



Jersey Financial
Services Commission

Consultation Paper Feedback

Proposed Amended Outsourcing Policy

No. 6 2016

Feedback to a consultation on the Proposed Amended Outsourcing Policy

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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

<i>2011 Policy</i>	means the <i>JFSC's</i> Policy Statement and Guidance Notes on: (1) Outsourcing; And (2) Delegation by Jersey Certified Funds and Fund Services Businesses published by the <i>JFSC</i> in May 2011.
<i>Amended Outsourcing Policy/ this Policy/ the Policy</i>	means the proposed amended outsourcing policy and guidance notes attached at Appendix B of this consultation paper
<i>AML/ CFT</i>	means anti-money laundering and countering the financing of terrorism
<i>AML/ CFT Handbook</i>	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 <i>JFSC</i> , from time to time) ¹
<i>Banking Code</i>	means the <i>Code of Practice</i> for Deposit-taking Business
<i>Banking Law</i>	means the Banking Business (Jersey) Law, 1991
<i>Certified Fund</i>	means a fund issued with a certificate pursuant to the Collective Investment Funds (Jersey) Law 1988
<i>Certified Funds Code</i>	means the <i>Code of Practice for Certified Funds</i>
<i>Client</i>	means a customer, investor or other <i>Person</i> in respect of whom a <i>Registered Person</i> is Licensed to provide products or services
<i>COBO Conditions</i>	means any conditions imposed by the <i>JFSC</i> pursuant to its granting of a <i>COBO Consent</i>
<i>COBO Consent</i>	means a consent issued by the <i>JFSC</i> pursuant to the Control of Borrowing (Jersey) Order, 1958
<i>Codes of Practice (or Codes)</i> ²	means, collectively, the <ul style="list-style-type: none"> › <i>Banking Code</i>; › <i>Certified Funds 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>
<i>Collective Investment Funds Law</i>	means the Collective Investment Funds (Jersey) Law, 1988
<i>Commission Law</i>	means the Financial Services Commission (Jersey) Law 1998
<i>Companies Law</i>	means the Companies (Jersey) Law, 1991
<i>EU</i>	means European Union
<i>FAQs</i>	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).

<i>Fit and Proper</i>	means that a Person would meet the standards required to be <i>fit and proper</i> to be Licensed or, continue to be Licensed (as applicable) pursuant to the requirements of the relevant <i>Regulatory Law</i> ³
<i>FSB Code</i>	means the <i>Code of Practice for Fund Services Business</i>
<i>FSC Amendment Law</i>	means the Financial Services Commission (Amendment No. 6) (Jersey) Law 2015.
<i>FSJL</i>	means the Financial Services (Jersey) Law, 1998
<i>Fund Services Business</i>	means the <i>Regulated Activity</i> , involving the provision of services in relation to certain types of funds, which is described in Article 2(10) of the FSJL
<i>GIMB Code</i>	means the <i>Code of Practice for General Insurance Mediation Business</i>
<i>Governing Body</i>	means the body within a <i>Registered Person</i> 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 <i>Governing Body</i> will be the sole trader
<i>Group</i>	means a body corporate that would be defined as a “subsidiary”, “wholly-owned subsidiary” or “holding body” of another body corporate, under the <i>Companies Law</i> irrespective of the jurisdiction of the company
<i>IB Code</i>	means the <i>Code of Practice for Investment Business</i>
<i>Insurance Code</i>	means the <i>Code of Practice for Insurance Business</i>
<i>Insurance Law</i>	means the Insurance Business (Jersey) Law, 1996
<i>Jersey Finance</i>	means Jersey Finance Limited
<i>JFSC</i>	means the Jersey Financial Services Commission
<i>Licence</i>	means the authorisation by the <i>JFSC</i> to conduct <i>Regulated Activity</i> ⁴
<i>Managed Entity</i>	means, in the context of <i>MoME Arrangements</i> , an entity that is managed by a <i>MoME</i>
<i>MoME</i>	means, in the context of <i>MoME Arrangements</i> , a manager of a <i>Managed Entity</i>
<i>MoME Arrangements</i>	means arrangements described in the <i>MoMe Guidance Note</i> and pursuant to which a <i>MoME</i> falls within class ZK of <i>Fund Services Business</i> by providing certain services to a <i>Managed Entity</i>
<i>MoMe Guidance Note</i>	means the guidance issued by the <i>JFSC</i> and contained in the document entitled: Guidance Note For a Manager of a <i>Managed Entity</i> (a MoME) and Certain Managed Entities (as may be amended by the <i>JFSC</i> , from time to time) ⁵

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

<i>Money Laundering Order</i>	means the Money Laundering (Jersey) Order, 2008
<i>Money Laundering Order</i>	means the <i>Code of Practice</i> for Money Service Business
<i>OCIF Guide</i>	means the guide which is Schedule 4 to the <i>Banking Law</i> Code called the Guide to Jersey Open-Ended Unclassified Collective Investment Funds Offered to the General Public (as amended by the <i>JFSC</i> , from time to time) ⁶
<i>Offer Document</i>	means a prospectus or other offering document inviting a <i>Person</i> to become an investor of a fund
<i>Outsourcing</i>	Outsourcing means an arrangement of any form between a <i>Registered Person</i> and a <i>Service Provider</i> by which the <i>Service Provider</i> performs any activity, that would otherwise be undertaken by the <i>Registered Person</i> , where a <i>Service Provider's</i> failure to perform or inadequate performance of such activity would materially impair the continuing compliance of the <i>Registered Person's</i> regulated activity, with the requirements of the <i>Regulatory Laws</i> .
<i>Outsourcing Notification</i>	means a notification as detailed in paragraph 4.6.4 of the <i>Amended Outsourcing Policy</i>
<i>Person</i>	means any natural or legal person (including a body of persons corporate or unincorporated)
<i>Registered Person</i>	means a <i>Person</i> that is Licensed or holds a permit or certificate, as applicable, under one or more of the <i>Regulatory Laws</i>
Regulated Activity	means activity conducted pursuant to the <i>Regulatory Laws</i> , in respect of which a <i>Person</i> is Licensed
<i>Regulatory Laws</i>	means the <i>Banking Law</i> , the <i>Collective Investment Funds Law</i> , the <i>FSJL</i> , and the <i>Insurance Law</i>
<i>Service Provider</i>	means a <i>Person</i> to whom a <i>Registered Person</i> <i>Outsources</i> activities
<i>Sub-contractor</i>	means a <i>Person</i> to whom a <i>Service Provider</i> transfers the carrying out of any <i>Outsourced</i> activity to the <i>Service Provider</i>
<i>Sub-Outsourcing</i>	means an arrangement of any form between a <i>Service Provider</i> and <i>Sub-contractor</i> pursuant to which the <i>Sub-contractor</i> performs any <i>Outsourced</i> activity that would otherwise be undertaken by the <i>Service Provider</i>
<i>TCB Code</i>	means the <i>Code of Practice</i> for Trust Company Business

⁶ http://www.jerseyfsc.org/the_commission/codes_of_practice/index.asp

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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

Question 1

Para 4.1.5 of the CP	Question: Do you consider a lead-in period of two months to be adequate? If you do not, please explain why and suggest an alternative time period.
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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

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.

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.

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).

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

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.

The majority of respondents did not raise any observations or concerns.

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*.

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 <i>Amended Outsourcing Policy</i> ? 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.
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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 <i>FAQs</i> as set out in the <i>Amended Outsourcing Policy</i> ? If you do, please indicate the number of the <i>FAQ</i> you are commenting on and state in detail what your observation or concern is and explain the reason for it.
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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
- › Maurant 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