

# Cracking the codes

Caroline McGrath, lawyer, Bedell Cristin, casts an eye over new codes of practice which have been brought in for certified funds



**N**EW codes of practice for certified funds (the 'Codes') were introduced by the Jersey Financial Services Commission on 2 April 2012 (the 'Effective Date'). The Codes apply from the Effective Date to all Jersey unclassified collective investment funds – that is, all funds (certified funds) which have been issued with a certificate pursuant to the Collective Investment Funds (Jersey) Law 1988 (the 'CIF Law'). The Codes do not apply to:

- Private placement funds, investment syndicates and 'club' arrangements, which are approved under the Control of Borrowing (Jersey) Law 1947.
- Non-Jersey domiciled funds.
- Unregulated funds within the meaning of Article 1 of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008.
- Recognised funds within the meaning of Article 1 of the CIF Law.

It is the responsibility of every certified fund, through its governing body (that is, its board of directors, trustee or general partner, as appropriate) to comply with the Codes in full. While a certified fund is able to appoint another person (for example, the manager or administrator of the fund) to implement any necessary actions to comply with the Codes, ultimate responsibility remains with the certified fund through its governing body. The expectation is that compliance with the Codes will form part of the contractual arrangements with service providers to certified funds.

The following eight principles for the conduct of business by certified funds are set out in the Codes:

- A certified fund must conduct its business with integrity.
- A certified fund must act in the best interests of unit holders.
- A certified fund 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.
- A certified fund must be transparent in its business arrangements with unit holders.
- A certified fund must maintain and be able to demonstrate the existence of both adequate financial resources and adequate insurance.
- A certified fund must deal with the JFSC and other authorities in Jersey in an open and co-operative manner.
- A certified fund must not make statements that are misleading, false or deceptive.
- A certified fund must at all times comply with and be operated in accordance with any applicable guide.

Failure by a certified fund to comply with the Codes will represent grounds for the JFSC to take enforcement action and to use its regulatory powers which, in serious cases, could result in the winding up of the certified fund and revocation of its certificate.

While failure to follow the Codes will not of itself render any person liable to proceedings, or invalidate any transaction, the Codes will be admissible in evidence if it appears to a court to be relevant to any question arising in court proceedings, and can be taken into account in determining any such question.

While the Codes impose new regulatory requirements on certified funds, they are mostly analogous with the JFSC's codes of practice for fund services business, which should facilitate implementation and in practice, much of the work in ensuring compliance with the Codes will fall on the Jersey service providers to certified funds.

Other requirements of the Codes replace conditions formerly imposed on a certified fund through its certificate so do not, in reality, introduce new requirements to those already operating in relation to certified funds.

**F**or existing certified funds, allowances will be made by the JFSC for the implementation of the detail of the Codes, provided that the fundamental principles of the Codes are complied with from the Effective Date and active steps are being taken by the funds to secure compliance with the detailed underlying requirements.

Accordingly, certified funds, assisted by their Jersey service providers, need to ensure as soon as possible that they meet – or are actively working towards – compliance with, the requirements of the Codes. Going forwards, new certified funds will be required to represent to the JFSC that they comply fully with the Codes or seek any relevant derogations to such requirements.

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