

## Jersey Expert Funds 2022

Insights - 15/04/2024

The Jersey Expert Fund is a longstanding and successful regime offering swift authorisation and a streamlined regulatory environment for funds making an unlimited number of offers to expert (ie professional, institutional and high net worth) investors. Expert Funds can be established within a matter of days on the basis of a self-certification approach, without the requirement for any formal regulatory review of the fund or its promoter.

Expert Funds have been at the core of Jersey's attractiveness as a jurisdiction for funds with a global, institutional investor base.

### Who is an Expert Investor?

Underpinning the Expert Fund regime is the requirement that each investor should fall within one of the categories of Expert Investor set out in the Jersey Expert Fund Guide (the **Guide**) published by the Jersey Financial Services Commission (the **JFSC**). These include (among others):

- a person who makes a minimum initial investment or commitment of US\$100,000 (or other currency equivalent)
- a person whose ordinary business includes buying, managing, holding or selling investments or giving investment advice (or any employee, director, partner or consultant to or of any such person)
- a person with a net worth (individually or jointly with their spouse, but excluding their principal place of residence) of at least US\$1 million (or other currency equivalent)
- an entity with assets available for investment of not less than US\$1 million (or other currency equivalent)
- a company, partnership, trust or other association of persons in which every member, partner or beneficiary is themselves an Expert Investor
- a fund service provider to the fund or their associate, and any employee, director, consultant

or shareholder to or of any such person acquiring their investment by way of remuneration, incentive or co-investment (including "carried interest" investors); or

- a government, local authority, public authority or supra-national body in Jersey or elsewhere

## **Regulatory requirements**

An Expert Fund is subject to a very light degree of regulation. In particular:

- the promoter of an Expert Fund is not subject to any regulatory review or approval (other than approval of the individuals who are the "principal persons", such as owners/controllers of any Jersey-regulated functionaries or directors of a corporate fund); and
- the Expert Fund is not required to adopt any prescribed investment restrictions or risk diversification strategy

The parameters for an Expert Fund are set out in the Guide, and outlined below. If an Expert Fund does not comply in all respects with these requirements, it is possible to request derogations from the JFSC in respect of any areas of non-compliance.

## **Investment manager/adviser**

The investment manager/adviser must:

- have had no convictions or disciplinary sanctions imposed on it
- be solvent
- be established in an OECD member state or another jurisdiction with which the JFSC has entered into a memorandum of understanding (or equivalent) on investment business and collective investment funds
- be regulated in that jurisdiction or, if its proposed activity is not a regulated activity in its home jurisdiction, gain the JFSC's approval to act in relation to the Expert Fund (which, provided the other requirements are met, will ordinarily be granted on an expedited basis)
- have relevant experience in managing or advising on investors' funds using similar investment strategies to those to be adopted by the Expert Fund; and
- satisfy the JFSC's general principles of corporate governance by maintaining an adequate "span of control" over its business

If the distributor of the Expert Fund is independent of the investment manager/adviser and either is a driving force behind the fund or introduces the majority of investors to the fund, it must satisfy the same requirements as the investment manager/adviser (other than in relation to investment management experience).

## **Jersey service providers**

An Expert Fund must appoint an administrator, manager or (in the case of a closed-ended unit trust) trustee which has two Jersey resident directors with appropriate experience, staff and a physical presence in Jersey. The administrator (or manager or trustee, as applicable) must monitor the compliance of the investment manager/adviser with any investment or borrowing restrictions set out in the Expert Fund's offer document and must have access to appropriate records of the investment manager/adviser to enable it to carry out this monitoring function.

If established as a limited partnership or unit trust, the Expert Fund must have a Jersey general partner or trustee and this, or the fund itself if a corporate fund, must have at least two Jersey-resident directors with appropriate experience.

All Jersey fund service providers to an Expert Fund (including the administrator) must be regulated in Jersey under the Financial Services (Jersey) Law 1998 (the **FS Law**), and will be required to comply with applicable Codes of Practice published by the JFSC. A fund service provider (such as an SPV general partner) established to act for an Expert Fund and which relies upon the services of a "manager of a managed entity" or "MoME" – such as a Jersey administrator – to satisfy any part of its regulatory obligations shall be subject only to the core principles of the Code of Practice for Fund Services Business, unless it elects to follow the Code in full.

An Expert Fund must appoint an auditor. If open-ended, it must also appoint a Jersey custodian (although this is not required in the case of a hedge fund which appoints a prime broker that is part of a group with a minimum credit rating of A1/P1).

## **Offer document**

The offer document of an Expert Fund must contain certain specified disclosures, including all information that investors would reasonably require to make an informed judgement about investing in the fund. Derogations may be sought in respect of specific content requirements where relevant.

Investors must acknowledge in writing receipt of a prescribed investment warning, which includes acceptance of the reduced regulatory requirements applicable to Expert Funds.

Expert funds can be marketed to investors in the UK and EU/EEA, subject to compliance with certain additional requirements set out under "Alternative Investment Fund Managers Directive/ UK AIFMD" below.

## **Stock Exchange listings and transfers of interest**

An Expert Fund may be listed on a stock exchange, provided the exchange permits restrictions

on transfers of interests in order to ensure that only Expert Investors can participate in the fund. The JFSC will still require that each new investor accepts the investment warning referred to above, and that suitable mechanisms are in place to prevent non-Expert Investors from becoming registered holders of interests in the fund.

### **Authorisation process**

The authorisation process for an Expert Fund is simple and quick. An application form must be submitted to the JFSC setting out the key features of the fund, together with a confirmation (countersigned by the administrator) that the investment manager/adviser complies with the requirements set out above. The submission must be accompanied by a structure chart, the draft offer document (with any derogations from content requirements typically being requested at this stage) and the related application for the fund to be granted a certificate under the Collective Investment Funds (Jersey) Law 1988 (the **CIF Law**). An application fee is also payable at this stage.

The JFSC will check that the application form has been properly completed and may request further information on the fund and its service providers, but will not carry out a full regulatory review of the fund or its promoter. The requisite consents can be issued within as little as three working days.

### **Alternative Investment Fund Managers Directive/UK AIFMD**

Jersey alternative investment fund managers (**AIFMs**) marketing funds to investors in the EU/EEA or United Kingdom via national private placement regimes (**NPPRs**) are required to comply with certain additional disclosure, transparency and reporting requirements under the Alternative Investment Fund Managers Directive (the **AIFMD**) or the UK's AIFMD regulations. However, as Jersey is a "third country" for AIFMD purposes, Jersey firms engaging in marketing under NPPRs are subject only to these limited obligations which apply to non-EU/EEA/UK AIFMs and not to full AIFMD compliance.

Since Expert Funds are regulated under the CIF Law and their Jersey service providers under the FS Law, no additional regulatory permissions are required in Jersey for the fund or to act as the fund's AIFM. However, the relevant provisions of the Alternative Investment Funds (Jersey) Regulations 2012 and the JFSC's Code of Practice for Alternative Investment Funds and AIF Services Business will apply (namely in relation to disclosure, reporting and asset stripping, together with notification to the JFSC in advance of marketing into the EU/EEA/UK).

These additional requirements apply only where there is to be active marketing of such funds in the EU/EEA/UK under NPPRs.

Jersey has implemented a notification regime for small AIFMs which manage AIFs below certain specific thresholds. This regime mirrors the corresponding exemptions provided in the AIFMD.

Our briefing on AIFMD is available here:

[Jersey Managers and Funds Marketing into the European Union under the AIFMD](#)

## **Taxation**

Jersey offers a location for investment funds which does not impose its own tax burden on an investment fund or its investors.

## **Economic substance**

Both the Taxation (Companies – Economic Substance) (Jersey) Law 2019 and the Taxation (Partnerships – Economic Substance) (Jersey) Law 2021 (together, the **Substance Laws**) are relevant in the context of Jersey investment funds.

A company or partnership will be caught within the scope of the Jersey economic substance regime if it is a "resident company" or a "resident partnership" which carries on one or more "relevant activities" from which it receives gross income.

The Substance Laws do not apply to investment funds directly, save in the case of self-managed corporate funds (ie. corporate funds which have not appointed an external manager). However, any Jersey fund manager appointed in respect of the fund will be conducting the relevant activity of "fund management business". Accordingly, consideration should be given to the application of the Substance Laws to general partners, managers, investment managers and managing trustees.

If within scope, the relevant company or partnership must satisfy the "economic substance test".

Our briefings relating to economic substance requirements are available here:

[Updated economic substance requirements for Jersey fund managers](#)

[Jersey economic substance requirements - the company perspective](#)

[The economic substance requirements for Jersey resident partnerships](#)

## **About Ogier**

Ogier provides practical advice on BVI, Cayman Islands, Guernsey, Irish, Jersey and Luxembourg law through our global network of offices across the Asian, Caribbean and European timezones. Ogier is the only firm to advise on these six laws.

## **Disclaimer**

This briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or as legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found at [www.ogier.com](http://www.ogier.com)

## **Related Links**

[Jersey Investment Funds – regulatory options](#)

[Jersey Managers and Funds Marketing into the European Union](#)

[Updated economic substance requirements for Jersey fund managers](#)

[Jersey Private Funds](#)

[Jersey Listed Funds](#)

## **About Ogier**

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

## **Disclaimer**

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

## **Meet the Author**



Emily Haithwaite

Group Partner, Ogier Legal L.P.

Jersey

E: [emily.haithwaite@ogier.com](mailto:emily.haithwaite@ogier.com)

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

## Key Contacts



Niamh Lalor

Partner

Jersey

E: [niamh.lalor@ogier.com](mailto:niamh.lalor@ogier.com)

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



Sophie Reguengo

Partner

Jersey

E: [sophie.reguengo@ogier.com](mailto:sophie.reguengo@ogier.com)

T: [+44 1534 514122](tel:+441534514122)



Joanna Christensen

Counsel

Jersey

E: [joanna.christensen@ogier.com](mailto:joanna.christensen@ogier.com)

T: [+44 1534 514127](tel:+441534514127)



Matt McManus

Managing Associate

Jersey

E: [matt.mcmanus@ogier.com](mailto:matt.mcmanus@ogier.com)

T: [+44 1534 514434](tel:+441534514434)



Alexandra O'Grady

Managing Associate

Jersey

E: [alexandra.o'grady@ogier.com](mailto:alexandra.o'grady@ogier.com)

T: +44 1534 514081

## Related Services

Investment Funds

Legal

## Related Sectors

Funds Hub