

# GUIDE TO EXPERT FUNDS IN JERSEY

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## PREFACE

The Jersey Financial Services Commission (the **Commission**) introduced in February 2004 a new regulatory classification for investment funds to be domiciled in Jersey and offered to institutional, professional or sophisticated investors (**Expert Funds**). The new classification maintained certain minimum standards and facilitated the speedy establishment of a wide range of alternative investment fund products as well as funds following more traditional investment strategies targeted at sophisticated investors. The thrust of the Commission's approach was to move the focus and degree of regulation down from the level of the fund vehicle itself to an underlying fund administrator or manager located in Jersey.

The Expert Funds classification enjoys a streamlined authorisation process to establish a collective investment fund in Jersey within the existing regulatory framework of the Collective Investment Funds (Jersey) Law 1988 (the **1988 Law**), where the fund meets the criteria set down for an Expert Fund. Those criteria are set out in the Jersey Expert Fund Guide issued by the Commission (the **Expert Fund Guide**) and focus on three key requirements:

- investors in an Expert Fund must fall within the definition of an Expert Investor which is defined in the Expert Fund Guide;
- the investment manager/investment adviser to be appointed for the Expert Fund must satisfy certain fit and proper criteria established by the Commission;
- the Expert Fund must have a fund service provider in Jersey who will monitor compliance by the investment manager/investment adviser with the investment objectives and restrictions of the Expert Fund. These requirements will usually be discharged and undertaken through a Jersey based administrator or management company appointed for the Expert Fund.

The Expert Fund classification has encouraged investment managers and other collective investment fund promoters to establish funds in Jersey which would not otherwise have come to the jurisdiction. In conjunction with a project by the States of Jersey (Jersey's government) to encourage specialist investment managers to relocate to Jersey, it has led to the establishment of an impressive stable of new funds. In addition, the effect of the Expert Fund classification has been to encourage funds which previously would have been established in Jersey and regulated only under the Control of Borrowing (Jersey) Order 1958 (**COBO**) to be established as collective investment funds subject to regulation under the 1988 Law. This facilitates wider offering of these funds than would previously have been permitted due to offering limitations under Jersey law applicable to funds which are not regulated under the 1988 Law.

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. EXPERT INVESTORS

Only persons qualifying as Expert Investors and who have acknowledged receipt of a prescribed investment/regulatory warning (which will usually be set out in the offering document for the Expert Fund or on the application form for shares/units) may invest in an Expert Fund.

The Expert Investor definition has been crafted to be as inclusive as possible. The full Expert Investor definition is set out as Appendix 1 to this client guide. Among the classes of investors covered are professional investors, individuals or entities with net investment assets of not less than USD1 million, carried interest investors and co-investment arrangements in the context of private equity structures.

Finally, any investor who invests an initial investment of a minimum of USD100,000 or currency equivalent qualifies as an Expert Investor.

## 2. LEGAL FORMS AND FUND STRUCTURES

Expert 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.

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

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

## 3. INVESTMENT STRATEGIES AND RESTRICTIONS

The Expert Funds classification focuses on the status of participating investors and is not defined by reference to any asset classes or investment techniques. It will therefore accommodate funds set up to follow orthodox investment strategies as well as private equity and hedge fund strategies. The offering document relating to the Expert Fund will set out details of the objective and investment strategies to be followed by the Expert Fund.

No investment or borrowing restrictions are prescribed for Expert Funds. Accordingly, there is considerable freedom for Expert Funds to tailor their own investment parameters and limitations in the context of the investment strategy and objective which the Expert Fund will follow and the risk appetite of participating investors.

If the Expert Fund is permitted to borrow and/or gear itself above 200% of the net asset value of the Expert Fund, the Commission reserves the right to undertake additional scrutiny of the arrangement.

## 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 Expert Fund. In this context, the term Investment Manager also includes an Investment Adviser appointed to the Expert 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 disciplinary sanctions imposed on it by any supervisory authority 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;

- be able to pay its debts as they fall due;
- be established and regulated 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. If the Investment Manager is established in such a state or jurisdiction but is not regulated in that state because the activity it proposes to carry out in relation to the Expert Fund is not a regulated activity in that state, this should be drawn to the Commission's attention in advance. Provided the Investment Manager satisfies the other specified criteria set out above and below, as they apply to the Investment Manager and Principal Persons of the Investment Manager, and in the absence of any other issues, the Commission will ordinarily grant approval of the Investment Manager on an expedited basis;
- possess relevant experience in relation to managing or advising on investors' funds using similar investment strategies to those to be adopted by the Expert Fund;
- satisfy the Commission's general principles of corporate governance relating to the minimum number of principals/executives controlling the activities of the Investment Manager. In this regard, see the extract of corporate governance principles set out as Appendix 5 of this client guide.

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

- have had any 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.

Where the Investment Manager is not the promoter of the Expert Fund, the entity which is the promoter or acting as principal distributor in connection with marketing of the Expert 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 Expert Fund must appoint a Jersey-based management company or administrator which is regulated in the island 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 Expert 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. Alternatively, so long as a Jersey resident "monitoring functionary" has been appointed, the fund may appoint a fund administrator outside Jersey.

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 Expert Fund Guide issued by the Commission to be ultimately responsible for the management and control of the Expert Fund and this responsibility cannot be delegated.

## 6. MONITORING OF INVESTMENT MANAGER

Every Expert Fund must have a Jersey-based fund service provider (the **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) adopted for the Expert 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 Expert Fund must put in place adequate arrangements for the safe custody of the property of the fund. If the Expert 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.

Prime brokerage arrangements are permissible. Full details of custody and prime brokerage arrangements must be set out in the offering documentation for the Expert Fund. Non-Jersey based prime brokers can be appointed for hedge funds. 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 Expert 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 Appendix 2.

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 Expert Fund and will be considered on an expedited basis.

## 9. AUDIT REQUIREMENTS

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

## 10. TRANSFERS OF INTERESTS

Where the Expert Fund is not listed on a stock exchange, reasonable steps should be taken in order to ensure that any person who is not an Expert Investor does not become a registered holder of an interest in the Expert Fund. Involuntary transfers e.g. on death or bankruptcy are excluded, although the Expert Investor criteria will apply to the transfer to the new beneficial owner on completion of the administration of the estate.

## 11. STOCK EXCHANGE LISTINGS

The Expert Fund may be listed, with the consent of the Commission, on a stock exchange which allows restrictions on transfers. The Commission will require confirmation that:

- the exchange permits restrictions on transfers to ensure, so far as reasonably possible, that no one other than an Expert Investor is allowed to become a registered holder of the Expert Fund's securities;
- each new investor will be required to confirm in writing that he has received and accepted the investment warning (see Appendix 4) and has seen the statement on Expert Funds referring to the Commission's website (which must be included in the Expert Fund's offering document).

## 12. AUTHORISATION PROCEDURE FOR EXPERT 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 Expert Fund (or highlighting any deviations from those parameters).

The Jersey-based service provider must sign the application submitted to the Commission and arrange for the application to be counter-signed on behalf of the Expert Fund.

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 Expert Fund and/or its Fund Service Providers as the case requires.

## 13. CONTENT OF OFFERING DOCUMENTS

In November 2012, the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012 (**Prospectus Order**) came into force. The Prospectus Order updated the previous prospectus regulations relating to closed-ended and open-ended Jersey collective investment funds in respect of which a certificate is issued under the Collective Investment Funds (Jersey) Law 1988, and extended the scope of regulation of prospectuses to all fund vehicles including closed-ended unit trusts and limited partnerships.

The offer document for an Expert Fund must contain all the information that investors and their professional advisers (if any) 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 Expert Fund and the extent of the risks accepted in so participating. The schedule to the Prospectus Order sets out the information to be contained in a prospectus, although the Commission may consent to deviation from the Prospectus Order where such deviation does not materially affect the substance of the Prospectus Order and is not calculated to mislead.

Each Expert 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 Appendix 4.

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

#### 14. ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

With effect from 22 July 2013, the Alternative Investment Funds (Jersey) Regulations 2012 (**AIF Regulations**) apply to alternative investment funds (**AIFs**) and alternative investment fund managers 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 including Expert funds) 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. TAXATION OF EXPERT 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.

Expert 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 Expert Fund should not constitute interest payments for the purposes of the automatic exchange of information and therefore neither the Expert 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.

#### 16. **FUNDS CODES OF PRACTICE**

In April 2012, the Commission issued Codes of Practice applicable to all collective investment funds regulated under the 1988 Law (which includes Expert Funds). Please see our guide to these Codes of Practice.

For more specific advice on Expert Funds in Jersey, we invite you to contact one of the following:

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

## APPENDIX 1

### Expert Investor Definition

The Commission's Jersey Expert Fund Guide defines Expert Investors as follows:

An Expert Investor is deemed able:

- to evaluate the financial risks of investing in the Expert Fund; and
- to bear the economic consequences of investment in the Expert Fund including any possibility of the loss of the entire investment.

In view of the above, an Expert Investor is deemed to require only limited regulatory protection in relation to the manner in which the Expert Fund is structured.

An Expert Investor is:

- (a) 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; or
- (b) an individual who has a net worth, or joint net worth with that person's spouse, greater than USD1,000,000 (or currency equivalent) excluding that person's principal place of residence; or
- (c) a company, partnership, trust or other association of persons which has (or which is a wholly owned subsidiary of a body corporate which has) assets available for investment of not less than USD1,000,000 (or currency equivalent) or every member, partner or beneficiary of which falls within the definition of Expert Investor; or
- (d) a fund service provider to the Expert Fund or an Associate of a fund service provider to the Expert Fund; or
- (e) a person who is an employee, director, consultant or shareholder of or to a fund service provider of the Expert Fund or an Associate of a fund service provider to the Expert Fund, who is acquiring an investment in the Expert Fund as part of his remuneration or an incentive arrangement or by way of co-investment; or
- (f) any employee, director, partner or consultant to or of any person referred to in paragraph a.; or
- (g) a trustee of a family trust settled by or for the benefit of one or more persons referred to in paragraphs e. or f.; or
- (h) a trustee of an employment benefit or executive incentive trust established for the benefit of persons referred to in paragraphs e. or f. or their dependants; or
- (i) a government, local authority, public authority or supra-national body in Jersey or elsewhere; or
- (j) an investor who makes a minimum initial investment or commitment of USD100,000 (or currency equivalent) in the Expert Fund, whether through the initial offering or by subsequent acquisition.

The Commission believes that those involved in establishing and providing services to an Expert Fund who wish to invest in that fund should be encouraged to do so. Accordingly, any application made to the Commission to extend the definition of Expert Investor in respect of any other types of "carried interest" investors is likely to be treated sympathetically by the Commission.

The Commission expects any discretionary investment manager acquiring an interest in the Expert Fund, directly or indirectly, for or on behalf of non-Expert Investors to be satisfied that the investment is suitable for the underlying investors, and that the underlying investors are able to bear the economic consequences of investment in the fund, including the possibility of the loss of the entire investment.

(The Commission's Jersey Expert Fund Guide is found [here](#): in Schedule 2 of the Codes of Practice for Certified Funds July 2013)

**APPENDIX 2****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.

### APPENDIX 3

#### Regulatory Fees

The following regulatory fees are payable to the Jersey Financial Services Commission.

- Initial application fee in respect of a new Expert Fund and each fund service provider of £1,000.
- Annual fees apply on a sliding scale basis according to the total number of pools of assets.

Number of pools of assets	Annual fee
0-1	£3,400
2-4	£4,500
5-9	£5,500
10-19	£7,000
20-49	£9,000
50-99	£12,000
100-149	£17,500
150-199	£24,000
200 or more	£32,000

(The regulatory permit fees payable to the Jersey Financial Services Commission are found [here](#))

## APPENDIX 4

### INVESTMENT WARNING

"This fund has been established in Jersey as an expert fund. It is suitable only for those who fall within the definition of "expert investors" published by the Jersey Financial Services Commission.

Requirements which may be deemed necessary for the protection of retail or non-expert investors, do not apply to expert funds. By acknowledging this statement you are expressly agreeing that you fall within the definition of an "expert investor" and accept the reduced requirements accordingly.

If you are an investment manager acquiring an interest in this fund, directly or indirectly, for or on behalf of non-expert investors, the Jersey Financial Services Commission expects you to be satisfied that the investment is suitable for the underlying investors and that the underlying investors are able to bear the economic consequences of investment in the fund, including the possibility of the loss of the entire investment.

You are wholly responsible for ensuring that all aspects of this fund are acceptable to you. Investment in expert funds may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of this fund and the potential risks inherent in this fund you should not invest in this fund."

(See Paragraph 3.7 of Commission Expert Fund Guide (issued 19 November 2012))

## APPENDIX 5

### SPAN OF CONTROL REQUIREMENTS

A guidance note in relation to the “span of control” principle applicable to Investment Managers can be found on the Commission website at: [Span of Control](#).

This appendix summarises this principle for guidance purposes only.

In the context of the Investment Manager, the principle requires that the Investment Manager be able to demonstrate that its business is actively managed by two or three skilled, experienced individuals: two persons if the Investment Manager cannot handle client monies, three if it can.

The “four eyes” or “six eyes” are the principal persons of the business, who must be able to exercise executive power on behalf of the Investment Manager. These individuals must be actively involved in the day-to-day management of the business and able to exercise executive powers on behalf of the Investment Manager. Normally, such person will be directors of the Investment Manager.

They must be able to demonstrate independence, competence, experience and integrity and be able to effectively exercise management control over the Investment Manager. Together, the persons providing the “four or six eyes” should be able to demonstrate a balance of appropriate qualifications, skills and experience. As part of the independence requirement care must be taken where members of the same family form principal persons of the Investment Manager.

Although the individuals making up the span of control do not need to be involved in the day-to-day execution of the Investment Manager’s policy, they should have day-to-day involvement in general management as well as knowledge of and influence upon the way in which the company’s strategy is being implemented through day-to-day policy.

The Commission acknowledges there may be exceptional circumstances for allowing some degree of relaxation of the principles outlined above. Each request for a relaxation will be considered on its merits and on a case by case basis, however, it must be borne in mind that requests of this nature will not be granted lightly and that, once granted, are not to be treated as setting a precedent notwithstanding any similarity of circumstances. Furthermore, consideration of such requests may increase the time taken to process an application.