



Position Paper 2020

**Consequential changes to the Code of Practice for
Alternative Investment Funds and AIF Services Business,
Certified Funds and Fund Services Business to take account
of Jersey legislative changes regarding Brexit effective from
1 January 2021**

Issued: 3 December 2020

If you require any assistance or clarification, wish to discuss any aspect of this Position Paper or, have any observations, please contact the Jersey Financial Services Commission (**JFSC**).

Responses to this Position Paper are not requested but any general questions or comments on the same should be sent to the following contacts at the JFSC:

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Glossary of Terms

Defined terms are indicated throughout this document as follows:

AIF	Means Alternative Investment Fund.
AIF Code	Means JFSC Code of Practice for Alternative Investment Funds and AIF Services Business.
AIF Order	Means Alternative Investment Funds (Jersey) Order 2013, as amended from time to time.
AIFMD	Means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010, as amended from time to time.
AIF Regulations	Means Alternative Investment Funds (Jersey) Regulations 2012, as amended from time to time.
CIF Code	Means JFSC Code of Practice for Certified Funds.
Codes	Means together, the AIF Code, the CIF Code and the FSB Code.
Commission Law	Means Financial Services Commission (Jersey) Law 1998, as amended from time to time.
EEA State	Means a State which is a Member State or any other State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May, 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 (currently Iceland, Liechtenstein and Norway) or a State which becomes a contracting party to these arrangements in the future, to which the AIFM Directive applies.
European Union/EU	Means 27 sovereign Member States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden), to which the AIFM Directive applies.
FSB	Means Fund Services Business.
FSB Code	Means JFSC Code of Practice for Fund Services Business.
FS(J)L	Means Financial Services (Jersey) Law 1998, as amended from time to time.
JFSC	Means Jersey Financial Services Commission.
Member State	Means a Member State of the European Union or other EEA State.
NFNO	Means No Further Negotiated Outcome.

Regulations	Means European Union (United Kingdom Exit – Alternative Investment Funds (Jersey) Regulations 2019.
UK AIFM Regulations	Means the Alternative Investment Fund Managers Regulations 2013 of the United Kingdom (S.I. 2013/1773), as amended from time to time.
United Kingdom/UK	Means England, Scotland, Wales and Northern Ireland, to which the UK AIFM Regulations apply.

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1 Executive Summary

1.1 Overview

- 1.1.1 The UK left the EU on 31 January 2020 under the terms of a negotiated divorce deal (**Brexit**). A 'transition period' keeping most pre-departure arrangements in place ends on 31 December 2020 and from 1 January 2021, the UK will leave the EU's Single Market and Customs Union to implement an independent trade policy.
- 1.1.2 At the time of publication of this Position Paper, it remains uncertain as to what arrangements, if any, will govern the alignment of EU and UK regulatory frameworks relevant to AIFs marketed into each from Jersey.
- 1.1.3 Jersey operates financial services legislation independent to the UK and EU systems however, the industry is still expected to properly plan for the more likely alternative outcomes and to give consideration to the impact on third parties, particularly those with a UK or EU element.
- 1.1.4 In March 2019, the JFSC updated its Memorandum of Understanding (**MOU**) with the UK's Financial Conduct Authority concerning cooperation and exchange of information in the alternative investment funds industry. This revised MOU secured access for Jersey to the UK funds market. It is the intention of the JFSC to continue to operate this MOU after January 2021, notwithstanding that it was concluded at a time when relevant UK regulatory frameworks were fully aligned with those of the EU.
- 1.1.5 Certain statutory amendments, in the form of the Regulations, were necessary to ensure the continued functioning of the Jersey legislation. The Regulations make amendments to certain financial services Laws having regard to the UK's exit from the EU. They ensure the continued functioning of Jersey's AIF legislation, in particular; the FS(J)L, the AIF Regulations and the AIF Order. These changes do not substantially alter the regulatory position of Jersey AIFs marketed in the UK or the EU.
- 1.1.6 The purpose of the Regulations is to ensure that Jersey's AIF legislation properly accounts for the UK's 'on-shoring' of the AIFMD. When the UK leaves the EU, it will initially onshore the AIFMD, and Jersey's legislation has been changed in the Regulations to properly reference this. A full public consultation in respect of the Regulations was not undertaken (although a working group of experts within the Funds sector was engaged in the review of the draft Regulations).
- 1.1.7 This Position Paper is being published by the JFSC to explain the resulting position. The position has been designed to reflect the fact that the relevant UK and EU regulatory frameworks are at this point aligned, but to create flexibility for Jersey in the event of a material change in either the EU or the UK frameworks. Any material change in the current approach of either the UK or EU will be closely monitored by the JFSC and acted upon in order to retain appropriate and proportionate flexibility.

1.2 What is proposed?

- 1.2.1 The JFSC updates the Codes on a routine basis to ensure that they remain current. Consequential changes to the Codes to take account of the Regulations are now required effective from the same date, the 1 January 2021.
- 1.2.2 In the same way as the changes brought in by the Regulations are designed to ensure the continued functioning of Jersey's AIF legislation beyond Brexit, the updated Codes are aimed at preserving the status quo and ensuring business as usual notwithstanding the UK's exit from the EU effective from 1 January 2021. The updated Codes were advised to industry in a Joint Statement from the Government of Jersey and the JFSC on 'Beyond Brexit: End of UK – EU transition period', issued in October 2020.

1.3 Who will be effected?

- 1.3.1 Our Jersey Funds industry should be aware of the consequential amendments to the Codes.

1.4 Basis for the Position Paper

- 1.4.1 Ordinarily, the JFSC must consult with persons or bodies that it considers are representative of the interests concerned before issuing an update to any Code, however the JFSC does not have to undertake a formal consultation where the revisions are consequential on the coming into force of legislative change(s), such as the Regulations.
- 1.4.2 Whilst a formal consultation is not required in these circumstances, this Position Paper is being issued ahead of the effective date for the legislative amendments to the FS(J)L, AIF Regulations and AIF Order which will come into force on 1 January 2021. The consequential changes to the Codes will be effective from the same date.
- 1.4.3 This Position Paper is designed to provide industry with the information contained in the Executive Summary and to further provide detail on the key consequential amendments to the Codes. Marked up versions of the updated Codes showing all amendments are also included in the Appendices to this Position Paper.

1.5 Responding to this Position Paper and ‘next steps’

- 1.5.1 As confirmed at the beginning of this Position Paper, responses to this Position Paper are not requested but any general questions or comments on the same should be sent to the JFSC contacts named at page 2 of this Position Paper.
- 1.5.2 The consequential changes to the Codes will take effect from 1 January 2021.

2 The JFSC

2.1 Overview

- 2.1.1 The JFSC is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.
- 2.1.2 Article 15(2) of the Commission Law provides that fees set by the JFSC are to be retained and must, together with any other income;
- 2.1.2.1 raise sufficient income to meet the JFSC’s liabilities;
 - 2.1.2.2 cover the JFSC’s expenses; and
 - 2.1.2.3 provide a reserve for the JFSC of such amount as it considers necessary.

2.2 The JFSC’s functions

- 2.2.1 Article 5 of the Commission Law prescribes that the JFSC shall be responsible for:
- 2.2.1.1 the supervision and development of financial services provided in or from within Jersey;
 - 2.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
 - 2.2.1.3 preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation, appertaining to financial services, companies and other forms of business structure;

- 2.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
- › as are required or authorised by or under any enactment, or
 - › as the States may, by Regulations, transfer, and
- 2.2.1.5 such other functions as are conferred on the JFSC by any other Law or enactment.

2.3 Guiding principles

- 2.3.1 Article 7 of the Commission Law provides that in exercising its functions the JFSC may take into account any appropriate matter, but that it shall have particular regard to the:
- 2.3.1.1 reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within Jersey;
 - 2.3.1.2 protection and enhancement of the reputation and integrity of Jersey in commercial and financial matter;
 - 2.3.1.3 best economic interests of Jersey; and
 - 2.3.1.4 need to counter financial crime in both Jersey and elsewhere.

3 Key Consequential Amendments to the Updated Codes

3.1 AIF Code

- 3.1.1 A number of changes to the definitions of the AIF Code have been made to reflect the changes to be made by the Regulations. In summary, these changes relate to UK AIF, UK AIFM and UK Depositary requirements in accordance with the UK AIFM Regulations. For reference the principal changes are:
- 3.1.1.1 'Directive AIF' amended to 'Directive/UK AIFM Regulations AIF';
 - 3.1.1.2 'EU AIF' amended to 'EU/UK AIF';
 - 3.1.1.3 'Non-EU AIF' amended to 'Non-EU/UK AIF';
 - 3.1.1.4 'Directive AIFM' amended to 'Directive/UK AIFM Regulations AIFM';
 - 3.1.1.5 'EU AIFM' amended to 'EU/UK AIFM'; and
 - 3.1.1.6 'Non-EU AIFM' amended to 'Non-EU/UK AIFM'.

- 3.1.2 Please see Appendix B for a marked up version of the updated AIF Code showing all amendments.

3.2 CIF Code

- 3.2.1 Consequential changes have been made to the definitions of the CIF Code to reflect the changes to be made by the Regulations, in particular to Principle 9 in relation to the requirement, where relevant, to comply with the applicable sections of the AIF Code. In addition, the Jersey Eligible Investor Fund Guide has been updated to refer to an 'EU/UK AIFM' rather than an 'EU AIFM' in relation to depositary requirements.
- 3.2.2 Please see Appendices C and D for a marked up version of the updated CIF Code, Schedules 1 and 5, showing all amendments.

3.3 FSB Code

3.3.1 Consequential changes have been made to the definitions of the FSB Code to reflect the changes to be made by the Regulations, in particular to Principle 8 in relation to the requirement, where relevant, to comply with the applicable sections of the AIF Code.

Please see Appendix E for a marked up version of the updated FSB Code showing all amendments.

List of Appendices

Appendix A	List of bodies who have been sent this Position Paper
Appendix B	Updated AIF Code marked up with all amendments
Appendix C	Updated CIF Code Schedule 1 marked up with all amendments
Appendix D	Updated CIF Code Schedule 5 marked up with all amendments
Appendix E	Updated FSB Code marked up with all amendments

Appendix A – List of bodies who have been sent this Position Paper

- › Jersey Funds Association
- › Jersey Finance Limited

[Appendix B – Updated AIF Code marked up with all amendments](#)

[Appendix C – Updated CIF Code Schedule 1 marked up with all amendments](#)

[Appendix D – Updated CIF Code Schedule 5 marked up with all amendments](#)

[Appendix E – Updated FSB Code marked up with all amendments](#)