

## Jersey Investment Funds: regulatory options

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Jersey is long established as a primary centre for the establishment of offshore funds and has been at the forefront of international developments, which have attracted international sponsors, promoters, fund managers, advisors and investors. One of the key features of Jersey's fund industry is the flexibility and range of structures and corresponding regulatory and commercial approaches that can be used for funds.

This publication provides an overview of the different fund products available in Jersey, and their pertinent features. It also touches on the regulation of functionaries, the impact of The Alternative Investment Fund Managers Directive (**AIFMD**) in Jersey, how economic substance is relevant to funds and the types of fund structures available in Jersey.

### Regulatory options

#### Jersey Private Funds

The Jersey Private Fund Guide (the **JPF Guide**) issued by the Jersey Financial Services Commission (the **JFSC**) defines a Jersey Private Fund (**JPF**) as a private investment fund involving the pooling of capital raised for the fund and that operates on the principle of risk spreading. It describes certain vehicles that are not intended to fall within the scope of the JPF Guide, which broadly include holding companies, joint ventures, securitisation vehicles, family office vehicles and carry / incentivisation vehicles. A JPF may be structured in Jersey as a company, unit trust or partnership or an equivalent vehicle overseas. It requires a consent issued under the Control of Borrowing (Jersey) Order 1958 (the **COBO Order**) and may be established using a streamlined authorisation process. The promoter of the JPF will not require the prior approval of the JFSC.

In terms of offering a JPF, there is no requirement for it to have an offer document but investors must acknowledge in writing a prescribed investment warning and disclosure statement. Neither the number of offers nor the number of investors can exceed 50, and each investor must be either a "professional investor" or an "eligible investor" each as defined in the JPF Guide, which includes an investor that

invests a minimum of £250,000, or other currency equivalent. The JPF Guide provides guidance in relation to how offers and investors will be counted.

A requirement of the JPF Guide is that a JPF must appoint a Designated Service Provider (**DSP**), which should be an existing Jersey regulated full substance entity and as such is a role typically carried out by the JPF's administrator. The DSP must, among other duties, make all reasonable enquiries to ensure that the JPF meets all eligibility criteria, both on its establishment and on a continuing basis and ensure that all necessary due diligence on the JPF and all related parties (including the promoter and service providers) is carried out.

Where a JPF is structured as a company, there is no requirement under the JPF Guide for Jersey resident directors. Similarly, where a JPF is structured as a partnership or unit trust, there is no requirement under the JPF Guide for the general partner / trustee to be incorporated in Jersey or for the general partner / trustee to have Jersey resident directors. However, whilst there is no explicit requirement under the JPF Guide for mind and management to be in Jersey, the JPF Guide does state that the JFSC's expectation is that in the majority of cases, there would be one or more Jersey resident directors on the board of a JPF's governing body.

At the date of this publication, the total number of registered JPFs has reached around the 700 mark since the product's inception in 2017, highlighting the JPFs' continued appeal to investors and managers as a flexible alternative fund structuring product.

## **Unregulated Funds**

Unregulated Funds are Jersey domiciled funds which are offered to certain eligible investors, being either an investor who makes a minimum initial investment of US\$1 million, or other currency equivalent - whether through the initial offering or by subsequent acquisition - or, alternatively, institutional investors or professional investors, as defined in the relevant order.

An Unregulated Eligible Investor Fund may be open or closed-ended and transfers of interests are only possible to other eligible investors. Stock exchange listings are possible subject to transfer restrictions, ie only to other eligible investors, still applying.

An Unregulated Fund may take any form recognised under the laws of Jersey, as being a Jersey company (including a cell structure), a Jersey limited partnership having at least one Jersey corporate general partner or a unit trust having a Jersey corporate trustee or manager. Subject to the structure complying with the relevant order, there is no regulatory review or oversight of the terms or conduct of such an Unregulated Fund.

The offer and / or listing document of an Unregulated Fund must contain a prominent statement that the fund is unregulated, together with a prescribed form of investment warning. In order to claim exemption as an Unregulated Fund, a completed notice needs to be filed with the Jersey registrar of companies.

## Expert Funds

Where a fund is to be regulated as a collective investment fund pursuant to the Collective Investment Funds (Jersey) Law 1988, as amended (the **CIF Law**) - which means that offers can be made to an unlimited number of investors - then a light level of regulation is possible provided that all investors qualify as expert investors and expressly acknowledge an investment warning. This allows a fund to qualify as an Expert Fund under the Expert Fund Guide issued by the JFSC. Expert investors include (among other tests) any person investing at least US\$100,000, or other currency equivalent. The approval process for seeking a certificate for Expert Funds pursuant to the CIF Law is streamlined and typically takes as little as three days from the formal filing of the application.

Other necessary features of Expert Funds include the following

- the investment manager must be established in an OECD member state or a state that is or subject to a memorandum of understanding with the JFSC or otherwise approved by the JFSC; and either be regulated in that state or satisfy certain criteria under the Expert Fund Guide
- an Expert Fund must be available only to expert investors
- the offer document for an Expert Fund must comply with certain content requirements
- the fund company, general partner or trustee must have at least two Jersey resident directors and the fund itself must be a Jersey company or have a Jersey general partner (if a limited partnership) or a Jersey trustee (if a unit trust)
- an Expert Fund must have a Jersey “monitoring functionary” being either an administrator or a manager established in Jersey
- if open-ended, a Jersey-resident custodian will also need to be appointed (unless it is a hedge fund, in which case a prime broker with a credit rating of A1 / P1 is required)

## Listed Funds

The Listed Fund Guide issued by the JFSC provides a fast track process for the establishment of corporate closed-ended funds that are listed on recognised stock exchanges or markets and regulated pursuant to the CIF Law.

Necessary features of Listed Funds include the following

- the investment manager of a Listed Fund must be established in an OECD member state or in a jurisdiction with which the JFSC has entered into a memorandum of understanding or otherwise be approved by the JFSC; and either be regulated in that state or satisfy certain criteria under the Listed Fund Guide
- Listed Funds must have at least two Jersey resident directors and a Jersey based monitoring functionary to ensure compliance with the Listed Fund Guide

- treatment as a Listed Fund is currently only available to closed-ended Jersey companies
- Listed Funds enjoy a fast track approval process modelled on the Expert Fund approach
- there is no minimum subscription and Listed Funds are available to any investor category

## Eligible Investor Funds

Eligible Investor Funds are regulated pursuant to the CIF Law and are restricted to “eligible investors” (which, among other tests, includes a person committing at least US\$1 million, or other currency equivalent, to the fund. They are subject to a streamlined approval process and a relatively light degree of regulation in accordance with the Eligible Investor Fund Guide issued by the JFSC.

Other necessary features of Eligible Investor Funds include the following:

- The investment manager of an Eligible Investor Fund must be of good standing, established in an OECD member state or a jurisdiction with which Jersey has entered into a memorandum of understanding or otherwise be approved by the JFSC and either be regulated in that state or satisfy certain criteria under the Eligible Investor Fund Guide
- An Eligible Investor Fund must have a Jersey based administrator, manager or (in the case of a closed-ended unit trust) trustee and at least two Jersey-resident directors
- If open-ended, a Jersey-resident custodian will also need to be appointed (unless it is a hedge fund, in which case a prime broker with a credit rating of A1 / P1 is required)
- There are limited content requirements in respect of an Eligible Investor Fund’s offering document

## Unclassified Funds

To the extent that a fund is to be offered to more than 50 investors or is to be listed and the fund is not able to fall under the expedited regulatory approach offered under any of the Expert Fund Guide, the Listed Fund Guide or the Eligible Investor Fund Guide, a collective investment fund may be regulated as an Unclassified Fund pursuant to the CIF Law. In this situation the JFSC will regulate the fund in accordance with its policy, which includes compliance by the promoter of the fund with the JFSC’s promoter policy. This will include an evaluation of the track record, experience and reputation of the promoter of the fund as well as of the financial resources and spread of ownership of the promoter. The JFSC will review the prospectus, constitutional documents and material agreements relating to the fund. The fund operation and investment and borrowing restrictions will need to comply with certain established standards against which the JFSC evaluates funds of this type.

Other relevant features of Unclassified Funds include the following:

- The extent of compliance with regulatory guidelines will depend on the minimum investment level

and whether the fund is open-ended (more tightly regulated) or closed-ended

- Open-ended funds require a Jersey resident manager and custodian. Closed-ended funds do not require a separate custodian
- The lower the minimum investment requirement, the more closely the JFSC will regulate a fund of this type

## Recognized Funds

Recognized Funds are regulated as collective investment funds pursuant to the CIF Law and must, in addition, comply with a separate prescriptive order. Funds of this type may be marketed directly to “retail” investors in the UK under the United Kingdom Financial Services & Markets Act 2000, taking advantage of Jersey’s designated territory status for the purpose of this legislation. Recognized Funds are more highly regulated and provide investors with access to a statutory compensation scheme. Recognized Funds may also be marketed to the public in a number of other territories, including Australia, Belgium, Hong Kong, the Netherlands and South Africa. Functionaries of Recognized Funds are also regulated under the CIF Law.

## Regulation of service providers to funds

Service providers to unclassified or unregulated funds in Jersey are licensed and regulated under the Financial Services (Jersey) Law 1998, as amended (the **FSJL**), as providers of “fund services business”. Once an entity is registered for a class of funds service business it no longer needs to apply for authorisation in relation to each new fund for which it provides that class of services.

Service providers to JPFs, other than the DSP, are not required to be licensed under the FSJL as they generally benefit from exemptions to such licensing on the basis that the fund meets the criteria of a ‘professional investor regulated scheme’.

Separate briefings on the regulation of service providers to different types of funds are available upon request.

## The Alternative Investment Fund Managers Directive

Since July 2013, Jersey alternative investment fund managers (**AIFMs**) marketing Jersey or other non-EU / EEA AIFs to investors in the EEA have been required to comply with additional disclosure, transparency and reporting requirements pursuant to AIFMD.

Where the fund is to be marketed to investors in the EU / EEA then the impact of the AIFMD on Jersey AIFMs and AIFs depends on the type of fund.

## Jersey Private Funds

These funds must apply to the JFSC for an AIF Certificate pursuant to Jersey's Alternative Investment Funds (Jersey) Regulations (the **AIF Regulations**) and comply with the applicable sections of the JFSC's Code of Practice for Alternate Investment Funds and AIF Services Businesses (the **AIF Code**), which mirrors the AIFMD Level 2 Regulation.

Jersey-based AIFMs of these funds will need to be licensed by the JFSC pursuant to the FSJL as providers of AIF Services Business and must comply with relevant sections of the AIF Code.

## Unregulated Funds

These funds must be converted to another form of fund (such as an Eligible Investor, Listed, or Expert Fund) before they may be marketed to investors in the EU / EEA.

## Expert / Listed / Eligible Investor / Unclassified / Recognized Funds

These funds are already regulated under the CIF Law and their service providers are regulated under the FSJL. Accordingly, the only additional regulatory requirement pertaining to such funds and service providers pursuant to the Jersey AIF Regulations is to comply with applicable sections of the AIF Code (namely in relation to disclosure, reporting and asset stripping, together with notification to the JFSC in advance of marketing into the EU /EEA).

Our briefing relating to [Jersey Managers and Funds Marketing into the European Union under the AIFMF](#).

# Tax and economic substance

## Taxation

Jersey offers a location for investment funds which does not impose its own tax burden on an investment fund or its investors.

## Economic substance

Both the Taxation (Companies - Economic Substance) (Jersey) Law 2019 and the Taxation (Partnerships – Economic Substance) (Jersey) Law 2021 (together, the **Substance Laws**) are relevant to Jersey investment funds.

A company or partnership will be caught within the scope of the Jersey economic substance regime if it is a "resident company" or a "resident partnership" which carries on one or more "relevant activities" and receives gross income from the relevant activity.

The Substance Laws do not apply to investment funds, save in the case of self-managed corporate funds - that is, corporate funds which have not appointed an external manager. However, any Jersey fund manager appointed in respect of the fund will be conducting the relevant activity of "fund

management business". Accordingly, consideration should be given to the application of the Substance Laws to general partners, managers, investment manager and trustees.

If within scope, the relevant company or partnership must satisfy the "economic substance test".

Separate briefings relating to economic substance requirements are available here:

- [The economic substance requirements for Jersey resident partnerships](#)
- [Jersey economic substance requirements - the company perspective](#)

## Fund structures

Jersey domiciled investment funds may be structured as companies (including protected cell companies and incorporated cell companies), limited partnerships (including incorporated limited partnerships and separate limited partnerships) or unit trusts. They may be open or closed-ended.

Separate briefings relating to unit trusts, companies, cell companies and limited partnerships are available upon request.

## Related links

[Jersey Private Funds](#)

[Jersey Expert Funds](#)

[Jersey Listed Funds](#)

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Regulatory information can be found under [Legal Notice](#)

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