

Jersey: a home for hedge fund managers

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An increasing number of hedge fund managers are establishing a physical presence in Jersey. In fact, a number of household name hedge fund managers now call Jersey home, with rumours that others are in advance stages of planning to follow them into Jersey.

The principal drivers for relocations

The drivers are both economic and regulatory but re-domiciling to Jersey is often also a lifestyle choice for many senior fund management professionals and their families. Jersey's established and sophisticated funds services offering enables the island to offer operational advantages for hedge fund managers relocating to Jersey. Underscoring this has been a political desire within Jersey to diversify Jersey's economy, which has resulted in the introduction of tax regimes and policies which have had the effect of encouraging high value industries, such as the fund management industry and the digital sector into the island.

As the UK represents the largest European base for the hedge fund sector, possible UK tax changes are undoubtedly contributing to the growing interest amongst hedge fund managers to domicile outside the UK. Jersey residents are subject to personal income tax at a maximum rate of 20% on worldwide income. Certain high net worth investment managers who become resident in Jersey may (subject to a number of conditions) have a significant proportion of their non-Jersey income taxed at a rate as low as 1%. Additionally, since the introduction of the "zero-ten" tax regime, the profits of a Jersey based and regulated investment manager may be taxed at a rate of 0%. These tax advantages clearly make Jersey an attractive proposition for hedge fund managers.

The ease of regulatory compliance in Jersey, while at the same time adhering to the highest international regulatory standards (resulting in endorsements from the IMF, OECD, EU and MONEYVAL), is another big factor. For example, Jersey is one of a few jurisdictions with a central beneficial ownership register for companies, as recommended by the FATF.

In addition, the introduction, in response to the EU Code of Conduct Group's "fair taxation"

requirements and the OECD's BEPS initiative, of economic substance rules for fund management companies which are tax resident in Jersey (in respect of which please see below), led to Jersey being assessed as a cooperative jurisdiction and very much played to the island's strengths because the governance model for fund managers in Jersey has always been to have substance on the ground. This proved particularly important during the COVID-19 lockdown and continues to be relevant whilst restrictions on travel persist, as the requirement to be "directed and managed" in Jersey (meaning that board meetings must be held in Jersey and the majority of the directors attending board meetings must be physically present in Jersey) could be met by the Jersey-resident directors.

Jersey also aspires to be recognised as a leading sustainable international finance centre and much thought has been put into the preparation and delivery of its sustainable finance strategy. Of interest to fund managers is the sustainable investment disclosure regime which was introduced in 2021 to combat the risk of greenwashing.

Finally, for hedge fund managers wishing to access European investor capital, the fact that Jersey does not form part of the EU but that Jersey-based hedge fund managers are permitted to continue to access EU investors via national private placement regimes is enormously important. This enables a Jersey-based hedge fund manager to benefit from a reduced AIFMD disclosure and transparency burden, in particular enabling it to avoid being bound by the remuneration disclosure rules applicable to EU fund managers. Additionally, at the point at which the AIFMD passport becomes available to non-EU funds, the existing availability of fully AIFMD-compliant regulations for those funds "opting-in" to the AIFMD, means that Jersey will be ideally placed to be able to benefit from this marketing passport, as and when it becomes available.

Qualifying segregated managed accounts (QSMA's)

Jersey took steps to adapt its regulatory and legal framework to enhance its attractiveness to hedge funds managers by introducing an exemption which enables hedge fund managers that are already regulated under the Financial Services (Jersey) Law 1998 (**FSJ Law**) in Jersey to carry out fund services business (**FSB**) to also service QSMA's without the need to seek additional regulatory permissions for the conduct of investment business under the FSJ Law.

As well as simplifying the regulatory position this will also allow managers of QSMA's to continue to be able to benefit from a 0% corporate tax rate.

The QSMA exemption recognises that those who utilise managed accounts in the hedge-fund space are typically very sophisticated investors. The QSMA exemption is open to managed accounts meeting the following criteria:

- minimum initial subscription of US\$1million

- the manager must be licensed for the conduct of FSB as a manager, investment manager, trustee or general partner and must be appointed as manager to hedge funds
- the QSMA must only pursue hedge-fund strategies that replicate, or be comprised of elements from, the hedge-fund strategies currently employed by one or more funds to which the manager is appointed to provide FSB services and the manager must ensure fair treatment of investors as between each other
- the manager must file a notice with the Jersey Financial Services Commission (the **JFSC**) confirming reliance on the exemption together with an annual fee, and must report on an ongoing basis the number of QSMA's and the aggregate value of investments managed in such QSMA's
- there must be a single investor (although this may include employees of the manager jointly or members of the same family jointly) who has received and signed a prescribed investment warning
- the Jersey manager must be the only manager of the QSMA and cannot hold or otherwise have custody of the assets under management

Jersey economic substance requirements for fund managers

A Jersey entity conducting "fund management business" will fall within the scope of the Taxation (Companies - Economic Substance) (Jersey) Law 2019 or the Taxation (Partnerships – Economic Substance) (Jersey) Law 2021 (together, the **Economic Substance Laws**), and such entity will be required to ensure that it is governed and operated in a way that complies with the economic substance test set out in the respective law, namely that:

- all of its "core income-generating activities" (**CIGAs**) are carried out in Jersey (fund managers must conduct all of their CIGAs in Jersey and must be able to monitor and control any CIGA outsourced to another entity in Jersey)
- it is "directed and managed" in Jersey in relation to the relevant CIGA (it is expected that the majority of board meetings will be held in Jersey with a quorum of directors being physically present, the board must be the decision-making body, and all company records and board minutes must be retained in Jersey)
- and it has adequate employees, expenditure and physical premises in Jersey (these can be provided by an outsourced service provider in Jersey)

Fund vehicles themselves are outside the scope of the Economic Substance Laws, other than self-managed funds (ie corporate funds which do not appoint an external manager but which are managed internally by their board of directors).

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Meet the Author



[Niamh Lalor](#)

Partner

Jersey

E: niamh.lalor@ogier.com

T: [+44 1534 514210](tel:+441534514210)

Key Contacts



Emily Haithwaite

Group Partner, Ogier Legal L.P.

Jersey

E: emily.haithwaite@ogier.com

T: [+44 1534 514072](tel:+441534514072)



Jonathan Hughes

Partner

Jersey

E: jonathan.hughes@ogier.com

T: [+44 1534 514336](tel:+441534514336)

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