



## Jersey investment funds update - Q4 2023

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### FSJL - Changes to investment business

On 31 October 2023, two amendments to the definition of “investment business” (as set out in article 2(2) of the Financial Services (Jersey) Law 1998 (“FSJL”)) came into force. The amendments have been discussed extensively over the last few years via numerous consultations with industry. The amendments are an attempt to modernise and align Jersey’s investment business regulatory regime with international standards.

The first amendment is to introduce an additional limb of “arranging” to the dealing in investments category. As such a person who makes arrangements for another person to buy, sell, subscribe for or underwrite investments will now potentially be required to be regulated for investment business. As with the other limbs of investment business, there are some exemptions that may apply, including where: (a) arrangements are made on behalf of a professional investor (i.e. whose ordinary activities involve investment business); (b) the investment could have happened without the arranger; (c) the investments are valued at no less than £250,000 or are into a Jersey collective investment fund; (d) the arranger is not being remunerated for such arrangement; and/or (e) the arrangement activity is limited to purely introducing.

The second amendment is to introduce an additional category of operating an investment exchange. As such a person who provides a facility (whether electronic or otherwise) for the trading of investments or the listing of investments for trading will now be required to be regulated for investment business.

### Outsourcing policy – Revised guidance

With effect from 1 January 2024, the JFSC’s revised outsourcing policy will apply to all existing and new outsourcing arrangements. The revised policy applies to a broader range of entities and includes updates to take account of Jersey’s evolving regulatory framework. The key amendments include that: (a) Jersey AIFs are now caught; and (b) unregulated businesses that are required to register under Jersey’s AML/CFT/CPF legislation are now caught but only in respect of outsourcing that would materially prevent, disrupt or impact upon such business’ ability to perform its obligations under such AML/CFT/CPF legislation.

To the extent that any newly in-scope outsourcing arrangements are not compliant with any of the core principles (including where they have not yet been notified to the JFSC), this should be remedied without delay. Please see [our briefing note](#) on this topic for more information.

### Schedule 2 – Further guidance

On 22 September 2023 the JFSC issued [updated guidelines](#) for interpreting Schedule 2 to the Proceeds of Crime (Jersey) Law 1999, specifically amending what constitutes a private trust company conducting as a business. This determination of conducting as a business then goes directly to whether or not a private trust company is required to register under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (“POCSBJL”).

The JFSC have made it clear that any trust company relying on the private trust company exemption from regulation as a TCB under the FSJL will be acting as a business and so will need to register as a Schedule 2 business for the purposes of POCSBJL. Any SPV trust company not relying on the private trust company exemption, including those relying on the PIRS exemption from TCB under the FSJL, will need to carry out an assessment based on the guidelines (a copy of which can be found [here](#)) to determine whether or not they are conducting business and so determine whether or not they are required to register under POCSBJL.

Additional guidance has also been published by the JFSC on the interpretation of “in or from within Jersey” for the purposes of POCSBJL. A non-Jersey entity is described as conducting business in or from within Jersey if either: (a) the entity is managed and controlled from Jersey; (b) the entity has a physical presence in Jersey (i.e. office space); or (c) the entity has employees or agents operating in Jersey (being persons located in Jersey with some degree of permanence). Whilst this definition is not directly applicable to the corresponding definition in the FSJL, it is helpful for interpreting the definition of “in or from within Jersey” in the FSJL. A non-Jersey resident individual is described as conducting business in or from within Jersey if they have some degree of permanence in Jersey (i.e. an office from which they work when in Jersey which is taken in their own name for the purpose of their business activities). Please follow [this link](#) for a copy of this further guidance.

Jersey resident non-executive directors are likely to fall within the scope of Schedule 2 and therefore will be required to register under POCSBJL. Please see [our briefing note](#) aimed at such Jersey resident non-executive directors for step by step guidance on how to register.

### UK-EU Memorandum of understanding on financial services

A memorandum of understanding on financial services (the “MoU”) between the UK and the EU was finally signed on 27 June 2023. The MoU is an arrangement between the two sides to cooperate around the objectives of preserving financial stability, market integrity and the protection of investors and consumers. The MoU also creates a joint EU-UK financial regulatory forum to allow both sides to cooperate on and discuss regulatory matters. For further information on this MoU and the implications for the Channel Islands, please see [our briefing note](#) on this topic.

### Manager of a Managed Entity (MoME) – Revised guidance

On 5 October 2023, the JFSC updated the MoME guidance note to better align it with the current FSB Code. The changes include making it clear that: (a) the detailed provisions of the FSB Code in respect of the requirement to maintain adequate insurance apply where there are no alternative measures in place, which includes, for the purposes of an Expert Fund (and other Qualifying Funds), that PII cover is obtained which is sufficient to withstand the risks to which the business is subject; and (b) the applicable sections of the AIF Code are also relevant to managed entities (if they are an AIFM). Please follow [this link](#) for a copy of the updated MoME guidance note.

If you have any questions or would like to discuss any of the points raised above, please speak to your usual Carey Olsen contact.



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