

Investment funds in Jersey: regulatory overview

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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 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 US\$100,000) 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.

See *Questions 16 to 28*.

- **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 17, 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, exchange traded fund and private placement 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 CISE) 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*;
 - **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 16 to 28*);
 - **eligible investor funds.** See above, *Open-ended retail funds*.
- **Private placement funds.** These are funds established or managed in Jersey which are offered to fewer than 50 investors. These funds are only available to either a "sophisticated investor" or a "professional investor" (including those investing a minimum of GB£250,000) (*see above, Open-ended retail funds*). For private placement funds, the Jersey Financial Services Commission (Commission) will grant approval on a three day fast-track basis, without applying the Promoter Policy (*see Question 6, Open-ended retail funds*). The Commission will instead rely on certain written confirmations from the fund's administrator in relation to the fund's promoter.
- **Private funds.** See above, *Open-ended retail funds*.

As at December 2014, in relation to funds under administration in Jersey, there were (*Financial Services Industry, Quarterly Report*).



Period ended 31 December 2014. Published in February 2015 by Jersey Finance):

- Over 2,176 separate pools of assets.
- Net asset value (NAV) of around GB£113.8 billion in open-ended CIFs.
- NAV of over GB£107 billion in closed-ended CIFs.
- A total NAV in all funds exceeding GB£228.8 billion.

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 CISE 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.

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 until at least 2018.
- Introducing the option of a fully AIFM Directive-compliant regime and obtaining an EU-wide passport by 2015 (as soon as is possible for non-EU "third countries").

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) will be in place with each member state where alternative funds are to be marketed from 2015, 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 recognized funds.
- The Control of Borrowing (Jersey) Order 1958 (COBO), which regulates private funds 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 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 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 18*).

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*).
- 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.
- The Codes 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 Codes of Practice for Alternative Investment Funds and AIF Services Business, which apply where funds and/or functionaries are required to comply with provisions of the AIFM Directive.

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*).
- Private placement funds must comply with the Jersey Private Placement Fund Guide published by the Commission (Private Placement Guide).

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 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.

Very private funds (15 or fewer investors) are largely unregulated and are relatively quick and easy to establish (*see Question 17, 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; 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).

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.

If a fund satisfies the criteria set out in the Private Placement Guide, the Commission will provide approval on three-day fast track basis. When considering the application, the Commission will not apply the Promoter Policy (*see Question 6, Open-ended funds*) and will instead rely on certain confirmations from the fund's administrator.

At least two Jersey-resident directors must sit on the board of the entity responsible for governing the fund, for example, its general partner. A private placement memorandum must also be produced.

If a proposed private placement fund does not satisfy the criteria in the Private Placement Guide, a request for derogations/regulatory consent can be made to the Commission. Applications for derogations will be considered on a case-by-case basis and will not be on a fast-track basis.

In relation to CCIFs and COBO-only funds which are not "very private" (*see Question 17, 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, JEIFs 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*.

Investors intending to invest in a private placement fund must be either a sophisticated investor or professional investor (including those investing a minimum of GB£250,000) (*Private Placement Guide*) (see *Question 1*).

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 17, Very private schemes*). It does not apply to:

- Expert funds.
- Jersey eligible investor funds (JEIFs).
- Listed funds.
- Eligible investor funds.
- Exchange traded funds.
- Private placement funds (ensuring that certain suitability requirements are met).

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 recognized 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 also applies to CCIFs and COBO-only funds which are not "very private" (see, *Question 17, 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. When considering the application under the Private Placement Guide, the Commission will not apply the Promoter Policy and will instead rely upon certain confirmations from the fund's administrator.

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 GB£250,000; and
 - net shareholders funds of at least GB£250,000.
- 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.

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: Regulatory framework*).

Where the AIFM Directive is applicable, a depositary must be appointed; both the "depositary lite" and the "depositary super-lite" regimes are available.

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 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.

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 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 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.

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).

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 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 (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 or Jersey eligible investor funds (JEIFs).

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 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, Jersey eligible investor funds (JEIFs) 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*.

Private placement funds are only available to professional investors and sophisticated investors (*Private Placement Guide*).

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, Jersey eligible investor funds (JEIFs) and listed funds, see *Question 23*.

Where the AIFM Directive is applicable, the usual disclosure and transparency requirements will also apply.

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*.

For private placement funds, investors must be provided with:

- A copy of its annual accounts.
- An auditor's report within the time period prescribed in the fund's private placement memorandum.

- Constitutive documents or otherwise as required by statute or regulation.

A private placement fund must deliver to the Commission a copy of the accounts of the fund where the auditor's report on the accounts is qualified. Details of qualification must be brought to the Commission's attention immediately.

The Commission must be notified of any material changes to the information submitted in connection with private placement funds as soon as possible (and within 28 days of the change). If the proposed change does not meet the criteria set out in the Private Placement Guide, the prior written consent of the Commission would be required.

Where the AIFM Directive is applicable, the usual disclosure and transparency requirements will also apply.

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 (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*).

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. See *Question 1* for more details on the expert fund route in this context.

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.

HEDGE FUNDS

16. 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 17*). These regimes have become particularly attractive to European fund managers and promoters.

Jersey has introduced a new, light-touch regime that will enable Jersey regulated fund managers to service qualifying segregate managed accounts without further regulation while continuing to benefit from Jersey's 0% corporate tax rate. Additionally, a new policy has been introduced to enable LLPs to act as fund managers. Both of these initiatives are designed to appeal to hedge fund managers.

Regulatory framework and bodies

17. 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, Jersey eligible investor funds (JEIFs) and listed funds.
- Very private schemes.
- Other private and public funds.

The AIFM Directive overlay is applicable to hedge funds in the same way as retail funds if funds or managers are subject to it.

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
 - CISE.

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, JEIFs and listed funds

The same laws and regulations for retail funds apply. The three-day approval process applies to each 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.

Private placement funds

The rules of the Private Placement Guide apply to private placement funds.

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.

18. 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, Jersey eligible investor funds (JEIFs) 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.
- **Private placement funds.** A form of investor risk warning is provided in the Private Placement Guide.
- **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, JEIFs 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; and
 - demonstration of the existence of adequate risk management systems.
- In the case of SPV managers for expert funds or JEIFs which are supported by a regulated administrator, an expedited approach can be adopted. Codes of Practice for Certified Funds have been adopted (see Question 28).
- **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

19. Who can market hedge funds?

See Question 4.

20. 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; and
 - 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.

Jersey eligible investor funds (JEIFs)

There are 11 categories of "eligible investor", including:

- Those investing or committing a minimum of US\$1 million or currency equivalent.
- Those whose ordinary business or professional activity includes dealing in, managing, underwriting or giving advice on investments (or an employee, director, consultant or shareholder of such a person).
- Individuals with property of a total market value of not less than US\$10 million or currency equivalent.

Private placement funds

Private placement funds must be established or managed in Jersey and offered to fewer than 50 investors falling within the category of either "sophisticated investors" or "professional investors" (including those investing a minimum of GB£250,000 or currency equivalent).

Very private schemes

There are no restrictions other than the maximum of 15 investors (see Question 17, *Very private schemes*).

Investment restrictions

21. 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

22. 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.

Listed funds, expert funds and Jersey eligible investor funds (JEIFs)

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). The position is the same for JEIFs.

Very private schemes

There are no restrictions.

Requirements

23. 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, listed funds and JEIFs

The requirements for offering documents are the same as for retail funds (except that JEIFs are exempt from the content requirements set out in the CFPO). They must:

- Contain all material information in relation to the fund.
- Otherwise comply with the disclosure requirements in the relevant guide.

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, JEIF 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.

Private placement funds

Offering documents must comply with the disclosure requirements set out in the Private Placement Guide. The Commission must be notified of any material changes to the information submitted in connection with a private placement fund as soon as possible (and

within 28 days of the change). If the proposed change does not meet the criteria set out in the Private Placement Guide, the prior written consent from the Commission would be required.

Very private schemes

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

24. 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, Jersey eligible investor funds (JEIFs) 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. This also applies to JEIFs under the JEIF 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, JEIFs 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*).

Private placement funds

The governing body of a Jersey domiciled fund must have:

- At least two Jersey resident directors with appropriate experience.
- An appointed administrator to provide general administration and/or registered office services and support the fund's anti-money laundering obligations. The administrator must be licensed by the Commission.

A non-Jersey fund must have either:

- At least two Jersey resident directors with appropriate experience on the board of the governing body.
- A Jersey company appointed as the fund's manager which has at least two Jersey resident directors with appropriate experience.

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

25. 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.

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 Jersey eligible investor funds (JEIFs) or 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 17, *Very private schemes*.

ONLINE RESOURCES

W www.jerseyfsc.org

Description. This is the website for the Jersey Financial Services Commission. It contains the relevant guidance notes and application forms.

Practical Law Contributor profiles



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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

- Advising Gravis Capital Partners on the launch of a new fund and the restructuring of their existing Jersey-funds.
- Advising Ahli United Bank (UK) PLC on the restructuring of AUB Central London Office Fund.
- Advising Alpha Real Capital LLP on their restructuring of an existing Irish fund into a new Jersey vehicle.
- Advising Appian Capital on the launch of Appian Natural Resources Fund.
- Advising Brevan Howard Capital Management LP on internal restructurings.
- Advising Hammerson Plc. on the sale of units in the Queensgate United Trust.
- Advising Kames Capital on AIFMD compliance and the establishment of a new fund.
- Advising Longbow Real Estate Capital on numerous debt investments in UK-situate real estate totalling over GB£100 million.
- Advising M&G Investments on its purchase of Two Rivers Unit Trust.
- Advising Morgan Stanley & Co International plc. on the establishment of a new Jersey expert fund and new sub-funds of TOPAS 2 (an existing Jersey expert fund).
- Advised SG Hambros on the launch of new sub-funds for SGH Collectives PCC.

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

Areas of practice. International funds and corporate work with a particular emphasis on private equity.

Recent transactions

- Advising Global Advisors on the launch of the world's first ever regulated Bitcoin investment Fund.
- Advising on the establishment of Kennedy Wilson Europe Real Estate plc and unprecedented capital raise of up to GB£1 billion through its initial public offering (IPO) on the LSE.
- Advised on the Jersey law aspects of one of last year's most competitive real estate acquisition and financing mandates : the GB £430 million purchase of three UK business parks in a joint venture between funds managed by Oaktree Capital Management, LP and Patrizia Immobilien AG.
- Advising Hastings Insurance Group on investment by Goldman Sachs private equity funds valuing the business at GB£700 million.
- Advised property company Kennedy Wilson Europe Real Estate plc (KWERE) on its acquisition of a corporate vehicle that owns the building which houses the Telegraph Media Group's London headquarters.

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Professional qualifications. Australia, Solicitor, 1993; England and Wales, Solicitor, 2005; Advocate of the Royal Court of Jersey, 2006

Areas of practice. Investment funds (including structuring and formation of investment funds and offshore funds).

Recent transactions

- Advising leading private equity firm Nordic Capital on the establishment of their new flagship fund, Nordic Capital Fund VIII, as a Jersey expert fund.
- Advised Capvis Equity IV, a Jersey 'expert fund', on its EUR600 million fund.
- Advising Mayfair Capital Investment Management on the establishment of Mayfair Capital Commercial Property Fund, a Jersey property unit trust structure for Jupiter's GB£4.7 billion Merlin Income and GB£1.6 billion Jupiter Merlin Balanced funds of funds.
- Advising Apex Fund Service (Jersey) Limited on the establishment of a fund services business in Jersey.
- Advising the Rockspring funds in relation to various real estate acquisitions, disposals and re-financings.