

Retail investment funds in Jersey: regulatory overview

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MARKET OVERVIEW

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 recognised funds (see below, *Recognised funds*) are considered public funds. There is no limit to 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 USD100,000) with no investment restrictions;
 - **regulated Jersey eligible investor funds (JEIFs).** JEIFs must be alternative investment funds for the purposes of the Directive 2011/61/EU on alternative investment fund managers (AIFM Directive) and are available to 11 categories of "eligible investors";
 - **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.
- **Private funds (PFs).** The Jersey Financial Services Commission (Commission) has also published a private funds guide (PFG) which enables PFs to benefit from a light touch fast-track regulatory process. Under the PFG, up to 50 offers can be made to investors who qualify as "professional" investors and/or subscribe for interests with a value of at least GBP250,000 in PFs, and the PF (and frequently its service providers) is entirely unregulated, other than the need to obtain consent under the Control of Borrowing (Jersey) Order 1958 (COBO) upon the establishment of the fund vehicle. (Prior to the PFG being published, the Commission was applying a similar proportionate and light-touch approach to very private structures (which permitted up to 15 offers). This resulted in a large number of very private structures being established, as they were seen as ideal for club investments, funds of one and co-investments in particular. Now, because of the wider scope and the ability to make offers to up to 50 potential investors, many more funds are benefitting from the PF regime's fast-track authorisation (within 48 hours) and its low initial and ongoing costs.)

The PF regime's speed, flexibility and low cost has proved popular with a wide range of funds, from small funds established by first time managers to multi-billion dollar/euro funds with a limited number of sovereign/institutional investors.

- **Recognised 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 category 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 The International Stock Exchange (TISE) (formerly known as the Channel Islands Securities Exchange) with no investment or borrowing restrictions; no minimum subscription; no restrictions on the type of investor and a three-day approval process;
 - expert funds. See above, *Open-ended retail funds*;
 - JEIFs. See above, *Open-ended retail funds*;
 - unregulated eligible investor funds. See above, *Open-ended retail funds*.
- **PFs.** See above, *Open-ended retail funds*.

For many years Jersey has collected a wide range of statistics in relation to the finance industry. The pattern is of steady, sustainable growth. Statistics are available from Jersey Finance Limited (www.jerseyfinance.je), with the latest figures (as at the end of October 2019 taken from the Funds overview, for latest statistics



visit www.jerseyfinance.je/jersey-the-finance-centre/sectors/funds). These statistics show the following:

- Total funds business in Jersey grew by GBP6 billion in the third quarter of 2018.
- Jersey funds now stand at more than GBP300 billion, with strong performances in private equity (GBP89.5 billion) and hedge funds (GBP57 billion).
- The number of Jersey-based funds promoters has almost doubled in the last five years (*source: Monterey Insight Jersey Funds Reports*).
- Significant amounts of money are being raised from a wide range of EU countries. Jersey has seen an annual increase of 8% in fund managers using Jersey to market funds into Europe (*source: JSFC*).
- In terms of new funds, the main focus of activity has been the following European and global sectors:
 - Private equity.
 - Real estate.
 - Distressed debt.
 - Infrastructure.

There has also been a returning trend of listed funds (on TISE 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. An increasing number of fund managers have relocated to or established a presence in Jersey and the tax and regulatory authorities have been sympathetic to these new businesses. Jersey fund managers should be mindful of Jersey's new economic substance requirements, whereby any company that is Jersey tax resident and which receives income from activities such as fund management in Jersey, is required to meet an economic substance test (*see Hedge funds in Jersey: regulatory overview*).

As EU member states implement the AIFM Directive, as a "third country" non-EU jurisdiction, Jersey has been working hard to ensure it can continue to offer professionals a blend of stability and flexibility.

Jersey's strategy in relation to the AIFM Directive is to have the right frameworks in place to continue to provide fund establishment, management and administration services on a "business as usual" basis. This has been achieved by placing an AIFM Directive "overlay" on existing regulatory frameworks such that a Jersey fund need only comply with the AIFM Directive to the extent it is absolutely necessary.

Jersey is committed to:

- Continuing to facilitate funds business within the EU through national private placement regimes.
- Introducing the option of a fully AIFM Directive-compliant regime and obtaining an EU-wide passport as soon as practicable.

As a non-EU jurisdiction, Jersey can offer investors the choice of maintaining a separate regime that lies outside the scope of the AIFM Directive, for managers who do not wish to access EU capital or operate in the EU.

Combined, this range of options means that Jersey continues to operate its existing fund regime whilst at the same time offering an option that is fully compliant with the AIFM Directive, providing managers with the flexibility to market to investors both inside and outside the EU.

Jersey already regulates and authorises alternative fund managers in accordance with the International Organization of Securities Commissions (IOSCO) standards, and tax information exchange agreements (TIEAs) are (or will be) in place with each member state where alternative funds are to be marketed, including TIEAs or double taxation agreements (DTAs) with 13 EU member states.

In addition, Jersey is able to comply with all required international reporting and transparency requirements, and is more compliant with Financial Action Task Force (FATF) recommendations than many onshore asset management jurisdictions. Jersey is therefore confident that it will be able to satisfy the criteria needed to comply with the AIFM Directive.

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 recognised funds.
- The Control of Borrowing (Jersey) Order 1958 (COBO), which regulates private funds (PFs) and controls, among others, the creation and issue of:
 - shares;
 - securities;
 - units in a unit trust scheme; and
 - limited partnership interests.
- The Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012 (CFPO), which regulates the contents of prospectuses for certified funds.
- The Financial Services (Jersey) Law 1998 (FSJ Law), which regulates fund service providers operating or incorporated in Jersey.
- Alternative Investment Funds (Jersey) Regulations 2012, which overlays the AIFM Directive requirements where applicable.

The following legislation applies to recognised 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 unregulated eligible investor funds is the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 (UF Order), which exempts them from regulation under the CIF Law if 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.

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. 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.

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 CCIFs (see below, *Closed-ended retail funds*).
- 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).
- Code 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.
- The Code of Practice for Certified Funds (including Expert Fund, JEIF and Listed Fund guides), which applies to funds domiciled and regulated in Jersey holding a certificate under the CIF Law (that is, Expert Funds, JEIFs, Listed Funds, OCIFs and CCIFs).
- The Code of Practice for Alternative Investment Funds and AIF Services Business (the AIF Codes), which apply where funds and/or fund services businesses are required to comply with provisions of the AIFM Directive.
- The PFG.

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:

- 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, *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 which comply with the terms of the UF Order. Personal questionnaires for the directors of a certified public fund vehicle should be submitted electronically 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.

PFs are largely unregulated (although additional regulation for the fund and/or its manager is generally needed where a PF is classified as an AIF for the purposes of the AIFM Directive) and are relatively quick and easy to establish (see *Question 1, Open-ended retail funds*).

All other OCIFs, CCIFs and recognised 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; and
 - 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 Expert Fund (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.

Similarly, in relation to JEIFs, the fund administrator certifies to the Commission that the JEIF complies with the relevant guide and aims to issue its approval within three working days of the submission of a completed application (assuming that no derogations are needed).

Recognised funds are structured to ensure investor protection that is at least equivalent to that afforded to investors in the UK. Recognised funds issued with a recognised fund certificate can apply to the UK Financial Conduct Authority (FCA) 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 recognised 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, 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 fund 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, JEIFs, eligible investor funds and PFs (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 and CCIFs. It does not apply to:

- Expert funds.
- Jersey eligible investor funds (JEIFs).
- Listed funds.
- Eligible investor funds.
- PFs.

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; and
- spread of ultimate ownership.

- The type of investor to whom the fund will be offered.

The OCIF Guide requires that a manager must:

- 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 countersign 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. This also applies to JEIFs. The distributor of the expert fund or JEIF (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 and JEIFs 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 recognised fund must obtain a functionary permit under the CIF Law and comply with the provisions set out in the RF Functionary Permit Order.

Where the AIFM Directive applies to a manager, it must comply with the relevant sections of the AIF Codes of Practice.

Closed-ended retail funds

The Promoter Policy applies to CCIFs. 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. 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 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*).

At least two Jersey-resident directors must sit on the board of the entity responsible for supervising the fund. A private placement memorandum must also be produced.

The same FSJ Law or AIF Codes 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 GBP250,000; and
 - net shareholders' funds of at least GBP250,000.
- Independent of the manager.

Expert funds and Jersey eligible investor funds (JEIFs) 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 and the JEIF Guide both require a trustee or custodian to be appointed to hold the fund's assets if it is open-ended. There are no specific requirements for PFs.

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

In cases where the AIFM Directive applies and a Jersey depositary is required, both the "depositary lite" and the "depositary super-lite" regimes are available under the AIF Codes. There is no Jersey requirement to appoint a depositary for these purposes.

Closed-ended retail funds

Listed funds, expert funds and JEIFs 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, 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.

The FSJ Law and the AIFM Directive 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 can be 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) and limited liability partnerships (LLPs)).
- 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 *Hedge funds in Jersey: regulatory overview*).

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

Recognised 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 are 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; and
 - partnership contributions.

Both ILPs and SLPs (introduced in Jersey in 2011 by the Incorporated Limited Partnerships (Jersey) Law 2011 and the Separate Limited Partnerships (Jersey) Law 2011 respectively) 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.

LLPs. Jersey funds can also be established as LLPs under the Limited Liability Partnerships (Jersey) Law 2017, whereby a partner of the LLP is generally not liable for the LLP's debts or losses (including those caused by another partner).

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*.

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. This also applies to Jersey eligible investor funds (JEIFs). There are no relevant restrictions for PFs.

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 recognised funds, depending on the nature of the fund.

Closed-ended retail funds

For the position in relation to expert funds and JEIFs, 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, 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, Jersey eligible investor funds (JEIFs) or PFs.

The OCIF Guide imposes various compulsory:

- Redemption requirements, for example, concerning:
 - non-cash redemption;
 - period until payment; and
 - 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 recognised 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

See above, *Open-ended retail funds*.

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

In relation to CCIFs, the requirements for OCIFs apply (by analogy and with more flexibility).

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, Jersey eligible investor funds (JEIFs), unregulated eligible investor funds and PFs 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).

Recognised 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 recognised 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, Jersey eligible investor funds (JEIFs) and listed funds, see *Hedge funds in Jersey: regulatory overview*.

Where the AIFM Directive is applicable, the disclosure and transparency requirements under the AIF Codes will also apply to all funds which have not appointed a sub-threshold manager (regardless of their regulatory classification).

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*.

The same AIF Codes considerations apply as for open-ended funds.

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, no corporation tax, profits tax or stamp duty is 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.

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, *Funds*).

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

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*).

QUASI-RETAIL FUNDS

14. Is there a market for quasi-retail funds in your jurisdiction?

There is no specific market for quasi-retail funds in Jersey. For more details on the expert fund route in this context, see *Question 1*.

REFORM

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

A comprehensive review of Jersey funds legislation is underway. A new, user-friendly regime should be implemented in the foreseeable future.

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.

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Professional qualifications. Advocate of the Royal Court of Jersey, 2003

Areas of practice. Innovative Jersey fund structures, with a particular focus on property and hedge funds.

Recent transactions

- Establishment of the around USD100 billion SoftBank Vision Fund.
- Migration to Jersey and listing on the London Stock Exchange of EJJ Investments.
- Listings on TISE for Liberty Living Group, Clipstone Logistics REIT and Bricklane Residential REIT.
- Hedge fund clients include Brevan Howard, BlueCrest, Systematica, Rokos and Altis.

Professional qualifications. England and Wales, Solicitor, 2001; Advocate of the Royal Court of Jersey, 2012

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Areas of practice. Investment management and real-estate finance, including structuring and formation of investment vehicles (open- and closed-ended funds, REITs, JV vehicles and so on) and regulatory advice.

Professional qualifications. England and Wales, Solicitor, 2003; Advocate of the Royal Court of Jersey, 2015

Areas of practice. Investment funds with particular expertise in private equity and hedge funds and the legal and regulatory aspects of fund launches and other bespoke investment structures. Leads the firm's digital assets practice.

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