Banking Business (Jersey) Law 1991

Code of Practice For Deposit-taking Business
Appointment of Auditors

Issued: X 2021
## Glossary of Terms

Defined terms are indicated throughout this document as per the following table.

If you hold down ‘Ctrl’ and then click on a defined term in the text (Indicated by the use of italics, as per examples in the table), this will bring you to the definition in this table.

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<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>AoA Code</td>
<td>Banking Code: Appointment of auditor – this document</td>
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<tr>
<td>Banking Code: Main Body</td>
<td>The Code of Practice for Deposit-taking Business: Main Body</td>
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<tr>
<td>Banking Code</td>
<td>The Code of Practice for Deposit-taking Business, comprising five parts, being:</td>
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<tr>
<td></td>
<td>› Banking Code: Main Body</td>
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<td>› AoA Code (this document)</td>
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<td>Banking Law</td>
<td>Banking Business (Jersey) Law 1991</td>
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<tr>
<td>Basel Committee</td>
<td>Basel Committee on Banking Supervision</td>
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<tr>
<td>Branch Auditor</td>
<td>Auditor appointed in relation to an OIB’s Jersey business</td>
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<td>Code requirement</td>
<td>Any requirement contained within the Banking Code</td>
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<td>DoC Code</td>
<td>Banking Code: Declaration of Compliance</td>
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<td>FS Code</td>
<td>Banking Code: Financial statements</td>
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<td>JFSC</td>
<td>Jersey Financial Services Commission</td>
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<td>JIB</td>
<td>Jersey Incorporated Bank: a Registered Person incorporated in Jersey</td>
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<td>JIB Auditor</td>
<td>Auditor appointed in relation to a JIB’s business</td>
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<td>BAO</td>
<td>Banking Business (Accounts, Auditors and Reports) Order</td>
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<td>OIB</td>
<td>Overseas Incorporated Bank: a Registered Person incorporated overseas.</td>
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<td>OIB Auditor</td>
<td>Auditor appointed in relation to an OIB’s business</td>
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<tr>
<td>PR Code</td>
<td>Banking Code: Prudential reporting</td>
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<td>Registered Person</td>
<td>A person registered under the Banking Law</td>
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1 Introduction

Arrangement of the AoA Code

1.1 The Jersey Financial Services Commission (JFSC) has issued a code of practice for deposit-taking business in five parts:
   › the main body of the Code of Practice for Deposit-taking Business (Banking Code: Main Body); and
   › Four Code documents addressing specific matters:
     o Banking Code: Appointment of Auditors (AoA Code – this document)
     o Banking Code: Financial statements (FS Code);
     o Banking Code: Prudential reporting (PR Code); and
     o Banking Code: Declaration of Compliance (DoC Code).

1.2 The defined term Banking Code refers to the entirety (all five parts).

1.3 Each Section of the AoA Code is intended to be understood by reference to its full text, including any notes.

1.4 A description is provided herein of relevant statutory requirements, being those established in the Banking Business (Accounts, Auditors and Reports) (Jersey) Order (BAO). Failure to follow a statutory requirement is a criminal offence and may also attract a regulatory sanction. The text included herein paraphrases provisions contained in the BAO and should always be read and understood in conjunction with the full text of the BAO, which is available from the Jersey Law website, at: https://www.jerseylaw.je.

1.5 The Introduction to the Banking Code: Main Body sets out the relevant considerations concerning:
   › ‘Compliance with the Banking Code’, within the section with that title; and
   › ‘Powers exercised and scope’, within the section with that title.

1.6 This document (the AoA Code) sets out Code requirements and provides guidance. Code requirements must be complied with, unless variances or exemptions have been granted by the JFSC.

1.7 Guidance is provided on ways of complying with certain requirements and must always be read in conjunction with these. A Registered Person may adopt other appropriate measures, so long as it can demonstrate that such measures also achieve compliance with the statutory requirements and Code requirements.

1.8 This allows a Registered Person discretion as to how to apply requirements in the particular circumstances of its business. The reasoned and evidenced application of the provisions contained within the guidance will provide a good indication that a Registered Person is in compliance with the statutory requirements and Code requirements.

Revision of this document

1.9 In accordance with Article 19A(1)(b) of the Banking Law, the JFSC may, after consultation with such persons or bodies as appear to be representative of the interests concerned, revise the Banking Code by revoking, varying, amending or adding to provisions.
1.10 In December 2020 the JFSC published Consultation Paper No. 13 2020, proposing that this draft document, the AoA Code, be issued to establish Code requirements regarding the appointment of auditors (JIB Auditors and Branch Auditors).

Effective Date

1.11 This part of the Banking Code, the AoA Code, is effective from X 2021 for all Registered Persons.
2 Jersey Incorporated Banks (JIBs)

Statutory requirements

Note: This is a summary of certain relevant matters. Please be aware of the full disclaimer in 1.4.

2.1 Every JIB must appoint an auditor in relation to its business (JIB Auditor) and notify the JFSC of the appointment.

2.2 The JIB Auditor appointed must have the skill, resources and experience to perform its functions.

2.3 The JFSC may object to the appointment, or proposed appointment, of a JIB Auditor.

2.4 The JFSC may require a proposed JIB Auditor to provide it with such information as the JFSC considers appropriate regarding its skill, resources and experience and that any information provided to the JFSC in this respect must also be provided to the relevant bank.

2.5 A Registered Person must notify the JFSC upon terminating a JIB Auditor’s appointment and the JIB Auditor is required to make a statement to the JFSC concerning the termination, including any matters that it considers should be brought to the attention of the JFSC.

2.6 Article 17 ‘Exemptions and variation’ of the BAO allows the JFSC, on the request of a JIB, to waive or vary requirements, provided that no customer or client is likely to be prejudiced if the exemption or variation is granted.

Code requirements

2.7 A JIB must have a robust process for approving, or recommending for approval, the appointment, reappointment, removal and remuneration of its JIB Auditor.

2.8 A JIB must monitor and assess the independence of its JIB Auditor.

2.9 A JIB must monitor and assess the effectiveness of its JIB Auditor.

2.10 A JIB must have effective communication with its JIB Auditor to enable the JIB to carry out its oversight responsibilities and to enhance the quality of the work carried out by its JIB Auditor.

2.11 A JIB must require its JIB Auditor to report to the JIB on all relevant matters to enable the JIB to carry out its oversight responsibilities.

2.12 A JIB must maintain records relating to the above as business records.

Guidance

2.13 The guidelines published in March 2014 by the Basel Committee on Banking Supervision (Basel Committee) on ‘External audits of banks’ should be considered by JIBs. In particular, those set out in ‘Section A – Supervisory guidelines with regard to a bank’s audit committee and its relationship with the external auditor’ within Part 1 ‘Supervisory guidelines with regard to a bank’s audit committee in relation to external audit, and the engagement of supervisors with auditors and audit oversight authorities’ should be considered to be guidance relevant to the Code and Statutory requirements.
2.14 The Basel Committee document is available on its website at:

› https://www.bis.org/press/p140331a.htm

2.15 The guidelines in that document are predicated on a JIB having an audit committee. Where this does not exist, the guidance should be considered as being applicable to the JIB’s board instead.
3 Overseas Incorporated Banks (OIBs)

Statutory requirements

Note: This is a summary of certain relevant matters. Please be aware of the full disclaimer in 1.4.

3.1 Every OIB must appoint (and notify the JFSC of the appointment of) both:
   › an auditor in respect of its entire business (OIB Auditor) and;
   › an auditor in respect of its Jersey business (Branch Auditor).

3.2 The OIB Auditor and Branch Auditor appointed must have the skill, resources and experience to perform their respective functions.

3.3 The JFSC may:
   › object to the appointment, or proposed appointment, of a Branch Auditor (but not an OIB Auditor); and
   › require a proposed Branch Auditor to provide it with such information as the JFSC considers appropriate regarding its skill, resources and experience and that any information provided to the JFSC in this respect must also be provided to the relevant bank.

3.4 An OIB must notify the JFSC upon terminating an OIB Auditor or Branch Auditor appointment and the relevant auditor is required to make a statement to the JFSC concerning the termination, including any matters that it considers should be brought to the attention of the JFSC.

3.5 Article 17 ‘Exemptions and variation’ of the BAO allows the JFSC, on the request of a JIB, to waive or vary requirements, provided that no customer or client is likely to be prejudiced if the exemption or variation is granted.

Code requirements

3.6 Every OIB must have a robust process for approving, or recommending for approval, the appointment, reappointment, removal and remuneration of its Branch Auditor.

3.7 Every OIB must monitor and assess the independence of its Branch Auditor;

3.8 Every OIB must monitor and assess the effectiveness of its Branch Auditor;

3.9 Every OIB must have effective communication with its Branch Auditor to enable the OIB to carry out its oversight responsibilities and to enhance the quality of the work carried out by its Branch Auditor;

3.10 Every OIB must require its Branch Auditor to report to it on all relevant matters to enable the OIB to carry out its oversight responsibilities; and

3.11 Every OIB must maintain records relating to the above as business records.

Guidance

3.12 With respect to the Branch Auditor, the appointment and oversight should be the responsibility of its audit committee.
3.13 Where no audit committee has been established, responsibility should rest with the OIB’s board.

3.14 Responsibility may be delegated, provided that relevant matters are addressed including conflicts.