



**Jersey Financial  
Services Commission**

## › **Consultation Paper**

› No. 12 2015

› Amendments to Codes of Practice

A consultation on proposals to amend the Codes of Practice to:

- ensure that all notification requirements are clear and unambiguous;
- update regulatory requirements on the handling of consumer complaints following the establishment of the Channel Islands Financial Ombudsman; and
- make minor updating and consequential changes.

## › Consultation Paper

Please note that terms in *italics* are defined in the Glossary of Terms.

The *Commission* invites comments on this consultation paper. **William Byrne** at *Jersey Finance* is co-ordinating an Industry response that will incorporate any matters raised by local businesses. Comments should reach *Jersey Finance* by 19 February 2016.

Responses should be sent to:

**William Byrne**

Head of Technical

Jersey Finance Limited

4<sup>th</sup> Floor, Sir Walter Raleigh House

48-50 Esplanade

St Helier

Jersey

JE2 3QB

Telephone: +44 (0) 1534 836021

Facsimile: +44 (0) 1534 836001

Email: [william.byrne@jerseyfinance.je](mailto:william.byrne@jerseyfinance.je)

Alternatively, responses may be sent directly to **Stephen de Gruchy** at the *Commission* by 19 February 2016. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the *Commission*.

The *Commission* contact is:

**Stephen de Gruchy**

Senior Manager, Policy & Strategy

Jersey Financial Services Commission

PO Box 267

14-18 Castle Street

St Helier

Jersey

JE4 8TP

Telephone: +44 (0) 1534 822110

Email: [s.degruchy@jerseyfsc.org](mailto:s.degruchy@jerseyfsc.org)

**It is the policy of the *Commission* to make the content of all responses available for public inspection unless specifically requested otherwise.**

## › Glossary of Terms

AIF Code	means the Code of Practice for Alternative Investment Funds and AIF Services Business.
AIF Regulations	means the Alternative Investment Funds (Jersey) Regulations 2012.
Banking Code	means the Code of Practice for Deposit-taking Business.
BBJL	means the Banking Business (Jersey) Law 1991.
Certified Funds Code	means the Code of Practice for Certified Funds.
CIFJL	means the Collective Investment Funds (Jersey) Law 1988.
CIFO	means the Channel Islands Financial Ombudsman.
Codes of Practice (or Codes)	means, collectively, the <ul style="list-style-type: none"> <li>• <i>AIF Code</i>;</li> <li>• <i>Certified Funds Code</i>;</li> <li>• <i>Banking Code</i>;</li> <li>• <i>FSB Code</i>;</li> <li>• <i>GIMB Code</i>;</li> <li>• <i>Insurance Code</i>;</li> <li>• <i>IB Code</i>;</li> <li>• <i>MSB Code</i>;</li> <li>• <i>TCB Code</i>.</li> </ul>
Commission	means the Jersey Financial Services Commission.
Commission Law	means the Financial Services Commission (Jersey) Law 1998.
EU	means European Union.
FSB Code	means the Code of Practice for Fund Services Business.
FSC Amendment Law	means the Financial Services Commission (Amendment No. 6) (Jersey) Law 2015.
FSJL	means the Financial Services (Jersey) Law 1998.
GIMB Code	means the Code of Practice for General Insurance Mediation Business.
IB Code	means the Code of Practice for Investment Business.
IBJL	means the Insurance Business (Jersey) Law 1996.
Insurance Code	means the Code of Practice for Insurance Business.
Jersey Finance	means Jersey Finance Limited.
MSB Code	means the Code of Practice for Money Service Business.
registered person	means a person who is registered, or holds a permit or certificate, as applicable, under one or more of the <i>regulatory laws</i> .
regulatory laws	means the <i>AIF Regulations</i> , the <i>BBJL</i> , the <i>CIFJL</i> , the <i>FSJL</i> , and the <i>IBJL</i> .
TCB Code	means the Code of Practice for Trust Company Business.

>	<b>Contents</b>	
<b>1</b>	<b>Executive Summary .....</b>	<b>5</b>
1.1	Overview .....	5
1.2	What is proposed and why?.....	5
1.3	Who would be affected?.....	6
<b>2</b>	<b>Consultation .....</b>	<b>7</b>
2.1	Basis for consultation.....	7
2.2	Responding to the consultation.....	7
2.3	Next steps.....	7
<b>3</b>	<b>The <i>Commission</i>.....</b>	<b>8</b>
3.1	Overview .....	8
3.2	<i>Commission's</i> functions.....	8
3.3	Guiding principles.....	8
<b>4</b>	<b>Proposed changes to the <i>Codes</i> .....</b>	<b>9</b>
4.1	Introduction .....	9
4.2	Generic changes to the <i>Codes</i> .....	9
4.3	Changes to the <i>AIF Code</i> .....	10
4.4	Changes to the <i>Certified Funds Code</i> .....	10
4.5	Changes to the <i>Banking Code</i> .....	11
4.6	Changes to the <i>FSB Code</i> .....	12
4.7	Changes to the <i>GIMB Code</i> .....	12
4.8	Changes to the <i>Insurance Code</i> .....	14
4.9	Changes to the <i>IB Code</i> .....	15
4.10	Changes to the <i>MSB Code</i> .....	16
4.11	Changes to the <i>TCB Code</i> .....	17
<b>5</b>	<b>Cost benefit analysis.....</b>	<b>18</b>
5.1	Costs to Industry .....	18
5.2	Costs to the <i>Commission</i> .....	18
5.3	Benefits .....	18
<b>6</b>	<b>Summary of questions .....</b>	<b>19</b>
	<b>Appendix A.....</b>	<b>20</b>
	List of representative bodies and other persons who will be sent this consultation paper .....	20
	<b>Appendices B to J.....</b>	<b>21</b>
	Proposed amended <i>Codes</i> (red-lined to show changes from the current versions).....	21

# 1 EXECUTIVE SUMMARY

## 1.1 Overview

- 1.1.1 The *Codes of Practice* are issued by the *Commission* under provisions in the *regulatory laws* and set regulatory requirements that *registered persons* must comply with.
- 1.1.2 A failure to comply with a *Code of Practice* can result in regulatory action being taken against a *registered person*. Following the recent enactment of the *FSC Amendment Law*<sup>1</sup> such regulatory action can now include the imposition by the *Commission* of a civil financial penalty for significant and material contraventions of a *Code*.
- 1.1.3 During the consultation process that led up to the introduction of the power to impose civil financial penalties for contraventions of the *Codes*, the *Commission* gave a commitment that it would review the *Codes* to ensure that questions of interpretation are minimised. In particular, the *Commission* acknowledged that some of the notification requirements set by the *Codes* could be clearer and undertook to review them with a view to maximising consistency and clarity.
- 1.1.4 This paper proposes revisions to the *Codes* following that review. In addition, the *Commission* is proposing revisions to the complaints-handling section of the *Codes* to take account of the recent establishment of the *CIFO*. A small number of other minor and updating amendments are also proposed.

## 1.2 What is proposed and why?

- 1.2.1 The main changes proposed to the *Codes of Practice* are as follows:
- 1.2.1.1 the introduction to each *Code* will be amended to reflect the recently amended statutory description of a *Code* as a document issued for the purpose of, "... setting out the principles and detailed requirements that must be complied with in the conduct of [type of regulated business]";
- 1.2.1.2 the *Codes* will be amended to make it clear that all notifications required to be given to the *Commission* must be in writing (at present, some provisions in the *Codes* are silent on the form of notification);
- 1.2.1.3 in a number of places the language describing the time period in which a matter must be notified to the *Commission* will be refined (in particular, to avoid the use of slightly ambiguous expressions such as "promptly");
- 1.2.1.4 in relevant *Codes*, the complaints-handling section will be updated to make it a regulatory requirement for a *registered person* to:
- advise complainants that if they are dissatisfied with the *registered person's* response to their complaint, they may be able to refer it to *CIFO* (and the *registered person* would be obliged to provide *CIFO's* contact details);

---

<sup>1</sup> See <http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cLawFiles%5c2015%2fL-01-2015.htm>

- notify the *Commission* if *CIFO* requires the *registered person* to pay compensation to a complainant or directs the *registered person* to take other specified steps in relation to a complaint; and
- deal with *CIFO* in an open and transparent manner.

### 1.3 Who would be affected?

- 1.3.1 The proposals in this consultation paper have the potential to affect all *registered persons*.

## 2 CONSULTATION

### 2.1 Basis for consultation

- 2.1.1 The *Commission* has issued this consultation paper in accordance with provisions in the *regulatory laws* that require the *Commission*, before revising any *Code of Practice*, to “[consult] with such persons or bodies as appear representative of the interests concerned”.

### 2.2 Responding to the consultation

- 2.2.1 The *Commission* invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.2.2 To assist in analysing responses to the consultation paper, respondents are asked to:
- 2.2.2.1 prioritise comments and to indicate their relative importance; and
  - 2.2.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

### 2.3 Next steps

- 2.3.1 The intention is that amended *Codes of Practice* in the form shown in Appendices B to J (subject to the making of any revisions considered necessary as a result of responses to this consultation) will be issued in the first half of 2016 and come into force 2 months later.

## 3 THE COMMISSION

### 3.1 Overview

- 3.1.1 The *Commission* 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.

### 3.2 *Commission's functions*

- 3.2.1 The *Commission Law* prescribes that the *Commission* shall be responsible for:
- 3.2.1.1 the supervision and development of financial services provided in or from within Jersey;
  - 3.2.1.2 providing the States of Jersey, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
  - 3.2.1.3 preparing and submitting to Ministers recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
  - 3.2.1.4 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 of Jersey may, by Regulations, transfer; and
  - 3.2.1.5 such other functions as are conferred on the *Commission* by any other Law or enactment.

### 3.3 Guiding principles

- 3.3.1 The *Commission's* guiding principles require it to have particular regard to:
- 3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
  - 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
  - 3.3.1.3 the best economic interests of Jersey; and
  - 3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

## 4 Proposed changes to the *Codes*

### 4.1 Introduction

- 4.1.1 This chapter describes, and explains the reasons for, the proposed changes to the *Codes*.
- 4.1.2 Where the same (generic) change to every *Code* is proposed it is described in section 4.2. The other sections in this chapter describe changes to be made to individual *Codes*.
- 4.1.3 Appendices B to J contain red-lined versions of the *Codes*, showing all of the proposed changes. Readers are asked to note that minor typographical or clarificatory changes to the *Codes* are not described in this consultation paper but, in the interests of full transparency, are shown in the red-lined version of each *Code* in the appendices.
- 4.1.4 The *Commission* recognises that *registered persons* may require a lead-in period to update their internal procedures to facilitate compliance with the amended *Codes*. In this regard, the *Commission's* intention is to provide for them to come into force 2 months after they are issued.
- 4.1.5 **Question: Do you consider a lead-in period of 2 months to be adequate? If you do not, please explain why and suggest an alternative time period.**

### 4.2 Generic changes to the *Codes*

- 4.2.1 The *FSC Amendment Law* (a draft of which was consulted on by means of *Commission* Consultation Paper No. 2 of 2014<sup>2</sup>), amended the statutory description of the *Codes* in the *regulatory laws* to more accurately reflect their regulatory purpose and status.
- 4.2.2 Consequently, a change to the opening section of the 'Introduction' to each *Code* will be made so that each is now stated to be prepared and issued, "... for the purpose of setting out the principles and detailed requirements that must be complied with in the conduct of [type of regulated business]". (The previous statutory description of a *Code* referred to its purpose as being to, "... [establish] sound principles for the conduct of [type of regulated business]").
- 4.2.3 In the existing 'Introduction' to each of the *Codes*<sup>3</sup> there is text stating that where a registered person, "*is not fully compliant with the Code, the Commission will expect the registered person to have, or be in the process of producing, a plan of action, including estimated timescales, to achieve full Codes compliance*"<sup>4</sup>. That text is now inconsistent with the provisions of the civil financial penalties regime, where a Band 2 financial penalty<sup>5</sup> may be imposed by the *Commission* for a significant and material contravention not remediated within a timescale agreed with the *Commission*.

---

<sup>2</sup> See [http://www.jerseyfsc.org/the\\_commission/general\\_information/consultation\\_papers/consultation\\_papers.asp](http://www.jerseyfsc.org/the_commission/general_information/consultation_papers/consultation_papers.asp)

<sup>3</sup> With the exception of the *Certified Funds Code*.

<sup>4</sup> The text in the *AIF Code* is similar but not identical.

<sup>5</sup> See the Schedule to the Financial Services Commission (Financial Penalties) (Jersey) Order 2015 at <http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2015%2fR%26O-071-2015.htm#ID116>

- 4.2.4 Consequently, the existing text will be replaced with, “*Where a registered person considers that it may not be able to achieve full compliance with the Code for a temporary period (for example, for a short period after first being licensed) it should, in advance, agree a plan of action (to include timescales) with the Commission to bring itself into full compliance with the Code*”. (N.B. Notwithstanding that the civil financial penalties regime does not apply to contraventions of the *Certified Funds Code*, this new text will, to ensure a consistent regulatory approach, also be placed in the revised version of that Code.)
- 4.2.5 Again in the existing ‘Introduction’ to each *Code*, there is a summary of the types of regulatory action that the *Commission* can take in response to a contravention of a *Code*. The text will be updated to refer to the possibility of the imposition of a civil financial penalty by the *Commission*. (N.B. This change will not be made to the *Certified Funds Code* given that the civil financial penalties regime does not apply to contraventions thereof.)
- 4.2.6 The *Codes* set a number of obligations on *registered persons* to notify the *Commission* of certain specified events. The *Commission’s* review of the *Codes* identified that some of the notification requirements could be clearer, both in how the relevant notification must be given and in what timescale.
- 4.2.7 Consequently, the *Codes* will be amended to make it clear that all notifications required to be given to the *Commission* must be in writing (at present, some provisions in the *Codes* are silent on the form of notification). For the avoidance of doubt, a note will be placed in the introduction to each *Code* confirming that the *Commission* will consider notification by email to be “in writing”.
- 4.2.8 In addition, a number of amendments will be made to the *Codes* to make the notification timescales clearer, in particular to avoid the use of slightly ambiguous expressions such as “promptly”. Where relevant, each *Code* will now specify the number of days in which a notification must be given (after a planned event) or require notification to be given, “as soon as a *registered person* becomes aware” (after an unplanned event).<sup>6</sup>
- 4.2.9 **Question: Do you have any observations or concerns on any of the proposed generic changes to the *Codes*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

### 4.3 Changes to the *AIF Code*

- 4.3.1 Except for some necessary updating to the ‘Introduction’ to the current *AIF Code* where reference is made to possible future “passporting” into the *EU*, no substantive changes are proposed, other than the generic changes described in section 4.2.

### 4.4 Changes to the *Certified Funds Code*

- 4.4.1 This section describes the changes proposed to the current *Certified Funds Code* (in addition to the generic changes described in section 4.2).

---

<sup>6</sup> The changes relating to the timing of notifications have not been made to the *AIF Code* because the requirements therein follow *EU* legislation.

- 4.4.2 In the 'Glossary', the definition of "anti-money laundering legislation" will be amended to reflect the repeal of the Drug Trafficking Offences (Jersey) Law 1988 by means of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014.
- 4.4.3 In section 3.2 of the *Certified Funds Code* [Internal systems and controls], Notes 1 and 2 will be updated to reflect a recent widening of permitted exceptions from the Rehabilitation of Offenders (Jersey) Law 2001. The exceptions allow *registered persons* to take into account, for employment purposes, certain "spent" convictions of principal persons<sup>7</sup>, key persons<sup>8</sup> and, what are known as, "finance employees"<sup>9</sup>.
- 4.4.4 Section 3.5 of the *Certified Funds Code* sets out how complaints must be dealt with. This section will be updated so that it aligns with the complaints-handling section of the *FSB Code*.
- 4.4.5 **Question: Do you have any observations or concerns on any of the proposed changes to the *Certified Funds Code*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

## 4.5 Changes to the *Banking Code*

- 4.5.1 This section describes the changes proposed to the current *Banking Code* (in addition to the generic changes described in section 4.2).
- 4.5.2 In the 'Glossary', the definition of "anti-money laundering legislation" will be amended to reflect the repeal of the Drug Trafficking Offences (Jersey) Law 1988 by means of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014.
- 4.5.3 As a consequence of the establishment of the *CIFO*, section 3.6 of the *Banking Code*, which sets out how customer complaints must be handled, will be updated to make it a regulatory requirement for a *registered person* to:
- 4.5.3.1 advise complainants that if they are dissatisfied with the *registered person's* response to their complaint, they may be able to refer it to *CIFO* (and the *registered person* would be obliged to provide *CIFO's* contact details);
  - 4.5.3.2 notify the *Commission* if *CIFO* requires the *registered person* to pay compensation to a complainant or directs the *registered person* to take other specified steps in relation to a complaint; and
  - 4.5.3.3 deal with *CIFO* in an open and transparent manner.

---

<sup>7</sup> As defined in the *CIFJL*.

<sup>8</sup> As footnote 7.

<sup>9</sup> See the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, as amended by the Rehabilitation of Offenders (Exceptions) (Amendment) (Jersey) Regulations 2014, for the definition of "finance employee".

- 4.5.4 There is an existing general requirement set by section 3.6.1 of the *Banking Code* for a *registered person* to “establish and maintain an effective customer complaint handling system and procedures”. In connection with this requirement, an additional note will be added at the end of the section advising *registered persons* that they may wish to consider adopting and following the “Model complaint-handling procedure for financial services providers”<sup>10</sup> published by CIFO. The *Banking Code* will not make it a regulatory requirement for that procedure to be followed. The main advantage for a *registered person* in following that model procedure is that it statutorily limits the time-period in which a complainant can refer the matter to CIFO to six months after the *registered person’s* ‘final response’ to the complaint.<sup>11</sup>
- 4.5.5 **Question: Do you have any observations or concerns on any of the proposed changes to the *Banking Code*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

## 4.6 Changes to the *FSB Code*

- 4.6.1 Only one change (other than the generic changes described in section 4.2) is proposed to the current *FSB Code*. In the ‘Glossary’, the definition of “anti-money laundering legislation” will be amended to reflect the repeal of the Drug Trafficking Offences (Jersey) Law 1988 by means of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014.

## 4.7 Changes to the *GIMB Code*

- 4.7.1 This section describes the changes proposed to the current *GIMB Code* (in addition to the generic changes described in section 4.2).
- 4.7.2 Note 5 after section 3.3 of the *GIMB Code* will be amended to reflect the repeal of the Drug Trafficking Offences (Jersey) Law 1988 by means of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014.
- 4.7.3 As a consequence of the establishment of the CIFO, section 3.5 of the *GIMB Code*, which sets out how client complaints must be handled, will be updated to make it a regulatory requirement for a *registered person* to:
- 4.7.3.1 advise complainants that if they are dissatisfied with the *registered person’s* response to their complaint, they may be able to refer it to CIFO (and the *registered person* would be obliged to provide CIFO’s contact details);

<sup>10</sup> See <https://www.ci-fo.org/wp-content/uploads/2015/11/151116-CIFO-model-complaint-procedure.pdf>

<sup>11</sup> Where the model procedure is not adopted and followed, the statutory time-limit for a complaint to be referred to CIFO is the later of –

(a) six years after the act to which the complaint relates; and  
 (b) two years after the complainant could reasonably have been expected to become aware that he or she had a reason to complain in relation to the act complained of.

- 4.7.3.2 notify the *Commission* if *CIFO* requires the *registered person* to pay compensation to a complainant or directs the *registered person* to take other specified steps in relation to a complaint; and
- 4.7.3.3 deal with *CIFO* in an open and transparent manner.
- 4.7.4 There is an existing general requirement set by section 3.5.1 of the *GIMB Code* requiring a *registered person* to “*establish and maintain an effective complaint handling system and procedures*”. In connection with that requirement, an additional note will be added at the end of the section advising *registered persons* that they may wish to consider adopting and following the “*Model complaint-handling procedure for financial services providers*”<sup>12</sup> published by *CIFO*. The *GIMB Code* will not make it a regulatory requirement for that procedure to be followed. The main advantage for a *registered person* in following that model procedure is that it statutorily limits the time-period in which a complainant can refer the matter to *CIFO* to six months after the *registered person’s* ‘final response’ to the complaint.<sup>13</sup>
- 4.7.5 Section 7 of the *GIMB Code* [A *registered person* must not make statements that are misleading, false or deceptive] sets certain requirements that a *registered person* must meet in relation to the advertising and promotion of insurance products. Currently, Note 1 in that section refers to those requirements as “*guidelines*”, which does not accurately reflect their status in law. Accordingly, the word “*guidelines*” will be replaced with “*requirements*”.
- 4.7.6 **Question: Do you have any observations or concerns on any of the proposed changes to the *GIMB Code*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

---

<sup>12</sup> See <https://www.ci-fo.org/wp-content/uploads/2015/11/151116-CIFO-model-complaint-procedure.pdf>

<sup>13</sup> Where the model procedure is not adopted and followed, the statutory time-limit for a complaint to be referred to *CIFO* is the later of –

- (a) six years after the act to which the complaint relates; and
- (b) two years after the complainant could reasonably have been expected to become aware that he or she had a reason to complain in relation to the act complained of.

## 4.8 Changes to the *Insurance Code*

- 4.8.1 This section describes the changes proposed to the current *Insurance Code* (in addition to the generic changes described in section 4.2).
- 4.8.2 In the ‘Glossary’, the definition of “anti-money laundering legislation” will be amended to reflect the repeal of the Drug Trafficking Offences (Jersey) Law 1988 by means of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014.
- 4.8.3 As a consequence of the establishment of the *CIFO*, section 3.6 of the *Insurance Code*, which sets out how client complaints must be handled, will be updated to make it a regulatory requirement for a *registered person* to:
- 4.8.3.1 advise complainants that if they are dissatisfied with the *registered person’s* response to their complaint, they may be able to refer it to *CIFO* (and the *registered person* would be obliged to provide *CIFO’s* contact details);
  - 4.8.3.2 notify the *Commission* if *CIFO* requires the *registered person* to pay compensation to a complainant or directs the *registered person* to take other specified steps in relation to a complaint; and
  - 4.8.3.3 deal with *CIFO* in an open and transparent manner.
- 4.8.4 There is an existing general requirement set by section 3.6.1 of the *Insurance Code* for a *registered person* to “*establish and maintain an effective complaint handling system and procedures*”. In connection with this requirement, an additional note will be added at the end of the section advising *registered persons* that they may wish to consider adopting and following the “Model complaint-handling procedure for financial services providers”<sup>14</sup> published by *CIFO*. The *Insurance Code* will not make it a regulatory requirement for that procedure to be followed. The main advantage for a *registered person* in following that model procedure is that it statutorily limits the time-period in which a complainant can refer the matter to *CIFO* to six months after the *registered person’s* ‘final response’ to the complaint.<sup>15</sup>

<sup>14</sup> See <https://www.ci-fo.org/wp-content/uploads/2015/11/151116-CIFO-model-complaint-procedure.pdf>

<sup>15</sup> Where the model procedure is not adopted and followed, the statutory time-limit for a complaint to be referred to *CIFO* is the later of –

- (a) six years after the act to which the complaint relates; and
- (b) two years after the complainant could reasonably have been expected to become aware that he or she had a reason to complain in relation to the act complained of.

- 4.8.5 Section 7 of the *Insurance Code* [A *registered person* must not make statements that are misleading, false or deceptive] sets certain requirements that a *registered person* must meet in relation to the advertising and promotion of insurance products. Currently, the heading to that section and Note 1 refers to those requirements as “[advertising] guidelines”, which does not accurately reflect their status in law. Accordingly, the word “guidelines” will be replaced with “requirements”.
- 4.8.6 **Question: Do you have any observations or concerns on any of the proposed changes to the *Insurance Code*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

## 4.9 Changes to the *IB Code*

- 4.9.1 This section describes the changes proposed to the current *IB Code* (in addition to the generic changes described in section 4.2).
- 4.9.2 In the Glossary, a defined term, “anti-money laundering legislation”, will be inserted for consistency with other *Codes*.
- 4.9.3 As a consequence of the establishment of the *CIFO*, section 3.6 of the *IB Code*, which sets out how client complaints must be handled, will be updated to make it a regulatory requirement for a *registered person* to:
- 4.9.3.1 advise complainants that if they are dissatisfied with the *registered person’s* response to their complaint, they may be able to refer it to *CIFO* (and the *registered person* would be obliged to provide *CIFO’s* contact details);
  - 4.9.3.2 notify the *Commission* if *CIFO* requires the *registered person* to pay compensation to a complainant or directs the *registered person* to take other specified steps in relation to a complaint; and
  - 4.9.3.3 deal with *CIFO* in an open and transparent manner.
- 4.9.4 There is an existing general requirement set by section 3.6.1 of the *IB Code* for a *registered person* to “*establish and maintain an effective complaint handling system and procedures*”. In connection with this requirement, an additional note will be added at the end of the section advising *registered persons* that they may wish to consider adopting and following the “Model complaint-handling procedure for financial services providers”<sup>16</sup> published by *CIFO*. The *IB Code* will not make it a regulatory requirement for that procedure to be followed. The main advantage for a *registered person* in following that model procedure is that it statutorily limits the time-period in which a complainant can refer the matter to *CIFO* to six months after the *registered person’s* ‘final response’ to the complaint.<sup>17</sup>

<sup>16</sup> See <https://www.ci-fo.org/wp-content/uploads/2015/11/151116-CIFO-model-complaint-procedure.pdf>

<sup>17</sup> Where the model procedure is not adopted and followed, the statutory time-limit for a complaint to be referred to *CIFO* is the later of –

- (a) six years after the act to which the complaint relates; and
- (b) two years after the complainant could reasonably have been expected to become aware that he or she had a reason to complain in relation to the act complained of.

- 4.9.5 **Question: Do you have any observations or concerns on any of the proposed changes to the *IB Code*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

## 4.10 Changes to the *MSB Code*

- 4.10.1 This section describes the changes proposed to the current *MSB Code* (in addition to the generic changes described in section 4.2).
- 4.10.2 In the 'Glossary', the definition of "anti-money laundering legislation" will be amended to reflect the repeal of the Drug Trafficking Offences (Jersey) Law 1988 by means of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014.
- 4.10.3 As a consequence of the establishment of the *CIFO*, section 3.5 of the *MSB Code*, which sets out how client complaints must be handled, will be updated to make it a regulatory requirement for a *registered person's* complaint handling system and procedures to include provision for:
- 4.10.3.1 complainants to be advised in writing when their complaint is considered closed and, where the complaint is not upheld, for the reason(s) for rejecting the complaint to be clearly stated;
  - 4.10.3.2 complainants to be advised that if they are dissatisfied with the *registered person's* response to their complaint, they may be able to refer it to *CIFO* (and the *registered person* would be obliged to provide *CIFO's* contact details);
- 4.10.4 A *registered person* will also be required to:
- 4.10.4.1 notify the *Commission* if *CIFO* requires the *registered person* to pay compensation to a complainant or directs the *registered person* to take other specified steps in relation to a complaint; and
  - 4.10.4.2 deal with *CIFO* in an open and transparent manner.
- 4.10.5 There is an existing general requirement set by section 3.5.1 of the *MSB Code* for a *registered person* to "establish and maintain an effective complaint handling system and procedures". In connection with this requirement, an additional note will be added at the end of the section advising *registered persons* that they may wish to consider adopting and following the "Model complaint-handling procedure for financial services providers"<sup>18</sup> published by *CIFO*. The *MSB Code* will not make it a regulatory requirement for that procedure to be followed. The main advantage for a *registered person* in following that model procedure is that it statutorily limits the time-period in which a complainant can refer the matter to *CIFO* to six months after the *registered person's* 'final response' to the complaint.<sup>19</sup>

<sup>18</sup> See <https://www.ci-fo.org/wp-content/uploads/2015/11/151116-CIFO-model-complaint-procedure.pdf>

<sup>19</sup> Where the model procedure is not adopted and followed, the statutory time-limit for a complaint to be referred to *CIFO* is the later of –

- (a) six years after the act to which the complaint relates; and
- (b) two years after the complainant could reasonably have been expected to become aware that he or she had a reason to complain in relation to the act complained of.

- 4.10.6 **Question: Do you have any observations or concerns on any of the proposed changes to the *MSB Code*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

#### 4.11 Changes to the *TCB Code*

- 4.11.1 This section describes the changes proposed to the current *TCB Code* (in addition to the generic changes described in section 4.2).
- 4.11.2 In the 'Glossary', the definition of "anti-money laundering legislation" will be amended to reflect the repeal of the Drug Trafficking Offences (Jersey) Law 1988 by means of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014.
- 4.11.3 In Note 1 to section 6.4 of the *TCB Code* the notification timescale will be changed from "seven working days" to "seven days" to be consistent with other *Codes*.
- 4.11.4 **Question: Do you have any observations or concerns on any of the proposed changes to the *TCB Code*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

## 5 Cost benefit analysis

### 5.1 Costs to Industry

- 5.1.1 It is not expected that the proposed changes to the *Codes* will result in *registered persons* incurring significant expense.

### 5.2 Costs to the *Commission*

- 5.2.1 Save for staff costs incurred in carrying out this consultation and the publication of final revised *Codes* in due course, no other substantive expenses are expected to be incurred by the *Commission*.

### 5.3 Benefits

- 5.3.1 The proposals in this paper will improve the clarity of the *Codes* for *registered persons*, particularly in the area of notification requirements.
- 5.3.2 Consumers and clients of *registered persons* falling within the scope of the *CIFO* will benefit from the proposed requirement for relevant *registered persons* to make a complainant aware that they may be able to refer their complaint to *CIFO*.

## 6 Summary of questions

REFERENCE	QUESTION
4.1.5	Question: Do you consider a lead-in period of 2 months to be adequate? If you do not, please explain why and suggest an alternative time period.
4.2.9	Question: Do you have any observations or concerns on any of the proposed generic changes to the <i>Codes</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.4.5	Question: Do you have any observations or concerns on any of the proposed changes to the <i>Certified Funds Code</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.5.5	Question: Do you have any observations or concerns on any of the proposed changes to the <i>Banking Code</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.7.6	Question: Do you have any observations or concerns on any of the proposed changes to the <i>GIMB Code</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.8.6	Question: Do you have any observations or concerns on any of the proposed changes to the <i>Insurance Code</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.9.5	Question: Do you have any observations or concerns on any of the proposed changes to the <i>IB Code</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.10.6	Question: Do you have any observations or concerns on any of the proposed changes to the <i>MSB Code</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
4.11.4	Question: Do you have any observations or concerns on any of the proposed changes to the <i>TCB Code</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.

## Appendix A

### List of representative bodies and other persons who will be sent this consultation paper

- Association of English Solicitors Practising in Jersey
- Channel Islands Financial Ombudsman
- Chartered Institute for Securities & Investment, Jersey branch
- Institute of Chartered Secretaries and Administrators, Jersey branch
- Institute of Directors – Jersey branch
- Jersey Association of Directors and Officers
- Jersey Association of Trust Companies
- Jersey Bankers' Association
- Jersey Chamber of Commerce and Industry Incorporated
- Jersey Compliance Officers Association
- Jersey Estate Agents Association
- Jersey Finance Limited
- Jersey Funds Association
- Jersey International Insurance Association
- Jersey Motor Traders Federation
- Jersey Society of Chartered and Certified Accountants
- Law Society of Jersey
- Personal Finance Society - Jersey branch
- Society of Trust and Estates Practitioners (STEP), Jersey branch

## Appendices B to J

Proposed amended *Codes* (red-lined to show changes from the current versions)

(Each appendix has discrete page numbering)

Please click on the links below to view the proposed amended *Codes*.

[Appendix B - Code of Practice for Alternative Investment Funds and AIF Services Business](#)

[Appendix C - Code of Practice for Certified Funds](#)

[Appendix D - Code of Practice for Deposit-taking Business](#)

[Appendix E - Code of Practice for Fund Services Business](#)

[Appendix F - Code of Practice for General Insurance Mediation Business](#)

[Appendix G - Code of Practice for Insurance Business](#)

[Appendix H - Code of Practice for Investment Business](#)

[Appendix I - Code of Practice for Money Service Business](#)

[Appendix J - Code of Practice for Trust Company Business](#)