not applicable in the case of the *AIF Code*.



4.2.13 To address this, the notes in Section 3.1 of the Codes8 will be amended to emphasise 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.

Dealing with the JFSC in an open and co-operative manner

- 4.2.14 Principle 6 of the Codes9 requires a registered person to deal with the JFSC in an open and co-operative manner.
- 4.2.15 To address an issue that the JFSC has encountered with some registered persons, a note will be added to Section 6 of the Codes to make it clear that 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.

Cessation of Business Plans

- 4.2.16 Where a registered person takes the decision to cease a business activity, Section 6 of the Codes10 requires a "Cessation of Business Plan" to be submitted to the JFSC. The plan must include details of arrangements for the protection of customers, creditors and stakeholders.
- 4.2.17 To ensure that the JFSC can satisfy itself that the proposed plan is appropriate, Section 6 of the Codes will be amended to require a registered person, before implementing its Cessation of Business Plan, to obtain written confirmation from the JFSC that it has no objection to it.

Use of the JFSC's online portal

- 4.2.18 To ensure that the efficiencies afforded by the JFSC's online portal are not lost through registered persons inappropriately submitting information by an alternative method, Section 611 of the Codes will be amended to set the following regulatory requirements:
 - 4.2.18.1 where the JFSC so specifies (whether in a Code or otherwise) a registered person must notify or provide information by means of the JFSC's online portal; and
 - 4.2.18.2 if, because of a systems failure of any kind, a registered person is unable to access the online portal to make a relevant notification or provide required information it must notify the JFSC within one business day of the systems failure being identified.
- 4.2.19 Registered persons may recognise that these new Code provisions are modelled closely on regulatory requirements in the FCA's Handbook.

⁸ As footnote 7.

⁹ As footnote 7.

¹⁰ With the exception of the AIF, Certified Funds and MSB Codes.

¹¹ Section 3 in the case of the *AIF Code* and Section 5 in the *MSB Code*.



Question 1:

Do you have any observations on, or concerns about, any of the proposed generic amendments to the *Codes*?

If you do, please state in detail what your observation or concern is and the reason for it.

4.3 Amendments to the AIF Code

4.3.1 Other than the generic changes referred to in paragraph 4.2.18 (use of the JFSC's online portal) no substantive changes to the AIF Code are proposed.

4.4 Amendments to the Banking Code

4.4.1 This section describes the changes proposed to the Banking Code in addition to the generic changes described in section 4.2.

ICAAPs

4.4.2 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. Should the JFSC wish to see a bank's current ICAAP document it will request it.

Question 2:

Do you have any observations on, or concerns about, any of the proposed amendments to the *Banking Code*?

If you do, please state in detail what your observation or concern is and the reason for it.

4.5 Amendments to the Certified Funds Code

4.5.1 Other than the generic changes referred to in section 4.2 no substantive changes to the Certified Funds Code are proposed.

4.6 Amendments to the FSB Code

4.6.1 This section describes the changes proposed to the FSB Code in addition to the generic changes described in section 4.2.

Financial resources

- 4.6.2 Currently, paragraph 5.1.4.1 of 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.
- 4.6.3 However, despite the fact that a custodian or a depository to a closed-ended fund has similar responsibilities and functions to a trustee, the FSB Code sets no minimum financial resources requirement (other than the default position for "All other fund services business" of £10,000).
- 4.6.4 To address this inconsistency, paragraph 5.1.4.1 of the FSB Code will be amended to require a custodian or depository 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.



Ceasing to act for a non-Jersey domiciled fund

4.6.5 To address an omission, Section 6 of the FSB Code will be amended to require a registered person to notify the JFSC, in writing, within ten business days of ceasing to act for a non-Jersey domiciled fund.

Question 3:

Do you have any observations on, or concerns about, any of the proposed amendments to the FSB Code?

If you do, please state in detail what your observation or concern is and the reason for it.

4.7 Amendments to the GIMB Code

4.7.1 Other than the generic changes referred to in section 4.2 no substantive changes to the GIMB Code are proposed.

4.8 Amendments to the IB Code

4.8.1 This section describes the changes proposed to the IB Code in addition to the generic changes described in section 4.2.

Reconciliation of movements in client assets

4.8.2 Please see paragraphs 4.11.3 to 4.11.6.

Disclosure of the terms on which client assets are held

- 4.8.3 Paragraph 4.3 of the IB Code will be amended to require the registered person, where it holds client money12, to disclose to its clients the terms on which that money is held.
- 4.8.4 This additional regulatory requirement is regarded as meeting best regulatory practice, as evidenced by the GIFCS Standard. In this regard, please see paragraphs 4.11.7 and 4.11.8 which describe an equivalent amendment that will be made to the TCB Code.

Question 4:

Do you have any observations on, or concerns about, any of the proposed amendments to the *IB Code*?

If you do, please state in detail what your observation or concern is and the reason for it.

4.9 Amendments to the Insurance Code

4.9.1 This section describes the changes proposed to the Insurance Code in addition to the generic changes described in section 4.2.

¹² "client money" has the meaning ascribed to it in Article 1 of the Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001.



Correction of manifest error

4.9.2 To correct a manifest error, Note 1 to Principle 6 (A permit holder must deal with the JFSC in an open and co-operative manner) will be amended to cross-refer to Article 15(2) of the IBJL, rather than Article 38(2).

4.10 Amendments to the MSB Code

4.10.1 This section describes the changes proposed to the MSB Code in addition to the generic changes described in section 4.2.

Application of the JFSC's policy on outsourcing

- 4.10.2 Currently, the Codes, with the exception of the MSB Code13, make it a requirement for a registered person to comply with the JFSC's policy on outsourcing.
- 4.10.3 However, that requirement does not currently extend to MSBs and, in the view of the JFSC, there is no good reason why it should not do, given that the potential risks posed by inappropriate or poorly executed outsourcing apply to an MSB as it does to any other type of regulated business.
- 4.10.4 To address this lacuna, paragraph 3.2 and Section 5 of the MSB Code will be amended to make it a requirement for an MSB to comply with the JFSC's policy on outsourcing.

Question 5:

Do you have any observations on, or concerns about, any of the proposed amendments to the *MSB Code*?

If you do, please state in detail what your observation or concern is and the reason for it.

4.11 Amendments to the TCB Code

Rationale for the incorporation of a company, etc.

4.11.1 The GIFCS Standard mandates that TCSPs should be required to understand and document the rationale for the incorporation of a company for a client, or the establishment of a trust, etc.

¹³ And with the exception of the *AIF Code*, the primary purpose of which is to implement, in Jersey, European Union regulatory requirements



- 4.11.2 To comply with that GIFCS Standard, the following amendments will be made to the TCB Code:
 - 4.11.2.1 TCBs that act as formation agents (Class F) will be required to, "understand, and document, the rationale for the formation of [a] company, partnership or foundation ..." (see new paragraph 3.2.2.1 in the TCB Code);
 - 4.11.2.2 TCBs that provide registered office facilities (Class J) or accommodation, correspondence addresses, etc. (Class K) will, in addition to the existing requirement to "understand the rationale" for the service (see paragraphs 3.2.6.2.1 and 3.2.7.1.1 in the TCB Code), also be required to "document" the rationale;
 - 4.11.2.3 TCBs that provide trustee services (Class L) will be required to, "understand, and document, the rationale for the establishment of the trust" (see new paragraph 3.2.8.4 in the TCB Code).

Reconciliation of movements in customer assets

- 4.11.3 The GIFCS Standard mandates that a TCSP should be required to reconcile movements in customer assets.
- 4.11.4 Whilst the Financial Services (Trust Company Business (Assets Customer Money) (Jersey) Order 2000 requires the reconciliation of customer money it does not cover assets in the broader sense.
- 4.11.5 To address this gap against the international regulatory standard, paragraph 3.2.1.1.5 of the TCB Code will be amended to require a TCB to maintain documented systems, controls and procedures for, "reconciling movements in trust company business assets14...".
- 4.11.6 An equivalent amendment will be made to paragraph 3.2.1.1.4 of the IB Code, requiring the registered person to maintain procedures for reconciling movements in client assets, because the GIFCS Standard is regarded by the JFSC as representing best regulatory practice in this area.

Disclosure of terms of business

- 4.11.7 The GIFCS Standard mandates that a TCSP should be required to disclose its terms and conditions to a customer, including, where relevant, the terms on which customer money15 would be held.
- 4.11.8 To meet this international standard a new paragraph setting out what information must be given to a customer has been inserted into the TCB Code at paragraph 4.5. For consistency it closely follows a similar existing obligation set on investment businesses in the IB Code.

¹⁴ "trust company business assets" is defined in Article 1 of the *FSJL* and means: (a) "trust property" (as defined in the Trusts (Jersey) Law 1984) and; (b) any other assets or property not beneficially owned by the *TCB*.

¹⁵ "customer money" has the meaning ascribed to it in Article 1 of the Financial Services (Trust Company Business (Assets – Customer Money)) (Jersey) Order 2000.



Notification timescale

- 4.11.9 Section 6 of the TCB Code requires a TCB to give certain notifications to the JFSC within a reasonable time of "becoming aware" of the particular matter.
- 4.11.10 To be consistent with the approach taken in other Codes, the notes to Section 6 will be amended to state that the JFSC considers that "becoming aware" applies from the point at which the TCB knows, or has reasonable grounds for believing, that the particular matter has occurred or may be about to occur, even where it is outside of the control of the TCB.

The Third Schedule

4.11.11 A consequential amendment to the Third Schedule 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 201716.

Question 6:

Do you have any observations on, or concerns about, any of the proposed amendments to the *TCB Code*?

If you do, please state in detail what your observation or concern is and the reason for it

4.12 Implementation timescale

4.12.1 The JFSC recognises that registered persons may require a lead-in period to update their internal procedures to facilitate compliance with the amended Codes. In this regard, the JFSC's intention is to bring them to come into force two months after they are issued.

Question 7:

Do you consider a lead-in period of two months to be adequate?

If you do not, please explain why and suggest an alternative time period.

¹⁶ See https://www.jerseylaw.je/laws/enacted/Pages/RO-033-2017.aspx



5 Cost Benefit Analysis

5.1 Costs to Industry

5.1.1 It is not expected that the proposed amendments to the Codes will result in registered persons incurring significant additional expenditure.

5.2 Costs to the JFSC

5.2.1 Save for staff costs incurred in carrying out this consultation and the publication of final amended Codes in due course, no other substantive expenses are expected to be incurred by the JFSC.

5.3 Benefits

5.3.1 The proposals in this paper will, in aggregate, improve the clarity of the Codes for registered persons, enhance consumer protection and ensure that the Island meets international regulatory standards.



6 Summary of questions

Page	Question
	Question 1:
12	Do you have any observations on, or concerns about, any of the proposed generic amendments to the <i>Codes</i> ?
	If you do, please state in detail what your observation or concern is and the reason for it.
	Question 2:
12	Do you have any observations on, or concerns about, any of the proposed amendments to the <i>Banking Code</i> ?
	If you do, please state in detail what your observation or concern is and the reason for it.
	Question 3:
13	Do you have any observations on, or concerns about, any of the proposed amendments to the FSB Code?
	If you do, please state in detail what your observation or concern is and the reason for it.
	Question 4:
14	Do you have any observations on, or concerns about, any of the proposed amendments to the <i>IB Code</i> ?
	If you do, please state in detail what your observation or concern is and the reason for it.
	Question 5:
14	Do you have any observations on, or concerns about, any of the proposed amendments to the MSB Code?
	If you do, please state in detail what your observation or concern is and the reason for it.
	Question 6:
16	Do you have any observations on, or concerns about, any of the proposed amendments to the <i>TCB Code</i> ?
	If you do, please state in detail what your observation or concern is and the reason for it
	Question 7:
16	Do you consider a lead-in period of two months to be adequate?
	If you do not, please explain why and suggest an alternative time period.



7 Appendix A

List of representative bodies who have been sent this consultation paper:

- > Channel Islands Financial Ombudsman
- > Chartered Institute for Securities & Investments
- > Institute of Chartered Secretaries and Administrators, Jersey branch
- > Institute of Directors Jersey branch
- Insurance Institute of Jersey
- > Jersey Association of Trust Companies
- > Jersey Bankers' Association
- > Jersey Chamber of Commerce and Industry Incorporated
- > Jersey Compliance Officers Association
- > Jersey Consumer Council
- > Jersey Finance Limited
- > Jersey Funds Association
- > Jersey International Insurance Association
- Jersey Society of Chartered and Certified Accountants
- > Law Society of Jersey
- Personal Finance Society
- Society of Trust and Estate Practitioners (STEP), Jersey Branch
- > Chartered Financial Advisors (UK)
- > Jersey Association of Directors and Officers



8 Appendices B to J

Proposed amended Codes

(red-lined to show changes from the current versions)

Each appendix has discrete page numbering

Please click on the links below to view the proposed amended *Codes*.

- Appendix B Code of Practice for Alternative Investment Funds and AIF Services Business
- Appendix C Code of Practice for Certified Funds
- Appendix D Code of Practice for Deposit-taking Business
- Appendix E Code of Practice for Fund Services Business
- Appendix F Code of Practice for General Insurance Mediation Business
- Appendix G Code of Practice for Insurance Business
- Appendix H Code of Practice for Investment Business
- Appendix I Code of Practice for Money Service Business
- Appendix J Code of Practice for Trust Company Business