

# GUIDE TO ELIGIBLE INVESTOR FUNDS IN JERSEY

## CONTENTS

PREFACE	1
1. Eligible Investor Funds	2
2. Eligible Investors	2
3. Legal Forms and Fund Structures	2
4. Investment Manager Requirements	2
5. Jersey Fund Service Provider Requirements	3
6. Monitoring of Investment Manager	3
7. Custody/Prime Broker Arrangements	4
8. Fund Service Provider Regulation in Jersey	4
9. Audit Requirements	4
10. Stock Exchange Listings	4
11. Authorisation Procedure for Eligible Investor Funds	5
12. Content of Offering Documents	5
13. Taxation of Eligible Investor Funds	5
14. Alternative Investment Fund Directive	6
15. Conversion of Unregulated Fund to Eligible Investor Fund	6
16. Funds Codes of Practice	7
Schedule 1	8
Who is an Eligible Investor?	8
Schedule 2	10
Warning to Eligible Investor in an Eligible Investor Fund	10
Schedule 3	11
Fund Service Provider Definition	11

## PREFACE

The Jersey Financial Services Commission (**Commission**) has recently introduced a new classification of regulated collective investment fund known as the Eligible Investor Fund.

This Guide is supplemental to the Appleby Guide to Jersey Investment Funds and relates to funds which meet the criteria to qualify as Eligible Investor Funds as further set out in this Guide.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

### **Appleby**

Jersey

March 2015

## 1. ELIGIBLE INVESTOR FUNDS

An Eligible Investor Fund is an unclassified collective investment fund established in Jersey pursuant to the Collective Investment Funds (Jersey) Law 1988, as amended (**1988 Law**) and the Jersey Eligible Investor Fund Guide issued by the Commission (**Eligible Investor Fund Guide**).

Interests in a Jersey Eligible Investor Fund are only available for subscription, purchase or exchange by an Eligible Investor (see Schedule 1 to this Guide for the full definition of an Eligible Investor).

## 2. ELIGIBLE INVESTORS

Only persons qualifying as Eligible Investors and who have signed and provided to the fund a declaration stating they have received, understood and accepted the warning set out in the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012, as amended (**CFPO**) before the subscription, purchase or exchange is completed (see Schedule 2 to this Guide for the full text of the warning).

Among the classes of investors covered are professional investors, individuals or entities who have agreed to pay consideration of not less than USD1 million for the subscription, purchase, exchange or acquisition of interests in the fund or individuals or entities whose property has a total market value of not less than USD10 million or the equivalent in another currency.

The Commission is of the view that those involved in establishing and providing services to an Eligible Investor Fund should be encouraged to invest in such fund should they wish to do so. It may be possible, therefore, to apply to the Commission to extend the definition of Eligible Investor to include carried interest investors in the context of private equity structures.

## 3. LEGAL FORMS AND FUND STRUCTURES

Eligible Investor Funds may take any legal form permitted under Jersey law: limited partnerships or unit trusts governed by Jersey law or par value/no par value limited companies under the Companies (Jersey) Law 1991.

Eligible Investor Funds can be established as either open-ended or closed-ended vehicles.

Eligible Investor Funds can be set up as single-class funds, umbrella funds, multi-class or common investment fund structures, feeder funds or fund of funds.

## 4. INVESTMENT MANAGER REQUIREMENTS

Certain confirmations have to be provided to the Commission regarding the status of the Investment Manager to be appointed for the Eligible Investor Fund. In this context, the term Investment Manager also includes an Investment Adviser appointed to the Eligible Investor Fund. Typically, the Investment Manager will be located outside Jersey and the confirmations focus on providing comfort to the Commission that the Investment Manager is in good standing and a fit and proper person.

The Investment Manager should:

- have had no regulatory or disciplinary sanctions imposed on it by any supervisory authority or professional body in the previous five years;
- have no convictions for any offence under the legislation of any country relating to the conduct of financial services businesses or involving fraud or dishonesty or be the parent, subsidiary or an associated company of any company which has such a conviction. If either of the above confirmations can only be given in qualified terms in relation to the Investment Manager then advance disclosure of the matter should be made to the Commission so that the circumstances can be assessed by the Commission;

- have no convictions for any offence under the anti-money laundering or combating financial terrorism legislation of any country or territory, or be the parent, subsidiary or an associated company of any company which has such a conviction;
- be able to pay its debts as they fall due; and
- be established in an OECD member state or any other state or jurisdiction with which the Commission has entered into a Memorandum of Understanding (or equivalent) on investment business and collective investment funds, and is either regulated in that state or possesses amongst its Principal Persons (as defined in the Eligible Investor Fund Guide) relevant experience in relation to managing or advising on investors' funds using similar investment strategies to those to be adopted by the Eligible Investor Fund.

In addition, no Principal Person of the Investment Manager shall:

- have had any regulatory or disciplinary sanctions imposed on him by any supervisory authority or professional body in the previous five years;
- have been convicted of any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty; or
- have been convicted for any offence under the anti-money laundering or combating financial terrorism legislation of any country or territory.

Where the Investment Manager is not the promoter of the Eligible Investor Fund, the entity which is the promoter or acting as principal distributor in connection with marketing of the Eligible Investor Fund must satisfy the same general status criteria as referred to above in connection with the Investment Manager.

## 5. JERSEY FUND SERVICE PROVIDER REQUIREMENTS

Every Eligible Investor Fund must appoint a Jersey-based management company or administrator which is regulated in Jersey and has a physical presence in Jersey. In the case of a closed-ended unit trust, a single managing trustee with a physical presence in Jersey may be appointed. General administration duties in connection with the Eligible Investor Fund may be outsourced by Jersey resident providers to fund administrators outside Jersey subject to compliance with the Commission's regulatory requirements in connection with outsourcing arrangements.

No valuation procedures have been prescribed by the Commission and accordingly NAV and share/unit price estimation and dealing adjustment procedures for hedge funds and fund of hedge funds can be accommodated.

At least two Jersey resident Directors with appropriate experience must be appointed to the fund board or the board of the general partner company in the case of a limited partnership or to the board of the corporate trustee in the case of a unit trust. These boards of directors are stated by the Eligible Investor Fund Guide issued by the Commission to be ultimately responsible for the management and control of the Eligible Investor Fund and this responsibility cannot be delegated.

## 6. MONITORING OF INVESTMENT MANAGER

Every Eligible Investor Fund must have a Jersey-based fund service provider (**Jersey-based service provider**) which is regulated in the Island and has a physical presence in Jersey (and which may be the administrator or management company or managing trustee in the case of a closed-ended unit trust referred to in the previous section) whose duties will include monitoring the actions of the Investment Manager. The Jersey-based service provider must take reasonable measures to satisfy itself that the actions of the Investment Manager do not breach the investment and borrowing limits (if any) applicable to the Eligible Investor Fund. It is also required to notify the entity that appointed the Investment Manager promptly of any concerns it has in connection with any such breaches so that

appropriate action can be taken. The Jersey-based service provider will not however be expected to assume responsibility for the Investment Manager's activities. It must maintain in Jersey sufficient records (in electronic or documentary form) to enable it to fulfil its monitoring functions and should be able to obtain other relevant records on demand.

## 7. CUSTODY/PRIME BROKER ARRANGEMENTS

Every Eligible Investor Fund shall have adequate arrangements for the safe custody of the property of the fund. If the Eligible Investor Fund is open-ended (but excluding hedge funds) then there are supplemental requirements that custody must be sourced from a separate Jersey-based custodian/trustee that is subject to any applicable Codes of Practice. Prior clearance for any deviation from this requirement would need to be negotiated with the Commission.

Where the Eligible Investor Fund has an alternative investment fund manager (**AIFM**) marketing AIFs within the EU or other EEA States pursuant to the Alternative Investment Fund Managers Directive (**Directive**), no prior approval is required for the appointment of a depository in the home member state of the AIFM, where such depository is subject to the requirements of the Directive.

Prime brokerage arrangements are permissible. Full details of custody and prime brokerage arrangements must be set out in the offering documentation for the Eligible Investor Fund. Non-Jersey based prime brokers can be appointed for hedge funds and the requirement for a custodian will be waived. Such prime brokers must be part of a group which satisfies minimum credit rating requirements (A1/P1) and prior clearance will only be required if the prime broker has a rating below such level. Beyond this no further rules concerning prime brokerage are prescribed.

## 8. FUND SERVICE PROVIDER REGULATION IN JERSEY

Jersey-based fund service providers appointed for an Eligible Investor Fund are required to be regulated in Jersey and subject to Codes of Practice issued by the Commission. The definition of fund service providers for this purpose is set out in Schedule 3.

Each Jersey-based service provider (such as a general partner, investment manager, investment adviser, or managing trustee) must be registered by the Commission under the Financial Services (Jersey) Law 1998. Where structuring requirements demand the incorporation of a general partner, investment manager, investment adviser, or managing trustee, the regulatory registration is applied for at the same time as applying to the Commission for approval of the Eligible Investor Fund and will be considered on an expedited basis.

## 9. AUDIT REQUIREMENTS

An auditor must be appointed for each Eligible Investor Fund. Annual audited reports and accounts will need to be prepared for the Eligible Investor Fund and sent to each investor.

## 10. STOCK EXCHANGE LISTINGS

The Eligible Investor Fund may be listed on a stock exchange which allows restrictions on transfers.

The units may be acquired only if:

- no market makers (as defined in the Commission's Guide to Jersey Eligible Investor Funds) have been appointed by a fund company or by another person on behalf of the Jersey Eligible Investor Fund;
- transfers of the units are restricted, so far as reasonably possible, to ensure that no person other than an Eligible Investor can acquire units in the Eligible Investor Fund that; and
- each new investor should sign and provide to the fund a declaration stating they have received, understood and accepted the warning set out in Schedule 2 of this Guide.

## 11. AUTHORIZATION PROCEDURE FOR ELIGIBLE INVESTOR FUNDS

The regulatory authorisation procedure is a one stage process centring on filing with the Commission an application and supporting paperwork (including a final or near final form version of the offering document) certifying that the applicant fund meets the parameters set out for an Eligible Investor Fund (or highlighting any deviations from those parameters).

In addition, the Investment Manager must confirm in writing to the Commission that it satisfies the criteria set out in connection with its role (which are summarised in the section of this client guide headed Investment Manager Requirements). The Jersey-based service provider must countersign the Investment Manager's submission confirming that it has carried out its own due diligence against the Investment Manager.

Upon receipt of a completed Application Form, the Commission will take steps to authorise the Eligible Investor Fund and/or its Fund Service Providers as the case requires.

## 12. CONTENT OF OFFERING DOCUMENTS

The offer document for an Eligible Investor Fund must contain all the information that investors would reasonably require and would reasonably expect to have brought fairly to their attention in the offer document in order to make an informed judgement about the merits of participating in the Eligible Investor Fund and the nature and levels of the risks accepted by making such a purchase. Further the offer document should satisfy the disclosure requirements of the Directive and any applicable Codes of Practice published by the Commission. For further information, please see the Commission's Guide to Jersey Eligible Investor Funds at [www.jerseyfsc.org](http://www.jerseyfsc.org).

Each Eligible Investor Fund must contain a prescribed investment warning in a prominent position in its offering document. The text of the investment warning is set out in Schedule 2 of this Guide.

Each Eligible Investor or his agent must acknowledge in writing that he has received and accepted this investment warning.

## 13. TAXATION OF ELIGIBLE INVESTOR FUNDS

Collective investment funds established in Jersey are zero rated for the purposes of Jersey income tax and are therefore not subject to Jersey income tax on non-Jersey source income or save in certain limited exceptions its Jersey source income (rental income or property development profits arising in respect of Jersey *situs* real property or land). Distributions paid out of a Jersey resident fund to either Jersey resident or non-Jersey resident investors are made on a gross basis without deductions in respect of Jersey tax.

Eligible Investor Funds qualify as International Service Entities (**ISEs**) with the Jersey Comptroller of Income Tax. On being listed as an ISE and payment of an annual fee, they are exempt from registration for the purposes of the Goods and Services Tax (Jersey) Law 2007. They would not therefore have to charge Goods and Services Tax (**GST**) on their supplies and would qualify for exemption from being charged GST. In order to retain ISE status an annual fee of £200 is payable.

There are no capital gains taxes nor value added taxes nor stamp duties in Jersey on securities transactions.

### EU Savings Tax

Jersey is not subject to the EU Savings Tax Directive but has introduced mandatory automatic exchange of information regarding payments to EU resident individuals with effect from 1 January 2015 in respect of payments of interest and other similar income which may include dividends and distributions out of funds to individual beneficial owners resident in an EU Member State paid by a paying agent situated in

Jersey. This supports Jersey's commitment to international standards on transparency and is in accord with the signing of agreements for the automatic tax information exchange with the USA and the UK.

Based on the provision of the bilateral agreements negotiated between Jersey and each of the EU Member States, the implementing legislation in Jersey and guidance notes issued by the Chief Minister's Department of the States of Jersey, distributions by an Eligible Investor Fund should not constitute interest payments for the purposes of the automatic exchange of information and therefore neither the Eligible Investor Fund nor any paying agent appointed by it in Jersey should be obliged to provide information.

The above automatic exchange of information requirements do not apply to interest or other affected payments to bodies corporate or to non-EU resident individuals although Jersey has signed separate inter-governmental agreements with both the UK and the USA for automatic exchange of information.

#### **FATCA/UK FATCA**

On 22 October 2013 the Chief Minister of Jersey signed an intergovernmental agreement with the United Kingdom (**UK-Jersey IGA**) under which certain disclosure requirements will be imposed in respect of certain investors in a Jersey entity who are resident in the United Kingdom. The UK-Jersey IGA also contains details of an Alternative Reporting Regime for UK resident non-domiciled individuals. Subsequently, the Chief Minister of Jersey also signed a similar intergovernmental agreement with the United States on 13 December 2013 (**US-Jersey IGA**). The UK-Jersey IGA and the US-Jersey IGA were ratified and implemented into Jersey domestic law by regulations brought into force on 18 June 2014. The States of Jersey have published draft guidance notes on these regulations. Under the US-Jersey IGA, an entity will not be required to report information to the IRS under an FFI Agreement; rather, such entity will be required to report information in respect of direct and certain direct U.S. investors to the Comptroller of Taxes in Jersey. Failure to comply with the requirements of the regulations will result in financial penalties or other sanctions being imposed under Jersey law.

#### **14. ALTERNATIVE INVESTMENT FUND DIRECTIVE**

With effect from 22 July 2013, the Alternative Investment Funds (Jersey) Regulations 2012 (**AIF Regulations**) apply to alternative investment funds (**AIFs**) and AIFMs in Jersey marketing AIFs within the EU or other EEA States pursuant to the Alternative Investment Fund Managers Directive.

Under the provisions of the AIF Regulations, AIFs will be required to apply for an AIF certificate from the Commission and will be subject to Codes of Practice.

However, a regulated fund (i.e. any Jersey collective investment fund) is exempt from the requirement to have an AIF certificate provided it has notified the Commission of its intention to market within the EU or other EEA States and has received written consent to do so. It must still comply with the Codes of Practice applicable to AIFs though.

Funds which before 22 July 2013 were not collective investment funds for the purposes of the collective investment funds law in Jersey and which are to market within the EU or other EEA States must now obtain an AIF certificate from the Commission or obtain the Commission's written consent and comply with the AIF codes.

Where the assets under management are below €100m (or €500m, where the AIF is unleveraged, closed ended and with a lock in period of at least five years) the Codes of Practice will still apply but will have a limited application.

#### **15. CONVERSION OF UNREGULATED FUND TO ELIGIBLE INVESTOR FUND**

Unregulated funds which before 22 July 2013 were not collective investment funds for the purposes of the collective investment funds law in Jersey and which are to market within the EU or other EEA States

must now obtain an AIF certificate from the Commission and comply with the AIF codes. Such funds are therefore required to convert to a regulated fund. The most appropriate regulated classifications for conversion are an Eligible Investor Fund or Listed Fund pursuant to the Commission's Guide to Jersey Eligible Investor Funds and Guide to Listed Funds, respectfully.

## 16. FUNDS CODES OF PRACTICE

In 2013, the Commission issued Codes of Practice applicable to Eligible Investor Funds. These Codes of Practice define an Eligible Investor Fund and set out the characteristics that would usually be required from such a collective investment fund.

For more specific advice on eligible investor funds in Jersey, we invite you to contact one of the following:

### Jersey

#### Andrew Weaver

Partner

Corporate

+44 (0)1534 818 230

aweaver@applebyglobal.com

#### James Gaudin

Partner

Corporate

+44 (0)1534 818 337

jgaudin@applebyglobal.com

For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).

**SCHEDULE 1****WHO IS AN ELIGIBLE INVESTOR?**

Meaning of 'eligible investor':

- (1) For the purposes of paragraph 3 of Schedule 2 to the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012, as amended, an eligible investor in relation to a fund is a person who, at the time of making a subscription, purchase, exchange or acquisition in relation to the fund, is any of the following persons:
- (a) a person who has agreed to pay consideration of not less than one million United States dollars, or the equivalent of that amount in another currency, for the subscription, purchase, exchange or acquisition;
  - (b) a person whose ordinary business or professional activity includes or could be reasonably expected to include:
    - (i) the acquisition, underwriting, management, holding or disposal of investments, whether as principal or agent, or
    - (ii) the giving of advice on investment;
  - (c) an employee, director or shareholder of, or consultant to, a person specified in clause (b);
  - (d) a fund service provider in relation to the fund or an associate of such a fund service provider;
  - (e) a person who:
    - (i) is an employee, director or shareholder of, or consultant to, such a fund service provider or associate, and
    - (ii) in making the relevant subscription, purchase, exchange or acquisition would acquire units in the fund as remuneration, or reward, as such an employee, director, shareholder or consultant;
  - (f) an individual whose property has a total market value of not less than 10 million United States dollars or the equivalent of that amount in another currency;
  - (g) a company, partnership, limited partnership, separate limited partnership, incorporated limited partnership, limited liability partnership, trust, or unincorporated association, in relation to which one or both of the following requirements is met:
    - (i) its property (or its property and that of its associates) has a total market value of not less than 10 million United States dollars or the equivalent of that amount in another currency,
    - (ii) every shareholder of the company, every partner of the partnership, limited partnership, separate limited partnership, incorporated limited partnership or limited liability partnership, every beneficiary of the trust or every member of the association (as the case requires) would, himself or herself, be an eligible investor in relation to the fund if he or she made in relation to the fund a subscription, purchase, exchange or acquisition referred to in paragraph 2;
  - (h) a wholly-owned subsidiary of a company that satisfies clause (g);
  - (i) a trustee of a trust established by a person who is specified in any of clauses (b), (c), (d), (f), (g) and (h) or is an employee, director, shareholder, or consultant, specified in clause (e)(i);

- (j) a trustee of a trust established for the benefit of:
    - (i) a person who is specified in clause (b) or (c) or is an employee, director, shareholder, or consultant, specified in clause (e)(i),
    - (ii) any one or more persons in any one or more of the following classes:
      - (A) the spouse or civil partner of a person specified in sub-clause (i),
      - (B) the issue of such a person,
      - (C) the dependants of such a person, or
    - (iii) a person specified in sub-clause (i) and any one or more persons in any one or more of the following classes:
      - (A) his or her spouse or civil partner,
      - (B) his or her issue,
      - (C) his or her dependants; or
  - (k) a person who in making the subscription, purchase, exchange or acquisition is acting as or for a public sector body.
- (2) For the purposes of sub-paragraph (1)(c), a reference to a shareholder of a person specified in sub-paragraph (1)(b) is a reference to a shareholder in respect of whom the person has signed a declaration that the investment is suitable for the shareholder and that the shareholder is able to bear the economic consequences of the investment, including the possibility of the loss of the entire investment.
- (3) For the purposes of sub-paragraph (1)(e), a reference to a shareholder of a fund service provider or associate specified in sub-paragraph (1)(d) is a reference to a shareholder in respect of whom the fund service provider or associate (as the case requires) has signed a declaration that the investment is suitable for the shareholder and that the shareholder is able to bear the economic consequences of the investment, including the possibility of the loss of the entire investment.

**SCHEDULE 2****WARNING TO ELIGIBLE INVESTOR IN AN ELIGIBLE INVESTOR FUND**

The investment warning must be in, or substantially in, the following terms:

“This fund has been established in Jersey as a Jersey eligible investor fund. It is only open to eligible investors who fall within the definition of ‘eligible investor’ within the meaning of paragraph 3 of Schedule 2 to the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012, as amended.

This fund is only suitable for professional or experienced investors, or those who have taken professional advice. Regulatory requirements, which may be seen as necessary for the protection of retail investors or those who are not eligible investors, do not apply to Jersey eligible investor funds.

By declaring that you have received this warning and understood and accepted its terms you are expressly agreeing that you are an eligible investor within the meaning of paragraph 3 of Schedule 2 to the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012, as amended. You are also expressly agreeing that you accept the risks in the investment accordingly.

If you are an investment manager acquiring an interest in this fund as an investment that is, directly or indirectly, for or on behalf of persons who are not eligible investors within the meaning of paragraph 3 of Schedule 2 to the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012, as amended, by additionally declaring that you are satisfied that the investment is suitable for those investors and that they are able to bear the economic consequences of investment, including the possibility of the loss of the entire investment, you are declaring that you have sufficient information in order to be satisfied as to the truth of that statement.

You are wholly responsible for ensuring that all aspects of this fund are acceptable to you (and to any persons referred to in the preceding paragraph). Investment in a Jersey eligible investor fund may involve special risks that could lead to a loss of all or a substantial portion of that investment. Unless you (and those persons, if any) fully understand and accept the nature of this fund and the risks inherent in investing in this fund you should not invest in this fund.”

### SCHEDULE 3

#### FUND SERVICE PROVIDER DEFINITION

A fund service provider means a person who carries on fund services business within the meaning of the Financial Services (Jersey) Law 1998.

A person carries on fund services business if by way of business the person is –

- a manager, manager of a managed entity, administrator, registrar, investment manager or investment adviser;
- a distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent or repurchase agent;
- a trustee, custodian or depository; or
- a member (except a limited partner) of a partnership, including a partnership constituted under the law of a country or territory outside Jersey

in relation to an unclassified fund or an unregulated fund.

General partners and trustees of unregulated funds are exempt from registration requirements of the Financial Services (Jersey) Law 1998, as amended.