

# An insight into Jersey Funds

*This note provides an overview of Jersey Funds*

## Introduction

Jersey has established itself as a well regulated international finance centre for investment funds with a wealth of fund administrators, banks and accountants.

At the end of March 2017, Jersey was reported to have US \$334 billion of assets under management, 1,320 regulated funds and 126 unregulated funds. Jersey and Guernsey have also established The International Stock Exchange (formerly the Channel Islands Securities Exchange).

Jersey now offers an attractive range of investment funds (unregulated and regulated) for all types of investors. This wide range reflects the history of the Jersey funds industry dating back to the 1980s.

There are now six categories of new fund for regulatory purposes. These are as follows: -

Category of Fund	Regulatory Treatment
1. Very Private Fund	Light regulatory treatment
2. Jersey Eligible Investor Fund	Regulated
3. Expert Fund	Regulated
4. Listed Funds	Regulated
5. Unclassified Funds	Highly regulated
6. Recognised Funds	Very highly regulated

The Jersey Very Private Fund was introduced from 18th April 2017, and replaces three previous types of fund, which are accordingly not addressed further in this note. There is presently a wide spread of funds under management in Jersey including money market, commodities, future and debt funds, with hedge, real estate, and private equity accounting for around 70% of overall fund business.

## Fund Legislation and Regulation

Jersey funds are regulated under the Collective Investment Funds (Jersey) Law 1988 as amended (the “Funds Law”). The most highly regulated funds, which fall under the Funds Law and require a certificate, include expert funds, listed funds, unclassified and regulated funds (“Certified Funds”).

The Jersey legislation has been supplemented by changes brought about by the Alternative Investment Fund Manager Directive (the “AIFMD”), which will need to be complied with when funds are marketed to an EU/EEA member state.

Jersey based “functionaries” (including fund managers, administrators, investment managers or advisers) are regulated under the Collective Investment Funds (Recognised Funds) (Rules) (Jersey) Order 2003 and the Financial Services (Jersey) Law 1998 as amended (The “Financial Services Law”) as providers of fund services businesses.

## Type of Structure

Jersey funds may be set up as limited partnerships, companies and unit trusts. There are different types of limited partnership (separate limited partnerships, incorporated limited partnerships and limited liability partnerships) and various forms of companies (including protected cell companies and incorporated cell companies).

For the purpose of Jersey regulation, an open-ended fund refers to an investment vehicle that permits its investors to continuously issue and redeem equity holdings at a price related to the value of the underlying assets. A closed-ended fund means a fund that is not open for redemptions at the option of the investors.

A detailed consideration of types of structure appears towards the end of this paper.

## Categories of Funds

In deciding which category of fund to establish, fund promoters should be aware that their reputation, ownership, track record and financial standing. New promoters with no track record or experience should consider that unregulated funds as a starting point will be considered by the JFSC.

The JFSC has a published policy on promoters of public and private collective investment funds. That policy document does not apply to Unregulated Funds, Listed Funds, Expert Funds or non-domiciled funds.

The JFSC has also published a Code of Practice for certified funds which was updated on 1 September 2016 and includes a Jersey Expert Fund Guide, a Jersey Listed Fund Guide, a Guide to Jersey Open-Ended Unclassified Collective Investment Funds Offered to the General Public and a Jersey Eligible Investor Guide. It has also published a Code of Practice for Alternative Investment Funds and AIF Service Businesses and a Jersey Private Fund Guide.

Other factors that the JFSC will take into account include: (i) the person responsible for attracting investors; (ii) whether or not the fund is linked to specific persons; and (iii) whether or not one organization has overall responsibility for all aspects of the fund.

Category of Fund	Further Detail
Unregulated Funds	<p data-bbox="513 190 651 219"><b>Regulation</b></p> <p data-bbox="513 253 1445 506">Unregulated funds were created by the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 (the “2008 Funds Order”). The 2008 Funds Order provided for two types of unregulated funds: unregulated exchange-traded funds and unregulated eligible investor funds. The unregulated funds are exempt from regulation as a collective investment fund under the Funds Law. However as from March 2017 the JFSC will no longer accept notifications in relation to a new unregulated exchange traded fund and accordingly this note does not consider them for this.</p> <p data-bbox="513 539 1445 696">Please note that the two current types of unregulated funds cannot be marketed in EU/EEA member states under the changes brought about by AIFMD and so a new type of fund was created, the ‘Jersey Eligible Investor Fund’ (“JEIF”). Please see further detail below in respect of JEIFs if marketing to EU/EEA funds is a consideration.</p> <p data-bbox="513 730 600 759"><b>Notice</b></p> <p data-bbox="513 792 1406 857">A prescribed form of notice must be filed which the registrar is obliged to make available for inspection on demand by any member of the public.</p> <p data-bbox="513 891 619 920"><b>Transfer</b></p> <p data-bbox="513 954 1437 1048">The transfer of an interest in an unregulated fund must be subject to a restrictive covenant to the effect that a transfer of interest is only possible to other eligible investors.</p> <p data-bbox="513 1081 959 1111"><b>Unregulated eligible investor funds</b></p> <p data-bbox="513 1144 1437 1368">Unregulated eligible investor funds, which may be open or closed-ended, listed or unlisted, are restricted to “eligible investors” (which include those classed as professional or institutional investors or who make a minimum initial investment of US \$1,000,000 (or its currency equivalent)). Eligible investors in an unregulated eligible investor fund must confirm in writing that they have received and understood a prescribed form of eligible investor warning.</p> <p data-bbox="513 1402 655 1431"><b>Conversion</b></p> <p data-bbox="513 1464 1174 1494">Existing funds may not convert into unregulated funds.</p>

Category of Fund	Further Detail
Jersey Eligible Investor Fund	<p data-bbox="517 190 906 219"><b>Unregulated funds can convert</b></p> <p data-bbox="517 253 1437 376">Unregulated Funds have not been able to be actively marketed into the EEA since 22 July 2013 but they are able to convert either to a ‘Jersey Eligible Investor Fund’ (“JEIF”) under the Jersey Eligible Investor Fund Guide or to a Listed Fund under the Jersey Listed Fund Guide.</p> <p data-bbox="517 412 847 441"><b>Application and regulation</b></p> <p data-bbox="517 477 1422 535">An application must be submitted to the JFSC in order to create a JEIF and following a successful application, a certificate will be issued.</p> <p data-bbox="517 571 970 600">JEIFs are regulated by the Funds Law.</p> <p data-bbox="517 636 724 665"><b>Transfer of units</b></p> <p data-bbox="517 701 1422 887">The Jersey Eligible Investor Fund Guide states that the units of a JEIF can only be transferred to an Eligible Investor, if the Eligible Investor signs a declaration acknowledging receipt of the associated warning and that a declaration is given to the certificate holder of the fund before the transfer. Further requirements apply where units in a JEIF are traded on a stock exchange.</p> <p data-bbox="517 922 935 952"><b>Key requirements/characteristics</b></p> <p data-bbox="517 987 1437 1173">JEIFs can be open or closed-ended funds. The investment manager must be established in an OCED member states or a country that has entered into a memorandum of understanding with the JFSC. No principal person of the investment manager shall have been subject to any sanctions or convictions. Two Jersey resident directors with appropriate experience must be appointed to the administrator’s/manager’s/trustee’s board of the JEIF.</p> <p data-bbox="517 1209 1394 1301">Requirements in respect of offer documents issued by JEIFS are also contained in the Collective Investment Funds (Certified Funds - Prospectus) (Jersey) Order 2012, as amended (The “Prospectus Order”).</p>

Category of Fund	Further Detail
Expert Funds	<p><b>Regulation</b></p> <p>By virtue of the JFSC Expert Fund Guide.</p> <p><b>Key requirements/characteristics</b></p> <p>An Expert Fund may be closed or open-ended and can be offered to an unlimited number of investors (providing all such investors qualify as expert investors and acknowledge the same).</p> <p>Expert investors are defined to include institutional and sophisticated investors and any person investing at least US \$100,000 (or its currency equivalent). Expert Fund prospectuses must comply with the Prospectus Order.</p> <p>The basic requirements of an expert fund are as follows: -</p> <ol style="list-style-type: none"> <li>1. the investment manager must be regulated in a member state of the OECD or must be subject to a memorandum of understanding with the JFSC or otherwise approved by the JFSC;</li> <li>2. the fund company, general partner or trustee requires at least two Jersey resident directors and 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</li> <li>3. either a Jersey administrator or a Jersey manager must monitor an expert fund.</li> </ol> <p>The Open Ended Unclassified Collective Investment Funds Offered to the General Public Guide apply to open-ended Expert Funds, and contain fairly onerous obligations in setting up an Expert Fund which can make it an unattractive choice.</p> <p>As at March 2016 there were 411 expert funds in Jersey.</p>
Listed Funds	<p><b>Regulation</b></p> <p>The JFSC Listed Fund Guide provides a fast-track process to establish corporate structured closed-ended funds for listing on recognized markets or stock exchanges. The prospectus must comply with the Prospectus Order.</p> <p><b>Key requirements/characteristics</b></p> <p>The requirements of a Listed Fund are as follows: -</p> <ol style="list-style-type: none"> <li>1. the investment manager of a Listed Fund must be established in an OECD member state or a jurisdiction with which the JFSC has entered into a memorandum of undertaking or has otherwise approved;</li> <li>2. listed funds must have at least two Jersey resident directors; and</li> <li>3. a Jersey administrator or a Jersey manager must monitor a Listed Fund in line with the Listed Fund Guide.</li> </ol> <p>There is no minimum subscription amount and listed funds are available to all classes of investors.</p> <p>As at March 2014 there were 28 listed funds in Jersey.</p>

Category of Fund	Further Detail
Classified Funds	<p data-bbox="515 188 644 219">Regulation</p> <p data-bbox="515 250 1417 315">Unclassified funds are the second highest form of regulated fund in Jersey. They are suitable structures for public offerings.</p> <p data-bbox="515 347 1414 412">The Funds Law regulates such funds and the promoters of such funds must meet the JFSC's promoter policy.</p> <p data-bbox="515 443 919 474">Key requirements/characteristics</p> <p data-bbox="515 506 703 537">The JFSC will: -</p> <ol data-bbox="515 568 1437 824" style="list-style-type: none"> <li data-bbox="515 568 1394 633">1. evaluate the track record, experience and reputation of the promoter of the unclassified fund;</li> <li data-bbox="515 633 1437 698">2. evaluate the financial resources and spread of ownership of the promoter of the fund; and</li> <li data-bbox="515 698 1362 763">3. review the prospectus, constitutional documents and material agreements relating to the fund; and</li> <li data-bbox="515 763 1422 824">4. ensure compliance with the established standards of the JFSC with respect to the fund operation, investment and borrowing restrictions.</li> </ol> <p data-bbox="515 855 1437 920">Unclassified funds must have a Jersey based manager and, if open-ended, a Jersey based custodian.</p> <p data-bbox="515 952 1337 983">Unclassified funds presently must comply with the Prospectus Order.</p> <p data-bbox="515 1014 1433 1111">Various factors will influence the ultimate level of regulation and compliance that will be required for the fund, such as whether the fund is open or closed ended and whether or not there is a minimum investment.</p> <p data-bbox="515 1142 1257 1173">As at March 2016 there were 665 Unclassified Funds in Jersey.</p>
Recognised Funds	<p data-bbox="515 1218 644 1249">Regulation</p> <p data-bbox="515 1281 1433 1408">Recognised Funds are collective investment funds that comply with the Collective Investment Funds (Recognised Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988 and the Collective Investment Funds (Recognised Funds) (Rules) (Jersey) Order 2003.</p> <p data-bbox="515 1440 919 1471">Key requirements/characteristics</p> <p data-bbox="515 1503 1445 1664">These are retail funds and are the most highly regulated funds in Jersey with investors having access to a statutory compensation scheme and whose functionaries are regulated under the Funds Law. Such funds may be marketed direct to the UK public under the Financial Services and Markets Act 2000 and to nationals of other countries with corresponding legislation.</p> <p data-bbox="515 1695 1433 1792">The regulatory regime of recognized funds in Jersey is similar to that of the UK authorised unit trust and contains strict restrictions on investment and investor protection provisions.</p> <p data-bbox="515 1823 1214 1854">As at March 2016 there were 8 recognised funds in Jersey.</p>

## What type of structure?

Different structures are available to be used for funds and a combination of structures is also permitted.

Entity Type	Further Detail
Companies	<p>The Companies (Jersey) Law 1991 as amended is a modern statute that is based on internationally familiar English company law principles. There is no minimum authorised or issued share capital requirements imposed. A number of different types of companies are available including protected cell companies and incorporated cell companies. No par value shares are also permitted.</p> <p>The standard corporate rate of income tax is 0%. A 10% rate applies to certain financial services companies. There are no Jersey withholding taxes on dividends, no capital gains tax and no inheritance tax).</p>
Unit Trusts	<p>A unit trust is not a separate legal entity, but a trust arrangement whereby legal ownership of the fund's assets is vested in a trustee who holds the asset of the fund on trust for the benefit of the unit holders.</p> <p>The unit trust will generally be constituted by means of a trust instrument made between the trustee and an independent manager. The manager will promote, manage and administer the scheme. Subscription proceeds will be paid to the trustee, which will act as custodian of the investment assets of the fund. In addition, the trustee will supervise compliance by the manager with its obligations under the trust instrument.</p> <p>The trust instrument will generally contain provisions regulating the issue, redemption and valuation of units, the appointment and removal of the trustee and the manager, their duties and remuneration, borrowing powers and investment restrictions and the trust's winding up.</p> <p>Jersey has a modern statute-based trusts law in the form of the Trusts (Jersey) Law 1984 as amended and a wealth of jurisprudence.</p> <p>There is no capital duty on the establishment of a unit trust and no annual registration fee. A unit trust may obtain exemption from Jersey tax on all income save for income arising in Jersey (other than bank interest which, by concession, is not liable to Jersey tax). There is no Jersey tax on distributions unless the unit holder is resident in Jersey.</p>
Limited Partnerships	<p>A limited partnership may be an appropriate structure for a number of different purposes. A principal use will be to provide an additional form of investment vehicle for mutual funds, especially for the venture capital industry. A limited partnership can also be an attractive structure for various tax planning purposes as the partnership is generally treated as being fiscally transparent.</p> <p>There is no maximum imposed on the number of limited partners of a limited partnership.</p> <p>The general partner will manage the business of the partnership and has unlimited liability for its debt. The liability of investors taking interests as limited partners (and who do not participate in the management of the business) will be limited generally to the amount of their investment.</p> <p>Each individual partner who is not resident in Jersey will not be liable to Jersey income tax except to the extent that any part is derived from Jersey source income (other than, by concession, Jersey bank deposit interest), which includes profits from a trade carried on in Jersey but excludes profits from international activities carried on outside Jersey.</p>

To a large extent the choice of structure will be driven by external factors as opposed to Jersey law. These may include: -

- prospective investors at whom the investment is targeted;
- regulatory and marketing considerations;
- fiscal implications for investors and underlying assets; and
- flexibility for listing and wider acceptability of marketing.

## Personal Questionnaires

Individuals wishing to become directors of a fund established under the Funds Law or the general partner or trustee of such a fund must file a long form personal questionnaire with the JFSC in order to become a principal person. The same applies for individuals who are directors or beneficial owners of any Jersey manager or investment adviser. As international regulatory checks can take several weeks, we would strongly recommend that such individuals submit their long form personal questionnaires (which have to be filed online with the JFSC) as soon as possible.

## The International Stock Exchange

The International Stock Exchange (formerly known as the Channel Islands Securities Exchange) serves both Jersey and Guernsey and offshore stock exchange in the European time zone. A new listing authority, the Channel Islands Securities Exchange Authority Limited was also introduced in December 2013. As at May 2017 it had over 2,000 listed securities on its official list with a total market capitalisation of more than £300 billion.

International recognitions and designations include being: -

- licensed to operate as an investment exchange under Guernsey statute and is regulated by the Guernsey Financial Services Commission, a member of IOSCO;
- designated as a Recognised Stock Exchange under the UK Income Tax Act 2007, section 1005, so that qualifying activities are eligible for the “Quotes Eurobond Exemption”;
- an affiliate member of IOSCO;
- a member of the International Capital Market Services Association;
- registered with the World Stock Exchanges as a corresponding market;
- recognised by the Australian Stock Exchange and the German Federal Financial Supervisory Authority, Berlin.

Advantages of listing include: -

- comparative low cost of appointing a sponsor;
- cost effectiveness and competitive pricing;
- speedy turnaround time;
- absence of requirement to appoint a nominated adviser; and
- the location of the exchange in an OECD jurisdiction.



## The Prospectus Order

The Prospectus Order affects all JEIF, Expert, Listed and Unclassified Funds that have issued or will issue a prospectus. New certified funds now have to ensure that their prospectus meet with the content and disclosure requirements of the Prospectus Order.

### Compulsory Statutory Disclosures

- Details of constitution and objectives of the fund.
- Particulars of those involved in the fund such as manager, custodian, investment adviser and other delegates.
- Characteristics of units in fund.
- Details of valuation methods, fees, charges and distribution processes.
- Details of subscriptions, redemptions and other transactions in the units of the fund.
- Details of the minimum subscription (if any) that must be achieved before units are issued and the possibility of over-subscription.
- Directors' interests and any conflicts of interests.
- Risks associated with the fund.
- Details of when the fund's audited accounts and annual and interim reports will be published.
- Feeder fund's prospectus must contain the information specified in the Prospectus Order in respect of the fund to which the feeder fund is dedicated.
- Other material information.
- Various standard statements must also be included such as to investors seeking advice, the statutory exemption of the JFSC from any liability and responsibility of the prospectus consent.

Jersey funds (being a non-EU/EEA fund) can either choose to comply with the AIFMD in full with a view to benefitting from the passporting rights once they apply to non-EU/EEA funds or can just comply with the disclosure requirements of the AIF Codes in addition to complying with the specific EU/EEA's member state's national private placement regime. The AIFMD requires member states to incorporate within their national private placement rules minimum disclosure, transparency and disclosure requirements. As at June 2016, IIS AIF funds had opted to use Jersey's private placement regime.

## About Hatstone

Hatstone is a leading boutique multi-jurisdictional law firm with offices in Jersey, London, Panama and South Africa.

Our philosophy revolves around a Partner-led client service.

We believe that the right people will attract the best work and we have put in place a first class team to assist you. The team has been carefully chosen to ensure that there is experience and strength-in-depth.

- **Partner-led:** Our Partners each have a wealth of experience in banking and finance, the establishment and maintenance of investment funds, corporate and commercial, acquisitions and mergers, private equity and venture capital, structured finance, financial services and regulatory law, trusts and foundations. We believe that our clients benefit from having their affairs overseen by senior staff with the necessary experience.
- **Client Focus:** We are dedicated to providing a client focused services. Knowing our clients and understanding what drives their businesses is fundamental to us. We enjoy a very strong rapport with our clients whom have access to our lawyers 24/7 through the latest technology. Our principal aim is to help clients achieve their objectives by offering them pragmatic advice and solutions.
- **Transparency:** We are happy to work on a fixed fee basis (in most circumstances) and are transparent about our fees.

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