

Codes of Practice for Certified Funds



Jersey Financial
Services Commission



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Timeline

- 1988 – CIF Law
- July 2009 – Consultation
- August 2011 – Feedback Statement
- **31 March 2012 – Implementation**



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Background

- More regulation inevitable
- Consultation:
 - moving landscape
 - constructive
- Industry:
 - wide participation, acceptance of principles
 - But: cost concerns (esp. duplication)



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Codes of Practice – Certified Funds

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Codes of Practice - Certified Funds



Background

- Codification of standards across Certified Funds (except – Recognized Funds, Non-Jersey Funds, Unregulated Funds)
- Combination of:
 - standard certificate conditions
 - key international standards (IOSCO) not incorporated in the FSB Codes
- Obligations Imposed on Governing Body of a Fund
 - Trustee of Unit Trust
 - General Partner of Limited Partnership
 - Directors of Company issuing units

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Commission's perspective:

- IOSCO recognition of Jersey as “fully/broadly implemented” against latest Methodology (impact on EU Alternative Investment Fund Managers Directive - AIFMD)
- Rationalisation of the authorisation process for new certified funds – only conditions will be special ones
- A uniform set of standards governing all applicable funds
- Generally more efficient use of resources – improvement in authorisation times

Codes of Practice – Certified Funds



Industry' perspective:

- Certainty of the common regulatory conditions to be imposed on application for new certified funds
- More efficient authorisation process for new certified funds
- Governing bodies of funds visibly discharging regulatory formalities
- Determine and implement appropriate response to each clause

Sources of the Codes

FSB Codes of Practice

- Extension to “companies issuing units”
- What you might expect

Certificate Conditions

Experience

IOSCO Principles



Status of the Codes

CIF(Jersey) Law 1988 - Art.15:

- “failure...to follow... not...liable to proceedings... or invalidate any transaction”
- Admissible if appears to court “to be relevant”
- Very similar to Art.19 of FS(J)L 1998

Regulatory powers of JFSC?

- Investigation, directions, public statement



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Timing of introduction

A balance (31 March 2012 = 3 months)

- “some Funds may not be able to demonstrate immediately full compliance”
- JFSC will “look favourably” on
 - compliance with principles AND
 - active steps to comply with detail

No “*principles only*” for expert funds



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Reflections

- Is the text final?
- Consider the CF Codes
 - Prospectuses: new & updated
 - All provider agreements
 - Protections in own agreement
- Costs
- Procedure; do it; document it. Every time.



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1. A Fund must conduct its business with integrity

- Identical to FSB requirements
- Conduct business with integrity
- Don't seek to avoid the Codes

2. A Fund must always act in the best interests of unitholders

Treat unitholders fairly (except fee discounts & different rights/treatment where disclosed)

And other FSB requirements, PLUS:

- Act in **unitholders' best interests** (creditors?)
- “**Sufficient**” notice of proposed changes
- DD on suitability of investments
- Hedge (side letters, PB & bank authorisation)



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3. Organise & control affairs effectively & adequate risk management systems

3.1 Corporate Governance: as for FSB

- “Four eyes” & always 2 Jersey directors
- Independent judgment, no undue influence
- Responsibilities apportioned & clear
- Oversight procedures to address RM:
 - assessment of risk
 - document: risk & ways managed/controlled
 - RM committee if warranted

3.2 Internal systems & controls

As for FSB

- Compliance systems, contingency arrangements
- transactions/decisions properly authorised by persons with requisite knowledge/experience
- “due regard” to SAP
 - but **prior notice** for “controlling” interest
 - notify investment policy if OM not clear



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3.2 Internal systems & controls (2)

- Outsourcing & **disclosed delegation**
- PPs, KPs, employees etc: **fit & proper**
 - vet & monitor competence & probity
- **Complex** transactions / structures
 - nature of entity or relevant country
 - = more specialised experience / quals / competence



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3.3 CPD

- **Fund company:** PPs (Directors), KPs
- **UT/LP:** KPs
- Requirements of **FSB Codes** apply
- **Functionary CPD** (written confirmation)
- **Non-Jersey directors:**
 - periodic regulatory updates sufficient

3.4 CO, MLRO, MLCO

- Requirements of **FSB Codes** apply
- **Notify JFSC** of :
 - breaches of laws, policies, fund documents or Codes not resolved in **1 month**
 - “best interests” of Fund or unitholders
- Internal audit: not required but “comfort”
 - reports available to JFSC & auditors
- One notice for multiple funds



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3.5 Complaints

3.6 Record keeping

- Requirements of **FSB Codes** apply
- Records
 - policy & procedures manual
 - transactions, internal organisation, RM
 - docs retention policy (incl. after wind-up)
- Legible form in Jersey without delay
- Access by functionaries **and unitholders!**



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3.7 Financial statements

- **Audited FS** and **Auditing standards** applied
- IFRS, UK AS, US GAAP or JFSC agreed
- UT / LP:
 - risk disclosures – cost/benefit
 - consolidation – irrelevance
 - how? existing funds? changes to AS?
- **Valuation & NAV:** “Applicable Rules”



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3.8 Valuation

- **Audited FS** and **Auditing standards** applied
- IFRS, UK AS, US GAAP or JFSC agreed
- UT / LP:
 - risk disclosures – cost/benefit
 - consolidation – irrelevance
 - how? existing funds? changes to AS?
- **Valuation & NAV:** “Applicable Rules”



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4. Transparency

5. Financial resources & insurance

- **JFSC regulated** in stationery & advertising
- **Fees, charges, expenses:** prospectus enough
- **Resources:** sufficient to meet commitments
- **Insurance:** scope & level carefully assessed by Fund



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6. Deal with authorities in open & co-operative manner

- **Similar to FSB Codes**
- Ensure all providers allow **JFSC inspections**
- **Management shares:** consent to changes
- **Notice of:**
 - failure to launch (90 days) or raise minimum
 - pricing errors > 0.5%
 - can't value, suspension etc
 - changes to u/holder rights (exc. expert, listed)

7. No misleading, false or deceptive statements

- Applies to **advertisements** (not prospectuses)
- Don't lie & don't be cute.

8. Comply with the Fund Guides / Policies

- **OCIFs**: OCIF guide (certificate condition)
- **Expert / Listed fund**: the relevant Guide
- **Other**:
 - JFSC consent: material change, prospectus
 - expected to be “**aligned with**” **OCIF guide** afap unless “not feasible” or “inappropriate”
- Guides will be **Schedules** to the CF Codes



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