



The Jersey Financial Services Commission's ("**JFSC**") Expert Fund Guide was published on 3 February 2004. This opened the door for sophisticated investors to take advantage of new streamlined procedures for establishing new funds in Jersey. Since its inception, the Expert Fund regime, with its streamlined procedures and flexibility apropos structure and operation, has been of great benefit to Jersey's fund management industry; an area that has undergone rapid expansion, with the total value of funds managed in Jersey more than doubling to \$319 billion since 2009.

Expert Funds are particularly suitable for establishing innovative schemes aimed at sophisticated, high net worth, professional and institutional investors as well as hedge fund-type products. There is no restriction on the numbers of investors in an Expert Fund and there is no requirement for a local management company to be created that is linked to its promoter. The JFSC have accepted applications to establish Expert Funds since 4 February 2004.

## **Self-Certification**

Before an Expert Fund can commence operation it must be certified; this process is undertaken via the Expert Fund's Jersey Fund Service Provider (which every Expert Fund must have) undergoing a process of 'self-certification'. The Jersey Fund Service Provider will take responsibility for assuring the JFSC that the Expert Fund complies with the various criteria outlined in the Expert Fund Guide.

Due to this process of self-certification, the JFSC's regulatory role in the set up of the Expert Fund is minimised. The Jersey Fund Service Provider will also certify that appropriate disclosures have been made in the Fund's documentation, particularly in respect of the offering document's disclosures of investment and borrowing strategies. There is no particular investment or gearing restrictions set by the regulator, provided the Jersey Fund Service Provider believe the strategies have been fully disclosed to investors. The Fund's board, general partner, manager or trustee (which must have at least two Jersey directors) is ultimately responsible for the management and control of the Fund.

## **Investor Requirements**

A large part of the appeal of the Expert Funds regime is the malleability of the regulatory requirements as regards the structure and running of the Expert Fund.

This relaxation is in large part due to the requirement that an Expert Fund may only be offered to Expert Investors; this criterion is based on the idea that Expert Investors are deemed to be better able than Retail Investors to, *inter alia*: understand the inherent risks in making investments; bear any losses arising from the investment; and be cognizant and able to judge the benefits of less regulation, and the potential for greater profits therein, vis-à-vis the added security that regulation provides.

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 to 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; or b) is a "professional investor"; or c) is a "high net worth individual" with US\$1 million of assets (excluding the principal residence, but including assets jointly held with a spouse).



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. The JFSC has 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. 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 without having to meet the “Expert Investor” criteria set out above.

A “professional investor” is defined in the Expert Fund Guide as: “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.”

### **Investment Manager**

The crucial determining factor on the acceptability of the “Promoter”/“investment manager” is whether the proposed investment manager is regulated in an OECD or associate member state. The investment manager will be expected to operate a ‘four eyes’ principle in its investment procedures (or ‘six eyes’ where it handles client money). The investment manager possesses relevant experience in relation to the investment strategies used in the Expert Fund and is solvent without any previous regulatory breaches. Other investment managers may be approved on a case-by-case basis by the JFSC, who take a flexible approach commensurate with providing adequate protection to the Fund’s investors and Jersey’s reputation.

### **Offer Document**

The Expert Fund Guide prescribes certain information that must be included in the document which the Expert Fund proffers to potential investors (the “**Offer Document**”). These requirements are not overly onerous and serve to illuminate potential investors and inform them of such ‘material information that investors would reasonably require... to make an informed judgement about [the merits and risks of the investment]...’

The mandated information, whilst not particularly burdensome, is numerous and the totality of the requirements cannot be listed here. However, for the sake of clarity and brevity, the prescribed information can be roughly categorised thus:

- **Administrative Information:** essential information about the Fund Service Provider, such as their registered office, place and date of incorporation and other pertinent details; addresses of the auditors and legal advisors of the Expert Fund; any conflicts of interest which may exist; and the various addresses where the potential investor could inspect various registers, reports and accounts, amongst other miscellaneous administrative information.
- **Structural Information:** the Expert Fund’s structure including ‘brief particulars’ of all documents constituting the Expert Fund; the basis upon which dealing in the Expert Fund is to take place, if applicable; the basis upon which any subsequent offerings in the Expert Fund may be made, in the case of a Closed Fund; details of any ‘umbrella’ structures and ‘ring-fencing’ of particular assets’;



and any safe custody arrangements.

- Investment Information: the investment objective and investment management strategies employed by the Expert Fund; the manner in which changes which may have a material effect on investors may be made; and the creation, issuance, payment, (and in the case of an Open Fund) cancellation and redemption, of units in the fund and the conduct and voting rights of those who hold such units.

After giving the prescribed information there is a statement affirming that the facts in the Offer Document are 'true and accurate' and that whosoever makes the statement for the Expert Fund accepts responsibility accordingly.

### **The Application Process**

In order to establish an Expert Fund an application form must be lodged with the JFSC. This standard application must be signed for and on behalf of the Expert Fund and the Jersey Fund Service Provider and filed by the JFSC, along with other miscellaneous documents, *viz.*; a copy of the offer document to potential investors; the fees, which currently are £1,820 payable on application of the fund certificate and £1,820 in respect of each of the Expert Fund's Jersey Fund Service Provider; and a declaration that the Expert Fund complies with the Expert Fund Guide.

The application form must be completed by the regulated Jersey administrator/manager/trustee and countersigned by the directors of the Fund/general partner/ manager/trustee. If the application form confirms that the Fund meets the JFSC's Expert Fund guidelines, (and all regulatory checks are satisfied), the appropriate consents and permits will be issued by the JFSC on an expedited basis. The JFSC's timescale for authorisation has been streamlined over recent years, and currently the JFSC aims for approval within three days of receipt by the JFSC.

### **Custody**

Jersey's Expert Funds are designed to be particularly flexible investment vehicles. Aside from the streamlined set-up procedure, the majority of Expert Funds will also be able to benefit from regulatory flexibility in respect of custody of assets provided that it can demonstrate adequate safekeeping procedures. However, an open-ended Expert Fund will still be required to source its custody arrangements from a Jersey custodian. If it is a hedge fund, the open-ended Expert Fund may appoint a prime broker that is part of a group with a credit rating of A1/P1 or better.

### **The Alternative Investment Fund Managers Directive ("AIFMD")**

AIFMD was implemented in July 2013 and regulates the management and marketing of alternative investment funds ("**AIF**"), aiming to positively integrate and harmonise the market for AIF Managers within the European Union.

Whilst AIFMD does not have any direct effect in Jersey, AIFMD does mandate certain requirements that any AIF and AIF Manager must meet to market and operate in the European Economic Area ("**EEA**"). Therefore, any Expert Fund which is intended to be marketed within the EEA, along with its Fund Service Provider will need to comply with the requirements of AIFMD.



To this end, the JFSC responded to the Directive with the Alternative Investment Funds (Jersey) Regulations 2012 (the “**AIF Regulations**”); however, there is no requirement for an Expert Fund to obtain a certificate pursuant the AIF Regulations provided the JFSC is notified and gives permission in writing for the Expert Fund to be marketed in the EEA. There is also an exemption for Fund Service Providers if the AIF Manager function is included in their registration as a Funds Service Business.

### **Administration of the Fund**

Each Expert Fund must have a regulated Jersey administrator (or manager/trustee) with a physical presence in the Island. The role of the administrator, manager or trustee (as applicable) will include taking reasonable measures to satisfy itself that the investment manager does not breach the investment and borrowing restrictions as set out in the Expert Fund's prospectus. The relevant Jersey Funds Service Provider will also be required to maintain sufficient records in Jersey in order to fulfil its obligations.

For further information or specific advice, please contact [Kate Anderson](#) or [Chris Le Quesne](#) 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.*