



PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2012

INVESTMENT FUNDS

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Jersey

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RETAIL FUNDS

1. What is the structure of the retail funds market? What have been the main trends over the last year?

Open-ended retail funds

Jersey is a leading global centre for the establishment of funds covering many investment disciplines and themes.

Jersey offers a range of open-ended funds:

- **Public funds.** All funds that can be offered to more than 50 people and which are not recognized funds (*see below, Recognized funds*) are considered public funds. There is no limit on the number of investors. Open-ended public funds can be established as:
 - **Open-ended collective investment funds (OCIFs).** These can be offered to the general public;
 - **Expert funds.** These are semi-retail or non-retail funds available to ten categories of “expert investor” (for example, those investing at least US\$100,000) with no investment restrictions, a three-day approval process and which can be used for hedge funds (as at 1 November 2011, US\$1 was about EURO.7);
 - **Eligible investor funds.** These are funds with no regulatory supervision and no investment or borrowing restrictions, which are available to 11 categories of “eligible investors”. These are not retail funds and can be used for hedge funds.
- See *Questions 15 to 27*.
- **Private funds.** Private funds (or COBO-only funds) are offered to no more than 50 people. They are approved under the Control of Borrowing (Jersey) Order 1958 (COBO). Private funds limited to 15 or fewer investors are often described as being “very private schemes” (*see Question 16, Very private schemes*).
 - **Recognized funds.** These are very public funds that must meet highly prescribed standards in relation to most aspects of the fund’s structure, operation and prospectus content. These funds can:
 - seek authorisation under the UK’s Financial Services and Markets Act 2000 to market directly to the general public in the UK;
 - be marketed freely in certain other jurisdictions once they have registered with the relevant authority.

Jersey has a large number of open-ended funds that are retail or semi-retail in nature and these represent a significant part of Jersey’s funds under management and funds under administration.

Closed-ended retail funds

For Jersey regulatory purposes, a closed-ended fund is a fund that is not open for redemptions at the option of holders of securities. Some of the same regulatory categories apply to open-ended and closed-ended funds, and the regulatory landscape of each is therefore sometimes similar. Funds that fall within the “listed fund” and “exchange traded fund” categories must be closed-ended.

Jersey offers the following closed-ended funds:

- **Public funds.** In the retail closed-ended fund context these include:
 - **Closed-ended collective investment funds (CCIFs).** These can be offered to the general public;
 - **Listed funds.** These are funds with a listing on a recognised exchange (such as LSE/AIM and CIXS) with:
 - no investment or borrowing restrictions;
 - no minimum subscription;
 - no restrictions on the type of investor;
 - a three-day approval process.
 - **Expert funds.** See above, *Open-ended retail funds*;
 - **Exchange traded funds.** These are funds (aimed primarily at the institutional market) with a listing on a recognised exchange with no investment or borrowing restrictions, and with no regulatory supervision. They can also be used for listed hedge funds (*see Questions 15 to 27*);
 - **Eligible investor funds.** See above, *Open-ended retail funds*.
- **Private funds.** See above, *Open-ended retail funds*.

As at June 2011, in relation to funds under administration in Jersey, there were (statistics published by the *Jersey Financial Services Commission (Commission)*):

- Over 2,450 separate pools of assets.
- Net asset value (NAV) of around GB£8.5 billion (as at 1 November 2011, US\$1 was about GB£0.6) in open-ended public collective investment funds.
- NAV of over GB£10.3 billion in closed-ended public collective investment funds.
- A total NAV in all funds exceeding GB£196.7 billion.



As at the end of June 2011 (data published by *Thomson Reuters' Lipper*):

- The value of assets administered and serviced by the Jersey funds sector rose to GB£173 billion (from GB£155 billion in 2010).
- Of the 1,468 funds serviced in Jersey, 1,157 are also domiciled in Jersey.

In terms of new funds, the main focus of activity has been the European and global:

- Private equity.
- Real estate.
- Distressed debt.
- Infrastructure sectors.

There has also been a returning trend of listed funds (on CISX or LSE's main board, SFM or AIM). Unregulated funds have also remained a popular structure due to the flexibility of that regime. Given the global economic climate, fund and manager restructuring activity levels have remained consistently high.

An increasingly common trend is the migration of manager teams to Jersey.

Regulatory framework and bodies

2. What are the key statutes, regulations and rules that govern retail funds? Which regulatory bodies regulate retail funds?

Open-ended retail funds

Regulatory framework. The following legislation applies:

- The Collective Investment Funds (Jersey) Law 1988, as amended (CIF Law), which regulates public funds and recognized funds.
- COBO, which regulates private funds and controls, among others, the creation and issue of:
 - shares;
 - securities;
 - units in a unit trust scheme;
 - limited partnership interests.
- The Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995, which is in the process of being updated and regulates the contents of prospectuses for open-ended unclassified funds established as companies or unit trusts.
- The Financial Services (Jersey) Law 1998 (FSJ Law), which regulates fund service providers operating or incorporated in Jersey.

The following legislation applies to recognized funds:

- The Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003 (RF Order).
- The Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988 (RF Functionary Permit Order).
- The Collective Investment Funds (Recognized Funds) (Compensation for Investors) (Jersey) Regulations 1988.

- The Collective Investment Funds (Recognized Funds) (Actions for Damages) (Jersey) Regulations 2008.

The legislation that applies to eligible investor funds and exchange traded funds is the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 (UF Order), which exempts them from regulation under the CIF Law if the specified conditions are satisfied. Jersey's internationally compliant regime to assist in the detection and prevention of money-laundering and terrorism still applies to these funds (*see Question 17*).

Regulatory bodies. The Commission authorises and supervises regulated investment funds as the principal regulatory authority in Jersey. In addition to its statutory regulation of the financial services sector, the Commission also publishes guidelines and codes of practice for the different industry sectors. These guidelines and codes of practice are produced after consultation with the relevant industry sectors.

Guidelines and codes of practice. The Commission has published the following codes and guidelines which are often as important as the primary legislation:

- Guide to open-ended unclassified collective investment funds offered to the general public (OCIF Guide). This is also applied (by analogy) to private funds and CCIFs (*see below, Closed-ended retail funds*).
- Jersey Expert Fund Guide (EF Guide).
- Promoters of Public and Private Collective Investment Funds (Promoter Policy).
- Licensing Policy in respect of those activities that require registration under the FSJ Law (Licensing Policy).
- Codes of Practice for Fund Services Business (FSJ Codes of Practice).
- Establishing a Collective Investment Fund Operation in Jersey.
- Securities Issues under the Control of Borrowing Legislation.

In addition, the Commission will shortly adopt a Code of Practice for Certified Funds which will apply to funds domiciled and regulated in Jersey which hold a certificate under the CIF Law (that is, Expert Funds, Listed Funds, OCIFs and CCIFs).

The Commission also issues letters to industry participants from time to time covering fund and manager related issues as a way of highlighting to practitioners and fund professionals the Commission's approach on a particular policy area.

Closed-ended retail funds

Regulatory framework. The key statutes are the same as for open-ended funds, and the Commission is the regulator (*see above, Open-ended retail funds*).

In addition:

- The prospectus of an unclassified fund which is a closed-ended company must comply with the Companies (General Provisions) (Jersey) Order 2002.
- Listed funds must comply with the Jersey Listed Fund Guide (LF Guide).
- The OCIF Guide is applied to CCIFs as a licensing starting point (by analogy only and with more flexibility) (*see above, Open-ended retail funds*).

Regulatory bodies. See above, *Closed-ended retail funds: Regulatory framework*.

3. Do retail funds themselves have to be authorised or licensed?

Open-ended retail funds

All Jersey public funds must apply to the Commission to be issued with a fund certificate under the CIF Law, save for eligible investor funds and exchange traded funds which comply with the terms of the UF Order. Personal questionnaires for the directors of a certified public fund vehicle should be submitted to the Commission as early as practicable.

Service providers to public funds must be registered under the FSJ Law and regulated by the Commission (unless an exemption applies) if carrying on business (or incorporated) in Jersey. Once a service provider is regulated, there is no requirement to obtain any further consent to act in the same capacity for other public funds (including non-Jersey funds). A tailored regime applies for the establishment of fund service providers as special purpose vehicles (SPVs) such as general partner or investment management companies. These applications are dealt with together in the fund application.

Very private funds (15 or fewer investors) are largely unregulated and are relatively quick and easy to establish (see *Question 16, Very private schemes*). All other COBO only funds, OCIFs, CCIFs and recognized funds must, after any informal discussions with the Commission, follow a two-stage approval procedure:

- **Initial review.** A short checklist is submitted to the Commission. The review takes up to ten working days.
- **Documentary review.** The following are submitted to the Commission:
 - an application;
 - a documentary checklist;
 - all material fund documents.

In relation to expert funds, the Commission does not need to review the structure, documentation or the promoter. Instead the fund administrator certifies to the Commission that the fund complies with the EF Guide. The Commission aims to issue its approval within three working days of the submission of a completed application. The EF Guide is flexible. However, where any unusual derogations are sought from its terms, it is usual to seek these in advance while the documents are being prepared to avoid potential delay in the approval process.

Recognized funds are structured to ensure investor protection that is at least equivalent to that afforded to investors in the UK. Recognized funds issued with a recognized fund certificate can apply to the UK Financial Services Authority (FSA) to market directly to the public in the UK and can also be marketed to the public (subject to any local requirements) in a number of other territories including Australia, Belgium, Hong Kong, The Netherlands and South Africa. Functionaries of recognized funds are regulated under the CIF Law.

Closed-ended retail funds

In relation to service providers to closed-ended public funds see above, *Open-ended retail funds*.

In relation to listed funds, the Commission operates an expedited approval procedure. This is based on the expert fund model where the Commission:

- Relies on a certification by the fund administrator.

- Aims to issue its approval within three working days from the submission of a completed application.

Where any unusual derogations are sought from the terms of the LF Guide, it is usual to seek these in advance while the documents are being prepared. This avoids potential delays in the approval process.

In relation to CCIFs and COBO only funds which are not “very private” (see *Question 16, Very private schemes*), the procedure set out for OCIFs applies (see above, *Open-ended retail funds*).

Marketing

4. Who can market retail funds?

Open-ended retail funds

Jersey law does not prescribe who can market retail funds. However, a distributor which carries on business (or is incorporated) in Jersey must be registered with the Commission under the FSJ Law.

Closed-ended retail funds

See above, *Open-ended retail funds*.

5. To whom can retail funds be marketed?

Open-ended retail funds

There are no applicable restrictions for marketing to non-Jersey retail investors. Investor qualification rules apply to expert funds and eligible investor funds (see *Question 1, Open-ended retail funds: Public funds*). A Jersey distributor may be needed to market non-domiciled funds to Jersey investors, unless a non-Jersey distributor which falls within an appropriate exemption to the FSJ Law has been appointed.

Closed-ended retail funds

See above, *Open-ended retail funds*.

Managers and operators

6. What are the key requirements that apply to managers or operators of retail funds?

Open-ended retail funds

The identity of the promoter and other entities involved in a fund (whether based in Jersey or not) is an important factor for the Commission in deciding whether to grant regulatory approval.

The Promoter Policy is applied to promoters of OCIFs, CCIFs and COBO only funds (other than very private funds with 15 or fewer investors (see *Question 16, Very private schemes*)). It does not apply to:

- Expert funds.
- Listed funds.
- Eligible investor funds.
- Exchange traded funds.



The promoter is described as the driving force behind the scheme. The criteria for approval are (Promoter Policy):

- The promoting group's:
 - track record and relevant experience;
 - reputation;
 - financial resources;
 - spread of ultimate ownership.
- The type of investor to whom the fund will be offered.

A manager of an OCIF must (*OCIF Guide*):

- Be engaged primarily in the business of fund management.
- Be independent of any trustee or custodian of the fund.
- Have sufficient financial resources for it to conduct its business effectively and meet its liabilities.
- Be a company incorporated and resident in Jersey (unless a Jersey administrator is appointed).
- Be registered under the FSJ Law for the conduct of fund services business and therefore comply with the FSJ Codes of Practice.

In relation to expert funds, there is no requirement for the investment manager or adviser to be incorporated or carry on business in Jersey, and the Promoter Policy does not apply. However, the investment manager or adviser should confirm in writing to the Commission whether it satisfies certain "good standing" requirements (including as to its experience and solvency) set out in the EF Guide, which the administrator, manager or trustee (as applicable) must counter-sign having undertaken appropriate due diligence. If an investment manager or adviser does not meet the criteria listed in the EF Guide, it can approach the Commission on a case-by-case basis. The distributor of the expert fund (if different from the investment manager/adviser) must also satisfy these requirements if it is not the investment manager/adviser or one of its associates. A distributor is either:

- The driving force behind the fund (that is, if the distributor were to withdraw from the proposal, the fund would not go ahead).
- The entity responsible (either directly or through its agents) for putting the majority of investors into the fund.

Expert funds must appoint an administrator or a manager with at least two Jersey resident directors with appropriate experience, together with staff and a physical presence in Jersey.

Service providers to public funds that carry on business in or are incorporated in Jersey must (unless an exemption applies) be registered under the FSJ Law and comply with the FSJ Codes of Practice, including the codes relating to:

- Managers.
- Investment managers.
- Investment advisers.
- Administrators.

The manager of a recognized fund must obtain a functionary permit under the CIF Law and comply with the provisions set out in the RF Functionary Permit Order.

Closed-ended retail funds

The Promoter Policy also applies to CCIFs and COBO-only funds which are not "very private" (*see Question 16, Very private schemes*). The OCIF Guide also applies, although by analogy only, with more flexibility being permitted for closed-ended funds.

The Promoter Policy does not apply to listed funds. The investment manager or adviser to a listed fund should confirm in writing to the Commission whether it satisfies certain "good standing" requirements (including as to its experience and solvency) set out in the LF Guide, which the administrator or manager (as applicable) must counter-sign having undertaken appropriate due diligence. If an investment manager or adviser does not meet the criteria listed in the LF Guide, it can approach the Commission on a case-by-case basis. The distributor of the listed fund must also satisfy these requirements if it is not the investment manager/adviser or one of its associates (*see above, Open-ended retail funds*).

Listed funds must appoint an administrator or a manager which has at least two Jersey resident directors with appropriate experience, together with staff and a physical presence in Jersey.

The same FSJ Law requirements in relation to registration apply to service providers to closed-ended public funds (*see above, Open-ended retail funds*).

Assets portfolio

7. Who holds the portfolio of assets? What regulations are in place for its protection?

Open-ended retail funds

The OCIF Guide generally requires a trustee or custodian to be appointed to hold the assets of the fund. It must be:

- A company that is a member of a major banking or insurance group of companies, or any other institution which is acceptable to the Commission.
- A company incorporated and with an established place of business in Jersey, or the Jersey branch of a non-Jersey bank.
- Independently audited and have:
 - an issued and paid-up capital and non-distributable capital reserves of at least GB£250,000; and
 - net shareholders funds of at least GB£250,000.
- Independent of the manager.

Expert funds must have adequate arrangements for the safe custody of their assets (including, if applicable, prime brokerage arrangements) which must be disclosed in their offer document. The EF Guide requires a trustee or custodian to be appointed to hold the expert fund's assets.

A public fund's trustee or custodian that carries on business in, or is incorporated in, Jersey must be registered under the FSJ Law and is subject to the FSJ Codes of Practice.

The manager of a recognized fund must obtain a functionary permit under the CIF Law and comply with the provisions set out in the RF Functionary Permit Order. For recognized funds, there are also requirements for the protection of assets under the recognized funds legislation (*see Question 2, Open-ended retail funds: Legislation*).

Closed-ended retail funds

Listed funds and expert funds must have adequate arrangements for the safe custody of their assets (including, if applicable, prime brokerage arrangements), which must be disclosed in their offer document.

In relation to CCIFs and private funds, the requirements for OCIFs apply (by analogy and with more flexibility) (see *above*, *Open-ended retail funds*). An independent trustee or custodian is often not required.

FSJ Law requirements for registration of service providers to public funds apply (see *Question 3*, *Open-ended retail funds*).

Legal fund vehicles

8. What are the main legal vehicles used to set up a retail fund and what are the key advantages and disadvantages of using these structures?

Open-ended retail funds

Funds in Jersey are typically established as:

- Companies (single class, multi-class, umbrella or protected cell or incorporated cell).
- Limited partnerships (including incorporated limited partnerships (ILPs) and separate limited partnerships (SLPs)).
- Unit trusts.

Hedge funds usually prefer a corporate structure, except where another vehicle is used to achieve tax transparency from the perspective of one or more onshore jurisdictions (see *Question 25*).

A fund of any legal structure can be open-ended or closed-ended.

Recognized funds must be structured as companies or unit trusts.

Companies. In recent years, the Companies (Jersey) Law 1991 has been modified to accommodate improvements for the funds industry (particularly companies with a fluctuating membership), such as:

- Introducing no par value companies (that is, companies the shares of which do not have a nominal value).
- Allowing companies to hold treasury shares.
- Simplifying the making of income and capital distributions, generally permitting them from any source, subject to the company's solvency.
- The use of corporate directors.
- The abolition of financial assistance restrictions.
- Permitting the merger of companies and the migration of companies to Jersey from other jurisdictions.

Investors' interests can be represented by shares (which can be traded uncertificated) or by depository receipts or certificates.

Cell companies are companies which can create cells separate from themselves, each of which can hold separate assets (and liabilities):

- **Protected cell companies (PCCs).** The PCC has a number of features, for example, a PCC cell can invest in another cell within the same PCC structure.

- **Incorporated cell companies (ICCs).** The ICC is very similar to a PCC except that individual cells have separate legal personality.

The ICC and the PCC have found favour as fund vehicles. Statute clearly provides for the segregated nature of the cellular structure, giving legal certainty. Over 400 protected cells and 250 incorporated cells have now been registered. PCCs and ICCs are particularly suited to repeat transactions, where:

- A fund manager can seek to establish a number of funds.
- The same infrastructure is used but with different investment objectives, investor profiles or fee structures.

Given their ring-fenced structure, PCCs and ICCs are particularly suitable as hedge fund vehicles.

Limited partnerships. Limited partnerships can be established under the Limited Partnerships (Jersey) Law 1994 (LP Law). The liability of limited partners for the debts of the partnership cannot extend beyond their agreed capital contributions, provided their activity does not constitute management under the LP Law. The LP Law provides a safe harbour for certain activities that would otherwise constitute management and permits the limited partner a greater degree of involvement in the management of a limited partnership than some other jurisdictions.

Other advantages of a Jersey limited partnership include that:

- There is no upper limit on the number of limited partners.
- Confidentiality is preserved, as the only document to be publicly filed is a short declaration of limited partnership that does not disclose the:
 - identity of the limited partners;
 - business of the partnership;
 - partnership contributions.

Both ILPs and SLPs, introduced in Jersey in 2011, have separate legal personalities (allowing each form of limited partnership, for example, to own assets, and sue and be sued in its own name). An ILP is also a body corporate (SLPs do not have this status). These entities provide greater flexibility for fund managers in structuring their fund's general partner and carried interest vehicle, particularly where the fund is an English limited partnership.

Unit trusts. A unit trust is not a separate legal entity but a trust arrangement under which the legal ownership of the scheme's assets is vested in a trustee who holds those assets on trust for the benefit of unitholders. A unit trust is constituted by an instrument of trust (in the case of an open-ended structure, the parties to the instrument are usually a manager and a trustee), which regulates:

- The appointment and retirement of the trustee and manager.
- Their respective duties.
- The distribution or accumulation of trust income.
- Investment powers.
- Dealing.
- Valuation.



The applicable trusts legislation in Jersey is the Trusts (Jersey) Law 1984. In addition to preserving confidentiality, and the relative flexibility of trusts, there can be significant tax advantages where a unit trust structure is used.

Closed-ended retail funds

See above, *Open-ended retail funds: Legal vehicles*.

Investment and borrowing restrictions

9. What are the investment and borrowing restrictions on retail funds?

Open-ended retail funds

In relation to expert funds, no investment or borrowing restrictions are prescribed for funds under the EF Guide. However, the fund's approach to both must be clearly disclosed in its marketing document.

The OCIF Guide provides guideline investment and borrowing restrictions depending on the nature of the unclassified fund. Borrowing restrictions (where they apply) are usually restricted to 10% of NAV in the case of (among others) feeder funds and funds of funds. Derogations from these restrictions (and the setting of restrictions for other types of fund) can be agreed with the Commission. The restrictions must be fully disclosed in the fund's prospectus.

Detailed investment and borrowing restrictions apply to recognized funds, depending on the nature of the fund.

Closed-ended retail funds

For the position in relation to expert funds, see above, *Open-ended retail funds*.

In relation to listed funds, there are no investment or borrowing restrictions for funds under the LF Guide, but the fund's approach to both must be clearly disclosed in its marketing document.

No investment or borrowing restrictions are prescribed for CCIFs. However, the Commission will, for a retail fund:

- Refer to the OCIF Guide as a benchmark.
- Require, as a condition to the certificate granted to the fund, that any change in investment or borrowing restrictions receive prior consent from the Commission.

In relation to CCIFs (and COBO only funds which are not "very private"), the requirements for OCIFs apply (by analogy and generally with some flexibility) (*see above, Open-ended retail funds*).

10. Can the manager or operator place any restrictions on the issue and redemption of interests in retail funds?

Open-ended retail funds

There are no limits on the restrictions which can be imposed on issues or redemptions for expert funds.

The OCIF Guide imposes various compulsory:

- Redemption requirements, for example, concerning:
 - non-cash redemption;

- period until payment;
- compulsory redemption.
- Issue requirements (for example, regarding non-cash consideration).

Suspension of dealings can be provided for in exceptional circumstances and having regard to the interests of holders.

For a recognized fund, the manner, process and pricing of the issue and redemption of interests is prescribed by the RF Order. The manager is not permitted to alter these prescribed terms.

Closed-ended retail funds

There are no limits on these restrictions for expert funds or listed funds.

In relation to CCIFs (and COBO-only funds which are not "very private"), the requirements for OCIFs apply (by analogy and with more flexibility) (*see above, Open-ended retail funds*).

11. Are there any restrictions on the rights of participants in retail funds to transfer or assign their interests to third parties?

Open-ended retail funds

No restrictions are imposed on public funds, except that the fund documents for expert funds and eligible investor funds must make provision to prevent non-expert investors or non-eligible investors (as the case may be) acquiring interests in the fund. Public funds often have transfer restrictions for onshore tax and/or regulatory reasons (subject to any applicable stock exchange rules on free transferability).

Recognized funds can only restrict transfers in limited circumstances.

Closed-ended retail funds

See above, *Open-ended retail funds*.

Reporting requirements

12. What are the general periodic reporting requirements for retail funds?

Open-ended retail funds

Investors. Under the OCIF Guide:

- At least two reports must be published and distributed to holders in relation to each financial year, with the annual statements audited. Holders must be notified of any changes to the offering or constitutive documents (unless there is no prejudice to the holders' interests).
- The latest selling and redemption prices and NAV must be available to all holders.

For recognized funds the annual and half-yearly audited financial statements and portfolio statements and reports prescribed by the RF Order must be made available to investors and sent out within:

- Four months of the relevant period's end in the case of an annual report.
- Two months of the period's end in the case of a semi-annual report.

Regulators. Copies of the same reports distributed to the holders must be filed with the Commission (see above, *Investors*). In relation to expert funds and listed funds, see *Question 22*.

Closed-ended retail funds

Investors. There are no requirements, other than for companies to file annual audited financial statements under the Companies (Jersey) Law 1991. The requirements for OCIFs apply to CCIFs (by analogy only and with more flexibility).

Regulators. See above, *Open-ended retail funds: Regulators*.

Tax treatment

13. What is the tax treatment for retail funds?

Open-ended retail funds

Funds. A fund, whether established as a company, unit trust or limited partnership, is not generally subject to any local Jersey tax. In particular, there is no capital gains, capital transfer, wealth or inheritance tax payable in relation to the issue or realisation of investments in a Jersey investment fund (unless the fund invests in Jersey property or buildings). In addition, corporation tax, profits tax or stamp duty is not payable. Funds structured as unit trusts and limited partnerships are fully exempt from tax; fund companies are subject to a 0% rate but can become fully exempt (see *Question 14*).

Jersey resident administrators and custodians are generally liable to Jersey income tax at the rate of 10%. However, Jersey-administered entities, such as general partners and managers that provide services to a fund, are taxed at 0%.

Resident investors. Jersey-resident investors must pay tax at up to 20% on income received from a fund. There is no capital gains tax in Jersey (see above, *Open-ended retail funds: Funds*).

Non-resident investors. Non-resident investors are generally not subject to Jersey tax.

Although not in the EU, Jersey, in common with other jurisdictions, has voluntarily agreed to apply the same or equivalent measures to those in Directive 2003/48/EC on taxation of savings income in the form of interest payments (Tax Savings Directive). It has elected to implement the withholding tax option during the transitional period. However, these measures are generally not applicable to Jersey funds.

Closed-ended retail funds

Funds. The same tax rules for open-ended retail funds apply (see above, *Open-ended retail funds*).

Resident investors. The same tax rules for open-ended retail funds apply (see above, *Open-ended retail funds*).

Non-resident investors. The same tax rules for open-ended retail funds apply (see above, *Open-ended retail funds*).

Reform

14. What proposals (if any) are there for the reform of retail fund regulation?

The following have been proposed:

- As part of a review of Jersey's company tax regime, it has been announced that fund companies will, on registration with the Comptroller of Income Tax in Jersey, be fully exempt from Jersey tax rather than being subject to a 0% rate (see *Question 13, Open-ended retail funds*).
- Codes of Practice for Certified Funds will be introduced for public funds under the CIF Law. These are expected to have a generally neutral effect on the costs of establishing and administering a fund.
- The rules relating to prospectus disclosure requirements for funds will be consolidated into a single enactment.
- The Commission is in the process of reviewing the regime relating to private placement funds, namely, closed-ended funds managed or established in Jersey for fewer than 50 sophisticated or professional investors. It is anticipated that:
 - the proposed fast-track regime will be based on the fund or its administrator certifying that it meets the relevant requirements; and
 - there will be certain "good standing" requirements as regards the promoter.

The Commission has a large and pro-active enforcement team. Recently, the Commission has increased its investigatory profile and has published critical findings (with public censure) against a prominent Jersey fund administration and custody business.

HEDGE FUNDS

15. What is the structure of the hedge funds market? What have been the main trends over the last year?

Jersey is dominated by its finance industry, which employs over 13,000 people and contributes a significant portion of Jersey's income. In recent years the finance industry has increasingly focused on the institutional market and sophisticated investors.

In particular, alternative asset classes and hedge funds have provided growth to the overall funds sector in Jersey. When combined with the relocation of hedge fund managers to Jersey and changes in international funds regulation, there is an increasing belief that this will enable Jersey to be a key destination in the hedge funds global community.

The introduction of the unregulated funds regime in February 2008 was aimed specifically at the hedge and alternative asset funds sectors (see *Question 16*). These regimes have become particularly attractive to European fund managers and promoters.



As new funds are launched and existing funds restructured, terms are drifting, once again, to a more investor-friendly position, including lower management fees, higher hurdle rate and no-fault divorces. Interestingly, Jersey-based litigation funds are making litigation in the UK for corporations more accessible.

Regulatory framework and bodies

16. What are the key statutes and regulations that govern hedge funds in your jurisdiction? Which regulatory bodies regulate hedge funds?

Regulatory framework

The following categories are generally used for hedge funds:

- Eligible investor funds and exchange traded funds.
- Expert funds and listed funds.
- Very private schemes.
- Other private and public funds.

Unregulated funds

The UF Order enables the establishment of eligible investor funds and exchange traded funds, which are exempt from the CIF Law. These allow hedge funds to be established in Jersey without any:

- Jersey service providers.
- Regulatory approval under Jersey's funds legislation.

There are two categories of unregulated fund:

- **Eligible investor funds.** These can be open- or closed-ended and are restricted to sophisticated investors (including those investing US\$1 million).
- **Exchange traded funds.** These must be closed-ended and listed on an approved stock exchange. The 50 pre-approved exchanges include:
 - LSE/SFM/AIM;
 - NASDAQ;
 - Euronext; and
 - CISX.

An eligible investor fund or exchange traded fund must be one of a:

- Jersey company.
- Jersey limited partnership (which must have at least one Jersey company as general partner).
- Unit trust (which must have at least one Jersey company as a trustee or manager).

A regulated Jersey administrator must supply the registered office to that company. SPV general partners and trustees are exempt from the requirement to be regulated under the FSJ Law.

Expert funds and listed funds

The same laws and regulations for retail funds apply. The three-day approval process applies to both of these categories. The short time to approval and the fair balance of regulatory oversight have proved successful selling points of the Jersey expert fund as an ideal fund structure for most promoters.

Very private schemes

These are used for 15 or fewer investors. The fund (and frequently its service providers) is entirely unregulated, other than the need to obtain consent under COBO on the establishment of the fund vehicle.

Other private and public funds

The same laws and regulations apply as for retail funds. Generally, the higher the minimum investment level and the more sophisticated the investors to whom the fund can be offered, the more flexible the Commission will be as to the scheme proposed (and in these cases the requirements of the OCIF Guide will generally not apply). These categories of fund are generally not used for hedge funds due to the speed and flexibility of the other options, and are not considered further in this chapter.

Regulatory bodies

Generally, the same statutes and regulations apply as for retail funds (see *Question 2, Open-ended retail funds*). The regulatory body is the Commission.

17. How are hedge funds regulated (if at all) to ensure compliance with general international standards of good practice?

Risk

The following apply to the various categories of fund used:

- **Eligible investor funds and exchange traded funds.** There are no regulations. A form of investor risk warning is prescribed.
- **Expert funds and listed funds.** The Jersey administrator, manager or trustee must monitor compliance by the investment manager with the investment restrictions and borrowing limits of the fund. A form of investor risk warning is prescribed.
- **Very private schemes.** There are no regulations.

Valuation and pricing

There are no regulations for valuation and pricing.

Systems and controls

The following apply:

- **Eligible investor funds and exchange traded funds.** There are no regulations. No regulated or Jersey service providers are required, other than a Jersey registered office provider (to the fund company, general partner or trustee).
- **Expert funds and listed funds.** All service providers that are regulated in Jersey under the FSJ Law must comply with the FSJ Codes of Practice, which require the:
 - implementation of appropriate corporate governance systems;
 - implementation of internal systems and controls;
 - demonstration of the existence of adequate risk management systems.

In the case of SPV managers for expert funds which are supported by a regulated administrator, an expedited approach can be adopted. Codes of Practice for Certified Funds have been proposed (see *Question 14*).

- **Very private schemes.** There are currently no regulations.

Insider dealing and market abuse

Insider dealing and market manipulation are regulated under the FSJ Law to comply with international standards. Offences in relation to misleading statements and practices exist under the CIF Law and FSJ Law.

Transparency

See above, *Systems and controls*.

Money laundering

Funds and their Jersey service providers must comply with the following legislation, which applies international standards:

- Proceeds of Crime (Jersey) Law 1999, as amended.
- Money Laundering (Jersey) Order 2008, as amended.
- Terrorism (Jersey) Law 2002, as amended.
- Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.
- Drug Trafficking Offences (Jersey) Law 1988, as amended.
- Criminal Justice (International Co-operation) (Jersey) Law 2001, as amended.

They must also comply with any related legislation, and the Commission's Handbook for the prevention and detection of money laundering and the financing of terrorism.

Short selling

There are no regulations restricting short selling.

Marketing

18. Who can market hedge funds?

See *Question 4*.

19. To whom can hedge funds be marketed?

Unregulated funds

This depends on the type of fund:

- **Exchange traded funds.** There are no regulations.
- **Eligible investor funds.** These are restricted to 11 categories of "eligible investor", which include:
 - those investing at least US\$1 million;
 - other sophisticated and high net-worth categories.

Listed funds

There are no restrictions.

Expert funds

These can only be marketed to "expert investors". There are ten categories, including:

- Those investing or committing a minimum of US\$100,000 or currency equivalent.
- Other sophisticated and high net-worth categories.

Very private schemes

There are no restrictions other than the maximum of 15 investors (see *Question 16, Very private schemes*).

Investment restrictions

20. Are there any restrictions on local investors investing in a hedge fund?

There are no restrictions other than those set out in *Question 19*.

Assets portfolio

21. Who holds the portfolio of assets? What regulations are in place for its protection?

Eligible investor funds and exchange traded funds

There are no restrictions.

Expert funds and listed funds

A listed fund (which is a hedge fund) must appoint a prime broker that either:

- Has a credit rating of A1/P1 or long-term equivalent.
- Is otherwise approved by the Commission.

An open-ended expert fund must appoint either a regulated Jersey custodian/trustee or prime broker. A closed-ended expert fund does not require a custodian/trustee, provided it has adequate safe custody arrangements (including, if applicable, prime brokerage arrangements).

Very private schemes

There are no restrictions.

Requirements

22. What are the key disclosure or filing requirements (if any) that must be completed by the hedge fund?

Eligible investor funds and exchange traded funds

Notice of the establishment of an eligible investor or exchange traded fund must be filed and a form of investment warning is prescribed. An unregulated fund which is a company must send annual audited financial statements to investors and file them with the Commission (see *Question 12*).

Expert funds and listed funds

The requirements for offering documents are the same as for retail funds. They must:

- Contain all material information in relation to the fund.
- Otherwise comply with the disclosure requirements in the EF Guide or LF Guide, as applicable.

Each offering document must be filed within 14 days of publication. Material changes to the fund must have received Commission consent if they do not comply with the EF Guide or LF Guide. If they do comply they merely need to be notified to the Commission. The fund must file annual audited financial statements and any interim reports with the Commission when these are published. A fund which is a company must file and send to investors annual audited financial statements.

Very private schemes

There are no requirements, other than obtaining the initial consent under COBO.



23. What are the key requirements that apply to managers or operators of hedge funds?

Eligible investor funds and exchange traded funds

There are no requirements. Service providers must be registered under the FSJ Law and regulated by the Commission (unless an exemption applies) if carrying on business in (or incorporated in) Jersey, in the same way as public retail funds (see *Question 3*).

Expert funds and listed funds

There is no requirement for the investment manager or adviser to be Jersey based. For an expert fund, the investment manager or adviser (and/or the distributor, if different) must satisfy certain requirements set out in the EF Guide. Similarly, the investment manager or adviser (and/or the distributor, if different) of a listed fund must satisfy certain requirements set out in the LF Guide. See also *Question 6*.

In relation to the establishment of SPV investment managers or advisers in Jersey, see *Question 3, Open-ended retail funds*.

Expert funds and listed funds must appoint an administrator or a manager that has at least two Jersey resident directors with appropriate experience, together with staff and a physical presence in Jersey (see *Question 3*).

Very private schemes

There are no requirements. An investment manager or adviser that carries on business (or is incorporated) in or from within Jersey may need to be regulated under the FSJ Law unless a relevant exemption is available or it only advises on real estate. For example, there is an exemption available for “professional investor regulated schemes” which requires that investors are either:

- Professional investors.
- Invest or commit at least GB£250,000.
- Other exemptions are also available (for example, for connected companies).

Legal fund vehicles and structures

24. What are the main legal vehicles used to set up a hedge fund and what are the key advantages and disadvantages of using these structures?

See *Question 8*.

25. What are the advantages and disadvantages of using onshore and offshore structures?

Onshore

Jersey is an attractive domicile for funds for a variety of reasons, including:

- Speed, flexibility and certainty in the funds regime, with hedge funds established on a “notification only” or “three-day approval” basis.
- A choice of tax-neutral fund vehicle (limited partnership, including ILPs or SLPs company, cell company structure or unit trust).

- Excellent quality and depth of fund service providers, and increasing number of asset managers moving to or establishing a regulated branch or company in Jersey.
- Convenient location, UK time zone and frequent (short) flights to London.
- A mature legal system, with fully reported judgments, a Court of Appeal manned by leading UK judges and a final right of appeal to the English Privy Council.
- Appropriate levels of confidentiality or transparency depending on promoter and investor requirements.
- Investor familiarity and confidence in the jurisdiction.
- A “white-listed” jurisdiction with consistently positive reports from international bodies and reviews, including in the 2009 IMF report.

Offshore

See above, *Onshore*.

Tax treatment

26. What is the tax treatment for hedge funds?

Funds

The same treatment for retail funds applies (see *Question 13*).

Resident investors

The same treatment for retail funds applies (see *Question 13*).

Non-resident investors

The same treatment for retail funds applies (see *Question 13*).

Restrictions

27. Can participants redeem their interest? Are there any restrictions on the right of participants to transfer their interests to third parties?

Redemption of interest

There are no statutory restrictions on participants redeeming their interests, but such restrictions can be imposed by fund terms.

All Jersey fund vehicles have great flexibility in distributing income and returning capital to investors (through redemption or distribution), subject to the solvency of the fund.

Transfer to third parties

The fund documents must make provision to prevent non-eligible investors acquiring interests in eligible investor funds or non-expert investors acquiring interests in expert funds. No other statutory restrictions apply, but more can be imposed by fund terms.

Reform

28. What (if any) proposals are there for the reform of hedge fund regulation?

See *Question 14*. No other changes to the regime are proposed.



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- Acting on numerous fund structurings, co-investments and listing transactions, portfolio acquisitions and refinancings.
- Advising on fund-related capital markets with clients listed on LSE, HKSE and NYSE Euronext, including AP Alternative Assets, LP, Ingenious Media Active Capital Limited, JSM Indochina Ltd and Real Estate Opportunities Ltd.
- Advising on Songbird Estates' successful takeover of Canary Wharf PLC and the successful takeover of BAA PLC by a consortium led by Ferrovial.

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Areas of practice. Innovative financing and fund structures, with a particular focus on private equity; property-holding structures involving Jersey vehicles.

Recent transactions

- Establishing the first Jersey unregulated fund limited partnership and a groundbreaking closed-ended fund company, GCP Infrastructure Investments Limited, on its listing on the Main Market of the London Stock Exchange.
- Advising on issues surrounding distressed fund and property structures, including replacing fund managers, cancelling regulated fund status and enforcing security over assets held through Jersey entities.
- Advising Morgan Stanley on their successful TOPAS 2 and TOPAS 3 Jersey expert fund unit trusts.



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- Advising on fund restructurings and wind-ups, issuing EUR100 million loan notes for a US hedge fund using a master/feeder structure with Jersey corporate and limited partnership vehicles, and establishing three parallel Jersey limited partnerships as an expert fund to invest in real estate special situations.
- Advising Investment Services UK Limited on establishing Amrah Global Opportunities Fund Limited, an open-ended expert Jersey-based fund company.
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