



## Jersey's Funds Industry

The Island of Jersey has over four decades of experience in servicing the investment funds market. Its funds industry has witnessed significant recent growth and has doubled in size in the last ten years. Much of this growth can be attributed to the impact of Expert Funds, which were introduced in 2004 and provided a streamlined product for funds targeting expert investors. As at December 2016, the combined value of Jersey's funds was \$319bn comprising 1,326 investment funds.

The establishment and operation of investment funds in Jersey is governed principally by two pieces of legislation, namely, the Control of Borrowing (Jersey) Law 1947 as amended, (the "**Borrowing Law**") and the Collective Investment Funds (Jersey) Law 1988 as amended, (the "**CIF Law**"). Together the two statutes provide the framework for appropriate investor protection whilst retaining the flexibility to adapt quickly to changing market conditions.

Functionaries with a presence in Jersey, which provide services to both Jersey and non-Jersey domiciled investment funds are now regulated by the Financial Services (Jersey) Law 1998 (the "**FSJL Law**"). The regulation entails the registration of that fund services business for the provision of one or more class of fund services business. The relevant classes are listed within the FSJL and generally include principal functions, which are provided to fund structures.

Codes of Practice set out the principles and standards of conduct expected of persons registered under the FSJL for carrying on fund services business activities. Once registered for a specific class of fund services business, a fund services business can provide similar services to both Jersey domiciled and non-Jersey domiciled funds, but, in the case of the latter, must notify details of the non-domiciled fund(s) to the JFSC for record keeping and statistical purposes.

Responsibility for the administration of these Laws rests with the Jersey Financial Services Commission (the "**JFSC**").

## Categories of Funds

### Private and COBO-only Funds

Private investment funds ("**Private Funds**") (whether in corporate form or as a special purpose unit trust) can be tailored for a single individual, for a strictly limited number of investors or structured as a closely held joint venture investment vehicle.

Following a consultation period, on the 15 March 2017 the JFSC issued a guide to Private Funds (the "**Private Funds Guide**") outlining a number of changes to the operation of Private Funds, with said Private Funds Guide becoming effective and binding from 18 April 2017.

The new Private Funds Guide maintains the status quo vis-à-vis "light touch" regulation; indeed, amongst the reforms are measures to facilitate the straightforward establishment of Private Funds.



Private investment funds are usually established to meet the requirements of a single investor or a corporate group. However, such a corporate group may not be more than 50 investors (before the recent reform the maximum was 15 investors). The fund's constitutional and offering documents will usually state that there is a specific restriction on the nature of the investor. Thereafter little more is required than the disclosure of the beneficial ownership to the JFSC. Hence the fund may be structured to suit particular needs or circumstances.

Where a promoter seeks to make a number of "offers" to potential investors to invest in a proposed structure, there will be additional regulation by the JFSC, albeit the regulatory burden is very slight. Those potential investors must be 'professional' investors and/or if the investors investment is at least £250,000.

Consent will be required from the JFSC under the Control of Borrowing (Jersey) Order, 1958 and in considering this the JFSC will perform a preliminary review of the "promoter" behind the scheme as well as a review of the private placement memorandum prior to the issue of a COBO consent. In considering a promoter, the JFSC will analyse the track record, reputation and experience of the promoter as well as such issues as spread of ownership and financial resources. The JFSC will also have an ongoing regulatory role and the COBO consent will set out various conditions which the fund will need to comply with. The Private Funds Guide and the associated reforms have instituted a "fast-track" process for this authorisation and it is possible to gain approval within 48 hours.

Exemptions are available under the Financial Services (Jersey) Law whereby flexibility in the regulation and appointment of service providers can be achieved. These exemptions are normally dependent on the investors being considered professional investors, or if the minimum investment per investor is £250,000 or more, and where all investors have acknowledged a prescribed investment warning.

The Private Funds Guide and the Private Fund regime replaced three existing funds products, viz. COBO Only Funds; Private Placement Funds; and Very Private Placement Funds. These fund products are moribund, as no new COBO Only Funds, Private Placement Funds or Very Private Funds can be formed. Existing COBO Only Funds, Private Placement Funds and Very Private Funds may elect to either remain subject to their current regulatory regime or may convert to a Private Fund.

## Public Funds

### Unregulated Funds

The Unregulated Funds regime was introduced on 19 February 2008 and allows eligible funds to merely notify the Jersey Financial Services Commission of their establishment, rather than going through any authorisation process. The pertinent legislation is the Collective Investments Funds (Unregulated Funds) Order 2008 (the "**Unregulated Funds Order**"). The Unregulated Funds Order exempts funds from regulation under the Collective Investment Funds (Jersey) Law 1988 ("**CIF Law**"), if certain conditions are satisfied; however, Jersey's regime concerning money laundering and terrorism still applies to the Unregulated Fund regime.



Two forms of unregulated fund have been introduced; an Unregulated Eligible Investor Fund and an Unregulated Exchange Traded Fund.

An 'Unregulated Eligible Investor Fund' is available to investors injecting a minimum of US \$1 million each into the fund, or a sophisticated investor. The investors will be required to acknowledge in writing their acceptance of the risks involved in a prescribed form. In addition, the fund must take steps to ensure that its investors meet the legal requirements to invest in the fund.

The fund may be open-ended or closed-ended and may take the form of a company (or cell company), unit trust or partnership.

There is no requirement for an Unregulated Eligible Investor Fund to have a Jersey-based administrator or custodian, nor for it to have any Jersey resident directors. There is also no need for Jersey-based auditors to be appointed to the fund. The fund may only list on a stock exchange which permits restrictions upon transfers of interests within the fund. This is in order to ensure that only eligible investors are allowed to invest in the fund.

An 'Unregulated Exchange Traded Fund' is not regulated by the Jersey Financial Services Commission on the basis that it is already regulated by a stock exchange. There is a prescribed list of stock exchanges for which funds listed on them may classify as Unregulated Exchange Traded Funds.

An Unregulated Exchange Traded Fund may only take the form of a closed-ended fund, but may be established as a company (or cell company), unit trust or partnership. As with an Unregulated Eligible Investor Fund, there is no need for Jersey-based auditors to be appointed to the fund.

This regime allows Jersey to compete with other jurisdictions already offering lightly-regulated fund products. In particular, Jersey is expected to continue to make strong advances in the alternative/hedge funds market following the launch of this regime.

It should be noted that the aforementioned JFSC consultation paper proposed to phase out Unregulated Exchange Traded Funds, and noted that from the 1 January 2017 the JFSC Registry will not be accepting any new notifications for Unregulated Exchange Traded Funds.

However, existing Unregulated Exchange Traded Funds are to be allowed to continue in operation until the end of the natural life.

## **Expert Funds**

Expert Funds are funds established for sophisticated, high net worth, professional and institutional investors. Expert Funds can be set up as open or closed ended funds and have no restrictions on the number of investors.

Existing authorised Jersey fund functionaries are able to progress the launch of such funds by self-certifying that the fund meets the criteria expected of an Expert Fund. In particular, a Jersey functionary is



required to certify that any offering documentation contains appropriate disclosures and information on the fund's investment and borrowing strategies. The appropriate criteria for an Expert Fund is contained in the Jersey Expert Fund Guide issued by the JFSC on 3 February 2004 and last updated in April 2008.

Each Expert Fund will require its investors to have received and accepted an investment warning acknowledging that the fund is suitable only for expert investors; and confirm their awareness that the fund involves special risks and that limited regulatory oversight applies to the fund. An investor will also have to confirm that he is either: a) investing US\$100,000 in the fund; or b) is a "professional investor"; or c) is a "high net worth individual". The applicable definition of a "high net worth individual" is US\$1 million of assets (excluding the principal residence). Such assets can be jointly held with a spouse.

The definition of a "professional investor" in the Expert Fund Guide is the following: "a person, partnership or other unincorporated association or body corporate, whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments whether as principal or agent, or the giving of advice on investments."

Due to their nature, most Expert Funds will probably rely on the professional investor exemption or the minimum subscription of US\$100,000. However, circumstances will, of course, make the "high net worth individual threshold" extremely relevant in smaller private client / family type of fund arrangements. In addition, the JFSC believes that those involved in establishing and providing services to an Expert Fund should be able to invest in the fund. The JFSC have also confirmed that any application to extend the definition of "Expert Investor" in respect of types of "carried interest" investors is likely to be treated sympathetically.

A fund that is established for expert investors can have considerable flexibility in both its structure and operation. A Jersey Expert Fund no longer requires a local management company to be created and linked to the promoter of the fund.

## Listed Funds

On 8 January 2007, the JFSC introduced a 72-hour fast-track authorisation process for all funds qualifying as Listed Funds under its Jersey Listed Fund Guide. The Guide provides certainty and guidance to those wishing to establish such funds in a quick and cost-effective manner, and is a response to an increased market demand for listed funds. Listed Funds are established on certification by the fund administrator that the fund complies with the criteria set out in the Guide. The JFSC issues the relevant permits on receipt of the certification.

The fund must be listed on an exchange recognised by the JFSC. The list of recognised exchanges is numerous and global in scope, and includes all exchanges upon which listings are ordinarily sought.

The investment manager must be of good standing, established and regulated (if appropriate - the JFSC recognizes that some investment managers may not be regulated) in an OECD member state or a jurisdiction with which the JFSC has a memorandum of understanding.



A small number of key structural requirements are imposed on such funds including that the fund must be closed-ended (meaning that it is not normally open for subscriptions and redemptions at the option of investors) and that the fund's offering document must carry a clear investment warning and contain all information necessary for potential investors to make an informed decision.

There are no investment or borrowing restrictions imposed on Listed Funds and no limit on the number or type of investors in such funds.

## **Unclassified funds**

These funds are authorised under the CIF Law. They may be open-ended or closed-ended and may have a corporate structure or be a unit trust or a limited partnership. Typically, they will have a lower minimum investment requirement than Expert Funds and Private (COBO) funds and may be marketed as retail products.

The JFSC's policy is that each unclassified fund is regulated to an extent and in a manner considered to be appropriate to the nature of the particular fund. This involves negotiations with the promoter and/or his professional adviser, following scrutiny of all the documentation and other information associated with the unclassified fund.

## **Recognised Funds**

A Jersey fund that has been registered as a "Recognised Fund" may be marketed freely to the public in the UK. This is because Jersey has been granted "Designated Territory Status" under Section 87 of the UK's Financial Services Act 1986 (now Section 270 of the Financial Services and Markets Act 2000). "Designated Territory Status" also helps a Recognised Fund to be marketed to other European Union jurisdictions.

To qualify as a "Recognised Fund", a fund must adopt constitutional documents, restrictions on investments and protection of investors equivalent to those of a conventional UK authorised unit trust. The relevant rules for Recognised Funds are set out in the Collective Investment Funds (Recognised Funds) (General Provisions) (Jersey) Order 1988, as amended. Recognised Funds are the most highly regulated and are subject to a compensation scheme for the protection of investors. Many types of equity, bond and money market funds have been established in Jersey as Recognised Funds. There have also been a wide variety of structures including "umbrella funds" and "fund of funds".

## **Potential Reform of Public Funds:**

In the aforementioned consultation paper, the JFSC noted that program of reforms was tripartite in nature.

The JFSC stated that "Phase II" of this package of reforms was a review of public funds, the principle aim of which was the consolidation the public funds space 'by reducing the number of [fund products which are regulated by the CIF Law]...to three.' These three funds would be an improved Expert Fund, a retail fund



product (to replace Unclassified Funds and Recognised Funds) and an AIFMD compliant fund.

The consultation process for Phase II is currently underway and as such potential investors should be aware of this potential change in the law.

## Non-Jersey Domiciled Funds

In 2004 the JFSC introduced the Non-Domiciled Fund Guide. This Guide made it possible for funds incorporated in other jurisdictions to be administered in Jersey by existing fund administration and banking groups. Licensed Jersey functionaries may, under these regulations, be permitted to provide services (such as administration, distribution and registrar functions) to non-Jersey domiciled funds established in OECD member jurisdictions without the prior consent of the JFSC provided that those funds are “materially equivalent” to Jersey Expert Funds.

## Legal Structures of Investment Funds

Investment Funds in Jersey may be established as closed-ended or open-ended investment companies, unit trusts or limited partnerships. Jersey has recently added to the range of corporate structures by introducing protected cell company and incorporated cell company legislation. A number of enhancements to Jersey’s existing company law have further developed the flexibility for funds structured as companies.

## Companies (Jersey) Law 1991 (as amended)

The Companies (Jersey) Law 1991 governs the establishment and management of companies. These may be open-ended (i.e. with shares continuously issued and redeemed to meet investor demand) or closed-ended (where there is a single issue of shares and investors can only realise their investments on the winding-up of the fund). Hybrid schemes are also permitted allowing a limited number of redemptions and subscriptions in each calendar year, as are conversion or (“C”) issues of shares enabling closed-ended companies to increase the number of its investors.

## Trusts (Jersey) Law 1984 (as amended)

Unit trusts may be established in Jersey subject to the provisions of the Trusts (Jersey) Law 1984. Under the unit trust structure, unit holders have an undivided beneficial interest in the assets held by the Trustee. The administration and affairs of the unit trust will be governed by the detailed provisions within the fund’s trust instrument. As with investment companies, unit trusts may permit investors to subscribe for and redeem units on a continuous basis.

Unit trusts are increasingly used for commercial property funds and within larger fund structures.



## Limited Partnerships (Jersey) Law 1994

This structure provides limited liability participation and yet is a transparent vehicle for investors' taxation (i.e. each partner is taxed directly on his share of underlying investments). Additionally, capital raised can easily be returned to investors once profits have been realised on an individual investment.

A Limited Partnership must have at least one General Partner (who is liable for all debts and obligations of the Partnership). This General Partner may be a limited liability company with a minimum capital level sufficient to provide security to investors and creditors. There is no limit to the number of Limited Partners. A Limited Partner's liability is restricted to his contributions to the Partnership, provided that he does not participate in the management of partnership business.

Limited Partnerships are often used for commercial property funds and venture capital funds and are a preferred vehicle for Shari'a compliant funds.

## Limited Liability Partnerships (Jersey) Law 2017 (the "LLP Law")

Limited Liability Partnerships ("LLPs") are partnerships governed by the terms of the partnership agreements; the LLP Law has recently been enacted and has reformed this area of the law. LLPs have traditionally been used as a vehicle for professional service entities, such as lawyers or accountants. The Limited Liability Partnership (Jersey) Law 1997 (the "Old LLP Law") required that each partner contribute 'skill and effort' to the LLP as an agent of the LPP.

This criterion has been amended by the LLP Law, with a partner now needing to contribute 'capital or effort and skill'. This change is intended to facilitate the use of LPPs as vehicles for investment.

## Incorporated Cell Companies ("ICCS") and Protected Cell Companies ("PCCS")

On 1 February 2006, the Companies (Jersey) Law 1991 was amended to introduce the concept of incorporated and protected cell companies into Jersey. Both forms of Cell Company are vehicles that can create individual segregated cells. Segregated Cells in both PCCs and ICCs will have their own assets and liabilities, distinct and "ring fenced" from those of other Cells and the Cell Company itself. The key legal principle of both PCCs and ICCs is that assets of each individual Cell will not be available to the creditors of any other Cell.

A PCC is a separate legal entity; however protected cells do not have legal personality independent of the PCC. Incorporated Cell Companies are similar to PCCs; however each incorporated cell is a separate corporate entity with the ability to appoint separate boards of directors.



Administratively, once a Cell Company is created, repeat transactions can be established on a much-reduced timescale. Hence, Cell Companies have advantages for funds and securitisations structures where initial documentation can be complex but may potentially be replicated in future offerings.

## Taxation of Jersey Funds

Since 2009 the States of Jersey has operated a standard rate of corporate income tax of 0% and a special rate of corporate income tax of 10%. The system operates on 'look through' principles, meaning that a trading company owned by Island residents will have a 0% rate.

A small proportion of companies, mainly specified financial services, are subject to the 10% special rate of corporate income tax under the zero/ten system.

The "Zero-Ten" taxation rules have been structured so as to ensure that Jersey fund companies (and fund managers established in Jersey but with no physical presence) are not adversely affected compared to the current exempt company rules where a company is not deemed resident in Jersey.

There are no taxes, registration fees or duties payable to the Jersey authorities in respect of the establishment or administration of a Unit Trust. By extra-statutory concession neither the trustee nor the assets of a Unit Trust will be liable to Jersey income tax on the income of a Unit Trust arising outside Jersey or, by concession, bank interest arising in Jersey. In addition, distributions paid to non-residents will not be subject to any withholding. However, the manager will be required to deduct Jersey income tax from distributions made to any Jersey unit holders.

The Limited Partnership is tax transparent. Profits and losses of the Limited Partnership are attributed to the partner themselves who will be taxed according to their proportionate share of profits and losses.

The Limited Partnership itself will not be subject to assessment for income tax and a non-resident partner will not be liable to Jersey income tax except on Jersey source income (but excluding by concession, bank deposit interest). Interest receivable by a non-resident partner from a loan made to a Limited Partnership is not Jersey source income. Hence, provided a Limited Partnership has no Jersey resident partners (a general partner with exempt status is treated as non-resident for these purposes) and no Jersey source income, no tax return is required to be submitted.

For further information regarding Investment Funds in Jersey, contact [Kate Anderson](#) of Voisin

*This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.*