



Jersey Financial
Services Commission

Feedback Paper on Consultation Paper No. 10 2018 (Part 1)

Amendments to Codes of Practice

A feedback paper relating to a consultation on proposals regarding maintenance amendments, amendments to address regulatory concerns and to ensure compliance with international regulatory standards and consideration of aligning the Codes of Practice

Consultation Feedback

This paper reports on responses received by the Jersey Financial Services Commission (**JFSC**) and Jersey Finance Limited (**JFL**) to Consultation Paper No. 10 2018 published by the JFSC on 2 November 2018.

Further enquiries concerning the consultation may be directed to:

Jon Stevens

Senior Manager, Policy
Jersey Financial Services Commission
P O Box 267
14-18 Castle Street
St Helier
Jersey
JE4 8TP

Telephone: +44 (0) 1534 822085

Email: j.stevens@jerseyfsc.org

Glossary of Terms

Defined terms are indicated throughout this document as follows:

AIF	Alternative investment fund
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)	Collectively, the <ul style="list-style-type: none"> › <i>AIF Code</i> › <i>Certified Funds Code</i> › <i>Banking Code</i> › <i>FSB Code</i> › <i>GIMB Code</i> › <i>IB Code</i> › <i>Insurance Code</i> › <i>MSB Code</i> › <i>TCB Code</i>
Commission Law	Financial Services Commission (Jersey) Law 1998
CP	Consultation Paper No.10 2018
FSB	Fund services business
FSB Code	Code of Practice for Fund Services Business
FSJL	Financial Services (Jersey) Law 1998
GIFCS Standard	Standard on the Regulation of Trust and Corporate Service Providers issued by the GIFCS ¹
GIMB	General insurance mediation business
GIMB Code	Code of Practice for General Insurance Mediation Business
IB	Investment business
IB Code	Code of Practice for Investment Business
IBJL	Insurance Business (Jersey) Law 1996

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

Insurance Code	Code of Practice for Insurance Business
IOSCO	International Organization of Securities Commissions
JFL	Jersey Finance Limited
JFSC	Jersey Financial Services Commission
JIB	Jersey Incorporated Bank, being a person that is registered under the BBJL and incorporated in Jersey
JPF	Jersey Private Fund
MSB	Money service business
MSB Code	Code of Practice for Money Service Business
NIST	National Institute of Standards and Technology, see also: https://www.nist.gov/cyberframework
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 <i>AIF Regulations</i> , the <i>BBJL</i> , the <i>CIFJL</i> , the <i>FSJL</i> and the <i>IBJL</i>
TCB	Trust company business
TCB Code	Code of Practice for Trust Company Business
TCSP	Trust and company service provider

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1 Executive Summary

1.1 Overview

- 1.1.1 The Consultation Paper (**CP**) sought views on amendments to the Codes of Practice (**Codes**) issued by the JFSC. The amendments proposed in the CP fall, broadly, into three categories:
 - 1.1.1.1 Amendments that could be termed ‘routine maintenance’ - for example, to improve the clarity of certain provisions in the *Codes*
 - 1.1.1.2 Amendments that will modify regulatory requirements in order to address issues that the *JFSC* has identified during the course of supervising *registered persons*
 - 1.1.1.3 Amendments to ensure that the *JFSC*’s regulatory requirements comply with international regulatory standards.
- 1.1.2 The purpose of this feedback paper is to provide feedback on the responses received.
- 1.1.3 The CP also outlined considerations around alignment of the high level principles as well as certain detailed requirements across the Codes and invited respondents to contribute their views on these considerations.
- 1.1.4 Section 3, Alignment of the Codes, outlines that the overall feedback has demonstrated appetite to commence this process and this will therefore form a separate feedback paper (Part 2) which will be published shortly after this feedback paper.

1.2 Feedback received

- 1.2.1 Respondents provided comments either directly to the JFSC or indirectly via JFL.
- 1.2.2 JFL provided the JFSC with comments it had received from eleven anonymous firms. Eleven other respondents provided comments directly to the JFSC. A full list of respondents is given at Appendix A.
- 1.2.3 Section 2 of this paper presents a summary of the substantive comments received and the JFSC’s response.
- 1.2.4 The JFSC is grateful to respondents for taking the time to consider and comment on the proposals. Each respondent has been sent a copy of this paper. The proposals in this consultation paper have the potential to affect all *registered persons*.

1.3 Next Steps

- 1.3.1 Amended Codes (in the form consulted on, save for the changes described later in this paper) will be issued shortly and come into force on 1 June 2019.

2 Consultation Feedback

2.1 Feedback received

- 2.1.1 This section summarises the substantive comments received in response to the CP. Whilst not every comment received is individually listed, this section contains summaries of the most commonly made and pertinent comments in relation to each question posed and, as appropriate, the JFSC's response to those comments.
- 2.1.2 The comments that were received can be split into those responding to a specific question posed in the CP and those on other matters. This section is structured on those lines.
- 2.1.3 Where the specific comments of a respondent are summarised, the respondent will have been a registered person (or represented a group of registered persons).

2.2 Question 1: Do you have any observations on, or concerns about, the proposed generic amendment regarding the payment of financial penalties?

- 2.2.1 The proposals regarding the payment of civil financial penalties (**Penalties**) received fourteen responses. Several responses expressed concern regarding the proposals while others were supportive. The concerns can be grouped under the following categories:
 - 2.2.1.1 Concern that the proposals are beyond the JFSC's powers and conflict with principles of justice or matters of law.
 - 2.2.1.2 Concern regarding the scope of the proposals where negligence was found compared to more egregious contraventions of the Codes.
 - 2.2.1.3 Concern regarding the ability to recruit high quality principal persons.
 - 2.2.1.4 Concern regarding the competitive position of Jersey compared to other International Finance Centres (**ifcs**).
 - 2.2.1.5 Concern regarding activities that would frustrate the effectiveness of the proposals.
 - 2.2.1.6 Clarificatory requests.
- 2.2.2 Each of these categories of feedback is explored below.
- 2.2.3 It is noteworthy that similar concerns were raised when the Penalty regime was first introduced. To date, the JFSC is yet to exercise its powers under the Penalty regime.

Background

- 2.2.4 Penalties for registered persons were introduced in 2015 and extended to principal persons in 2018. Penalties may only be imposed for significant and material contraventions of the Codes and are distinct from any other costs that may arise as a result of a breach, for example, any costs associated with defending against JFSC enforcement actions or general costs or compensation for making a situation good.
- 2.2.5 That is to say, a Penalty is the amount determined by the JFSC at the conclusion of the Decision Making Process² (**DMP**) to be in accordance with the provisions of the

² <http://www.jerseyfsc.org/media/1749/decision-making-process-march-2018.pdf>

Financial Services Commission (Jersey) Law 1998 (**FSCJL**) and the JFSC's published statement of principles that it will apply in determining the imposition and amount of a Penalty, including aggravating and mitigating factors, which can be found at the Appendix of the DMP.

- 2.2.6 The intent of the Penalty regime is, inter alia, to ensure that a financial disincentive exists to deter contraventions of the Codes and that persons cannot expect to profit from a contravention of the Codes.
- 2.2.7 The extension of the Penalties regime to principal persons was proposed to the States of Jersey through the Financial Services Commission (Amendment No. 7) (Jersey) Law 2018 (**Amendment No. 7**) and came into force on 26 October 2018.
- 2.2.8 On 26 June 2018, Amendment No. 7 was unanimously voted for (Pour) by the 42 States Members present for the debate. The report accompanying Amendment No. 7 highlighted:
 - 2.2.8.1 "In line with established international regulatory practice, the Government is of the view that behavioural change is more likely to be achieved when principal persons know that, potentially, they will bear a financial penalty personally for poor conduct."
- 2.2.9 In researching the practical implications of the existing and extended Penalty regime, the JFSC had a concern that a person might be able to insure or indemnify themselves against the disciplinary consequences of a breach of a Code (i.e. A Penalty). This would be achievable by:
 - 2.2.9.1 Securing an indemnity from a third party (say a registered person standing ready to pay a penalty imposed on a principal person); or
 - 2.2.9.2 Entering into a contract of insurance that provides cover for a Penalty.
- 2.2.10 In undertaking one or both of these steps, the intent of the Penalty regime may be frustrated which potentially impinges on the JFSC's guiding principles, in particular:
 - 2.2.10.1 "the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice [...] of persons carrying on the business of financial services in or from within Jersey"
 - 2.2.10.2 "the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters"
- 2.2.11 Where registered or principal persons are able to effectively mitigate any risk of having to pay a Penalty in their own right, the deterrent effect of the Penalty is diminished. This weakens the JFSC's ability to effectively disincentivise contraventions of the Codes.
- 2.2.12 Including the requirements within the Codes will strengthen the effectiveness of the Penalty regime and support the JFSC's guiding principles of reducing the risk to the public of financial loss due to dishonesty, incompetence or malpractice; and effectively protecting and enhancing the reputation and integrity of Jersey.
- 2.2.13 In the UK, the Financial Conduct Authority (**FCA**), under whose remit a not inconsiderable number of our regulated entities (or other group companies) also fall, has addressed these concerns, to the extent possible, through the following rules (**FCA Rules**) in its handbook³:

³ <https://www.handbook.fca.org.uk/handbook>

2.2.13.1	GEN 6.1.4A: No firm, except a sole trader, may pay a financial penalty imposed by the FCA on a present or former employee, director or partner of the firm or of an affiliated company.
2.2.13.2	GEN 6.1.5: No firm may enter into, arrange, claim on or make a payment under a contract of insurance that is intended to have, or has or would have, the effect of indemnifying any person against all or part of a financial penalty
2.2.14	In light of the intent and effect of the FCA Rules, the approach Proposed in CP10 was essentially to transpose those rules into the Codes:
2.2.14.1	A registered person must not pay a financial penalty imposed by the JFSC on any other person.
2.2.14.2	A registered person must not enter into, arrange, claim on or make a payment under a contract of insurance that is intended to have, or has or would have, the effect of indemnifying any person against all or part of a financial penalty imposed by the JFSC.
2.2.15	Several respondents expressed concern that it may be beyond the JFSC’s power to introduce the proposals and may also conflict with principles of justice or matters of law.
2.2.16	Some respondents argued that as a matter of fairness, because the legality of a contract of insurance purporting to insure against a civil penalty has not been determined by the Jersey courts, it is beyond the JFSC’s powers to introduce the Proposals.
2.2.16.1	If such a contract would be invalid, some respondents asked why the JFSC felt it necessary to introduce the Proposals to the Codes.
2.2.16.2	If such a contract would be valid, some respondents stated that the proposals were “draconian”, preventing registered or principal persons from securing a legitimate form of protection.
2.2.17	In respect of indemnity being provided by other persons, some respondents similarly stated that this was a legitimate form of protection, particularly in cases where a Penalty might be imposed for a negligent act.
JFSC response	
2.2.18	With regard to the suggestion that the introduction of the Proposals was unnecessary, in advance of the Consultation, the JFSC reviewed the legal position for firms or individuals taking out insurance to cover a Penalty imposed on them. The position regarding whether a contract of insurance that insures the holder against a civil fine is valid in Jersey has not been established through the Jersey courts and so the JFSC referred to the position in the UK in order to identify relevant principles.
2.2.19	It is well established in English law that one cannot insure against the imposition of a criminal fine. The consensus amongst commentators is that it seems highly likely that the English courts would rule unlawful any insurance policy that purported to indemnify a person against the imposition of a civil fine for negligent or intentional acts although the position will not be entirely settled unless and until the Supreme Court rules on the matter.
2.2.20	The Jersey legal position will similarly not become clear until such a time as a judgment is made in respect of the legality of a policy of insurance that paid out (or not) in respect of a civil fine.

- 2.2.21 In sum, the legal situation is not entirely clear, but such contracts may well be ruled invalid by a court. The matter is not sufficiently certain, however, as to make the Proposals unnecessary. In the event that the Proposals were unnecessary because such contracts of insurance cannot be taken out, it would, in any case, follow that the Proposals would have no negative impact, if introduced.
- 2.2.22 With regard to the suggestion that the Proposals are draconian, the JFSC accepts that were it to seek to replace the courts by its own decisions in a significant respect this could be draconian. The JFSC has reflected carefully on whether it is doing that and concluded that it is not.
- 2.2.23 The putting in place of such contracts of insurance would, in the view of the JFSC, significantly dilute the deterrent effect of the civil penalties regime with regard to potential beneficiaries of such a contract of insurance. The effect of the Proposals would be to effectively counter this dilution by not only prohibiting registered persons from seeking such insurance, but also enabling the JFSC itself to take action against registered persons that took out such insurance as a contravention of the Codes.
- 2.2.24 The Proposals address an activity which would negatively impact on the quality of the conduct of registered persons and this falls properly within the matters which the JFSC may, and should, cover by provisions of the Code.
- 2.2.25 The JFSC is mandated to issue codes setting out the principles and detailed requirements that must be complied with by registered persons⁴ to conform to the regulations which it supervises. The Codes also assist the JFSC with its on-going consideration of whether a registered person is a fit and proper person⁵ and it is the JFSC's view that the Proposals support this assessment.
- 2.2.26 The JFSC acknowledges the concerns of certain respondents that the JFSC, through the Proposals, could be putting itself in a position where it could be acting beyond its powers by effectively making a judgment in a matter properly reserved for the courts. It would, of course, be draconian if the JFSC were to attempt to take to itself the making of decisions properly reserved for the courts. This has been carefully considered in light of the feedback received.
- 2.2.27 The JFSC is satisfied that it is acting within its powers and that matters properly reserved for the courts such as the validity of contracts of insurance will remain a matter for the courts. None of the feedback received identified a decision which, without the implementation of the Proposals, would be decided by the courts and which, in the event of the implementation of the Proposals, would be decided by the JFSC.
- 2.2.28 The conclusions of the JFSC are, therefore, similar to the conclusions the FCA reached when they introduced their equivalent rules in respect of insurance. These were to have a twofold effect:
- 2.2.28.1 Clarify the legal position regarding the validity of insurance contracts in respect of civil fines.
 - 2.2.28.2 Establish enforceable powers where firms sought to insure against the imposition of civil fines.

⁴ Regulation 22 AIF Regulations, Article 19A BBJL, Article 15 CIFJL, Article 19 FSJL and Article 42 IBJL

⁵ Regulation 9(7) AIF Regulations, Article 10(3) BBJL, Article 7(6) CIFJL, Article 9(3) FSJL and Article 7(4)

- 2.2.29 Overall, the JFSC conclusion after considering all the feedback is that not to introduce the Proposals would erode the deterrent effect of Penalties and that the Proposals cover behaviours of a type which the JFSC may properly cover in code provisions. As a matter of public policy, it is undesirable for a person to be able to indemnify themselves against the financial consequences of a contravention of the Codes by whatever means. It is not draconian but on the contrary proportionate to the need to prevent this dilution of the effect of the Penalties to introduce the Proposals.
- 2.2.30 Some respondents expressed concern regarding the scope of the proposals where negligence was found compared to more egregious contraventions of the Codes.
- 2.2.31 In respect of both insurance sought against penalties and indemnity provided by registered persons to other persons, several respondents sought to highlight that the threshold in respect of the lowest band of contravention that may lead to a Penalty is neglect.
- 2.2.32 Several respondents argued that negligence was not a satisfactory threshold given their view of the relatively innocent nature of negligent acts, for example asking:
- 2.2.32.1 “why Jersey would wish to establish a position where a civil penalty excludes the right to indemnity where a mere standard of fault at the level of negligence is involved”
- 2.2.33 It was requested, for example, that the Proposals prohibiting both insurance and indemnity be amended such that they were qualified to apply only in situations where another person was not acting in good faith:
- 2.2.33.1 “where the offence was fraud, gross negligence or wilful misconduct”
- 2.2.34 Some respondents drew attention to the right of persons to insure against certain acts, for example:
- 2.2.34.1 “It is a fundamental principle of insurance law, and common in contract and goodwill indemnities, that one may be protected from acts of negligence (as opposed to intentional acts and in many instances grossly negligent acts).”
- 2.2.35 There was a pervasive assumption that the quantum of financial penalties imposed on principal persons by the JFSC would be at the maximum level for principal persons under the FSCJL of £400,000.

JFSC response

- 2.2.36 The JFSC recognises that insurance may be sought to protect against acts of negligence, however, the nuance in respect of insurance against Penalties is that Penalties are an explicit consequence imposed by the JFSC after the proper determination that a significant and material contravention of a Code has taken place. This is distinct from insurance (required by the Codes) or indemnity in respect of making good the consequences of negligent acts.
- 2.2.37 The JFSC does not consider negligence to be a “mere standard of fault”. Indeed, the FSCJL specifies that neglect can lead to a significant and material contravention of the Codes and may ultimately lead to the imposition of a Band 2A Penalty.
- 2.2.38 Many regulatory breaches arise from negligent acts and while intentionally or recklessly giving poor advice, failing to perform responsibilities in respect of AML/CFT or failing to commission adequate systems and controls are differentiated

as more serious contraventions, negligently enabling such acts is not akin to an innocent mistake.

- 2.2.39 As such, it is inappropriate to draw a distinction between negligence, gross negligence and deliberate contraventions in the proposed amendments to the Codes.
- 2.2.40 The relative severity of a contravention must in any case be taken into account by the JFSC through the DMP which explicitly takes account of the nature and severity of contraventions in determining the amount of any Penalty that may be imposed. Those respondents who emphasised the problem of merely negligent contravention of the codes did not factor either the fact that the Penalties regime applies only to “significant and material” contraventions of the Codes or this aspect of the DMP into their arguments.
- 2.2.41 The careful process of consideration that will be followed in determining the amount of a Penalty is prescribed by Article 21B of the FSCJL and has been elaborated by the JFSC in the Policy Statement, Civil Financial Penalties: Methodology for determining the amount⁶ (**Methodology**), which was published in September 2018.
- 2.2.42 Following the Methodology, the maximum level of penalty that might be imposed of £4,000,000 on registered persons as prescribed by the FSCJL is unlikely to be imposed excepting in the most egregious case of a contravention of a Code of Practice. The circumstances of each case will be different and the JFSC will apply each step in the methodology with the necessary degree of flexibility and discretion that the particular case will merit
- 2.2.43 The prescribed considerations in respect of Penalties that might be imposed on principal persons differ to those for registered persons, however, the nature of the contravention and consideration of the potential financial consequences to the principal person and to third parties (including creditors of the principal person) of imposing the penalty will be key determinants.
- 2.2.44 The JFSC will, in due course, update the Methodology to ensure that principal persons are properly referred to.
- 2.2.45 Several respondents expressed concern that the potential imposition of Penalties on individuals who could not insure or indemnify themselves would be a deterrent for high quality principal persons taking up the role.
- 2.2.46 This point was made in respect of “competent, risk-averse” principal persons in a role such as a client director as well as high-quality neds who some respondents felt would not seek appointments if they were prohibited from either indemnity from client firms or by way of insurance.
- 2.2.47 Concerns relating to recruitment and retention were most strongly expressed by respondents representing the funds sector.

JFSC response

- 2.2.48 The JFSC recognises the concerns that recruitment and retention of principal persons might be adversely affected by the proposals, however, no concrete evidence has been provided to support the concerns.

⁶ <http://www.jerseyfsc.org/media/2179/civil-financial-penalties-methodology-sept-2018.pdf>

2.2.49 The JFSC is able to ban people from the finance industry which can have a very significant financial effect on an individual. Despite these powers the JFSC has not seen a decline in good quality candidates for principal person positions. Nor has the JFSC observed such a decline in other jurisdictions which have civil penalty regimes.

2.2.50 Some respondents drew attention to the fact that no other ifcs have similar provision in their regulation. This was argued to damage Jersey's competitive position with respect to other ifcs.

2.2.51 It was argued that international organisations would become disinclined to operate in Jersey, particularly where other jurisdictions do not have an equivalent prohibition on either indemnity from registered persons or insurance being sought in respect of Penalties.

2.2.52 Certain feedback expressed a feeling that Jersey should not be trying to emulate larger jurisdictions and that as a "substance jurisdiction" it is damaging to industry to upset arrangements where firms employ people to act as principal persons on client structures.

2.2.53 Various respondents posited that introducing the Proposals would cause significant reputational damage to Jersey compared to other ifcs and that this would be a significant factor when new firms contemplate Jersey operations.

JFSC response

2.2.54 Whenever action is taken to strengthen the regulatory framework, there are trade-offs and a balanced judgement is required. In this case, there are strong positive impacts from the proposals, namely:-the overriding aims of the proposals are to:

- 2.2.54.1 Strengthen the effectiveness of the Penalty regime by preserving the deterrent effect of Penalties;
- 2.2.54.2 Reducing the risk to the public of financial loss due to dishonesty, incompetence or malpractice; and
- 2.2.54.3 Protecting and enhancing the reputation and integrity of Jersey in commercial and financial matters.

2.2.55 Precisely calibrating the impact of such proposals on the competitive position of Jersey would be difficult. None of the responses to the consultation was either convincing or detailed in this regard. For example, while one might argue that international organisations will find Jersey less attractive as a result, that would be difficult to support with any evidence and none of the respondents considered that where international organisations operate mainly in jurisdictions with well-established civil penalties regimes, this proposal is likely to prove immaterial.

2.2.56 Nor did any respondents consider how to assess the positive impact of these proposals on the reputation of Jersey or seek to factor that into their assessment of the overall balance of the impact of these proposals on the competitive position of Jersey. While the JFSC carefully reviewed these arguments, it was not persuaded that there were any facts articulated which persuasively called the proportionality of the Proposals into question, particularly having regard to the evident intention of the States of Jersey in introducing the civil penalties regime as outlined earlier in this feedback statement.

2.2.57 Several respondents expressed concern regarding the ability to frustrate the effectiveness of the proposals including certain of the following actions being taken to prevent the Proposals from having any real effect:

- 2.2.57.1 In order to address the concerns about having inadequate insurance or indemnity from their employers, principal persons would force wage inflation by way of self-insurance.
 - 2.2.57.2 While registered persons might not “pay” a Penalty imposed on a principal person they could simply pay a bonus to cover the costs.
 - 2.2.57.3 The direct prohibition on payment of Penalties could simply be circumvented by use of an intermediary.
 - 2.2.57.4 Principal persons could simply take out personal insurance policies as the Codes apply only to registered persons and not to principal persons as individuals.
 - 2.2.57.5 Principal persons could start holding all their assets in the name of their spouse which was also noted as leading to challenges if a principal person’s matrimonial status changed.
- 2.2.58 Some responses indicated that the wording of the proposal in respect of registered persons providing indemnity to other persons should be enhanced to prevent registered persons procuring to pay, arrange or settle a financial penalty imposed on another person.

JFSC response

- 2.2.59 These observations were helpful in allowing the JFSC to consider whether more granular proposals would be appropriate to ensure that there cannot be any such avoidance. The intent of the current draft is in our view clear, namely to ensure that where a Penalty is on a person that person ought to suffer the Penalty and the JFSC would be surprised to find that registered persons, or indeed principal persons, would actively attempt to subvert their effectiveness. Indeed, if they were to do so, it would call into question their fitness and propriety.
- 2.2.60 It is relevant to note that the proposals do not preclude the taking out of insurance to cover the costs of defending oneself against regulatory action. Indeed, the JFSC would anticipate that through existing Professional Indemnity Insurance and Directors and Officers insurance arrangements, registered persons would be adequately insured in this regard.
- 2.2.61 As noted at 2.2.59, the JFSC views the intent of the proposal as sufficiently clear and does not propose to further modify the proposed wording. If experience shows us a pattern of evasion along the lines indicated in these comments, the JFSC will revisit the wording.

- 2.2.62 Further information was requested regarding the intent behind the Proposals, their timing and matters relating to their operation.

JFSC response

- 2.2.63 These clarificatory requests have been addressed under “Background” (2.2.4 to 2.2.14, above).

- 2.2.64 No further concerns or observations were made.

JFSC Conclusion

- 2.2.65 The proposed generic amendments in respect of the payment of and insurance against Penalties will be introduced in the form consulted on and can be found at Appendices B-J, or with the changes highlighted, at Appendices K-S.

2.3 Question 2: Do you have any observations on, or concerns about, the proposed generic amendment that would include a note regarding Cyber Security risk management?

- 2.3.1 One respondent requested clarification regarding expectations in respect of Managed Entities noting that the majority of managed entities only apply the core principles of the FSB Code to the extent described in the Guidance Note for a Manager of a Managed Entity (a “MOME”) and Certain Managed Entities (**mome GN**).
- 2.3.2 The same respondent asked if the JFSC intend to update the mome GN for guidance on cyber security measures for managed entities. If not, it was suggested that the JFSC update the FSB Code to acknowledge that managed entities can rely on risk based reliance/confirmations from their service providers.
- 2.3.3 No other observations or concerns were raised.

JFSC response

- 2.3.4 It is incumbent on the Managed Entity to be able to demonstrate compliance with the Core Principles and it should be noted that the mome GN specifies that elements of 3.1, 3.2 and 3.7 of the detailed requirements of the FSB Code are expected to be relevant.
- 2.3.5 This includes operating an effective corporate governance system with robust internal controls and adequate business resumption, disaster recovery and contingency arrangements in place and tested at appropriate intervals. The Managed Entity must satisfy itself that it has complied with its obligations under the Code.
- 2.3.6 The proposed note, consistent with the other Codes, clarifies what is expected in respect of risk management where cyber security is concerned.
- 2.3.7 Should a Managed Entity determine that it is satisfied that its manager adequately fulfils the Managed Entity’s obligations and this is in accordance with the Outsourcing Policy then the Managed Entity would need to adequately document this element of its risk management systems and ensure that it will be tested at appropriate intervals.
- 2.3.8 With respect to 3.7, record keeping, per the mome GN it is anticipated that documentation of the relevant procedures and records are likely to be maintained by the mome.
- 2.3.9 The JFSC does not consider that the mome GN is incompatible with the proposed amendments, however, would note that as part of the work to commence on the alignment of the Codes of Practice all Guidance Notes will be considered and updated as appropriate.
- 2.3.10 The proposed generic amendments in respect of cyber security risk management will be introduced in the form consulted on and can be found at Appendices B-J, or with the changes highlighted, at Appendices K-S.

2.4 Question 3: Do you have any observations on, or concerns about, the proposed generic amendment to arrangements for the review of controls over client, customer and fund money?

- 2.4.1 One respondent suggested that the JFSC needs to adopt what they characterised as a more risk-based approach to the amendment. The respondent outlined that they conduct a high degree of compliance monitoring around client money, reconciliation policies, procedures and controls.
- 2.4.2 The respondent noted that there are generally few changes to the control environment and felt that insisting a review is done annually is very onerous, another expense to the business which perhaps adds little value.
- 2.4.3 The respondent posited options that they felt balanced risk and reward:
 - 2.4.3.1 Risk rate registered persons on value of assets – this would support the JFSC’s strategy to have a risk-based approach to supervision and then decide the frequency of reviews.
 - 2.4.3.2 Amend the wording so that an initial review is conducted and then an annual declaration made by the board that there have been no changes to controls. If there has then this would be a trigger event for another review.
 - 2.4.3.3 Issue a policy statement that ensures that the testing of controls over client, customer or fund money are a compulsory part of the compliance monitoring programme.
- 2.4.4 Another respondent requested that the JFSC provide a Guidance Note regarding the form of the report for the independent review.

JFSC response

- 2.4.5 The JFSC considers that registered persons will be able to adopt a risk based approach to implementing the requirements in respect of reviews over controls in respect of client, customer or fund money.
- 2.4.6 While it is recognised that control environments may rarely change, it is incumbent on registered persons to ensure that their control environments remain effective from design through implementation to operating effectiveness.
- 2.4.7 The specific requirement to review controls over client, customer and fund money is driven by international best practice where the consensus is that control weaknesses present a significant risk.
- 2.4.8 Among the options proposed, the JFSC notes that the suggestion that the JFSC issues a Policy Statement ensuring that the review of controls becomes a compulsory part of the Compliance Monitoring Programme (**CMP**).
- 2.4.9 The Guidance Note: Compliance Monitoring⁷ provides detailed instruction around the development and maintenance of the CMP. The JFSC would highlight with the introduction of the requirement in the Codes, the review of controls becomes a Regulatory Requirement in accordance with that Guidance Note. It is therefore anticipated that the review of controls (if it is decided to perform this internally) will be included in the CMP.
- 2.4.10 A separate Guidance Note prescribing the form of the review is unnecessary at this time, however, should firms be unable to incorporate the review of controls within their CMP then the JFSC will consider issuing further guidance.

⁷ <https://www.jerseyfsc.org/pdf/GN-Compliance-Monitoring-6-December-2013.pdf>

- 2.4.11 Several respondents requested clarification regarding what was meant by “appropriately qualified independent person”.

JFSC response

- 2.4.12 The proposed amendments used the term “appropriately qualified independent person” in order to give registered persons the freedom to interpret the new requirement within the context of their business.
- 2.4.13 For example:
- 2.4.13.1 A large TCB with a compliance function dedicated to implementing the firm’s CMP might find that the person is a member of that team with experience in assessing compliance with the CMP.
 - 2.4.13.2 A small GIMB firm with a single person as the compliance function might find that the person is that individual.
- 2.4.14 Two respondents stated that they felt the amendments, should distinguish between circumstances where a registered person **holds** client, customer or fund money against circumstances where a registered person **controls** client, customer or fund money. They found, for example, that the amendments were “overly onerous for controls to be independently reviewed just because an employee acts as authorised signatory”. The respondents suggested the distinction be drawn between “Fund Money” controlled by a registered person and “Fund Money” held by third party custodians.
- 2.4.15 In respect of the FSB Code, the two respondents both considered the term “fund money” to be simplistic and subject to interpretation. Comparison was made to the definition of “customer money” under the Financial Services (Trust Company Business (Assets – Customer Money)) (Jersey) Order 2000 which was considered to be more effective.
- 2.4.16 One of the respondents stated that the FCA only requires a review for entities holding client assets and therefore considered that this approach should be applied in Jersey.

JFSC response

- 2.4.17 The intent of the amendments is to ensure that the JFSC’s regulatory requirements comply with international regulatory standards. Specifically, that the Codes comply with the GIFCS Standard. The effect of the amendment is to provide for an, at least, annual review of the controls over client money.
- 2.4.18 The JFSC finds that drawing a distinction between holding and controlling client money per the responses will not be in line with either the expectations of the GIFCS standard or the reasonable expectations of clients, customers or funds. The examples of an employee acting as an authorised signatory, or money being held by third parties would prompt the appropriate review of the relevant controls.
- 2.4.18.1 If the mainstay of a registered person’s activities in respect of client, customer or fund money is the authorisation of payments on behalf of clients then review of the controls would enhance the mitigation of the risk that these controls are not effective.
 - 2.4.18.2 Similarly, if the mainstay of a registered person’s activities in respect of client, customer or fund money is through the use of third party custodians then review of the controls around the transmission and receipt of money to or from third parties as well as consideration of

the effectiveness of the third party's safeguarding of the registered person's client, customer or fund money would enhance the mitigation of the risk that these controls are not effective.

- 2.4.19 The JFSC considers that the definition of fund money as "fund assets which are money" with fund assets meaning "assets of any description belonging to the fund or made available by or due to an investor" is adequately comparable to the definition of customer money within the meaning of the TCB Code, where customer money:

2.4.19.1 Means trust company business assets consisting of money that the registered person has control of or is otherwise responsible for which the registered person is required to safeguard in accordance with the responsibilities the registered person has accepted in the course of carrying on that trust company business⁸; and

2.4.19.2 "trust company business assets" means trust property; or any other assets or property not beneficially owned by the registered person.⁹

- 2.4.20 As there is no statutory definition of fund money in the case of the FSB Code, unlike customer money in the case of the TCB Code, the definition of fund money has been given to enable registered persons to take an appropriately risk-based approach to identifying the relevant controls in the context of fsbs.

- 2.4.21 The JFSC notes the comments regarding the FCA's expectations, but would first highlight that the FCA Handbook's Client Assets Sourcebook (**CASS**)¹⁰ is a comprehensive approach applicable to all firms in the UK required to comply with the FCA Handbook which, if implemented in Jersey, would itself increase the burden on firms including the requirement for reviews of compliance to be conducted by external parties. Unlike the approach the JFSC has taken through the amendments which enable firms to perform reviews internally should they deem this to be the most appropriate approach.

- 2.4.22 One respondent asked how a mome would discharge a Managed Entity's obligations suggesting the following options:

2.4.22.1 A risk based sample by the mome across all Managed Entities;

2.4.22.2 The mome conducting an independent review on behalf of all of its managed entities; or

2.4.22.3 Each managed entity having to arrange for its mome or another independent reviewer to conduct the assessment on its behalf.

- 2.4.23 One respondent asked why the review made no reference to incorporating such a review into external audit arrangements. The respondent felt that the scope of external audits extends to checks on compliance with applicable legislation and guidance and given that there is an existing approval and notification regime concerning the appointment of auditors, this would seem the appropriate place for such a review to be carried out.

JFSC response

⁸ [Financial Services \(Trust Company Business \(Assets – Customer Money\)\) \(Jersey\) Order 2000](#)

⁹ [Financial Services \(Jersey\) Law 1998, Article 1\(1\)](#)

¹⁰ <https://www.handbook.fca.org.uk/handbook/CASS/>

2.4.1	It is incumbent on the Managed Entity to be able to demonstrate compliance with the Core Principles and it should be noted that the mome GN specifies that elements of 3.2 of the detailed requirements of the FSB Code are expected to be relevant.
2.4.2	This includes operating an effective corporate governance system with robust internal controls and adequate business resumption, disaster recovery and contingency arrangements in place and tested at appropriate intervals. The Managed Entity must satisfy itself that it has complied with its obligations under the Code.
2.4.3	The proposed note, consistent with the other Codes, clarifies what is expected in respect of the review of controls over fund money.
2.4.4	Should a Managed Entity determine that it is satisfied that its mome adequately fulfils the Managed Entity's obligations and this is in accordance with the Outsourcing Policy then the Managed Entity would need to adequately document this element of its risk management systems and ensure that testing occurs at appropriate intervals.
2.4.5	The JFSC considers that provided registered persons are able to satisfy themselves that an internal party is appropriately qualified and independent then the specification that the review be performed as part of external audit arrangements is not necessary at this time.
2.4.6	The JFSC notes that the scope of an external audit would not feature client money specifically, therefore the JFSC is mindful of the additional cost and resource implications that would be borne by some firms in introducing this requirement as having to be performed by a third party. Of course, some firms will already have reviews of relevant controls performed by external parties (for example as part of a SSAE 16 engagement).
2.4.7	One respondent requested that the JFSC confirm that the amendment would not apply to incidental GIMB business on the basis that the Codes do not apply.
JFSC response	
2.4.8	This is correct.
2.4.9	One respondent observed that the terms "client money", "customer money" and "fund money" should be checked to confirm that they are used consistently. In the proposed amendments to the GIMB Code, paragraphs 3.2.6.1.3 and 6.5.16 include references to "customer money", where "client money" should have been used."
JFSC response	
2.4.10	The JFSC notes this comment and will check the references as well as making this specific change.
2.4.11	One respondent suggested that the notification requirement be amended from "any deficiencies" to "any material deficiencies".
JFSC response	
2.4.12	The JFSC believes this to be an appropriate amendment and it will be introduced.
2.4.13	No other observations or concerns were raised.

JFSC Conclusion

- 2.4.14 It is anticipated that for the majority of registered persons, the introduction of the generic amendment in respect of Client, Customer and Fund Money will already be accommodated by existing compliance monitoring arrangements. In order to ensure that the TCB Code accommodates the requirements of the GIFCS standard the proposal intends to ensure that this element of Compliance Monitoring Plans is explicitly stated. As stated in the CP, as the proposal reflects best regulatory practice it has therefore been proposed across the Codes where client, customer, or fund money are controlled by registered persons.
- 2.4.15 The proposed generic amendments in respect of reviews of controls over client, customer and fund money will be introduced with the above amendment to the notification requirement in respect of “material deficiencies” and the comments at 2.4.9 being checked. These revised Codes can be found at Appendices B-J, or with the changes highlighted, at Appendices K-S.

2.5 Question 4: Do you have any observations on, or concerns about, the proposed generic amendment to PII Arrangements for fsbs, gimbs, ibs and tcbs?

- 2.5.1 One respondent suggested that the PII requirements within the Codes were ineffective and should be replaced by a consumer compensation scheme funded by industry.
- 2.5.2 Two respondents expressed concern that directors’ and officers’ insurance was proposed to be included for IB and GIMB firms as these firms do not generally provide external board appointments. One of the respondents stated that they believe that there is no directors’ and officers’ exposure for GIMB and IB firms. One of the respondents suggested that extending the Code to require “outside board position” insurance for relevant firms would be most appropriate.
- 2.5.3 One respondent suggested that the term, “fidelity guarantee” should be replaced by “employee dishonesty” or “crime” insurance to reflect current terminology prevalent in several insurance contracts. The respondent also stated that if the JFSC are concerned about theft of funds by third parties then reference should be made to “crime insurance”.

JFSC response

- 2.5.4 The JFSC notes the comment regarding the establishment of a consumer compensation scheme which it understands to be a proposal beyond the ambit of the Channel Islands Financial Ombudsman and the Jersey Bank Depositors Scheme. Such a compensation scheme would not be an alternative to PII, but would complement it, were there such a scheme. Whether or not such a scheme is in place, the proper use of PII in accordance with the Codes is an important protection for clients and is in line with international best practice. For that reason the JFSC was not persuaded that the absence of a compensation scheme or the limitations on liability which often apply amount to reasons not to impose such PII requirements.

2.5.5	The Chartered Insurance Institute ¹¹ defines directors' and officers' liability insurance as "cover for the directors and officers in their personal capacity when they are unable to claim an indemnity from the company, and corporate reimbursement: cover to protect the company in circumstances where it is permitted to indemnify the directors or officers, such as the repayment of legal defence costs."				
2.5.6	The JFSC considers that while GIMB and IB firms are unlikely to provide outside board positions (or similar functions) by virtue of the licences they hold, "outside board positions" is not the sole meaning of directors' and officers' insurance. The JFSC is not persuaded that there is never directors' and officers' exposure for IB and GIMB firms, specifically where it might be necessary to secure: <table> <tr> <td>2.5.6.1</td><td>Cover for the directors and officers in their personal capacity; and</td></tr> <tr> <td>2.5.6.2</td><td>Cover to protect the company.</td></tr> </table>	2.5.6.1	Cover for the directors and officers in their personal capacity; and	2.5.6.2	Cover to protect the company.
2.5.6.1	Cover for the directors and officers in their personal capacity; and				
2.5.6.2	Cover to protect the company.				
2.5.7	The JFSC notes that the timing of the amendment to the Codes might mean that cover in place for certain firms will not include the requirements of the revised Codes. In light of this, this requirement will be introduced with effect on 1 June 2019 as for other amendments, but firms will not be required to fully comply until the next renewal date for their PII policy. If a policy is otherwise amended or extended prior to its set renewal date, amendments to meet these requirements should be included at the same time.				
2.5.8	The JFSC notes that "fidelity guarantee" insurance has become a less common term than when the Codes first introduced the requirement. In the context of the Codes and the expectation that the cover will extend to self-employed or contract hire persons engaged in a registered person's business as well as to current or former employees, partners and consultants the term will remain with the suggested enhanced wording in parentheses to aid clarity: "(employee dishonesty or fraud)".				
2.5.9	One respondent questioned the uniform use of the term "replacement, reinstatement, restoration or reconstruction of data" stating that "by including restoration\reconstruction of data this brings in cyber insurance" which they found was not likely to be included within a PII policy.				
2.5.10	One respondent asked for clarification regarding whether the mome GN in respect of PII arrangements for managed entities continued to apply.				

¹¹ <https://www.cii.co.uk/learning/knowledge-services/reference-resources/classes-of-insurance/directors-and-officers-liability/>

JFSC response

- 2.5.11 The alignment to uniformly use “replacement, reinstatement, restoration or reconstruction of data” across the Codes brings “reinstatement” into the TCB Code, GIMB Code and IB Code and “replacement” into the FSB Code. As such, this is not a new requirement in respect of cyber insurance.
- 2.5.12 To the extent that the JFSC is able to prescribe whether specific cyber insurance is required by registered persons, the PII Guidance Note¹² provides the following guidance: “Cyber-crime is becoming more and more prevalent, and as well as establishing robust protections to guard itself against cyber-attacks, a Registered Person should also be mindful of whether or not the scope of PII cover sufficiently provides for losses or damages incurred from the loss of data/fraudulent activity related to a cyber-crime. Consideration may need to be given by Registered Persons to the taking out of specific cyber-crime related insurance which is separate to their PII arrangements.”
- 2.5.13 The mome GN continues to apply and the JFSC would also highlight 5.2.10 in the proposed FSB Code which states “where a registered person is a managed entity providing services to Qualifying Funds, then PII cover is required which, in the opinion of its directors, is sufficient to withstand the risks to which its business is subject.”
- 2.5.14 Three respondents expressed concerns about the amendment to the notes beneath the detailed requirements specifying that it is anticipated that the JFSC will expect to see run-off cover for a period of 3-6 years, specific concerns included:
- 2.5.14.1 It is not always possible to purchase run-off cover for this period;
- 2.5.14.2 Some insurers can offer a single policy covering the whole period while others only offer cover on an annual basis, annual policies are dependent upon insurer appetite and there is the danger of insurer ceasing to write the business, or refusing to offer further cover and no new insurer will get involved.
- 2.5.14.3 A single policy stretches the LOI over the entire policy period and cannot be changed once the policy has commenced.
- 2.5.14.4 The proposal appears onerous, particularly for managed entities operating with a single client, with the reduced risks that implies.
- 2.5.14.5 If the intention is to ensure that there may be money available to cover claims made by former customers of the registered person, then 3 to 10 years would seem like a more appropriate period. 6 years would be appropriate in the United Kingdom because the prescription period for a breach of contract or negligence claim is 6 years, whereas, in Jersey, the applicable prescription periods are 3 years for negligence (and other tortious) claims and 10 years for contractual claims.
- 2.5.15 One respondent asked if the JFSC had undertaken a comparison of competitor jurisdictions to assess whether similar requirements exist there as the cost implications could be significant. They argued that the requirement is likely to put Jersey at a competitive disadvantage to other ifcs, particularly given the de-

¹² <https://www.jerseyfsc.org/media/1962/2018-06-19-pii-guidance-note.pdf>

regulation requirements in Jersey (including regarding production of audited accounts) are already onerous and costly.

JFSC response

- 2.5.16 The JFSC would highlight that the amendment to the notes beneath the detailed requirements are guidance and therefore not necessarily mandatory provided that firms are able to determine and explain to us if asked, the extent to which they are applicable in their circumstances.
- 2.5.17 The intent of extending the period within the note is to provide protection for the registered person and all potentially affected parties in the event that a claim emerges after the cessation of business. The period of three to six years was selected following feedback from local insurance brokers regarding the experiences of firms whose run-off cover was not sufficient.
- 2.5.18 The JFSC notes that firms might seek to establish cover on an annual rolling basis, however, highlights that run-off insurance must be in place before a Cessation of Business Plan (**cobp**) is approved. The JFSC, through its review of the insurance arrangements in the cobp, would be seeking to ensure that adequate cover is in place for the entirety of the relevant period.
- 2.5.19 Should a Managed Entity (or indeed any firm), at cessation, determine that it is satisfied that its run-off PII arrangements adequately fulfil its obligations under the Code, the JFSC will consider this as part of its review of the cobp, however, the initial position of the JFSC will be as indicated at 2.5.21.1.
- 2.5.20 The JFSC notes the clarificatory information provided in respect of the most appropriate periods in response to the CP.
- 2.5.21 In light of this feedback the note will be modified to read:
- 2.5.21.1 “the JFSC will generally expect to see “run off” PII cover covering a period of not less than three years.”
- 2.5.21.2 The JFSC will not expect firms to take this as a minimum standard of compliance, but would expect careful consideration of the appropriateness of any length of cover to feature within the cobp.
- 2.5.22 The JFSC is cognisant of arrangements and requirements across other ifcs, however, in determining the appropriate length of run-off cover in respect of the guidance note to the detailed requirements of the Codes, has been mindful to the specific needs of Jersey registered firms and their clients, customers or funds.
- 2.5.23 One respondent requested clarification regarding why “partner” was included within the proposed amendment to the GIMB Code as they understood that there are no partnerships among GIMB registered firms.
- 2.5.24 One respondent requested that clarity be developed regarding “what cost/expense is intended to be covered in relation to self-employed or contract for hire persons. Assuming that the intention is to require cover to include indemnity to self-employed or contract for hire persons, it would be helpful to add some words to make that clear.”
- 2.5.25 One respondent highlighted that use of the word "employee" in the Codes, AML Handbooks and notices of fees are divergent and asked that this be addressed.

JFSC response

- 2.5.26 In respect of the inclusion of “partners” in the amended Codes, the reasons is that some GIMB registered persons are formed as partnerships.
- 2.5.27 The JFSC would highlight that the cover in respect of all persons and eventualities listed at 5.2.4 of each of the relevant Codes is PII cover as defined throughout section 5.2 and it is not expected to be limited in respect of any specific class of person or eventuality.
- 2.5.28 It is correct that within the Codes, AML Handbook and notices of fees there are several definitions of “employee” which, in each of the circumstances, are defined for a specific purpose. This is intentional and driven by the different purpose for which the term is used in different texts.

- 2.5.29 One respondent requested that the notification obligation “if a registered person becomes aware that it has conducted any activity that is not covered by the PII policy” be amended to “if a registered person becomes aware that it has conducted any financial services business activity that is not covered by the PII policy” in order “to avoid any suggestion that a registered person is required to have PII cover for any activity that is not supervised by the JFSC”.

JFSC response

- 2.5.30 The JFSC would highlight that the scope of Principle 6 of the Codes, a registered person must deal with the JFSC in an open and co-operative manner is extended to the provision of information and the notification of events concerning non-regulated activities [...] to the extent that such information or events might reasonably be expected to have a material impact on the registered person in Jersey.
- 2.5.31 The JFSC would also draw attention to the FSJL Licensing Policy¹³ where it is stated that applicants are expected to restrict their activities to the regulated activities for which they hold licences and other activities that are wholly associated with or allied to the licensed business. The requirements of the FSJL Licensing Policy are ongoing for registered firms.
- 2.5.32 In respect of IB firms, the JFSC would also highlight the revisions to the IB Code in response to Consultation Paper No. 4 2018 which has clarified that where a registered person is “providing advice comprising of regulated and unregulated services, [the registered person must] explain to its client, in writing, which elements of the advice are regulated and which are unregulated”¹⁴.
- 2.5.33 Due to the scope of Principle 6 and the expectation that the non-regulated activities of registered persons will be allied to their regulated activities, the JFSC does not find that it is necessary to amend the requirement such that it solely relates to regulated activities.

- 2.5.34 One respondent highlighted that “in Jersey” within the requirement for a registered person “ceasing to conduct a class of financial services business in Jersey” was unnecessary.

JFSC response

- 2.5.35 The JFSC notes this comment and will amend the wording accordingly.

¹³ [https://www.jerseyfsc.org/pdf/PS-FS\(J\)L-Licensing-Policy-August-2014.pdf](https://www.jerseyfsc.org/pdf/PS-FS(J)L-Licensing-Policy-August-2014.pdf)

¹⁴ Section 2.8.4 <https://www.jerseyfsc.org/media/2322/2018-12-18-code-to-be-implemented.pdf>

2.5.36 No further observations or concerns were raised.

JFSC Conclusion

- 2.5.37 The proposed generic amendments in respect of PII arrangements will be introduced with the above amendments and otherwise as in the form consulted on. The revised Codes can be found at Appendices B-J, or with the changes highlighted, at Appendices K-S.

2.6 Question 5: Do you have any observations on, or concerns about, any of the proposed amendments to the AIF Code?

- 2.6.1 Excepting references to the generic amendments (Questions 1 – 4), no observations or concerns were raised.

JFSC response

- 2.6.2 The proposed amendments to the AIF Code will be introduced in the form consulted on and can be found at Appendix B, or with the changes highlighted, at Appendix K.

2.7 Question 6: Do you have any observations on, or concerns about, any of the proposed amendments to the Banking Code?

- 2.7.1 One respondent highlighted that the proposed amendment to notification and objection requirements in respect of changes to capital structure applies only to Jersey Incorporated Banks (**jibs**). The respondent requested clarification regarding a situation where a “non-trivial” change to the capital structure of a Jersey Branch’s parent entity occurred and whether it is intended that a Jersey Branch be excluded, or if a capital restructure of its parent was also captured.
- 2.7.2 Excepting references to the generic amendments (Questions 1 – 4), no further observations or concerns were raised.

JFSC response

- 2.7.1 The proposed amendment relates only to jibs.
- 2.7.2 6.1 of the Banking Code requires a registered person to advise the JFSC in writing as soon as it becomes aware of any matter that might reasonably be expected to affect its deposit-taking or money services business or be in the interests of its customers to disclose. A material change to the capital structure of a Jersey Branch’s parent would, be such a matter and hence subject to 6.1.
- 2.7.3 The notification requirement would then apply in such a circumstance. No requirement to receive a “letter of no-objection” would apply.
- 2.7.4 The proposed amendments to the Banking Code will be introduced in the form consulted on and can be found at Appendix C or with the changes highlighted at Appendix L. It should be noted that the most recently issued version of the Banking Code (February 2019) superseded the version that was consulted on. The more recent version contained additional information in respect of capital adequacy (Basel III). The changes from the CP have been introduced to the February 2019 Code rather than the consultation version.

2.8 Question 7: Do you have any observations on, or concerns about, any of the proposed amendments to the Certified Funds Code?

- 2.8.1 In respect of note at section 3.2 in respect of cyber risk management, one respondent observed that certain certified funds may rely on their service providers for their cyber security measures. By way of example, a corporate fund which is not otherwise subject to the FSB Code might rely on its Jersey based fund administrator for its IT infrastructure (and that Jersey administrator would itself be subject to the cyber security risk measures under the amended FSB Code).
- 2.8.2 It was suggested that the JFSC might update the Certified Funds Code to acknowledge that in situations such as this, certified funds can rely on risk based reliance/confirmations from their service providers.
- 2.8.3 Excepting references to the generic amendments (Questions 1 – 4), no further observations or concerns were raised.

JFSC response

- 2.8.4 It is incumbent on the Fund to be able to demonstrate the existence of adequate risk management systems. This includes operating an effective corporate governance system with robust internal controls and adequate business resumption, disaster recovery and contingency arrangements in place and tested at appropriate intervals. The Fund must satisfy itself that it has complied with its obligations under the Code.
- 2.8.5 The proposed note, consistent with the other Codes, clarifies what is expected in respect of risk management where cyber security is concerned.
- 2.8.6 Should a Fund determine that it is satisfied a service provider adequately fulfils the Funds obligations and this is in accordance with the Outsourcing Policy then the fund would need to adequately document this element of its risk management systems and ensure that it will be tested at appropriate intervals.
- 2.8.7 The proposed amendments to the Certified Funds Code will be introduced in the form consulted on and can be found at Appendix D, or with the changes highlighted, at Appendix M.
- 2.8.8 Registered persons may note that the text “Last updated” has been replaced with “Last revised” throughout the code in the footer sections. This is to bring consistency with other Codes when the Codes of practice are published, but has no effect on the content of the Code.

2.9 Question 8: Do you have any observations on, or concerns about, any of the proposed amendments to the FSB Code?

- 2.9.1 Excepting references to the generic amendments (Questions 1 – 4), no further observations or concerns were raised.

JFSC response

- 2.9.2 The proposed amendments to the FSB Code will be introduced in the form consulted on and can be found at Appendix E, or with the changes highlighted, at Appendix N.

2.10 Question 9: Do you have any observations on, or concerns about, any of the proposed amendments to the GIMB Code?

- 2.10.1 Excepting references to the generic amendments (Questions 1 – 4), no further observations or concerns were raised.

JFSC response

- 2.10.2 The proposed amendments to the GIMB Code will be introduced in the form consulted on and can be found at Appendix F, or with the changes highlighted, at Appendix O.

2.11 Question 10: Do you have any observations on, or concerns about, any of the proposed amendments to the IB Code?

- 2.11.1 Excepting references to the generic amendments (Questions 1 – 4), no further observations or concerns were raised.

JFSC response

- 2.11.2 The proposed amendments to the IB Code will be introduced in the form consulted on and can be found at Appendix G, or with the changes highlighted, at Appendix P.
- 2.11.3 It should be noted that the feedback to Consultation Paper No. 4 2018 was released in December 2018 which was during the consultation period for this CP. As such the version of the IB Code in the form introduced (Appendix G) contains the changes pursuant to Consultation Paper No. 4 2018 as well as those relating to the CP. The version with changes highlighted (Appendix P) illustrates both sets of changes from the two consultations.

2.12 Question 11: Do you have any observations on, or concerns about, any of the proposed amendments to the Insurance Code?

- 2.12.1 Excepting references to the generic amendments (Questions 1 – 4), no further observations or concerns were raised.

JFSC response

- 2.12.2 The proposed amendments to the Insurance Code will be introduced in the form consulted on and can be found at Appendix H, or with the changes highlighted, at Appendix Q.

2.13 Question 12: Do you have any observations on, or concerns about, any of the proposed amendments to the MSB Code?

- 2.13.1 Excepting references to the generic amendments (Questions 1 – 4), no further observations or concerns were raised.

JFSC response

- 2.13.2 The proposed amendments to the MSB Code will be introduced in the form consulted on and can be found at Appendix I, or with the changes highlighted, at Appendix R.

2.14 Question 13: Do you have any observations on, or concerns about, any of the proposed amendments to the TCB Code?

- 2.14.1 One respondent noted that paragraph 5.2.13 within the proposed TCB Code makes reference to a registered person who, “may be subject to an Eligible complaint as defined at the Article 7 of the Financial Ombudsman (Jersey) Law 2014”. The respondent sought clarity regarding the inclusion of this paragraph on the basis that tcbs, generally, would not fall under the ambit of the Channel Islands Financial Ombudsman.
- 2.14.2 Excepting references to the generic amendments (Questions 1 – 4), no further observations or concerns were raised.

JFSC response

- 2.14.3 While it is not prevalent in the TCB sector, certain tcbs undertake activities that may be within the ambit of the Financial Services Ombudsman (Jersey) Law 2014 (**CIFO Law**). An example would be where a TCB undertakes relevant pension business as defined at Schedule 3 to the CIFO Law. The inclusion of 5.2.13 is therefore intended to ensure that such tcbs give appropriate consideration to their PII cover.
- 2.14.4 The proposed amendments to the TCB Code will be introduced in the form consulted on and can be found at Appendix J, or with the changes highlighted, at Appendix S.

2.15 Question 14: Do you consider a lead-in period of two months to be adequate?

- 2.15.1 Three respondents considered two months to be adequate. One respondent suggested a “slightly longer period”, one respondent suggested a three month lead-in and one respondent requested a six month lead-in period.

JFSC response

- 2.15.2 The amended Codes will come into force with effect from 1 June 2019.

3 Alignment of the Codes

3.1 Question 15: Do you have any observations on, or concerns about the considerations regarding alignment of the Codes raised in Chapter 5 of this consultation paper?

- 3.1.1 Several respondents provided feedback regarding alignment of the Codes and the overall feedback was positive, albeit cautious, in this regard.

JFSC response

- 3.1.2 As stated in the CP, as respondents have expressed an appetite to align the Codes, this feedback will be provided in a separate feedback paper detailing the intended programme of revisions to achieve alignment of the Codes.

Appendix A: List of respondents to Consultation Paper No. 10 2018:

- › Butterfield Bank (Jersey) Limited
- › Cyan Regulatory Services Limited
- › European Insurance Brokers Limited
- › Four anonymous FSB/tcbs
- › HSBC Bank plc – Jersey Branch
- › Jersey Funds Association
- › Lloyds Bank International Limited
- › One anonymous bank
- › One anonymous TCB
- › Ravenscroft
- › Rossborough
- › State Street Bank and Trust Company
- › SWM Synergy
- › Two anonymous consultant/law firms
- › Two anonymous fsbs
- › Two anonymous trade associations

Appendices B to J – Codes to be implemented

- Appendix B – Code of Practice for Alternative Investment Funds and AIF Services Business
- Appendix C – Code of Practice for Deposit-taking Business
- Appendix D – Code of Practice for Certified Funds
- 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 Investment Business
- Appendix H – Code of Practice for Insurance Business
- Appendix I – Code of Practice for Money Service Business
- Appendix J – Code of Practice for Trust Company Business

Appendices K-S: Codes with visible changes

- Appendix K – Code of Practice for Alternative Investment Funds and AIF Services Business
- Appendix L – Code of Practice for Deposit-taking Business
- Appendix M – Code of Practice for Certified Funds
- Appendix N – Code of Practice for Fund Services Business
- Appendix O – Code of Practice for General Insurance Mediation Business
- Appendix P – Code of Practice for Investment Business
- Appendix Q – Code of Practice for Insurance Business
- Appendix R – Code of Practice for Money Service Business
- Appendix S – Code of Practice for Trust Company Business