

UPDATE

## Updates to Codes of Practice

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Businesses regulated under the Financial Services (Jersey) Law 1998 (**Registered Persons**) are reminded of the latest updates to the Jersey Financial Services Commission's various Codes of Practice, which came into effect on 21 March 2018.

The revised Codes, issued following a consultation process in the second half of 2017, include amendments addressing concerns identified by the Commission in the course of its supervisory role, and certain clarifying changes, as well as updates to ensure that the Codes reflect the latest international standards.

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The majority of the amendments are made across all the Codes for the different industry sectors:

- **Regular corporate governance review:** compliance with section 3 of the Codes now requires a *regular review of all aspects of a Registered Person's corporate governance arrangements*, to ensure their continuing adequacy in light of the Registered Person's business activities and risk profile(s), and including a *periodic self-assessment* or *external assessment* of the board's effectiveness. The Commission has indicated that the frequency of review should depend on the complexity of that business and that it may require a Registered Person to provide the rationale for this determination.
- **Qualified audit notification:** a Registered Person is required to notify the Commission under section 6 of the Codes upon becoming aware that its auditor intends to *qualify its audit report* or *raise an emphasis of a matter* stated in the Registered Person's accounts. This is in addition to the filing of the accounts themselves.
- **Records to be kept up-to-date:** the Codes now state, for the avoidance of doubt, that the records of a Registered Person should be kept *up-to-date* (as well as being 'adequate' and 'orderly').
- **'Complaint' now defined:** to avoid uncertainty as to what constitutes a 'complaint' under section 3 of the Codes, the following definition has been added:

'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 fund services business carried on by the registered person, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.'
- **Scope of risk management:** a Registered Person's risk management systems maintained under principle 3 of the Codes should address *all risks* facing the Registered Person as a business, not just those relating to money laundering or terrorist financing.
- **Provision of fees data:** a Registered Person's obligations under principle 6 of the Codes to deal with the Commission in an open and co-operative manner include providing data required in connection with the calculation of fees – and paying the fees – on a timely basis (ie. within timescales as specified).
- **Prior approval of cessation of business plan:** before implementing a cessation of business plan, a Registered Person must obtain the Commission's *written confirmation that it has no objection* to it.

- **Use of online portal:** where specified in a Code or otherwise by the Commission, a Registered Person should submit information to the Commission by way of its online portal. In the event of any systems failure preventing this, the Commission should be notified accordingly.

In addition, certain changes have been made to individual Codes including, in relation to Fund Services Business and Trust Company Business (no further changes have been made to the AIF Code):

#### FSB Code

- **Closed ended depositary/custodian regulatory capital:** depositaries and custodians to closed-ended funds must maintain a minimum net assets position and paid up share capital/non-distributable reserves of £250,000 (in line with the requirement for the trustee of a closed-ended fund).
- **Ceasing to act for a non-Jersey domiciled fund:** an FSB is now required to *notify the Commission in writing* within ten business days of ceasing to act for a non-Jersey domiciled fund.

#### TCB Code

- **Documenting the rationale for services:** TCBs are now required to *understand and document the rationale* for forming a company, partnership or foundation or establishing a trust and, in addition to the existing requirement to understand the rationale for service when providing a registered or business office, accommodation, administrative or correspondence address, to document this rationale.
- **Reconciliation of customer assets:** the TCB Code now requires businesses to maintain documented systems, controls and procedures for the reconciliation of movements in *all customer assets*, not just customer money (a requirement under the Financial Services (Trust Company Business (Assets – Customer Money) (Jersey) Order 2000). For these purposes, a 'movement' is a transaction (for instance, a sale, purchase or other transfer to another person) rather than a change in value.
- **Disclosure of terms of business:** a TCB should *disclose its terms and conditions* to each person to whom it provides the relevant services. Paragraph 4.5 of the TCB Code specifies how these should be presented (including, among other things, that they should be presented in plain language, using technical or legal terms only where necessary, distinguishable from marketing or promotional material and include all appropriate information relevant to the service to be provided).
- **Notification timescale and awareness:** section 6 of the TCB Code has been updated in line with the other Codes to state that a TCB 'becomes aware' of a matter requiring notification under this section at the point at which it knows, or has reasonable grounds for believing, that the matter has occurred or may be about to occur (even if outside the TCB's control).

## Contacts

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