



Guide to
Regulation of Funds
in Jersey

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PREFACE

This Guide provides an outline description of the categories of regulation of investment funds in Jersey by the Jersey Financial Services Commission (the “JFSC”).

We recognise that this Guide will not completely answer detailed questions from clients and their advisers. The Guide is intended to provide a sketch of the subject matter covered and is, therefore, designed as a starting point for a more detailed and comprehensive discussion of the issues.

Appleby
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1. TYPES OF INVESTMENT FUND

Investment funds in Jersey may be established using companies, limited partnerships or unit trusts. Unless otherwise specified, they may be established as open-ended or closed-ended vehicles.

Unregulated funds

Funds which meet the criteria to qualify as unregulated eligible investor funds or unregulated exchange traded funds are exempt from Jersey regulatory requirements.

An unregulated eligible investor fund is a scheme or arrangement established in Jersey and in which only eligible investors may invest.

An “eligible investor” is an investor who makes a minimum initial investment of US\$1 million or the currency equivalent (which can be made either at the initial offering or by subsequent acquisition) or an institutional or professional investor, as defined in the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 (the “Unregulated Funds Order”).

An unregulated eligible investor fund may be open or closed-ended and transfers of interests are possible but only to other eligible investors. While it is possible to list unregulated eligible investor funds on stock exchanges, transfer restrictions will apply.

An unregulated exchange traded fund is a scheme or arrangement established in Jersey which is a closed-ended fund and which is listed or to be listed on one or more prescribed stock exchanges.

An unregulated exchange traded fund is not subject to the investor criteria or restrictions on transfer applicable to unregulated eligible investor funds.

Provided there is compliance with the Unregulated Funds Order, unregulated funds are not subject to regulatory review or oversight. Each type of fund is required to file a notice with the Registrar of Companies in Jersey confirming its establishment and to include a prescribed investment warning in its offering document.

For further information, please refer to the Appleby Client Guide to Unregulated Funds in Jersey.

Very Private Funds

A fund is classified as a “very private” fund where the fund vehicle is established for a small group of co-investors - not exceeding 15 in number - or for a single purpose, and there is no general offer of shares or units.

Very private funds require only consent from the JFSC to issue securities in the fund pursuant to the Control of Borrowing (Jersey) Order 1958 (“COBO”). It is therefore possible for a very private fund to be formed within a short period of time.

There is great flexibility in the way in which very private funds can be structured and operated and therefore they may be appropriate for single investor vehicles, joint ventures and co-investment structures.

Private Placement Funds

Private placement funds, or COBO only funds as they are also known, are funds which are not offered to more than 50 investors and not listed on a stock exchange. A private placement fund will provide offering documents to its investors. They are subject to a degree of regulation by the JFSC but still only subject to regulatory control pursuant to COBO (as with very private funds).

The COBO consent issued to the fund will contain conditions as an ongoing form of regulating the fund. Prior to issuing the COBO consent, the JFSC will undertake a preliminary review of the “promoter” to the

scheme to ensure that it satisfies the JFSC's promoter policy as well as a review of the private placement memorandum.

When reviewing the promoter, the JFSC will need to be satisfied as to the promoter's reputation, track record, experience, spread of ownership, and financial resources.

The fund's Jersey service providers (e.g. investment manager, general partner or trustee) may also benefit from regulatory exemptions under the Financial Services (Jersey) Law 1998 (the "FS Law") where each investor is either a professional investor or is investing at least £250,000 and, in each case, formally acknowledges a prescribed investment warning.

Very private funds and private placement funds fall outside of the regulatory control of the Collective Investment Funds (Jersey) Law 1988 ("CIF").

Expert Funds

It is possible for an unclassified fund to be subject to a lighter touch regulation provided all of the investors qualify as expert investors. This type of fund is known as an "Expert Fund" and is regulated pursuant to the JFSC Expert Fund Guide.

Expert investors must expressly acknowledge an investment warning and invest at least US\$100,000, or equivalent currency.

Fund criteria include:

- The investment manager must be regulated in an OECD member state or in a jurisdiction with which the JFSC has entered into a memorandum of understanding or otherwise approved by the JFSC.
- An expert fund is available only to expert investors.
- The offer document for an expert fund must comply with certain content requirements.
- The fund itself must be a Jersey company or have a Jersey general partner (if a limited partnership) or a Jersey trustee (if a unit trust) and the fund company, corporate general partner or corporate trustee should have at least two Jersey resident directors.
- An expert fund must have a Jersey "monitoring functionary", being either an administrator or a manager in Jersey to ensure compliance by the investment manager with the investment and borrowing restrictions of the fund.

Listed Funds

An unclassified fund which complies with the requirements of the JFSC Listed Fund Guide can also benefit from a lighter touch regulation. The JFSC Listed Fund Guide provides a fast track process for the establishment of corporate closed-ended funds which are listed on a recognised stock exchange or market.

Fund criteria include:

- The investment manager of a listed fund must be established in an OECD member state, or in a jurisdiction with which the JFSC has entered into a memorandum of understanding, or has otherwise been approved by the JFSC.
- Listed funds must have at least two Jersey resident directors with appropriate experience and a Jersey "monitoring functionary", being either an administrator or a manager in Jersey, to ensure compliance by the investment manager with the investment and borrowing restrictions of the fund.
- The fund must be a closed-ended Jersey company.
- There is no minimum subscription and listed funds are available to any investor category.

Unclassified Funds

Collective investment schemes, the units in which are to be offered to more than 50 investors or are to be listed and which are open-ended or operate on a principle of risk spreading, will be regulated by the JFSC under CIF unless they meet the criteria set out in the Unregulated Funds Order.

Funds regulated under CIF are either unclassified funds (including sub-classes of expert funds and listed funds) or recognised funds. See below for further detail on recognised funds.

The JFSC will regulate an unclassified fund and its promoter in accordance with its policies and the fund and promoter will need to ensure compliance with the same. Again, the JFSC will need to be satisfied as to the promoter's reputation, track record, experience, spread of ownership, and financial resources.

The JFSC will also review the prospectus (or other offering documents), constitutional documents of the fund and any material agreements.

While there is considerable flexibility as to how unclassified funds may be structured and operated, certain well-established standards form the basic benchmarks against which the JFSC evaluates unclassified funds. For example, applicable regulatory guidelines may be relaxed depending on the minimum investment level and whether the fund is open-ended, which is more regulated, or closed-ended. Where there is a lower minimum investment amount, there will be greater regulation by the JFSC. Where the fund is an open-ended fund, it will require a Jersey resident manager and custodian. However, for a closed-ended fund, no separate custodian is required.

Further, the investment objectives and restrictions of the fund must be appropriate to the risk sensitivity of the type of investor for whom the fund is designed. Where appropriate, prominent investment warnings must be included in the fund prospectus or offering document.

Recognised Funds

Recognised funds are funds which wish to take advantage of Jersey's Designated Territory status under the United Kingdom Financial Services and Markets Act 2000 (the "FSMA") so that they may be marketed freely to the public in the United Kingdom under the FSMA, subject to compliance with United Kingdom regulatory marketing requirements. The requirements for the constitutional documents of such funds, their mode of operation, the categories of investments and assets they can acquire and the investment restrictions which they must follow are set out in detail in the Collective Investment Funds (Recognised Funds) (Rules) (Jersey) Order 2003, as amended, and the Collective Investment Funds (Recognised Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988, as amended. Funds within this category are the most highly regulated under Jersey law and are subject to a statutory compensation scheme for the protection of investors.

2. AUTHORISATION PROCEDURE

The authorisation procedure by the JFSC for unclassified funds (which are not expert funds or listed funds) is divided into three stages: an initial review stage during which the proposal as a whole is reviewed, the identity of the promoter is vetted and "in-principle" consent is obtained; the "document review" stage, and; the "licensing" stage.

It usually takes up to two weeks to obtain in-principle consent for a fund where the promoter is not known to the JFSC. Once the JFSC has indicated in principle that the application may proceed, the draft fund documentation and its prospectus or other offering document must be prepared and submitted for the document review stage together with any other regulatory applications. The Commission will indicate whether the documentation is satisfactory within two to four weeks and the regulatory permits, certificates, registrations and consents, as the case may be, are usually issued within a matter of a few business days thereafter.

There is a streamlined approval process for expert funds and the expert fund can be established within three business days of the filing of the complete application and supporting documentation with the JFSC. For further information, please refer to the Appleby Client Guide to Expert Funds in Jersey.

As with the expert fund policy, there is a streamlined approval process for listed funds and the listed fund can also be established within a short period following the filing of the complete application and supporting documentation with the JFSC. For further information, please refer to the Appleby Client Guide to Listed Funds in Jersey.

3. REGULATION OF SERVICE PROVIDERS

Many of the funds which are established in Jersey are promoted by groups who do not have a physical presence in the Island. Accordingly, the funds are operated on a “fully administered basis” by existing banking and fund administration groups established in Jersey.

These service providers are regulated pursuant to the FS Law and should be registered to conduct “fund services business”. The service providers should be managed and operated in accordance with the JFSC’s Codes of Practice for Fund Services Business.

Promoters with no existing offices or staff in Jersey who wish to establish a presence in Jersey, so as to be able to administer their own fund or undertake investment management or other functions relating to the fund from Jersey, will need to obtain registration under the FS Law. If the new activity is to have staff or business premises in Jersey, consent will also be required under the Regulations of Undertakings and Development (Jersey) Law 1973, as amended.

4. TAXATION OF FUNDS IN JERSEY

Investment funds established in Jersey are not liable to any Jersey income tax burden. Distributions paid out to Jersey resident and non-Jersey resident investors are made on a gross basis without deductions in respect of Jersey tax. Investors will be taxed in accordance with the legislation applicable in the country in which they reside.

Collective investment funds are listed as International Service Entities with the Jersey Comptroller of Income Tax and as such are exempt from registration for the purposes of the Goods and Services Tax (Jersey) Law 2007. They do not have to charge goods and services tax (“GST”) on their supplies and qualify for exemption from being charged GST.

There are no capital gains taxes or value added taxes or stamp duties in Jersey on securities transactions.

Jersey is not subject to the EU Savings Tax Directive but has introduced a retention tax system 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.

For further information in relation to taxation of funds in Jersey, please contact Appleby.

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

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