

CONSULTATION PAPER NO. 3 2007

On Amendments to Codes of Practice

**Amendments proposed to Codes of Practice relating
to:**

**Investment Business
Deposit-taking Business
Insurance Business
Trust Company Business**

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Robert Kirkby at Jersey Finance Limited (“**Jersey Finance**”) is co-ordinating an industry response that will incorporate any matters raised by local businesses. Comments should reach Jersey Finance by 12 October 2007.

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Alternatively, responses may be sent directly to individuals at the Commission, as noted below, by 12 October 2007. If you require any assistance, clarification or wish to discuss any aspect of the proposals prior to formulating a response, it is of course appropriate to contact the Commission. The Commission contact details are:

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

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1 Executive Summary

1.1 Overview

- 1.1.1 The Commission issued Position Paper No.4 2007, Amendments to Regulatory Legislation, in June 2007, which discussed the policy position relating to a number of proposed amendments to regulatory legislation arising from the Commission's preparation for the forthcoming International Monetary Fund ("IMF") assessment and "business as usual" activities.
- 1.1.2 Section 1.17 of the position paper refers to the Commission consulting on proposed amendments to Codes of Practice later in 2007. This consultation paper is the second such document, the first being a consultation paper on the Codes of Practice for General Insurance Mediation Business, published June 2007.
- 1.1.3 This consultation paper proposes amendments to the Codes of Practice relating to four financial sectors: investment business; banking; insurance and trust company business. Of these, the most extensive amendments are proposed to the Investment Business Codes of Practice, as they have not been revised since 2001.
- 1.1.4 The proposals to amend the various Codes of Practice fall into four main types:
 - 1.1.4.1 those amendments identified as a result of the Commission's self assessment of the regulatory framework against international regulatory standards, along with implementation of a number of recommendations set out in the 2003 IMF report;
 - 1.1.4.2 those amendments that are intended to maintain consistency between the Codes for the various financial sectors, as far as possible allowing for the differences in each sector¹;
 - 1.1.4.3 those amendments that aim to take account of changes in industry practice; and
 - 1.1.4.4 those amendments that aim to clarify areas of the Codes where the Commission's experiences, through the on-site examination programme, has highlighted interpretation issues.

1.2 Construct of the consultation paper

- 1.2.1 To accommodate consultation on amendments proposed to the Codes of Practice of four financial sectors, the structure of this consultation paper has been slightly varied from the norm, as follows:
 - 1.2.1.1 With respect to responses, rather than provide one Commission contact, the paper provides a contact for each financial sector.

¹ Note: the Commission is not attempting to align the Codes completely.

- 1.2.1.2 Proposed amendments to each of the Codes have been discussed by financial sector, as follows:
- Section 4 – Investment Business Codes of Practice (“**IB Codes**”)
 - Section 5 – Codes of Practice for Deposit-taking Business (“**Banking Codes**”)
 - Section 6 – Insurance Business Codes of Practice (“**Insurance Codes**”)
 - Section 7 – Trust Company Business Codes of Practice (“**TCB Codes**”)
- 1.2.1.3 The revised Codes of Practice have not been appended to the consultation paper, rather Appendix B contains website links to revised versions of the Codes of Practice².
- 1.2.1.4 Appendices C, D and E to the paper provide tables highlighting the sections of the Codes impacted by the proposed amendments for deposit-taking business, insurance business and trust company business respectively.

1.3 What is proposed and why?

- 1.3.1 The most significant amendments proposed to the various Codes are summarised below by financial sector:
- 1.3.2 Investment business – the proposed amendments mainly result from a need to bring the IB Codes, last revised in 2001, into line with current international regulatory standards (International Organisation of Securities Commissions Objectives and Principles of Securities Regulation (“**IOSCO Objectives**”)).
- 1.3.2.1 Proposals have been made to strengthen the requirements relating to ‘understanding your clients’ such that the relationship between client and investment business is the most suitable and the products an investment employee suggests are appropriate and suitable.
- 1.3.2.2 The Commission proposes a methodology for reviewing and updating the investment employee professional qualifications on a more regular basis, in order that updates to the professional qualifications will be possible on a six-monthly basis.
- 1.3.2.3 Proposals have been included that investment businesses holding a registration to undertake Class D activities will be required to complete an adjusted net liquid assets (“**ANLA**”) calculation on a quarterly basis; currently they are not required to undertake a formal solvency calculation.
- 1.3.2.4 The Commission proposes to include a new section in the IB Codes addressing advertising; it will require that a registered person must not make statements that are misleading, false or deceptive.
- 1.3.2.5 Proposals have been included such that a registered person must have

² “Black lined” versions of the Investment Business, Banking and Insurance Codes are available on request.

adequate procedures in place to maintain compliance with all the terms and conditions of its professional indemnity insurance (“PII”).

- 1.3.3 Deposit-taking business - the proposed amendments are not individually considered significant, however taken together the proposed amendments impact two of the seven Banking Codes principles plus one of the two Appendices, originally published in August 2006.
- 1.3.4 Insurance Business - no significant amendments are being proposed to the Insurance Codes, published February 2005.
- 1.3.5 Trust Company Business - no significant amendments are being proposed to the TCB Codes that were distributed to industry for information in June 2007. Additionally, the TCB Codes published with this consultation paper should be taken as ‘transitional’ pending full adoption on 1 January 2008.
- 1.3.6 The general rationale for the Commission proposing amendments to the various Codes has been documented as part of the Overview (section 1.1.4).

1.4 Who would be affected?

- 1.4.1 The following entities will be affected, to varying degrees, in the operation of their business:
 - 1.4.1.1 Entities holding a registration to undertake investment business, as defined by Article 2 of the Financial Services (Jersey) Law 1998 (the “**Financial Services Law**”);
 - 1.4.1.2 Entities holding a registration to undertake deposit-taking business, as defined by Article 3 of the Banking Business (Jersey) Law 1991 (the “**Banking Law**”);
 - 1.4.1.3 Entities holding a permit to undertake insurance business, as defined by the Insurance Business (Jersey) Law 1996 (the “**Insurance Law**”); and
 - 1.4.1.4 Entities holding a registration to undertake trust company business, as defined by Article 2 of the Financial Services Law.
- 1.4.2 The effect on entities holding either an insurance permit or trust company registration is expected to be minimal.

2 Consultation

2.1 Basis for consultation

- 2.1.1 The Commission has issued this consultation paper in accordance with Article 8(2) of the Financial Services Commission (Jersey) Law 1998 (the “**Commission Law**”), as amended, under which the Commission “*may, in connection with the carrying out of its functions -consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate*”.
- 2.1.2 In addition, the Commission is required to consult on amendments to Codes in accordance with the following provisions:
- 2.1.2.1 Article 19 of the Financial Services Law.
 - 2.1.2.2 Article 42 of the Insurance Law.

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 an industry body or association makes comments, 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 Commission will consider all responses received from interested parties and proposes to issue final Codes of Practice before the end of 2007.
- 2.3.2 It is anticipated that:
- 2.3.2.1 IB Codes will have a three-month transitional period;
 - 2.3.2.2 Banking Codes will have a three-month transitional period;
 - 2.3.2.3 Insurance Codes will be effective from 1 January 2008; and
 - 2.3.2.4 TCB Codes will be effective from 1 January 2008.

3 The Commission

3.1 Overview

3.1.1 The Commission is a statutory body corporate established under the Commission Law, as amended. 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, 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 the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure; and

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 may, by Regulations, transfer.

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 or malpractice by, 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, in pursuit of the above,

3.3.1.4 contributing to the fight against financial crime.

4 Investment Business Codes of Practice

4.1 Introduction

- 4.1.1 The IB Codes were last revised in 2001. The past six years have seen substantial change in the field of investment business; change that continues and, consequently, the Commission has undertaken a wholesale review and update of the IB Codes.
- 4.1.2 Additionally, as already identified, the Commission is preparing for the forthcoming assessment of the Island's regulatory framework by the IMF and has undertaken a review of the IB Codes against the requirements of the international regulatory standard relating to the securities industry - namely, the IOSCO Objectives. See <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD155.pdf>.
- 4.1.3 This section takes each of the principles of the IB Codes and discusses the significant amendments that are being proposed:
- 4.1.3.1 to address issues highlighted by the IMF in their last assessment of the Island - 2003 report;
 - 4.1.3.2 to achieve compliance with the relevant principles of the IOSCO Objectives - based on the results of the recent self assessment exercise;
 - 4.1.3.3 to take account of the Commission's experience of supervising investment businesses;
 - 4.1.3.4 to take account of changes in industry practice; or
 - 4.1.3.5 to bring the IB Codes in line with the Codes more recently issued by the Commission.
- 4.1.4 Whilst the amendments proposed in this consultation paper are comprehensive the Commission reserves the right to propose further amendments to the IB Codes once the practical impact of the introduction, into the European Economic Area, of the Markets in Financial Instruments Directive becomes more apparent.
- 4.1.5 Also, the Financial Services Authority ("FSA") has this month issued Discussion Paper 07/4³, which explores potential changes to the prudential rules for investment businesses in order to better mitigate market failures in that sector. The Commission regards the issues addressed by this paper as particularly relevant to the local market and will therefore closely monitor this debate, and consider any resultant amendments in the context of our own regime.

³ Discussion Paper 07/4, Review of the Prudential Rules for Personal Investment Firms, http://www.fsa.gov.uk/pubs/discussion/dp07_04.pdf

4.2 Principle 1

- 4.2.1 Principle 1 addresses the requirement for a registered person to conduct their affairs with integrity.
- 4.2.2 No significant amendments have been proposed to the first principle of the IB Codes. Minor amendments designed to bring the IB Codes more into line with other Codes issued by the Commission have been suggested.

4.3 Principle 2

- 4.3.1 The second principle of the Codes requires that “a registered person have the highest regard for the interests of its clients”.
- 4.3.2 The amendments proposed to this principle include structural changes to the layout of the requirements and the establishment of specific requirements in terms of the manner in which a registered person must conduct business with its clients.
- 4.3.3 With respect to structural changes it is proposed that principle 2 be restructured under the following headings:
- Knowledge of client;
 - Suitability;
 - Conflicts of interest;
 - Switching & churning;
 - Front running;
 - Customer order priority;
 - Aggregation;
 - Fair and Timely allocation;
 - Timely execution; and
 - Best execution.
- 4.3.4 The requirements for an advisor or discretionary manager to ensure that their advice or exercise of discretion is suitable are set out under principle 2 of the Codes. A criticism of the previous Codes was that they lacked sufficient detail in this area as to what documentation should be retained and/or delivered to a client to demonstrate that a particular investment was suitable.
- 4.3.5 In redrafting this section of the Codes, it has been necessary to pay regard to the fact that the IB Codes apply to a broad spectrum of investment businesses servicing clients, which range from retail to institutional. Accordingly, there is a danger that, in pitching the provisions of the Codes at the retail end of the market, the Commission could make the requirements unduly burdensome for those businesses acting for sophisticated or institutional investors.
- 4.3.6 One means of addressing this issue would be to introduce the concept of client classification into the Codes whereby businesses would be required to classify each client and the Codes drafted so as to provide varying levels of protection. Whilst such an approach carries some support in the industry, it is likely that

adopting client classification would serve to move the Codes from the current principles based approach to something altogether more prescriptive.

4.3.7 Accordingly the approach taken in this redraft of the Codes has been as follows:

4.3.7.1 Redraft principle 2 of the Codes so as to make the suitability of advice and knowledge of client requirements clearer and more enforceable.

4.3.7.2 Retain the principles based approach so that the provisions can be applied to both retail and non-retail clients.

4.3.7.3 Introduce a new requirement that “in determining the means by which it will comply with the requirements of principle 2 of the Codes a registered person must take into account relevant guidance issued by the Commission”.

4.3.8 In this way, the Commission believes that provisions of the Codes remain universally applicable but the Commission has the ability to introduce, and update, guidance which can be taken into account when determining whether a registered person has interpreted the Codes in a reasonable manner. It is proposed that the Commission will issue such guidance prior to implementation of the revised IB Codes.

4.3.9 New requirements have been proposed in respect of switching and churning, front running and timely and fair allocation of orders. The Commission considers it necessary to directly address such activities as part of the Codes in order to comply with international regulatory standards and reflect the current practices in industry.

4.3.10 **Do you anticipate your business having difficulty complying with any of the revised requirements under principle 2 of the IB Codes?**

4.3.11 **Would your business benefit from a guidance note on the practical interpretation of the “suitability” requirements in the IB Codes?**

4.4 Principle 3

4.4.1 The third principle of the IB Codes requires that “a registered person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems”.

4.4.2 It is proposed to amend the format of this section of the IB Codes so as to align it with other Codes more recently issued by the Commission. It is proposed that principle 3 of the IB Codes be structured under the following headings:

- Corporate governance;
- Internal systems and controls;
- Integrity and competence;
- Continuing Professional Development;

- Compliance Officer, Money Laundering Reporting Officer (“MLRO”) and Money Laundering Compliance Officer (“MLCO”);
- Complaints; and
- Record keeping.

4.4.3 The key changes proposed under these headings are summarised below:

4.4.4 **Corporate Governance**

4.4.4.1 This section of the Codes will contain the existing requirements in relation to span of control and will also address the IOSCO Objectives in the area of risk management. These changes will align the IB Codes with other Codes more recently issued by the Commission.

4.4.4.2 **Do you consider the corporate governance proposals to be appropriate? If not, please set out your reasons.**

4.4.5 **Internal systems and controls**

4.4.5.1 Again, the proposed amendments to this section will serve to bring the IB Codes more into line with the requirements established under more recently issued Codes for other sectors of the industry. This section sets requirements for a business to operate internal control systems that achieve and maintain compliance with regulatory and anti-money laundering and terrorist-financing (“AML/CFT”) requirements.

4.4.5.2 New requirements are proposed such that the registered person must have a documented business continuity plan, which they periodically test, and that they must have regard to the Commission’s sensitive activities policy, when taking on new business.

4.4.5.3 Finally, the Commission is considering introducing a requirement, under this section, to properly monitor the activities of branches and subsidiaries. This is becoming increasingly relevant as a number of Jersey based investment business are now opening overseas branch and subsidiary operations to cater for clients outside of the Island.

4.4.5.4 **Do you consider the internal systems and controls proposals to be appropriate? If not, please set out your reasons.**

4.4.5.5 **Do you have any strong objections to the Commission introducing a requirement as referred to in 4.4.5.3?**

4.4.6 **Integrity and competence**

4.4.6.1 This section of the IB Codes sets out the requirements relating to staff vetting, supervision and competence.

4.4.6.2 The most significant change proposed in this part of the Codes is that the process for approving and updating the investment employee professional qualification requirements be altered. At present, the qualification requirements contained in the IB Codes are outdated as they fail to reflect

changes in professional qualifications since the Codes were last updated in 2001.

4.4.6.3 As part of the redraft to the Codes, consideration has been given to either placing responsibility for determining suitable staff qualifications back on the registered person and/or linking the IB Codes to the Financial Services Skills Council's list of appropriate qualifications (the approach adopted by the FSA in their Handbook).

4.4.6.4 On balance, it is considered preferable for the Commission to continue to set and maintain the mandatory minimum qualification levels. Linking the Jersey requirements in a similar manner to those of the FSA would be potentially confusing for businesses and could also serve to dilute the Jersey requirements.

4.4.6.5 Accordingly, the consultation paper proposes that a special qualifications steering group be convened to initially overhaul the existing qualifications in the IB Codes and to then meet on a 6 monthly basis going forward in order to keep the qualification requirements up to date.

4.4.6.6 It is further proposed that the qualification section of the IB Codes be published separately on the Commission's website for greater ease of reference and revision.

4.4.6.7 It is envisaged that the qualification steering group would be formed with the assistance of Jersey Finance during the consultation period and would consider proposals in relation to qualifications in parallel with the wider consultation on the revised IB Codes.

4.4.6.8 Do you agree with the proposal to form a qualification steering group to help develop and update the investment business qualification requirements? Who do you suggest should form part of such a steering group?

4.4.6.9 What changes would you propose to the existing professional qualification requirements in the IB Codes? Please provide support for any changes that are proposed.

4.4.7 Continuing professional development ("CPD")

4.4.7.1 CPD is considered a key component of employee competence alongside professional qualifications and relevant experience.

4.4.7.2 There are no proposals to alter the current minimum level of annual CPD from 35 hours. However, further guidance as to what constitutes relevant CPD is proposed as part of this update to the IB Codes. It is also proposed that the amount of CPD to be obtained by reading be capped at 5 hours in line with other Codes issued by the Commission.

4.4.7.3 Do you believe that the CPD regime is effective? Are the changes being proposed appropriate? If not, please set out your reasons.

4.4.8 **Compliance Officer, MLRO and MLCO**

4.4.8.1 Amendments have been proposed requiring that Compliance Officers demonstrate an appropriate level of independence in the undertaking of their role and are afforded adequate access to the information and resources necessary for them to properly perform their role as described in the IB Codes.

4.4.8.2 These amendments are designed to address deficiencies that have been identified during on-site examinations of investment businesses. Additionally, these changes will also serve to better align the IB Codes with Codes issued by the Commission relating to other financial sectors.

4.4.9 **Complaints**

4.4.9.1 It is proposed that a new requirement be introduced to “handle complaints transparently, fairly and, in so far as is possible, independently”. In addition a number of new notifiable events in relation to complaints are being proposed, which will serve to align the IB Codes with more recent Codes introduced by the Commission. The relevant changes can be found at 3.6 of the IB Codes.

4.4.10 **Record keeping**

4.4.10.1 The proposed amendments to the record keeping requirements provide more detail as to what would constitute retainable records as well as clarification as to when the period for document retention should commence.

4.4.10.2 The proposals also introduce an explicit requirement to maintain a policies and procedures manual. This change serves to better align the IB Codes with other Codes issued by the Commission and also addresses a recommendation made by the IMF at the time of their last assessment.

4.4.10.3 **Do you anticipate your business having any difficulty complying with the updated record keeping requirements?**

4.5 Principle 4

4.5.1 Principle 4 of the IB Codes requires that “a registered person be transparent in its business arrangements”.

4.5.2 The most significant amendments proposed to this section of the IB Codes are:

4.5.2.1 the introduction of a requirement that a registered person provide its client with a written agreement setting out the terms and conditions applying to the services that it provides; and

4.4.2.3 a new requirement that a registered person make its client aware if it has a policy of recording telephone conversations.

- 4.5.3 With respect to section 4.4 of the IB Codes the Commission has retained a principles approach at this time and intends to issue guidance on what constitutes “relevant matters” at a later date.
- 4.5.4 The rationale for these amendments is to impress upon registered persons the importance of them providing clients with clear and relevant information relating to products and services they are offering. Additionally, registered persons should make clients aware of the terms and conditions associated with the service that they are receiving from the registered person.
- 4.5.5 The proposed amendments will serve to better align the IB Codes with more recent Codes issued by the Commission and will also address the IOSCO Objectives in the area of client agreements.
- 4.5.6 **Do you anticipate your business having any difficulty in providing all clients with written terms and conditions?**
- 4.5.7 **Do you envisage any difficulty with your business complying with the more detailed requirements for client confirmations? If so, please provide specific examples.**

4.6 Principle 5

- 4.6.1 An important requirement of the Codes and the regulatory regime in general, is that registered persons have appropriate financial standing. Principle 5 of the IB Codes sets out these requirements stating that “a registered person must maintain, and be able to demonstrate the existence of adequate financial resources and adequate insurance”.
- 4.6.2 The financial failure of a registered person has the potential to severely prejudice customers and to damage the Island’s reputation. Therefore it is important that the regulatory regime requires that registered persons maintain adequate financial resources and insurance.
- 4.6.3 Whilst the Commission is of the view that the financial resource requirements remain broadly appropriate, issues arising during the course of regulatory supervision indicate that some amendments are necessary.
- 4.6.4 A summary of the most significant changes relating to capital adequacy and solvency requirements is set out below:
- 4.6.4.1 It is proposed that the minimum capital requirements be amended so as to require that a registered person maintain a net asset position (per the annual financial statements of the registered person) of at least £10,000 or £25,000 depending on the type of registration held. This amendment is intended to address instances under the existing Codes where a registered person is able to satisfy the minimum issued share capital requirements in spite of having an overall net liability balance sheet position on the annual financial statements.
- 4.6.4.2 It is proposed that persons undertaking Class D investment business be

required to perform a quarterly solvency calculation in the same way as other investment businesses albeit it on a less frequent basis. This change is intended to provide evidence that Class D investment businesses are properly monitoring their financial position and can demonstrate an appropriate level of solvency.

4.6.4.3 It is proposed that registered persons be required to notify the Commission in the event that their ANLA calculation produces a ratio of less than 130%. An ANLA ratio of below 130% will not constitute a breach of the IB Codes so long as the registered person continues to maintain net liquid assets surplus to three month's expenditure based on either the last year's audited financial statements or current budget, whichever is the higher. The purpose of altering the notification requirement is to provide the Commission with earlier warning that a registered person may be encountering financial difficulties.

4.6.4.4 It is proposed to require all loans payable to be treated as liabilities for the purpose of the ANLA calculation and only to exclude liabilities from the ANLA calculation that are truly long term; appropriately documented; and, in the case of subordinated loans, subject to certain notification requirements. Consequently, it is proposed that the Codes should require all loans payable to be treated as liabilities unless they are:

- approved long term subordinated loans; or
- long-term bank loans.

4.6.4.5 The format of the ANLA calculation has been updated in order to make it more consistent with other Codes more recently issued by the Commission. More guidance has been provided as to how the calculation should be performed so as to facilitate a more straightforward and consistent approach. The position risk, counterparty risk and market risk elements of the calculation have been updated to reflect the latest prudential guidance issued by the FSA and the other Crown Dependencies.

4.6.4.6 Finally, the Commission recognises that a significant number of investment businesses are also registered to carry on other types of regulated activity. In such circumstances, it is currently necessary to carry out multiple solvency calculations, which is time consuming for the registered person and may result in unnecessary duplication. For this reason, it is proposed that the Commission will issue a guidance note setting out how registered persons holding multiple licences should approach their solvency calculation. As part of this process, the Commission will explore whether it is feasible to exempt Jersey based banks from the solvency calculation in the IB Codes provided that they are observing the capital adequacy regime set out in the Banking Codes.

4.6.5 The most significant amendments proposed relating to PII are as follows:

4.6.5.1 The Commission has sought to remove ambiguous terms and proposes to introduce a requirement that firms obtain appropriate "run off" PII where an investment business is ceasing to conduct business.

4.6.5.2 It is proposed that the maximum permissible PII excess be changed from £5,000 plus 0.75% of cover over £1 Million to 3% of relevant fees and commissions. It is felt that this more appropriately reflects the levels of excess available in the insurance market and puts the IB Codes on a more equal footing with other Codes issued by the Commission. It should be noted that investment businesses will be required to account for the full amount of any excess as a liability when performing their ANLA calculation.

4.6.5.3 The Commission has explored whether it would be appropriate to require that registered persons obtain PII cover which does not include notification clauses which might serve to invalidate cover but has concluded that to do so may severely limit registered persons' access to the PII market. Accordingly, it is considered necessary to bolster the requirements of the Codes relating to systems and controls in this area.

4.6.5.4 A new requirement is proposed such that registered persons must have adequate procedures in place to maintain compliance with all the terms and conditions of its PII policy, particularly in relation to the timely notification of events that may lead to a claim on the policy. This requirement is considered particularly relevant given the conclusions reached in the Royal Court judgement in respect of Alternate Insurance Services Limited.

4.6.6 **Do you see benefit in a guidance note along the lines described in 4.6.4.6?**

4.6.7 **Do you have any concerns about the extension of the ANLA calculation to Class D investment business?**

4.6.8 **Do you consider any of the changes proposed in terms of financial resources or PII to be inappropriate and, if so, how?**

4.6.9 **Are these changes likely to alter your ability to satisfy the ANLA requirements and, if so, how?**

4.6.10 **Do you have loans that you envisage converting to a subordinated basis?**

4.7 Principle 6

4.7.1 Principle 6 of the IB Codes states that "a registered person is expected to deal with the Commission and other authorities in Jersey in an open and co-operative manner".

4.7.2 The Commission considers the candour of registered persons as being fundamental to the effective operation of a principle based regulatory regime. A registered person's willingness to volunteer information about its business and particularly the risks that it has encountered, or is likely to encounter, enables the Commission to more accurately assess the relative risk that a business poses and to plan its supervisory approach accordingly.

- 4.7.3 Principle 6 of the Codes sets a general requirement for a registered person to notify the Commission of matters that may reasonably be expected to affect their registration or to be in the interests of clients to disclose.
- 4.7.4 Without wishing to reduce the generality of this principle, the Commission has set out a number of specific circumstances in which a registered person must notify the Commission. It is proposed that new notification events are added to the IB Codes as part of this revision so as to align the IB Codes with more recent Codes issued by the Commission and to assist the Commission in maintaining its risk assessment of businesses for supervisory purposes. The new notification events are set out in detail in the Third Schedule to the IB Codes, appended to Appendix B of this paper.
- 4.7.5 **Is compliance with any of the proposed amendments under principle 6 of the IB Codes likely to prove impractical? If so, please provide examples.**
- 4.7.6 Finally, given that notification requirements and matters requiring the Commission's consent are currently found throughout the Codes, it is proposed that a new Third Schedule be created so as to also collate these items in a consolidated table for easier reference.

4.8 Principle 7

- 4.8.1 Clear requirements on advertising are an important component of the IOSCO Objectives. Currently the IB Codes are silent on this matter.
- 4.8.2 Consequently, it is proposed to introduce a new principle such that "a registered person must not make statements that are misleading, false or deceptive".
- 4.8.3 The requirements proposed under this principle relate to the format and content of a financial service advertisement, as defined in Article 1 of the Financial Services Law, and set out the extent to which terms and conditions and risk warnings should be disclosed as part of an advertisement. The requirements also propose the manner in which forecasts and competitor comparisons can be used and the circumstances in which it is permissible to refer to a product as "guaranteed".
- 4.8.4 These provisions are intended to provide sector specific requirements in parallel with an Advertising Order which it is intended will be introduced as subordinate legislation to the Financial Services Law later this year.
- 4.8.5 The proposed contents of principle 7 of the IB Codes have previously been subject to public consultation as part of CP 2, 2002. Whilst the wording is substantively similar to that previously consulted upon, changes have been proposed such that the requirements align with Codes for other sections of the finance industry, so far as is possible.
- 4.8.6 **What are your views in relation to the proposed new high level principle 7 and the accompanying IB Codes in relation to advertising?**

4.9 Other amendments

- 4.9.1 The requirements relating to Class E of investment business are now set out in the Second Schedule to the IB Codes.
- 4.9.2 Class E of investment business applies to “Investment business carried on only with respect to funds which would be funds within the meaning of the *Collective Investment Funds (Jersey) Law 1988* but for the fact that they do not, and do not intend to, acquire capital by means of an offer to the public of units for subscription, sale or exchange, as described in that Law”.
- 4.9.3 In practice, this Class of business has been elected by very few entities (3 at present) because the vast majority of funds meeting the description above also meet the definition of a “Professional Investor Regulated Scheme” in which case the investment adviser is afforded exemption from registration by the Financial Services (Investment Business (Restricted Investment Business –Exemption)) (Jersey) Order 2001.
- 4.9.4 The existing IB Codes set minimal requirements for Class E investment businesses; in essence they are required to comply with only the high level principles and nothing else.
- 4.9.5 It is proposed that, on the basis that these businesses are dealing with only private funds, this approach remain. However, it is proposed that the existing requirements be extended to include the following:
 - 4.9.5.1 A requirement to follow the span of control principles;
 - 4.9.5.2 A requirement to comply with the Compliance Officer, MLRO and MLCO requirements set out under section 3.5 of the Codes;
 - 4.9.5.3 A requirement to maintain a procedures manual;
 - 4.9.5.4 A requirement to keep adequate and orderly records;
 - 4.9.5.5 A requirement to maintain adequate financial resources; and
 - 4.9.5.6 A requirement to comply with the notification events set out under principle 6 of the IB Codes.

5 Codes of Practice for Deposit-taking Business

5.1 Introduction

- 5.1.1 In October 2006 the Basel Committee on Banking Supervision issued a revised version of the Core Principles for Effective Banking Supervision (the “**Basel Core Principles**”). The Basel Core Principles set minimum levels for sound supervisory practices and these principles have been adopted by the Commission in its role as regulator and supervisor of deposit takers (“**registered persons**”) in Jersey.
- 5.1.2 The Basel Core Principles can be found at www.bis.org/publ/bcbs130.htm.
- 5.1.3 As part of the Commission’s preparation for the IMF assessment in 2008, the revised Basel Core Principles have been considered against the Banking Codes. Following this exercise a number of amendments are being proposed to the Banking Codes, which have been highlighted in Appendix C for ease of reference. In addition, the material changes have been more fully explained below.

5.2 Principles 1 and 2

- 5.2.1 Principles 1 and 2 address the requirement for a registered person to conduct its affairs with integrity and have due regard to the interests of its customers respectively.
- 5.2.2 No significant amendments are being proposed to these principles.

5.3 Principle 3

- 5.3.1 Principle 3 of the Banking Codes requires that a registered person organises its affairs effectively for the proper performance of its business activities and to be able to demonstrate the existence of adequate risk management systems. The consideration of the Banking Codes against the revised Basel Core Principles has resulted in the Commission proposing three amendments to the Banking Codes.
- 5.3.2 Independent risk management unit (see Banking Codes section 3.1.4.4)
 - 5.3.2.1 Principle 7 of the Basel Core Principles recommends that larger and more complex banks have an independent unit responsible for risk evaluation, monitoring, and control or mitigation of material risk areas in the bank.
 - 5.3.2.2 The Commission proposes adopting this principle in the Banking Codes, but does not propose to apply any prescriptive criteria to establish whether or not a bank is large or complex. This remains a decision for the registered person to make.

5.3.2.3 In addition, it is of note that a number of registered persons in the Island already have independent risk management units.

5.3.2.4 **Do you feel that the Commission is correct to leave the primary decision on the definition of 'large or complex' with the registered person as appropriate? If not, please set out your reasons.**

5.3.3 Customer due diligence (3.2.1.8 and Appendix I)

5.3.3.1 Customer due diligence is most closely associated with the fight against money laundering. However, sound customer due diligence is also critical in protecting the safety and soundness of banks and the integrity of banking systems from other risks such as reputational, operational, legal and concentration risks.

5.3.3.2 Effective risk management requires sound customer due diligence policies and procedures. Currently, Appendix I to the Banking Codes identifies what the Commission considers to be minimum control requirements for a number of key risks areas.

5.3.3.3 The Commission proposes adding a new section to Appendix I, section 7, that will highlight three areas that a registered person should consider in respect of customer due diligence. The three areas are:

- having a formal customer acceptance policy;
- having identification procedures relating to new customers; and
- establishing an adequate understanding of customers and their service/product needs.

5.3.3.4 **Do you consider that incorporation of these requirements into your risk management system is of concern?**

5.3.4 Competency requirements (3.7.4)

5.3.4.1 The Commission has adopted two separate approaches to the establishment of competency requirements within the Codes for the financial sectors that it regulates. These competency requirements relate to the staff and officers of the registered person in question.

- The first approach is to list explicit requirements (i.e. qualifications, years service, training) that must be met by a proportion of the registered person's staff and officers e.g. TCB Codes.
- The second approach places the responsibility with the registered person to decide levels of competency requirements for each job role within their organisation.

5.3.4.2 It is this latter approach that the Commission has adopted for deposit-taking businesses, and will continue to do so for the foreseeable future. However, the Commission is proposing to strengthen the requirements surrounding this approach by requesting the following:

- Competency requirements to be set out in each employee's job description; and

- An assessment of the employee to be performed against these requirements on an appropriately regular basis.

5.3.4.3 The Commission expects that most registered persons already have sufficiently documented job descriptions for their staff, and that these staff are appraised on an appropriately regular basis (e.g. annually), such that this requirement should not generate significant challenge or effort.

5.3.4.4 **Do you believe these requirements fall outside of your current practices?**

5.4 Principles 4 and 5

5.4.1 Principles 4 and 5 address the requirement that a registered person must be transparent in its business arrangements and establish a requirement for a registered person to maintain, and be able to demonstrate the existence of, adequate capital resources respectively.

5.4.2 No significant amendments are being proposed to these principles.

5.5 Principle 6

5.5.1 Principle 6 states that registered persons are expected to deal with the Commission and other authorities in the Bailiwick in an open and co-operative manner. The review of the revised Basel Core Principles against the Banking Codes has resulted in two amendments being proposed to principle 6.

5.5.2 Reporting requirements (6.2 and 6.3)

5.5.2.1 Previously, the Commission has issued a number of legal notices under Article 26 of the Banking Law that established financial reporting requirements for registered persons. It is now considered more appropriate that such requirements are established by the Banking Codes. This will appropriately reduce the impact of minor failures to meet these requirements and enable them to be varied more easily going forward.

5.5.2.2 In transferring the reporting requirements to the Banking Codes the Commission is providing clarification as to those requirements that relate to registered persons that are Jersey registered companies (Banking Codes 6.2) and those that relate to branches of companies registered outside of Jersey (Banking Codes 6.3).

5.5.2.3 The Commission also proposes formalising the current requirement to submit to the Commission financial statements relating to the parent(s) of the registered person (both ultimate and intermediate parents).

5.5.2.4 Finally, the Commission proposes that the submission of parent financial statements be made within four months of the financial year end of the parent companies.

- 5.5.2.5 **Do you agree that the amended text in the Banking Codes clarifies adequately the reporting requirements of branches and Jersey registered companies?**
- 5.5.2.6 **Do you have any concerns with respect to the four months submission deadline for financial statements of parent companies?**
- 5.5.3 Prudential reporting standards (6.2 & 6.3)
- 5.5.3.1 Principle 21 of the Basel Core Principles recommends that clear instructions be given to banks on the accounting standards to be used when preparing supervisory reports (i.e. the quarterly prudential reports). The Commission considers this principle to be appropriate in Jersey but whilst it has followed a principle of accepting any widely accepted accounting standards it has not previously made this explicit.
- 5.5.3.2 Consequently, the Commission proposes to place a requirement on registered persons to prepare their quarterly prudential reports following standards based on widely accepted accounting principles.
- 5.5.3.3 The Commission expects the accounting standards to align to those applied in the production of the registered person's financial statements, in the case of both locally registered companies and branches of companies registered outside Jersey.
- 5.5.3.4 **Do you have any concerns with the requirement to adopt accounting standards, for the quarterly prudential reports, that are in line with those adopted in the registered person's financial statements? If so, what are those concerns?**
- 5.5.4 Annual declaration (6.4)
- 5.5.4.1 Most of the financial sectors regulated by the Commission have, or are expected to have by the end of the year, a requirement to provide the Commission with a declaration of compliance with relevant legislation and applicable Codes. In the case of deposit-taking, this annual declaration will cover banking legislation, AML/CFT legislation and the Banking Codes. It is anticipated that the annual declaration will encourage registered persons to identify areas that require addressing in order to maintain compliance.
- 5.5.4.2 It is proposed that the registered person will provide the Commission, on an annual basis, with a letter confirming its compliance with relevant legislation and the Banking Codes, or highlighting where deviations have occurred. The managing director, or equivalent, will sign the letter for Jersey registered companies and the branch manager for branches.
- 5.5.4.3 **Do you have any views for or against the submission of an annual declaration, as proposed?**

5.5.5 New activities - notification (6.8)

5.5.5.1 Principle 5 of the Basel Core Principles recommends that a clear definition be provided of the type and amounts of acquisitions and investments that need prior supervisory notification. The Commission has considered this principle and proposes to adopt two thresholds in this respect, being:

- 5% of the registered person's agreed capital base for acquisition/investments; and
- 5% of the registered person's total income (as defined in the Schedule to the Banking Codes) for new activities.

5.5.5.2 There is no requirement to notify the Commission prior to acquisitions/investments or commencement of new activities that fall below the proposed thresholds, unless notification is separately required under the Banking Business (General Provisions) (Jersey) Order 2002 in respect of establishing new branches or representative offices.

5.5.5.3 **Do you feel that the 5% thresholds have been set appropriately? If not, what would you consider to be appropriate?**

5.6 Principle 7

5.6.1 Principle 7 states that a registered person must not make statements that are misleading, false or deceptive.

5.6.2 No significant amendments are being proposed to this principle.

5.7 Appendices to the Banking Codes

5.7.1 The Appendices to the Banking Codes address risk management controls and large exposure definitions. The review of the Banking Codes against the Basel Core Principles has identified one area appropriate to amend⁴.

5.7.2 This is the expansion of Appendix I, Risk Management Controls, to include procedures with respect to related parties and their transactions.

5.7.3 Related parties – procedures (Appendix I, 1.5)

5.7.3.1 Principle 11 of the Basel Core Principles makes a number of recommendations on dealings with related parties. The Commission proposes strengthening the requirements placed on registered persons by the Banking Codes in this respect, so as to better align with the revised Basel Core Principles.

5.7.3.2 The Commission proposes moving the definition of related parties from its current location of Note 3 in section 5.4 to Appendix I.

⁴ Amendments to Appendix I in respect of customer due diligence are dealt with in section 5.3.3, of this paper.

5.7.3.3 The Commission further proposes including specific policies and procedures with respect to related parties and their transactions, focussing on:

- the responsibilities of senior management and/or directors around related party transactions, including the management of actual and potential conflicts of interest;
- assessing the terms of related party transactions; and
- the identification and reporting of related party transactions.

5.7.3.4 The Commission believes that the vast majority of banks already have adequate policies and procedures in place covering related parties. Therefore the impact of this change to the Banking Codes is anticipated to be minimal.

5.7.3.5 Do you agree that the impact of the proposals with respect to related parties will be minimal?

5.8 Supplemental changes to the Banking Codes

5.8.1 Appendix C, to this paper, lists, by Banking Code section, all proposed amendments of any materiality to the Banking Codes, including those less significant amendments not included in the above sections.

5.8.2 Some very minor amendments have not been highlighted in this section or in the Appendix. These amendments are grammatical or formatting in nature.

6 Insurance Business Codes of Practice

6.1 Introduction

- 6.1.1 The compliance of the Island's regulatory framework with respect to Insurance Business is to be assessed against the 28 Insurance Core Principles, as issued by the International Association of Insurance Supervisors (the "IAIS"). Details of the IAIS Core Principles can be found on the IAIS website at www.iaisweb.org.
- 6.1.2 The Commission has reviewed the Insurance Codes for compliance with the IAIS Insurance Core Principles focussing on the essential criteria, where appropriate, in order to ensure that the core principles are adequately addressed in the Insurance Codes.

6.2 International Standards

- 6.2.1 The Commission's review of the Insurance Codes has identified just two items where the Commission considers amendment to the Insurance Codes is necessary. Both proposed amendments impact principle 3 of the Insurance Codes and are as follows:
 - 6.2.1.1 Market Risk - the Insurance Core Principles require that insurers review the risks within the market in which they operate. The Commission has considered this requirement and proposes to add this requirement as section 3.1.3.5 to the Insurance Codes.
 - 6.2.1.2 Remuneration Policy - the Insurance Core Principles require that insurers have a documented remuneration policy for directors and employees. The Commission has considered this requirement and proposes to add this requirement as section 3.7.6 to the Insurance Codes.
- 6.2.2 **Do you consider the wording of the proposed additional requirements in respect of market risk and remuneration policy to be sufficiently clear to enable compliance? If not, please provide details relating to your concerns.**

6.3 Supplemental changes to the Insurance Codes

- 6.3.1 Whilst reviewing the Insurance Codes, the Commission has also made a number of minor changes and improvements, to better align the Insurance Codes with those issued more recently by the Commission. These amendments together with the changes highlighted in 6.2 are summarised in Appendix D to this paper.
- 6.3.2 The Commission has also taken the opportunity to make some grammatical improvements and incidental amendments, including updating references to Articles in the Insurance Law, all of which have been considered too minor to include in Appendix D.
- 6.3.3 **Do you have any observations or comments to make regarding the minor amendments proposed to the Insurance Codes?**

7 Trust Company Business Codes of Practice

7.1 Introduction

- 7.1.1 The Commission issued a consultation paper on proposed amendments to the TCB Codes in August 2006; closing date for comments was 15 November 2006. Since November the Commission, in conjunction with an Industry Working Party, has been considering the comments received on the proposed amendments, and at the recent trust company business seminar, hosted by the Commission on 19 June 2007, an updated draft of the Codes was distributed to industry for information (the “**June draft**”).
- 7.1.2 However, due to time constraints, the June draft of the TCB Codes did not include some amendments proposed resulting from the Commission’s recent review of the regulatory regime for Trust Company Businesses against the Best Practice Statement for Trust and Company Services Providers⁵ (the “**OGBS Statement**”), issued by the Offshore Group of Banking Supervisors.
- 7.1.3 It is not the intention of the Commission to subject the TCB Codes to another full consultation process; rather we are seeking comments on a few very specific proposed amendments.

7.2 International Standards

- 7.2.1 Following consideration of the TCB Codes against the OGBS Statement the Commission considers that the current regulatory framework for trust company businesses can demonstrate ‘substantial compliance’.
- 7.2.2 Consequently, the Commission considers it necessary to propose only a small number of amendments to the June draft. Appendix E to this paper contains details of amendments proposed to the TCB Codes. Amendments proposed to Codes sections 3.2.9.1, 3.2.10.1, 3.2.13.1, 3.6.4 and 5.5.12 result from consideration of the OGBS Statement.
- 7.2.2.1 The amendments proposed to 3.2.9.1, 3.2.10.1 and 3.2.13.1 are to include specific references to primary legislation reflecting the requirement for registered persons to comply with relevant and applicable domestic statutory obligations.
- 7.2.2.2 The amendment noted with respect to 3.5.6 proposes a new requirement such that a registered person is to ensure that its compliance function is adequately resourced.
- 7.2.2.3 The amendments noted with respect to 3.6.4 and 5.5.12 propose new requirements in respect of PII and complaints such that a registered person

⁵ This document can be located on the Offshore Group of Banking Supervisors website - www.ogbs.net

should have adequate procedures in place to ensure compliance with all terms and conditions set out in a registered person's PII terms and conditions; particularly in relation to the timely notification of events that may lead to a claim on the policy.

7.3 Supplemental changes to the TCB Codes

- 7.3.1 The Commission has also taken the opportunity to review the TCB Codes with the aim of making them more 'user - friendly' and has proposed a number of amendments that provide greater clarity for registered persons and other interested parties.
- 7.3.2 The clarity of the TCB Codes has also been addressed by proposing amendments to the structure of the Codes. Guidance on the interpretation of the Codes is now included as a footnote and, where the Commission has identified mandatory requirements that were contained within explanatory notes or footnotes these requirements have been formally codified.

7.4 Next Steps

- 7.4.1 Given the recent consultation on significant amendments to the TCB Codes the Commission intends that the attached TCB Codes be considered in 'transitional' form until 31 December 2007, with formal adoption on 1 January 2008.
- 7.4.2 The Commission proposes this timetable to coincide with the adoption of the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (the "AML/CFT Handbook") on 1 January 2008. The Industry Working Party suggests that there are synergy benefits for registered persons reviewing their systems and controls as one task, covering compliance with both the new regulatory and anti-money laundering requirements.
- 7.4.3 Notwithstanding that the TCB Codes are in a transitional form the Commission welcomes comments from interested parties in respect of the amendments detailed in the attached table.
- 7.4.4 **Do you have any observations or comments to make regarding the proposed amendments to the TCB Codes?**

8 COST BENEFIT ANALYSIS

8.1 Costs to Industry

- 8.1.1 The cost to industry, as a consequence of the proposed amendments to the various Codes, is considered unlikely to be significant on the basis that the Codes are not seeking to introduce requirements that would not already be observed by the majority of entities, as a matter of best practice.
- 8.1.2 A potential exception to this is the proposal that Class D investment businesses henceforth perform a quarterly solvency calculation. Those businesses that do not possess sufficient financial resources to satisfy the prescribed solvency ratio may need to take steps to obtain further working capital.
- 8.1.3 The minimum operating standards established by the Codes are considered to be widely in place and already applied by entities. The Commission recognises, though, that the size of individual operations and breadth of activities in Jersey vary significantly, with a proportionately greater financial impact falling on smaller entities.
- 8.1.4 The Commission already actively supervises the financial sectors to which these Codes apply and the amendments proposed to these Codes are not expected to materially add to the Commission's operating costs.

8.2 Benefits to Industry

- 8.2.1 The main benefits achievable from the amendments proposed to the Codes include:
 - 8.2.1.1 clearer, less ambiguous provisions;
 - 8.2.1.2 greater consistency amongst Codes issued by the Commission;
 - 8.2.1.3 compliance with international regulatory standards; and
 - 8.2.1.4 contributing to the maintenance of confidence in the Island's finance industry and corresponding regulatory regime.
- 8.2.2 Additionally, for investment businesses the achievable benefits include:
 - 8.2.2.1 the removal of outdated provisions, in particular, the transitional provisions section, which is no longer applicable;
 - 8.2.2.2 greater consumer protection through provisions dealing with advertising, record keeping, financial standing, client disclosure and the suitability of advice; and
 - 8.2.2.3 clearer, less ambiguous, financial resource and PII requirements.

9 Summary of Questions

4 Investment Business Codes of Practice

4.3 Principle 2

- 4.3.10 Do you anticipate your business having difficulty complying with any of the revised requirements under principle 2 of the IB Codes?
- 4.3.11 Would your business benefit from a guidance note on the practical interpretation of the “suitability” requirements in the IB Codes?

4.4 Principle 3

- 4.4.4.2 Do you consider the corporate governance proposals to be appropriate? If not, please set out your reasons.
- 4.4.5.4 Do you consider the internal systems and controls proposals to be appropriate? If not, please set out your reasons.
- 4.4.5.5 Do you have any strong objections to the Commission introducing a requirement as referred to in 4.4.5.3?
- 4.4.6.8 Do you agree with the proposal to form a qualification steering group to help develop and update the investment business qualification requirements? Who do you suggest should form part of such a steering group?
- 4.4.6.9 What changes would you propose to the existing professional qualification requirements in the IB Codes? Please provide support for any changes that are proposed.
- 4.4.7.3 Do you believe that the CPD regime is effective? Are the changes being proposed appropriate? If not, please set out your reasons.
- 4.4.10.3 Do you anticipate your business having any difficulty complying with the updated record keeping requirements?

4.5 Principle 4

- 4.5.6 Do you anticipate your business having any difficulty in providing all clients with written terms and conditions?
- 4.5.7 Do you envisage any difficulty with your business complying with the more detailed requirements for client confirmations? If so, please provide specific examples.

4.6 Principle 5

- 4.6.6 Do you see benefit in a guidance note along the lines described in 4.6.4.6?
- 4.6.7 Do you have any concerns about the extension of the ANLA calculation to Class D investment business?

- 4.6.8 Do you consider any of the changes proposed in terms of financial resources or PII to be inappropriate and, if so, how?
- 4.6.9 Are these changes likely to alter your ability to satisfy the ANLA requirements and, if so, how?
- 4.6.10 Do you have loans that you envisage converting to a subordinated basis?

4.7 Principle 6

- 4.7.5 Is compliance with any of the proposed amendments under principle 6 of the IB Codes likely to prove impractical? If so, please provide examples.

4.8 Principle 7

- 4.8.6 What are your views in relation to the proposed new high level principle 7 and the accompanying IB Codes in relation to advertising?

5 Codes of Practice for Deposit-taking Business

5.3 Principle 3

- 5.3.2.4 Do you feel that the Commission is correct to leave the primary decision on the definition of 'large or complex' with the registered person as appropriate? If not, please set out your reasons.
- 5.3.3.4 Do you consider that incorporation of these requirements into your risk management system is of concern?
- 5.3.4.4 Do you believe these requirements fall outside of your current practices?

5.5 Principle 6

- 5.5.2.5 Do you agree that the amended text in the Banking Codes clarifies adequately the reporting requirements of branches and Jersey registered companies?
- 5.5.2.6 Do you have any concerns with respect to the four months submission deadline for financial statements of parent companies?
- 5.5.3.4 Do you have any concerns with the requirement to adopt accounting standards, for the quarterly prudential reports, that are in line with those adopted in the registered person's financial statements? If so, what are those concerns?
- 5.5.4.3 Do you have any views for or against the submission of an annual declaration, as proposed?
- 5.5.5.3 Do you feel that the 5% thresholds have been set appropriately? If not, what would you consider to be appropriate?

5.7 Appendices to the Banking Codes

- 5.7.3.5 Do you agree that the impact of the proposals with respect to related parties will be minimal?

6 Insurance Business Codes of Practice

6.2 IMF – International Standards

6.2.2 Do you consider the wording of the proposed additional requirements in respect of market risk and remuneration policy to be sufficiently clear to enable compliance? If not, please provide details relating to your concerns.

6.3 Supplemental changes to the Insurance Codes

6.3.3 Do you have any observations or comments to make regarding the minor amendments proposed to the Insurance Codes?

7 Trust Company Business Codes of Practice

7.4 Next Steps

7.4.4 Do you have any observations or comments to make regarding the proposed amendments to the TCB Codes?

APPENDIX A

List of representative bodies who have been sent this consultation paper, including documents linked at Appendix B.

- Jersey Finance Limited
- Jersey Bankers' Association (Deposit- taking Codes of Practice only)

APPENDIX B

Links to the updated Codes of Practice for each financial sector:

Document 1: Investment Business Codes of Practice
Revised version link:

Document 2: Codes of Practice for Deposit-taking Business
Revised version link:

Document 3: Insurance Business Codes of Practice
Revised version link:

Document 4: Trust Company Business Codes of Practice
Revised version link:

APPENDIX C

Summary of proposed amendments to the Banking Codes

Codes Section	Amendment details	Comment
Contents	Various amendments	Comments on the reasons for amending the Banking Codes. Notes the introduction of the annual declaration and highlights that the transition period will be three months from the issue of the amended Banking Codes.
3.1.4.2	Balance of skills between back and front office	An appropriate balance of skills between the back and front office should be a key aim in the operational structure of the registered person.
3.1.4.4	Independent risk unit	Larger and more complex registered persons are expected to have an independent unit conducting risk management. (CP section 5.3.2)
3.2.1.8	Customer due diligence	Requirement that sufficient due diligence is performed on the registered person's customers to enable an effective and comprehensive assessment of the risks faced by the registered person. (CP section 5.3.3)
3.2.1.11	Logical access controls	Adequate logical access controls (e.g. IT security controls) expected to be in place to protect the electronic assets and records of the registered person.
3.2 - Note 4	Correspondent banking relationships	Reference to the AML/CFT Handbook on requirements relating to correspondent banking relationships.
3.4.4	Compliance Officer personal questionnaire	The proposed amendment to the Banking Law will place a requirement on a registered person to obtain 'no objection' from the Commission before the Compliance Officer's appointment. Change in Banking Codes to recognise this law amendment.

Codes Section	Amendment details	Comment
3.4.5	MLRO and MLCO	The proposed amendment to the Money Laundering (Jersey) Order 1999 (as amended or replaced) has introduced the requirement to appoint a MLCO, in addition to the MLRO. The introduction of the AML/CFT Handbook has permitted the removal of specific Banking Code requirements for the MLRO as these are now covered in the Handbook.
3.7.4	Competency requirements	New requirement to record the expected competencies for each job role in the registered person, and to regularly assess employees against these competencies. (CP section 5.3.4)
5.1 - Note 1	Reference to Prudential Reporting Forms and Associated Definitions Schedule	Reference to the Schedule and a note to explain the expected addition of a new Schedule for Basel 2 reporting in 2008.
5.4.2	Large Exposure requirement	This requirement to notify the Commission of those exposures that exceed 10% of agreed capital base is already a requirement established by the General Provisions Order. It has been inserted into the Banking Codes for completeness in section 5.4.
5.4 - Note 4	Definition clarification	Note to clarify that 'agreed capital base' and 'agreed capital resources' are equivalent definitions.
5.4.10	Large Exposure valuation, classification and provisioning	The valuation, classification and provisioning of Large Exposures should be conducted on an individual item basis. In practice this is expected to occur in the normal course.
6.2	Required financial information from Jersey registered companies	Required financial information previously requested by the Commission through Notices under Article 26 of the Banking Law has been transferred into the Banking Codes. (CP section 5.5.2)
6.3	Required financial information from branches of companies registered outside Jersey	Required financial information previously requested by the Commission through Notices under Article 26 of the Banking Law have been transferred into the Banking Codes. (CP section 5.5.2)

Codes Section	Amendment details	Comment
6.2.3 & 6.3.3	Accounting standards over prudential reporting forms	The prudential reporting forms sent to the Commission on a quarterly basis should follow recognised accounting standards. The Banking Codes note that these standards should be based on accounting principles and rules that are widely accepted internationally. (CP section 5.5.3)
6.4	Requirement to provide an annual declaration	New requirement for the registered person to provide an annual declaration on their compliance with the Banking Law, AML/CFT legislation and the Banking Codes. (CP section 5.5.4)
6.8 - Note	New acquisitions and investments	Two thresholds have been adopted for the prior notification requirement when the registered person decides to make an investment or acquisition, or begin a new activity. (CP section 5.5.5)
6.9.17	Suspicious activities or fraud	The Commission has clarified that the registered person should provide notification where there is suspicious activities or incidents of fraud. Notification need only occur when the safety, soundness or reputation of the registered person is at risk. It is not intended that the Commission should receive all Suspicious Activity Reports that are sent to the Joint Financial Crimes Unit.

Appendix 1 to the Codes of Practice for Deposit-taking Business		
Codes Section	Amendment details	Comment
1.4.2	Classifying loans	Policy over problematic credits should include a system for classifying loans based on payment arrears.
1.4.3	Impairment of loans	Policy over problematic credits should include the criteria for loans to be identified as impaired.
1.5	Related party policies and procedures	Introduction of requirement to have policies and procedures over related parties. (CP section 5.7.3)
3.3	Valuation adjustments for difficult positions	Requirement for policies and procedures to cover positions that cannot easily be prudentially valued
4.1.2	Documentary and legal risk	Consideration of documentary and legal risk when designing policies and procedures to manage overall operational risk.
6	Liquidity Management and Reporting guidance notes reference	Reference to paper published by the Commission in May 2007 and the minimum liquidity management standards established therein.
7	Customer due diligence	Further explanation on section 3.2.1.8 requirement, including examples of necessary policies and procedures over customer due diligence.

APPENDIX D

Summary of proposed amendments to the Insurance Codes

Codes Section	Amendment details	Comment
Contents	Insertion of reference to MLCO (3.3)	New AML regulatory requirement.
3.1.3.5	New insertion in respect of Market Risk.	IAIS Core Principle requirement.
3.2.5 – Note 1	Insert “directors and senior” in place of “management”.	Reflects consistency with other Codes
3.2.5 - Note 3	Insert, “(and as subsequently amended or replaced)” after reference to Money Laundering (Jersey) Order 1999.	To reflect impending revision to the Order not yet finalised.
3 - Note 3	Replace “Handbook” with “Handbook For The Prevention And Detection Of Money Laundering And Financing Of Terrorism”.	Revised to reflect the correct title of the relevant AML document.
	Insert “Failure to follow legislation to counter money laundering and the financing of terrorism may form the basis of regulatory action by the Commission”.	Reflects consistency with other Codes and IMF review
3.3.2; 3.3.2.1; 3.3.2.2; 3.3.2.3; 3.3.5	Insert new sections addressing Compliance Officer responsibilities.	Bring into line with other Codes.
3.3.5 – Note 3	Insert new note in support of new 3.3.5	Bring into line with other Codes.

Codes Section	Amendment details	Comment
3.3.6	Revision to reference MLROs and MLCOs to new AML/CFT Handbook	Bring in line with other Codes.
3.4.2.3	Insert “directors and senior” in place of “management”.	Consistency with other Codes
3.7.6	New insertion in respect of a documented remuneration policy	IAIS Core Principle requirement.
3.7 - Notes	Notes 1 and 2 replaced with new insertion.	Consistent with the Commission’s latest statement in respect of Rehabilitation of Offenders legislation

APPENDIX E

Summary of proposed amendments to the Trust Company Business Codes

Codes Section	Amendment details	Comment
3.2.9.1	Reference to the 'Companies (Jersey) Law 1991 as amended', specifically included within this Code.	IMF driven amendment - to reflect the requirement for registered persons to comply with relevant and applicable domestic statutory obligations.
3.2.10.1	Reference to the 'Companies (Jersey) Law 1991 as amended', specifically included within this Code.	IMF driven amendment - to reflect the requirement for registered persons to comply with relevant and applicable domestic statutory obligations.
3.2.10.2	New Code - 'take reasonable steps to maintain adequate contact with the directors of the company'	To provide consistency with the requirements in 3.2.9.2.
3.2.13.1	Reference to the 'Trusts (Jersey) Law 1984 as amended', specifically included within this Code.	IMF driven amendment - to reflect the requirement for registered persons to comply with relevant and applicable domestic statutory obligations including recognised standards in respect of trustees' responsibilities.
3.3	Explanatory notes have become either codes or moved to become footnotes.	To provide consistency within the Codes and to remove ambiguity with regard to status of 'notes'.
3.3.3.2	New wording to reflect that falling below the required 50% competency requirement for category C employees is now a 'notification' rather than a breach of the Codes.	Outstanding point from consultation process (that was awaiting Commissioner agreement).

Codes Section	Amendment details	Comment
Previous 3.3.5	Now a footnote.	Guidance wording is more appropriate to a footnote than a Code.
3.3 – Advisory note 1	The words ‘The Commission would also add the role of accounts preparer to the list of general support functions provided in the Order above’, have been removed.	The Commission view the role of accounts preparer as an integral function in assisting the registered person in the provision of trust company business. The Commission would further comment that ‘loosening’ of the category C employee position, should facilitate the inclusion of accounts preparers as category C employees.
3.4.1	Previous 3.4.2 becomes new 3.4.1. The words ‘A registered person must ensure that all trust company business employees undertake a’ have been added at the start of this Code.	Removes ambiguity and clarifies the position that the responsibility for ensuring trust company business employees undertake CPD is with the registered person.
Previous 3.4.3	Now a footnote.	Guidance wording is more appropriate to a footnote than a Code.
3.5	Wording in second paragraph is now 3.5.1. Subsequent numbering in section 3.5 has changed as a consequence.	Mandatory wording is more appropriate to a Code rather than a footnote.
3.5.7	(Previously 3.5.5.) Additional wording ‘(and as subsequently amended or replaced) and associated guidance, including the Handbook for the Prevention and Detection of Money Laundering and Financing of Terrorism’	To reflect the issuance of the Handbook.
3.5.4	‘or Key Person Updating Letter’ added after ‘Personal Questionnaire’.	To reflect the two methods of notifying the Commission.

Codes Section	Amendment details	Comment
3.5.6	This is a new Code stating 'A registered person must ensure that its compliance function is adequately resourced'.	IMF driven amendment – to reflect the requirement for registered persons to have an effective compliance function. The Commission would suggest that this new Code will assist in meeting this requirement.
3.5 – previous Footnote 2	Removed.	Consequential amendment following 3.5.12 above.
3.5 – previous Footnote 4	Removed.	As a consequence of the compliance officer now being required to be based in Jersey, that compliance officer should report to the local management board, notwithstanding that there is an additional reporting line to 'another party' (usually within a Group structure).
3.6	Wording in now 3.6.1. Subsequent numbering in section 3.6 has changed as a consequence.	Mandatory wording is more appropriate to a Code rather than a footnote.
3.6.4	New Code – 'consider paragraph 5.5.12 of the Codes, in relation to determining whether a complaint gives rise to any notification requirement under its professional indemnity insurance policy'.	IMF driven amendment - to reflect the requirement to have adequate PII, which may be vulnerable through the non-notification to PII insurers of complaints.
4.2	A portion of this Code is now included as a footnote.	Guidance wording is more appropriate to a footnote than a Code.

Codes Section	Amendment details	Comment
5.5.12	New Code (as per 3.6.4 above.) – ‘A registered person must have adequate procedures in place to ensure compliance with all terms and conditions set out in its PII policy, particularly in relation to the timely notification of events that may lead to a claim on the policy by the registered person.	IMF driven amendment - to reflect the requirement to have adequate PII, which may be vulnerable through the non compliance with any of the policy’s terms and conditions.
6.1.1	Removed	As previously agreed following consultation.
Second Schedule	A line added under the Current Liabilities section (page 37) – ‘ Trade creditors and accruals’.	Suggestion from industry received post consultation.
Fifth Schedule	New drafting.	To provide further guidance in relation to the use of Subordinated Loans within the financial resource requirements.