Consultation Paper Feedback

Proposed Amended Outsourcing Policy
No. 6 2016

Feedback to a consultation on the Proposed Amended Outsourcing Policy

Issued: 1 March 2017
Consultation Feedback

This paper reports on responses received by the JFSC on Consultation Paper No. 6 2016 – Proposed Amended Outsourcing Policy.

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Glossary of Terms

2011 Policy means the JFSC’s Policy Statement and Guidance Notes on: (1) Outsourcing; And (2) Delegation by Jersey Certified Funds and Fund Services Businesses published by the JFSC in May 2011.

Amended Outsourcing Policy/ this Policy/ the Policy means the proposed amended outsourcing policy and guidance notes attached at Appendix B of this consultation paper

AML/ CFT means anti-money laundering and countering the financing of terrorism

AML/ CFT Handbook means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Business (as may be amended by the JFSC, from time to time)

Banking Code means the Code of Practice for Deposit-taking Business

Banking Law means the Banking Business (Jersey) Law, 1991

Certified Fund means a fund issued with a certificate pursuant to the Collective Investment Funds (Jersey) Law 1988

Certified Funds Code means the Code of Practice for Certified Funds

Client means a customer, investor or other Person in respect of whom a Registered Person is Licensed to provide products or services

COBO Conditions means any conditions imposed by the JFSC pursuant to its granting of a COBO Consent

COBO Consent means a consent issued by the JFSC pursuant to the Control of Borrowing (Jersey) Order, 1958

Means, collectively, the
  › Banking Code;
  › Certified Funds Code;
  › FSB Code;
  › GIMB Code;
  › IB Code;
  › Insurance Code;
  › MSB Code;
  › TCB Code

Collective Investment Funds Law means the Collective Investment Funds (Jersey) Law, 1988

Commission Law means the Financial Services Commission (Jersey) Law 1998

Companies Law means the Companies (Jersey) Law, 1991

EU means European Union

FAQs means frequently asked questions

1 http://www.jerseyfsc.org/anti-money_laundering/Regulated_financial_services_businesses/aml_cft_handbook.asp

2 Codes of Practice may be prepared and issued; or revised by the Commission pursuant to, the Regulatory Laws, and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law, 2008 (in respect of AML/ CFT requirements).
Fit and Proper means that a Person would meet the standards required to be fit and proper to be Licensed or, continue to be Licensed (as applicable) pursuant to the requirements of the relevant Regulatory Law.

FSB Code means the Code of Practice for Fund Services Business

FSC Amendment Law means the Financial Services Commission (Amendment No. 6) (Jersey) Law 2015.

FSJL means the Financial Services (Jersey) Law, 1998

Fund Services Business means the Regulated Activity, involving the provision of services in relation to certain types of funds, which is described in Article 2(10) of the FSJL

GIMB Code means the Code of Practice for General Insurance Mediation Business

Governance Body means the body within a Registered Person that is considered to exercise ultimate control over it. Generally, this will be (i) the directors of a company; protected cell company or the relevant cells of an incorporated cell company; (ii) the trustee of a unit trust; (iii) the general partner of a limited partnership; separate limited partnership or incorporated limited partnership; or the partners of a limited liability partnership. In the case of a sole trader, the Governing Body will be the sole trader

Group means a body corporate that would be defined as a “subsidiary”, “wholly-owned subsidiary” or “holding body” of another body corporate, under the Companies Law irrespective of the jurisdiction of the company

IB Code means the Code of Practice for Investment Business

Insurance Code means the Code of Practice for Insurance Business

Insurance Law means the Insurance Business (Jersey) Law, 1996

Jersey Finance means Jersey Finance Limited

JFSC means the Jersey Financial Services Commission

Licence means the authorisation by the JFSC to conduct Regulated Activity

Managed Entity means, in the context of MoME Arrangements, an entity that is managed by a MoME

MoME means, in the context of MoME Arrangements, a manager of a Managed Entity

MoME Arrangements means arrangements described in the MoMe Guidance Note and pursuant to which a MoME falls within class ZK of Fund Services Business by providing certain services to a Managed Entity

MoMe Guidance Note means the guidance issued by the JFSC and contained in the document entitled: Guidance Note For a Manager of a Managed Entity (a MoME) and Certain Managed Entities (as may be amended by the JFSC, from time to time)

3 See for example Article 9 of the FSJL. Note also that the JFSC provides guidance as to, amongst other things, the criteria upon which it bases decisions as to whether such requirements are satisfied in the relevant Licensing Policy, http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp

4 Such authorisation being: (i) registration under the Banking Law; (ii) grant of a permit or certificate under the Collective Investment Funds Law; (iii) registration under the FSJL or (iv) grant of a permit under the Insurance Law

5 http://www.jerseyfsc.org/the_commission/general_information/policy_statements_and_guidance_notes/index.asp
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Money Laundering Order</td>
<td>means the Money Laundering (Jersey) Order, 2008</td>
</tr>
<tr>
<td>Money Laundering Order</td>
<td>means the Code of Practice for Money Service Business</td>
</tr>
<tr>
<td>OCIF Guide</td>
<td>means the guide which is Schedule 4 to the Banking Law Code called the Guide to Jersey Open-Ended Unclassified Collective Investment Funds Offered to the General Public (as amended by the JFSC, from time to time)</td>
</tr>
<tr>
<td>Offer Document</td>
<td>means a prospectus or other offering document inviting a Person to become an investor of a fund</td>
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<tr>
<td>Outsourcing</td>
<td>Outsourcing means an arrangement of any form between a Registered Person and a Service Provider by which the Service Provider performs any activity, that would otherwise be undertaken by the Registered Person, where a Service Provider’s failure to perform or inadequate performance of such activity would materially impair the continuing compliance of the Registered Person’s regulated activity, with the requirements of the Regulatory Laws.</td>
</tr>
<tr>
<td>Outsourcing Notification</td>
<td>means a notification as detailed in paragraph 4.6.4 of the Amended Outsourcing Policy</td>
</tr>
<tr>
<td>Person</td>
<td>means any natural or legal person (including a body of persons corporate or unincorporated)</td>
</tr>
<tr>
<td>Registered Person</td>
<td>means a Person that is Licensed or holds a permit or certificate, as applicable, under one or more of the Regulatory Laws</td>
</tr>
<tr>
<td>Regulated Activity</td>
<td>means activity conducted pursuant to the Regulatory Laws, in respect of which a Person is Licensed</td>
</tr>
<tr>
<td>Regulatory Laws</td>
<td>means the Banking Law, the Collective Investment Funds Law, the FSJL, and the Insurance Law</td>
</tr>
<tr>
<td>Service Provider</td>
<td>means a Person to whom a Registered Person Outsources activities</td>
</tr>
<tr>
<td>Sub-contractor</td>
<td>means a Person to whom a Service Provider transfers the carrying out of any Outsourced activity to the Service Provider</td>
</tr>
<tr>
<td>Sub-Outsourcing</td>
<td>means an arrangement of any form between a Service Provider and Sub-contractor pursuant to which the Sub-contractor performs any Outsourced activity that would otherwise be undertaken by the Service Provider</td>
</tr>
<tr>
<td>TCB Code</td>
<td>means the Code of Practice for Trust Company Business</td>
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Executive Summary

1. Overview

1.1 In July 2016 the JFSC issued Consultation Paper No. 6 2016. The purpose of the Consultation Paper was to seek views on proposals to amend the JFSC's Policy Statement and Guidance Notes on: (1) Outsourcing; And (2) Delegation by Jersey Certified Funds and Fund Services Businesses published by the JFSC in May 2011 (the 2011 Policy).

1.2 The purpose of this paper is to provide feedback on the responses received regarding the Consultation Paper.

2. Feedback received

2.1. The consultation period closed on 30 September 2016. Respondents provided comments either directly to the JFSC or indirectly to Jersey Finance. The JFSC received 5 responses directly. Jersey Finance provided the JFSC with comments it had received from 13 respondents: 5 Banks, 4 administrators, 2 law firms (JFSC also received both these responses), a consultant and a group of compliance officers. A full list of respondents appears at Appendix A.

2.2. This Feedback Paper presents a summary of the substantive comments received and the JFSC's responses.

2.3. The JFSC is grateful to respondents for taking the time to consider and comment on the proposals. The final Amended Outsourcing Policy can be found in Appendix B.

3. Next steps

3.1. The Amended Outsourcing Policy (in the form consulted on, save for the changes described later in this paper) will be published in Quarter 1 2017 and will come into force in accordance with the Effective Dates set out in the Policy.
Summary of Responses

1. Structure of this section

1.1. This section summarises the responses to the Consultation Paper. While not every comment received is individually listed, this section contains summaries of the most substantive and pertinent comments in relation to the questions posed and, as appropriate, the JFSC’s responses to those comments.

1.2. There were a number of common themes that appeared in responses. Where comments made relate to an answer to more than one question or were felt to be more appropriately dealt with in another response they have been consolidated accordingly.

2. Responses to Questions

<table>
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<tr>
<th>Question 1</th>
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<tbody>
<tr>
<td>Para 4.1.5 of the CP</td>
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</table>

The majority of respondents did not object to the lead in period of two months. Some respondents viewed two months as sufficient to update internal controls and consider the new policy and amend arrangements while others did not. Reasons given for needing a longer lead in period were: that there was not enough time to review policies and procedures, particularly where the entity was part of a larger group; the entity only holds quarterly board meetings and agreements particularly in relation to non-regulated activities would need to be renegotiated.

Three respondents suggested that a lead in period of 6 months would be preferable. One observation was that there was no specific deadline for the implementation of this Policy. Another respondent observed that 12 months had been allowed for the implementation of the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012 (the CFPO). In addition clarification was requested on how the Policy applies to existing arrangements and for more detail surrounding the JFSC’s expectations.

JFSC Response

Effective Dates and Transitional Provisions

A final deadline by which all Registered Persons are expected to have arrangements compliant with the Policy has now been included. The rationale behind this being that all Outsourcing arrangements as defined in the Amended Outsourcing Policy (regulated and non regulated) need to be subject to the Policy.

The Effective Date is 3 months from the date of publication for new Outsourcing arrangements. For existing arrangements Registered Persons may adopt this Policy 3 months from the date of publication of this Policy but must comply with this Policy 15 months from the date of its publication (the “OSP Deadline”). For the avoidance of doubt existing arrangements means Outsourcing arrangements that were either previously subject to the 2011 Policy or are now caught by this...
Policy when previously they may not have been. This longer lead in time takes into consideration the annual review process referred to in the 2011 Policy.

Question 2

Para 4.2.8 of the CP

Question: Do you have any observations or concerns on the scope of the Amended Outsourcing Policy? If you do, please state in detail what your observation or concern is and explain the reason for it.

The majority of Respondents raised no objections. Views provided seem to be at both ends of the spectrum, for example the scope of the Policy is too wide now that non regulated activities are caught as opposed to the Policy is not wide enough to capture services provided for the fund but not contracted by the fund directly i.e. via another fund service provider. There were requests that further activities be carved out from the scope including Sub-Outsourcing. It was also commented that the Policy does not include Alternative Investment Funds or AIF Services Business.

A few of the respondents raised concerns that the Policy is onerous and non-competitive with other jurisdictions. One respondent felt that the expectation that Outsourced regulated services should be undertaken by regulated service providers was unrealistic where service providers are not regulated for this activity in their home jurisdiction. Another respondent commented in relation to Certified Funds that the CFPO already provides for adequate disclosure. The legislative basis and the structure of the Policy was also challenged.

JFSC Response

The change to the scope of the activity of the Policy was intended to ensure oversight extends to all activities that could cause a Registered Person to breach their legal and regulatory obligations (such as a codes breach). As one respondent observed this is a more holistic approach that considers the global risk. The GFSC, IOM FSA and UK FCA all include similar provisions regarding Outsourcing which would include non regulated activity which impacts on the provision of the regulated function and services.

Outsourcing by a fund or Service Provider providing services in relation to a fund will be outside of the scope, subject to adherence with paragraph 3.2.2.5 (i.e. clear disclosure), of the Policy. For example if the fund manager outsources to a sub investment manager then this will need to clearly be disclosed including the parties to the arrangement. The Policy has been amended to make this clear.

The Policy cannot be applied on a tick box basis. What is material will depend on the respective circumstances of each Registered Person and its activity. The definition of Outsourcing has been amended to provide further clarity and amalgamate the “Outsourcing” and “Material” definitions. Please see the new appendix 1 to the Policy which provides guidance on how the JFSC would anticipate a Registered Person considers whether activity/activities need to be compliant with the Policy.

The Codes of Practice for Alternative Investment Funds and AIF Services Business (the “AIF Codes”) and AIF Regulations (Jersey) 2012 are not included in the definitions of “Codes” or “Regulatory Laws” in the Policy because specific provisions apply to delegation by an AIF Manager. See Paragraph 14 of the AIF Codes. The AIF Codes are referred to in the Policy as imposing additional requirements in paragraph 5.3.2.
In relation to Certified Funds the CFPO does provide for disclosure of delegation arrangements in fund prospectuses and paragraph 3.2.2.5 of the Policy repeats this.

The 2011 Policy states “The Commission will normally require an Outsourced activity to be Outsourced to a service provider which is itself regulated in its jurisdiction of domicile for that activity”. The Amended Outsourcing Policy changes “will normally require” to “expects”. There is no significant change in this requirement. Under the 2011 Policy Registered Persons already deal with scenarios where the delegate is not regulated in its home jurisdiction.

The use of the term “Letterbox” is intended to demonstrate, to international standard setting bodies, that the Island does not wish to be used for such business. We consider this term reflects language used more currently by bodies such as within the EU but view inserting a definition would introduce unnecessary complications.

The Structure of the Policy has been amended to take into consideration comments received. For clarification purposes the Legislative basis of the Policy is:

i. the JFSC has the power under the Commission Law to make policy;

ii. The JFSC has the power under each of the Regulatory Laws to prepare and issue codes of practice; and

iii. The Codes require compliance with the Policy.

Exemptions/Carve Outs
The only additional “carve outs” that will be included are:

In relation to Trust Company Business activity to reflect the current practice within the JFSC, which under the 2011 Policy is applied to Trust Company Business (TCB) globally but not to each individual trust (unless it is a Certified Fund).

Terminology in relation to “advisory services” has been further expanded to provide clarification particularly in relation to investment advisory services. See paragraph 3.2.2.1, bullet 2 of the Policy.

A provision is included which permits an application for a variance to be made to the JFSC where anomalous results would occur where the Policy is applied.

Sub-Outsourcing
Save as provided in the paragraph below, the JFSC comments that as a matter of good practice every regulated service provider should know if an activity (regulated or not) that they are Outsourcing is being sub-outsourced. The JFSC expects as a part of good corporate governance that provisions regarding Sub-Outsourcing should already be included in agreements.

Requirements regarding the Registered Person to be aware of Sub-Outsourcing were already included in Part III, paragraph 2.3 of the 2011 Policy. In light of the comments regarding a Registered Person being unaware that Sub-Outsourcing may be taking place the wording in Part III, paragraph 2.3 of the 2011 Policy has been re-inserted by way of further guidance on Core Principle 2 (paragraph 4.3.3).

The Outsourcing Notification includes a requirement to confirm whether Sub-Outsourcing is permitted and provide relevant details of the Sub-Outsourcing.

An exemption is provided for where a fund custodian (including a prime broker) is a member of an international corporate group, and the sub custodians engaged by the custodian are also
members of the same group. This is on the same basis as the JFSC’s guidance on the CFPO (letter 31 May 2012). References in the Offer Document should be made to the outsourced custodian and its use of members of the same corporate group to act as sub-custodians rather than describing each sub-custodian separately.

### Question 3

Para 4.3.4 of the CP

<table>
<thead>
<tr>
<th>Question: Do you have any observations or concerns on the removal of the distinction between delegation and Outsourcing as set out in the Amended Outsourcing Policy? If you do, please state in detail what your observation or concern is and explain the reason for it.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The removal of the distinction was welcomed. Out of 16 Respondents only 2 raised objections and these objections were not based on the removal of the distinction but on other proposals in this Policy and are considered elsewhere.</td>
</tr>
<tr>
<td>A view was expressed that the Policy will result in a Registered Person taking previously outsourced functions in house. It was also suggested that there should be separate policies for trust company business and funds (including fund services business and collective investment funds).</td>
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</table>

**JFSC Response**

The JFSC does not expect in practice that functions that are not currently provided in house will need to be in response to the Policy.

*The Policy* has wider scope than just TCB and Fund Services Business/ Funds. *The Policy* also applies to Insurance, Banking and other types of business under the FSJL and it is not efficient or consistent to have a different policy for different sectors. Moreover JFSC supervision is now entity rather than sector based.

### Question 4

Para 4.4.5 of the CP

<table>
<thead>
<tr>
<th>Question: Do you have any observations or concerns on the definitions of “Outsourcing” and “Material Activity” as set out in the Amended Outsourcing Policy? If you do, please state in detail what your observation or concern is and explain the reason for it.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The majority of respondents did not raise any observations or concerns.</td>
</tr>
<tr>
<td>Of those respondents who did comment the main views related to how the Registered Persons and the JFSC would assess what amounts to Material Activity.</td>
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</table>

**JFSC Response**

It will be for the Registered Person to undertake an analysis of the regulated or non regulated activity outsourced and document why such activity is considered to be “Material” (i.e. impairs the performance of Regulated Activity) or not.

The JFSC has amended the Outsourcing definition and added further wording in the scope section of the Policy which is consistent with the requirements of IOSCO and other regulators which will assist Registered Persons and the JFSC in their determination as to what is material.

A flow chart is now also included at Appendix 1 of the Policy to assist Registered Persons to assess the applicability of the Policy.
## Question 5

### Para 4.5.14 of the CP

**Question:** Noting paragraph 4.4 and the meaning of Material Activity do you have any observations or concerns on the wording of the New Core Principles in the Amended Outsourcing Policy? If you do, please indicate the number of the Core Principle you are commenting on and state in detail what your observation or concern is and explain the reason for it.

The majority of Respondents expressed no concerns about the wording of the New Core Principles.

Some comments raised related to the logistics of implementing the Policy. Such as the need for the Registered Person to have its own policy on how it manages outsourced activity including documenting and testing contingency plans. Concern was raised about the need to negotiate further warranties/indemnities with Service Providers. There were also questions about:

I. What is the application process where material changes are made to existing arrangements?
II. What level of due diligence is required?
III. What is required regarding the JFSC’s right of access to premises and records of Jersey and overseas service providers?
IV. How can Registered Persons determine what are concentration risks?

Also questioned was the role of the JFSC in the termination process and whether the JFSC has the resources to deal with additional Outsourcing Notifications?

### JFSC Response

The consultation was in relation to an amendment of an 2011 Policy and it was therefore surprising that a number of matters raised related to the existing requirements rather than the proposed amendments. Outsourcing poses risks which the JFSC expects to be appropriately managed. As a matter of good practice as part of corporate governance the JFSC expects that the Registered Person would (and this list is not exhaustive) in relation to any existing Outsourcing arrangement (including contingency plans):

i. Ensure policies and procedures exist regarding the Outsourcing arrangements;
ii. Obtain sufficient information and due diligence on the proposed delegate, for example it may be necessary to visit the proposed Service Provider as part of this process;
iii. Consider the scope and extent of the services to be outsourced, the terms of the Outsourcing agreement (which under the 2011 Policy may have entailed the inclusion of warranties and indemnities) and what will happen on termination, for example issues have arisen regarding the ownership of CDD documentation; and
iv. Conduct a risk assessment in relation to the proposed Outsourcing arrangement which will determine how the risks should be managed including for example an assessment of the frequency of monitoring of the arrangements; Etc....

As part of contingency plans the practicalities of trying to test the transfer of activities from one Service Provider to another need to be considered. If the logistics of testing are difficult this may indicate that the contingency plan is not achievable.

Concentration risk is a factor which may become apparent from the Registered Person’s due diligence on the Service Provider. The Registered Person would need to consider whether the Service Provider has sufficient resources to perform its role.
A “no objection” is required from the JFSC upon entering into new Outsourcing arrangements, materially changing existing Outsourcing arrangements or replacing existing arrangements.

Reference to the contingency arrangements being invoked in exceptional circumstances is now included in paragraph 4.5.1. The notification requirement existed as part of the 2011 Policy. While this Policy may have wider scope due to the inclusion of non regulated activity that would materially impair Regulated Activity, it also provides a carve out for funds and fund service providers and reflects current practices of Trust Company Businesses. The JFSC does not believe that its resources will be insufficient to process these notifications but will keep this under review.

The JFSC has prepared a notification form, as attached at appendix D, to be used in relation to material changes to existing arrangements and new arrangements. As per a comment received the JFSC has now included a requirement for the Registered Person to disclose what if any relationship it has with the Service Provider, i.e. group company etc....

Core Principle 6 does not materially differ to the existing Core Principle 6. Outsourcing Arrangements should ensure that the JFSC has a right of access where necessary and such rights will need to endure post termination. How long this right of access needs to endure will depend on the circumstances of the case and the provisions made for the retention or return of records and access to premises post termination. Outsourcing to an overseas Person should factor in any additional risks posed by the fact the delegate is not resident in Jersey. While the JFSC normally expects a right of access at the premises as a term of the Outsourcing agreement, arrangements should be in place to provide sufficient information and documentation in Jersey for the JFSC to exercise its statutory function.

**Question 6**

Para 4.6.4 of the CP

| Question: Do you have any observations or concerns on the proposed FAQs as set out in the Amended Outsourcing Policy? If you do, please indicate the number of the FAQ you are commenting on and state in detail what your observation or concern is and explain the reason for it. |

The Majority of the respondents raised no concerns. Some respondents welcomed the inclusion of FAQs, stating that they were both helpful and informative.

There were some concerns raised regarding:

i. clarification of the regulatory status of the FAQs; and

ii. requesting further FAQs particularly in respect of what is not covered within the scope of the Policy.

**JFSC Response**

The FAQs remain as guidance. The FAQs which related to the scope of the Policy have now been included in the restructured “policy” section of the document. The JFSC has now included in the “policy” section the definition, scope and core principles.

See paragraph 3.2 regarding the scope of the Policy.
Question 7

| Para 4.7.5 of the CP | Question: Do you have any observations or concerns on the approach to Intra-Group Outsourcing as set out in the Amended Outsourcing Policy? If you do, please state in detail what your observation or concern is and explain the reason for it. |

All the banks that provided responses to this question had no concerns. One bank did seek guidance on functional groups such as global on boarding and product development teams.

Of all the respondents only one raised concerns but this appeared to reflect the desire to extend the carve out for arrangements between different elements of one legal person to intra-group Outsourcing.

**JFSC Response**

Intra Group Outsourcing is not the same as arrangements between different elements of one legal entity i.e. i) head office and branch; ii) branch and branch, in both cases all elements are of the same legal person. The difference in simple terms is whether the arrangements are between two legal persons or internal arrangements of one legal person.

References to “parent” in the context of branches have been removed to avoid confusion between intra Group Outsourcing.

Group entities need to ensure a proper framework is in place surrounding Outsourcing.

The obligations imposed in paragraph 7.2.3.3 of the Policy are not isolated to the Policy, they are basic principles of corporate governance pursuant to Principle 3 of the Codes which all Registered Persons have to comply with. Although the Policy may not apply to those Registered Persons operating in Jersey as part of a branch (where elements of a legal person rely on each other) that does not mean there are no other requirements that the Registered Person needs to comply with, see FAQ 5.3.

Question 8

| Para 4.8.3 of the CP | Question: Do you have any observations or concerns on the Outsourcing Notification information requirements, timeframe and the confirmation that a Registered Person cannot proceed until a “no objection” is received in writing from the JFSC as set out in the Amended Outsourcing Policy? If you do, please state in detail what your observation or concern is and explain the reason for it. |

The majority of respondents raised no concerns. Of the comments received views were split between those in favour and those against the formal process and proposed timeframes. A couple of Respondents raised concerns about the cost of compliance with the Policy.

**JFSC Response**

The 2011 Policy requires “a Registered Person to inform the JFSC in writing of its intention to outsource...”no time frame is given for the JFSC to consider the proposal and raise concerns, save that the JFSC will endeavour to raise concerns within 10 working days in respect of fund services businesses. The prior notification requirement is not new.

As no response was prescribed under the 2011 Policy members of the JFSC’s supervision teams often received requests for confirmation that the JFSC had finalised its review and would not be
raising any concerns. The inevitable concern was created that the Registered Person would enter into an arrangement that the JFSC would later object to.

To avoid such uncertainty, the JFSC’s Executive has determined that a formal “no objection” is required. The timeframe and the “no objection” notification provide clarity and consistency across all the divisions of the JFSC in relation to which this Policy applies. Twenty working days was decided upon as the appropriate timeframe after discussion with all the divisions, most of which had not been subject to published timeframes.

The timeframe for funds and fund services business (where the Outsourcing arrangements are not exempt) will continue to be in line with 10 working days as per Part III, paragraph 5.7 of the 2011 Policy. In relation to Outsourcing arrangements that are proposed as part of a fund’s authorisation application these will continue to be dealt with in accordance with the existing published funds authorisation application timeframes. The current timeframe for all other Registered Persons will be 20 working days. This is subject to review, with the aim being to reduce the timeframe for all Registered Persons to 10 working days.

Previously, notifications have been made with excessive amounts of documentation or insufficient information. Providing detail as to what is needed to consider the notification and a standard notification form should streamline and make the process more efficient and cost effective. This should be of benefit to both Registered Persons and the JFSC.

The information requested has been collated after discussions with JFSC supervision colleagues to try and reduce the necessity of reverting to the Registered Person with additional requests for information. The JFSC’s expectation is that this level of information and analysis should already have been undertaken by the Registered Person in relation to proposed Outsourcing arrangements under the 2011 Policy. Therefore by requesting this information from Registered Persons it avoids a duplication of effort by both the Registered Person and the JFSC. If the Registered Person has properly considered the proposed Outsourcing arrangement and provided the information within the Outsourcing Notification form this should mean that the timeframes are achievable.

The notification should be made as soon as the Registered Person is able to complete the Outsourcing Notification form and there is an intention to finalise the arrangement. If the Outsourcing arrangement is unusual or the extent of the Outsourcing of functions is wide-ranging the JFSC would suggest that the Registered Person speaks to its Supervision Manager at an early stage.

3. Relocation of Funds Corporate Governance Guidance

3.2. During the review of the 2011 Policy it was identified that the guidance in Part VI of the 2011 Policy needed to be relocated. This was because Outsourcing that meets certain requirements such as being disclosed in the Fund prospectus is not within the scope of the Amended Outsourcing Policy.

3.3. The guidance in Part VI of the 2011 Policy related to good corporate governance practices for funds and Fund Service Businesses and therefore it is now included in two General Fund FAQs at Appendix C of this paper. The intention is to publish both of these FAQs on the JFSC website at the same time the Amended Outsourcing Policy is published, these FAQs however, will not be part of the Policy.
Appendix A

List of Respondents

A total of 16 responses were received of which five responses were direct to the JFSC

› Barclays
› HSBC Bank International Limited
› Ogier
› Mourant Ozannes
› Bank

11 responses from Jersey Finance

› 5 Banks,
› 4 Fund Administrators,
› 1 Consultant
› 1 Group of Compliance Officers
Appendix B

Outsourcing Policy and Guidance Notes
Appendix C

General Fund FAQs
Appendix D

Outsourcing Notification