



Jersey Financial  
Services Commission

# Banking Business (Jersey) Law 1991

Code of Practice For Deposit-taking Business

Declaration of Compliance

Effective from: 1 August 2023

## Glossary of Terms

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

Appointment of Auditor Code	Banking Code: Appointment of Auditor
BAO	Banking Business (Accounts, Auditors and Reports) Order
Banking Code: Main Body	The Code of Practice for Deposit-taking Business: Main Body
Banking Code	The Code of Practice for Deposit-taking Business, comprising five parts, being: <ul style="list-style-type: none"> <li>› Banking Code: Main Body</li> <li>› Declaration of Compliance Code (this document)</li> <li>› Appointment of Auditor Code</li> <li>› Financial Statements Code</li> <li>› Prudential Reporting Code</li> </ul>
Banking Law	Banking Business (Jersey) Law 1991
Basel Committee	Basel Committee on Banking Supervision
Branch Auditor	Auditor appointed in relation to an OIB's Jersey business
Code requirement	Any requirement contained within the Banking Code
Declaration of Compliance	Declaration required to be produced by a Registered Person, in accordance with the BAO, regarding its compliance with laws and regulations
Declaration of Compliance Code	Banking Code: Declaration of Compliance - this document
Financial Statements Code	Banking Code: Financial statements
JFSC	Jersey Financial Services Commission
JIB	Jersey Incorporated Bank: a <u>Registered</u> Person incorporated in Jersey
JIB Auditor	Auditor appointed in relation to a JIB's business
OIB	Overseas Incorporated Bank: a Registered Person incorporated overseas
OIB Auditor	Auditor appointed in relation to a OIB's business
Prudential Reporting Code	Banking Code: Prudential reporting
Prudential Return	Return submitted by a Registered Person to us in accordance with Article 16 'Prudential returns' of the BAO
Registered Person	A person registered under the Banking Law

We / us /our	Terms used to refer to the JFSC
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# 1 Introduction

## Arrangement of the Declaration of Compliance Code

- 1.1 TEST VERSION 3 (same document title), testing ref number
- 1.2 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 Banking Code**); and
  - › Four code documents addressing specific matters:
    - › Banking Code: Appointment of Auditors (**Appointment of Auditor Code**)
    - › Banking Code: Financial statements (**Financial Statements Code**);
    - › Banking Code: Prudential reporting (**Prudential Reporting Code**); and
    - › Banking Code: Declaration of Compliance (**Declaration of Compliance Code** – this document).
- 1.3 The defined term **Banking Code** refers to the entirety (all five parts).
- 1.4 Each section of the Declaration of Compliance Code is intended to be understood by reference to its full text, including any guidance.
- 1.5 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>
- 1.6 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.
- 1.7 This document (the Declaration of Compliance Code) sets out code requirements and provides guidance. Code requirements must be complied with, unless variances or exemptions have been applied for and granted by us.
- 1.8 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.
- 1.9 This allows a Registered Person discretion as to how to apply requirements in the particular circumstances of its business. The soundly reasoned 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

- 1.10 In accordance with Article 19A(1)(b) of the Banking Law, we may, after consultation with such persons or bodies as appear to be representative of the interests concerned, revise the Banking Codes by revoking, varying, amending or adding to provisions.
- 1.11 In December 2020 we published Consultation Paper No. 13 2020, proposing that this draft document, the Declaration of Compliance Code, be issued to establish Code requirements regarding prudential reporting.

## Effective date

- 1.12 This part of the Banking Code, the Declaration of Compliance Code, is effective from 1 August 2023 for all Registered Persons.

## 2 Jersey Incorporated Banks (JIBs)

### Statutory requirements

Note: This is a summary of certain relevant matters. Be aware of the full disclaimer in 1.5.

- 2.1 A JIB must prepare a Declaration of Compliance, signed by a director, in relation to each accounting period.
- 2.2 The Declaration of Compliance must state whether the JIB has:
  - › complied with the applicable requirements of the Banking Law and with the requirements of Orders and any codes of practice made or issued under the Banking Law (not being a requirement we have waived);
  - › maintained proper accounting records and adequate systems to enable it to comply with the above; and
  - › complied with the requirements of all relevant legislation and guidance to counter money laundering and the financing of terrorism.
- 2.3 If a JIB has failed to comply with a relevant requirement, the Declaration of Compliance must:
  - › contain details of all material failures; and
  - › specify any measures taken or to be taken to ensure that the failures are not repeated.
- 2.4 A JIB must provide its JIB Auditor with a copy of its Declaration of Compliance.
- 2.5 The JIB Auditor is required to prepare a report on the JIB's Declaration of Compliance.
- 2.6 The report on the Declaration of Compliance must take into account work carried out for the purpose of the report on the year-end Prudential Return and the audit of JIB's financial statements and directors' report.
- 2.7 A report must include a statement that, in preparing the report:
  - 2.7.0 the JIB Auditor became aware of nothing that could be taken to indicate that any statement in the declaration was incorrect or misleading; or
  - 2.7.1 the JIB Auditor became aware of a matter that could be taken to indicate that a statement in the declaration was incorrect or misleading and why the auditor is of that opinion.
- 2.8 Each report must be signed and a copy provided to the JIB.
- 2.9 The report on the Declaration of Compliance must be provided to us, together with (1) the JIB's financial statements (2) directors' report and (3) the JIB Auditor's reports in respect of Prudential Return, the financial statements and the directors' report.
- 2.10 The Banking Law (Article 22) makes it an offence to knowingly or recklessly provide information which is false or misleading in purported compliance with these statutory requirements.
- 2.11 Article 17 'Exemptions and variation' of the BAO allows us, 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 is granted.

## Code requirements

- 2.12 A JIB must have robust, documented processes for the production of its Declaration of Compliance and must establish responsibility for sign off and for oversight of the processes.
- 2.13 A JIB must ensure that full documentation is produced to enable its JIB Auditor to carry out the work necessary to produce its report on the Declaration of Compliance; which should include:
- › working papers showing how the declaration was produced, including supporting compliance reports and/ or internal audit reports that have been relied upon;
  - › copies of relevant procedures for the production and sign-off of the Declaration of Compliance;
  - › material changes in the relevant procedures for the production and sign-off of the Declaration of Compliance since the last year-end;
  - › material changes made to our requirements and any other relevant regulations and law; and
  - › any material issues identified during the year concerning compliance, whether identified by compliance monitoring, the JFSC and/ or internal audit together with a description of how these have been addressed.
- 2.14 A JIB must instruct its JIB Auditor to address:
- › review of the adequacy and maintenance of the control framework relating to the production process of the Declaration of Compliance in order to prevent material mis-statement and ensure adherence to our relevant requirements, taking into account relevant guidance;
  - › consideration of the adequacy of knowledge and experience of staff involved in the process;
  - › overview, and sign off of the Report on the Declaration of Compliance to include completeness, accuracy and accessibility of key documentation which supports the process;
  - › details of any compliance monitoring, internal audit and action plans that may have been produced following the changes detailed in the background section above.
- 2.15 A JIB must establish responsibility for addressing any issues arising from the JIB Auditor's report.
- 2.16 A JIB must maintain records relating to the above as business records.

## Guidance

- 2.17 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.
- 2.18 The Basel Committee document is available is available on its website at:
- › <https://www.bis.org/press/p140331a.htm>

- 2.19 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.
- 2.20 Where the JIB identifies exceptions but they are not material, state this fact.
- 2.21 Where material exceptions have been identified by the JIB, group according to the following:
- › any exceptions identified by us during an examination;
  - › exceptions identified to us previously; and
  - › exceptions not identified previously.
- 2.22 A JIB may wish to produce a single Declaration of Compliance in respect of the BAO and any other similar Order(s) that are relevant, in order to avoid duplication. In such cases, it may request a variance under the other Order(s), subject to the condition that its Declaration of Compliance under the BAO also confirms its compliance with the relevant Laws as per the other Order(s).
- 2.23 Where issues are identified concerning the prudential return, the non-compliance aspect should be addressed within the report on the Declaration of Compliance but duplication can be reduced by cross referring to the report on the prudential return.

## 3 Overseas Incorporated Banks (OIBs)

### Statutory requirements

Note: This is a summary of certain relevant matters. Be aware of the full disclaimer in 1.5.

- 3.1 An OIB must prepare a Declaration of Compliance, signed by the principal manager of its Jersey Branch in relation to each accounting period.
- 3.2 The Declaration of Compliance must state whether the Jersey Branch of the OIB has:
  - › complied with the applicable requirements of the Banking Law and with the requirements of Orders and any codes of practice made or issued under the Banking Law (not being a requirement we have waived);
  - › maintained proper accounting records and adequate systems to enable it to comply with the above; and
  - › complied with the requirements of all relevant legislation and guidance to counter money laundering and the financing of terrorism.
- 3.3 If an OIB has failed to comply with a relevant requirement, the Declaration of Compliance must:
  - › contain details of all material failures; and
  - › specify any measures taken or to be taken to ensure that the failures are not repeated.
- 3.4 An OIB must provide its Branch Auditor with a copy of its Declaration of Compliance.
- 3.5 The Branch Auditor must prepare a report on the OIB's Declaration of Compliance.
- 3.6 The report on the Declaration of Compliance must take into account work carried out for the purpose of the report on the year-end prudential return.
- 3.7 A report must include a statement that, in preparing the report:
  - › the Branch Auditor became aware of nothing that could be taken to indicate that any statement in the declaration or prudential return was incorrect or misleading; or
  - › the Branch Auditor became aware of a matter that could be taken to indicate that a statement in the declaration or prudential return was incorrect or misleading and why the auditor is of that opinion.
- 3.8 Each report must be signed and a copy provided to the OIB.
- 3.9 The report on the Declaration of Compliance must be provided to us, together with the (1) Branch Auditor's reports in respect of Prudential Return (2) the OIB's financial statements (3) the OIB's directors' report and (4) the OIB Auditor's reports in respect of the financial statements and the directors' report.
- 3.10 The Banking Law (Article 22) makes it an offence to knowingly or recklessly provide information which is false or misleading in purported compliance with these statutory requirements.
- 3.11 Article 17 'Exemptions and variation' of the BAO allows us, on the request of an OIB, to waive or vary requirements, provided that no customer or client is likely to be prejudiced if the exemption is granted.

## Code requirements

- 3.12 An OIB must have robust, documented processes for the production of its Declaration of Compliance and must establish responsibility for sign off and for oversight of the processes.
- 3.13 An OIB must ensure that full documentation is produced to enable its Branch Auditor to carry out the work necessary to produce its report on the Declaration of Compliance; which should include:
- › working papers showing how the declaration was produced, including supporting compliance reports and/ or internal audit reports that have been relied upon;
  - › copies of relevant procedures for the production and sign-off of the Declaration of Compliance;
  - › material changes in the relevant procedures for the production and sign-off of the Declaration of Compliance since the last year-end;
  - › material changes made to our requirements and any other relevant regulations and law; and
  - › any material issues identified during the year concerning compliance, whether identified by compliance monitoring, us and/ or internal audit together with a description of how these have been addressed.
- 3.14 An OIB must instruct its Branch Auditor to address:
- › review of the adequacy and maintenance of the control framework relating to the production process of the Declaration of Compliance in order to prevent material mis-statement and ensure adherence to our relevant requirements, taking into account relevant guidance;
  - › consideration of the adequacy of knowledge and experience of staff involved in the process;
  - › overview, and sign off of the Report on the Declaration of Compliance to include completeness, accuracy and accessibility of key documentation which supports the process;
  - › details of any compliance monitoring, internal audit and action plans that may have been produced following the changes detailed in the background section above.
- 3.15 An OIB must establish responsibility for addressing any issues arising from the Branch Auditor's report.
- 3.16 An OIB must maintain records relating to the above as business records.

## Guidance

- 3.17 Where the OIB identifies exceptions but they are not material, state this fact.
- 3.18 Where material exceptions have been identified by the OIB, group according to the following:
- › any exceptions identified by us during an examination;
  - › exceptions identified to us previously; and
  - › exceptions not identified previously.
- 3.19 An OIB may wish to produce a single Declaration of Compliance in respect of the BAO and any other similar Order(s) that are relevant, in order to avoid duplication. In such cases, it may request a variance under the other Order(s), subject to the condition that its Declaration of Compliance under the BAO also confirms its compliance with the relevant Laws as per the other Order(s).

- 3.20 Where issues are identified concerning the prudential return, the non-compliance aspect should be addressed within the report on the Declaration of Compliance but duplication can be reduced by cross referring to the report on the prudential return.