

INVESTMENT FUND CATEGORIES IN JERSEY



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Introduction

- This document provides brief information on the principal categories of private and public collective investment funds which can be established in Jersey, Channel Islands.
- To receive further information on Jersey domiciled investment funds and the local regulatory regime for investment funds in Jersey please contact: simon.howard@howard.je , Howard Law, Ordinance House, 31 Pier Road, St Helier, Jersey JE3 9AR, Channel Islands, T: + 44 (0) 1534 825376

Warning: These notes provide an outline summary of certain features and aspects of the funds regime in Jersey and the regulatory controls applied to funds and fund service providers. It is not comprehensive and should not be relied upon as legal or other professional advice. Appropriate professional advice should always be sought in the context of particular circumstances or a fund proposal where guidance is required.

Very Private Funds

- No published guidance note from the Jersey Financial Services Commission yet exists on this private fund category in Jersey. It has evolved through practice over the last decade. It was given impetus and recognition by the Jersey Property Unit Trust (JPUT) “bonanza” in Jersey a number of years ago when large numbers of very private funds were set up as Jersey unit trusts to acquire title to and invest in UK real estate.
- A very private fund (“VPF”) can be set up using any of the legal forms available (company, unit trust, limited partnership). Essentially it is a closed-ended vehicle due to the restriction on number of participating investors which applies to a VPF.
- Maximum of 15 investors permitted – a VPF falls outside the regulated Collective Investment Funds space in Jersey which is governed by the Collective Investment Funds (Jersey) Law 1988.
- A consent under the Control of Borrowings (Jersey) Order 1958 (“COBO”) is required for each private fund to enable the fund to issue its securities to investors – there is a five day service pledge from the Companies Registry in Jersey/Jersey Financial Services Commission (“JFSC”) for issue of the COBO consent.
- A VPF can be treated as trust company business for administration purposes in Jersey and therefore administered by registered trust companies in the island. A VPF does not necessarily have to be administered by registered fund administrators in Jersey.
- Considerable flexibility in terms of functionary arrangements and exemption from the Financial Services (Jersey) Law 1998 exists in relation to VPF’s as referred to below.
- Where a VPF is structured as a “professional investor regulated scheme” (PIRS) under Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001 and related trust company business exemption this will exempt functionaries of the VPF from registration under Financial Services (Jersey) Law 1998 for investment business or trust company business purposes. To qualify as a PIRS the minimum investment amount which each investor must invest in the VPF must be set at £250,000 per investor unless the investor otherwise qualifies as a professional investor and prescribed investment warning language is adopted.

- Additional benefits and flexibility of PIRS status : allows establishment of exempt SPV functionary companies in Jersey which are set up to service particular requirements of the private fund eg. Jersey based investment management company.
- Functionaries in this context include manager, investment manager, adviser, investment adviser, administrator, distributor, trustee, custodian and general partner.
- The fiduciary and investment risk issues remain the same for a VPF as for a regulated fund; but for regulatory purposes the private fund qualifies as trust company business which provides a more flexible administration environment for the private fund in Jersey and if the VPF is structured so as to qualify as a PIRS the private fund and any SPV functionary entities set up in Jersey to service aspects of the VPF are exempt from registration under the Financial Services (Jersey) Law 1998.

Traditional COBO Schemes

- Private placement funds set up in Jersey targeting up to 50 investors.
- The old “Promoter Policy” test still applies in Jersey to this regulatory category. This means that the Jersey Financial Services Commission is normally only prepared to allow institutional type promoters or regulated financial services businesses of substance to act as promoter of a COBO scheme. Small groups of investors or newly established asset/property managers in private ownership and without a business track record will usually find it difficult to meet the JFSC requirements under the Promoter Policy test and so cannot promote the establishment of private placement funds which are to be offered on a restricted basis to up to 50 investors.
- Many funds which in the past were set up as COBO schemes now opt for Expert Fund status or Unregulated Funds status in Jersey. If the fund is to be privately placed with only a handful of investors then the Very Private Fund category (for up to 15 investors) is a more practical and flexible option.

Expert Funds

- A fast track approval process exists for Jersey Collective Investment Funds which satisfy the Expert Fund criteria set out in the JFSC's Expert Fund Guide. The Expert Fund is subject to regulatory oversight by the JFSC under the Collective Investment Funds (Jersey) Law 1988.
- Expert Funds can make unlimited offering of their securities from the standpoint of Jersey law provided the investors who subscribe qualify as Expert Investors (The Expert Investor definition includes any investor who subscribes a minimum amount of \$100,000).
- The introduction of non-Expert Investors by discretionary investment managers is possible provided the discretionary manager accepts responsibility for suitability of the Expert Fund for its underlying clients.
- Flexibility exists in terms of legal form. Expert Funds can be open-ended or closed-ended. They can be set up as corporate funds, unit trusts or limited partnerships.
- Technical stock exchange listings are possible for Expert Funds on exchanges such as the Channel Islands Stock Exchange provided no active secondary market in the fund's securities exists on the exchange.
- Expert Investors are required to sign a prescribed investment warning when they invest in the fund. Transferees of interests in an Expert Fund are also required to sign the same investment warning.
- The investment manager/adviser to be appointed to the Expert Fund (typically located outside Jersey) and the principals of the investment manager/adviser must satisfy fit and proper person criteria, be solvent, be OECD based (or established in a jurisdiction with which the JFSC has a Memorandum of Understanding for inter-regulator cooperation) and be regulated (or otherwise approved by the Commission on special application), possess relevant investment management/advisory experience and satisfy the Commission's corporate governance standards.
- A locally based functionary in Jersey (typically the fund administrator) must "endorse" the investment manager/adviser and Expert Fund application and discharge a monitoring and oversight role of the investment management/advisory function.
- The Fund board must provide a regulatory confirmation to JFSC concerning their acceptance of responsibility for the overall management and operation of the fund.

- There are significant due diligence responsibilities imposed on the local administrator to the fund vis-à-vis investment manager/adviser fit and proper person status and ongoing monitoring of investment management process.
- Two local Jersey directors are required for the fund board.
- A local custodian is required for open-ended Expert Funds (other than those qualifying as hedge funds)
- Any SPV entity established in Jersey to service particular requirements of the Expert Fund (eg. a General Partner company appointed to an Expert Fund limited partnership, or a Jersey-based investment management company appointed for the Expert Fund) will need to be registered to conduct fund services business under the Financial Services (Jersey) Law 1998 and will be classified as a Managed Entity in Jersey if the SPV entity has no real presence in terms of occupying office space and engaging employees in Jersey. The JFSC scrutinizes these Managed Entity set ups closely and they can sometimes take considerable time and effort to establish. If a proposal involves the setting up of a Managed Entity in Jersey advice should be sought at an early stage of the project concerning the regulatory requirements that will need to be satisfied in Jersey for the Managed Entity.

Listed Funds

- A fast track approval process exists for Jersey closed-ended corporate Collective Investment Funds which satisfy the Listed Fund Guide criteria published by the Jersey Financial Services Commission. The Listed Fund is subject to regulatory oversight by JFSC under the Collective Investment Funds (Jersey) Law 1988.
- No eligible investor criteria apply to this category as free transferability of the Fund securities is necessary in connection with the Fund's listing.
- The Listed Fund must be listed on a recognised stock exchange specified in the Listed Fund Guide. The list of recognised stock exchanges includes the London Stock Exchange, AIM, Euronext and the Channel Islands Stock Exchange.
- Substantial disclosure requirements in the offering document issued by the List Fund are required regarding corporate governance issues and the role and oversight function of the Fund board.
- Two local Jersey directors are required for the Fund board.
- A majority independent board of directors must be appointed for the Fund together with an independent chairman of the Fund board.
- The same investment manager/adviser "fit and proper" person tests and related issues must be satisfied as apply to Expert Funds
- The same of due diligence responsibilities attach to the local Jersey administrator vis-à-vis investment manager/adviser and ongoing monitoring of investment management process as apply in the context of Expert Funds.
- The same Managed Entity issues exist in connection with services arrangements for Listed Funds as apply to Expert Funds.

Unregulated Eligible Investor Funds

- No registration under the Collective Investment Funds (Jersey) Law 1988 for this category of fund is required. An Unregulated Fund is not subject to regulatory approval or supervision by the Jersey Financial Services Commission. However service providers or functionaries in Jersey appointed by the Unregulated Fund must be regulated fund services businesses.
- No local Jersey directors or audit are required (as a matter of regulation). [If the Unregulated Fund is set up as a Jersey public company an annual audit will be required as a matter of company law].
- No local functionary requirements apply in Jersey save as follows. An Unregulated Eligible Investor Fund set up as a Jersey Limited Partnership (“JLP”) must have a Jersey General Partner and a Jersey unit trust must have a Jersey based trustee. Also for funds set up as companies/JLP’s there is the statutory requirement for registered office/register of members/accounting records to be maintained in Jersey. Accordingly it is likely that in most cases there will be a Jersey-based administrator appointed to discharge these minimum statutory requirements in connection with the Eligible Investor Fund. There is no prohibition on a Jersey based fund manager/administrator being appointed for the Eligible Investor Fund provided the functionary entity in Jersey is a regulated funds services business under the Financial Services (Jersey) Law 1998.
- Eligible Investor Funds can made general offers of their securities. They are open to all Eligible Investors. (The definition of Eligible Investor includes any investor subscribing at least \$1 million to the Fund).
- The introduction of non-Eligible Investors by discretionary investment managers is possible subject to the discretionary manager accepting responsibility for suitability of the Eligible Investor Fund for its underlying clients.
- The Eligible Investor Fund notifies its existence and satisfaction of Unregulated Funds criteria after it is set up to the Companies Registry in Jersey.
- Unregulated Eligible Investor Funds are the latest category introduced to the range of Jersey Funds. They may be best suited to arrangements where the only requirements are to domicile the Fund in Jersey and appoint a fund administrator in Jersey and with all other servicing requirements for the Fund including investment management being conducted from a location outside Jersey.

Unregulated Exchange Traded Funds

- No eligible investor criteria apply to Exchange Traded Funds set up in Jersey. These funds are not subject to regulatory approval or supervision by the Jersey Financial Services Commission. However service providers or functionaries in Jersey appointed by the Exchange Traded Fund must be regulated fund services businesses.
- The Fund must be listed on a recognised exchange specified in the Unregulated Funds Order. The list of recognised exchanges includes the London Stock Exchange, AIM, Euronext and the Channel Islands Stock Exchange.
- Closed-ended vehicles only are permitted in this category.
- The Fund must have a Jersey based General Partner or Jersey Trustee if set up as Jersey Limited Partnership/Unit Trust. Otherwise no local functionary requirement applies as a matter of regulation.
- No local Jersey directors or audit requirements apply.