

Jersey Expert Funds

Last reviewed: August 2023

An Expert Fund is a fund which targets only Expert Investors (as defined by the JFSC – see below) and fulfils the other criteria of the Jersey Expert Fund Guide published by the JFSC. The Jersey Expert Fund Guide provides a streamlined authorisation process for Jersey collective investment funds targeting Expert Investors. In addition to reducing authorisation timescales, the Jersey Expert Fund Guide also relaxed a number of other policies and rules on the structure and running of an Expert Fund. The Expert Fund regime has proved very successful and a popular route for establishing funds in Jersey, for a broad range of asset classes, including private equity, property and hedge funds and other funds investing in alternative asset classes.

Following the implementation of the AIFMD in July 2013, regulations and codes apply in Jersey to AIFMs actively marketing funds in the EEA.

Please refer to the Glossary at the end of this guide for the definitions of various capitalised terms.

Key features of an Expert Fund

- An Expert Fund may only be offered to Expert Investors, on the basis of an offer document setting out all material information. Expert Investors are deemed to be able to evaluate the risks of investing in an Expert Fund and to bear the economic consequences should the investment fail, and are therefore also deemed to require less regulatory protection in relation to the manner in which the Expert Fund is structured.
- Regardless of the number of potential investors to whom the fund is offered, a Fund Certificate is required in relation to an Expert Fund.
- Expert Funds must comply with the Certified Funds Code which sets out a regulatory framework of fundamental principles and practical guidance for all Certified Funds.
- Each of the Jersey Fund Service Providers must be registered under the FS Law and comply with the FSB Code.
- An Expert Fund which will be marketed in the EEA and its Fund Service Providers must comply with the applicable sections of the AIF Code.
- An Expert Fund must have a Jersey Fund Service Provider which is able to certify compliance with the JFSC's requirements for Expert Funds.
- The investment manager should be appropriately qualified in accordance with published criteria (principally it must be established and regulated in an approved jurisdiction).
- An Expert Fund which is a unit trust or limited partnership must have a Jersey trustee/general partner.
- The fund company, general partner or trustee must have at least two Jersey-resident directors.
- Directors and certain other officers of corporate-structured Expert Funds and the Expert Fund's Fund Service Providers are required to seek confirmation that the JFSC has no objection to their appointment in relation to the Expert Fund by completing an application on the JFSC's myProfile system.

- Jersey tax-resident fund management companies (ie managers, investment managers, trustees (where there is no separate manager) and general partners (where there is no separate manager)) must satisfy the requirements of the Taxation (Companies - Economic Substance) (Jersey) Law 2019.
- An Expert Fund can be open or closed-ended and established using any of the common forms of investment vehicle. No investment or borrowing restrictions are set by the JFSC.
- An Expert Fund may be listed provided that certain criteria are met so that the holding of units in the fund is always restricted to Expert Investors.
- Transfers of interests should only be made to other Expert Investors.
- The requirements for custody arrangements are flexible, especially for closed-ended vehicles and for hedge funds. Every Expert Fund must have adequate arrangements for the safe custody of the property of the fund and, in the case of open-ended funds, the custodian should be Jersey based. However, in the case of a hedge fund, the need for a custodian will be waived provided a prime broker with a credit rating of A1/P1 is appointed.
- Flexibility is maintained, as the JFSC will discuss any variations from the requirements of the Jersey Expert Fund Guide on a case-by-case basis.
- An Expert Fund must be audited.

Investors in an Expert Fund

An Expert Fund may only be offered to Expert Investors. The term Expert Investor includes:

- an investor who makes an initial minimum investment of US\$100,000 (or equivalent); or
- a person or entity (or an employee thereof) whose ordinary business or professional activity includes acquiring, managing or giving advice on investments; or
- an individual with a net worth greater than US\$1,000,000 (or equivalent) (excluding principal residence); or
- an entity with assets available for investment of not less than US\$1,000,000 (or equivalent) or every member, partner or beneficiary of which is an Expert Investor; or
- a Fund Service Provider or an associate of a Fund Service Provider to the Expert Fund (or an employee or shareholder thereof).

A discretionary investment manager is an Expert Investor for the purposes of the Jersey Expert Fund Guide and may invest on behalf of non-expert investors provided that it ensures that an investment in the Expert Fund is suitable for the underlying investors.

Any application to include other types of carried interest investor within the definition of Expert Investor is likely to be treated sympathetically by the JFSC. This is intended to encourage investment by those involved in establishing and providing services to Expert Funds. We have seen a number of funds approved in which such carried interest vehicles participate.

There is no restriction on the number of Expert Investors, but each must acknowledge in writing a specific investment warning acknowledging their understanding that the fund is suitable only for Expert Investors.

Authorisation process for an Expert Fund

In order to establish an Expert Fund, a standard application form must be completed, signed on behalf of the Expert Fund and the relevant Jersey Fund Service Provider and filed with the JFSC, together with copies of the offer document, fees and a declaration certifying that the Expert Fund complies with the requirements of the Jersey Expert Fund Guide. The JFSC relies on the declaration in order to authorise the Expert Fund on an expedited basis.

The authorisation process will conclude with the issue of a Fund Certificate in relation to the Expert Fund and the registration under the FS Law of any Fund Service Providers not yet registered.

Fund Certificate

The Fund Certificate is granted to the fund itself if the fund is a company, to the general partner if the fund is a limited partnership or to the trustee if the fund is a unit trust. The majority of Fund Certificates have no conditions as conditions previously imposed on Expert Funds are now included within the Certified Funds Code.

Registration under the FS Law to carry on fund services business

Each Jersey Fund Service Provider of an Expert Fund needs to be registered under the FS Law to carry on fund services business.

All registered Fund Service Providers are required to comply with the FSB Code which consists of eight core principles together with detailed requirements in respect of each of these principles. However, Managed Entities acting in relation only to Expert funds, related Expert funds or materially equivalent funds are subject only to the core principles and a set of standard conditions attaching to their registration under the FS Law unless they have elected to comply with the FSB Code in full.

Once a person (other than a Managed Entity) is registered to provide fund services business of the relevant type, it does not need to apply for authorisation in relation to each new fund for which it intends to carry on the same type of fund services business.

Changes made to an Expert Fund do not require the prior approval of the JFSC provided the criteria in the Jersey Expert Fund Guide continue to be met.

AIF Regulations

In relation to Expert Funds that will be marketed in the EEA:

- there is no requirement to obtain a certificate pursuant to the AIF Regulations provided the JFSC is notified and gives its written permission for the Expert Fund to be marketed in the EEA; and
- its Fund Service Providers may seek an exemption from the requirement to register for AIFSB if AIFM functions are included within the classes of business on their FSB registration.

The Expert Fund must comply with the applicable sections of the AIF Code. These sections mirror the Transparency and Asset Stripping provisions of Chapters IV and V of the AIFMD.

Timescale for authorisation

The JFSC's published timescale for authorising an Expert Fund is three working days (subject to prior FSB approval); 10 working days for the FSB registration of a Managed Entity; and 30 working days for the FSB registration of any other unregistered Fund Service Providers.

These timescales are based on the JFSC receiving a fully completed application and satisfactory responses to enquiries.

Statutory fees

Application fees

A fee of £3,440 is payable on application for the Fund Certificate plus £3,440 in respect of each of the fund's Jersey Fund Service Providers.

Annual fees

Annual fees are payable in relation to a fund which holds a Fund Certificate. The amount depends on the total number of pools of assets in the fund at the time the fee is payable (this ranges from £5,680 (£2,255 in respect of a limited partnership) if there is only one pool of assets to £55,880 if there are 200 or more pools of assets).

Statutory fees are also payable by Jersey Fund Service Providers. A fee of £4,260 is payable for a Fund Service Provider's application for registration under the FS Law. Please note that as mentioned above, once a Fund Service Provider is registered, then if it is not a Managed Entity, it does not need to apply for authorisation in relation to each new fund for which it intends to carry on the same type of fund services business. The annual fees payable by a Fund Service Provider depend on the number of pools of assets in all the collective investment funds in relation to which it is a Fund Service Provider. This ranges from £7,080 to £66,890. A Fund Service Provider is required to pay the minimum annual fee of £7,080 even if the number of pools of assets in all the collective investment funds in relation to which it carries on fund services business is zero.

If the Fund Certificate is granted or the Fund Service Provider registered on a day after 1 July the annual fees are calculated pro rata for each complete month of the year to the following 1 July.

Offer document

The Jersey Expert Fund Guide prescribes basic information which must be contained in an Expert Fund's offer document. This includes all the information that investors would reasonably require for the purposes of making an informed judgement about whether to participate in the Expert Fund.

The requirements are not unduly burdensome and also benefit Expert Fund promoters in providing clear guidance as to the requirements for offer documents. In addition, all Expert Funds must comply with the CFPO and, if the Expert Fund will be marketed in the EEA, the disclosure requirements of the AIF Code.

Offer documents for Expert Funds need to include an investment warning in the approved form, and each investor must acknowledge in writing that he has received and accepted this warning.

Additional requirements in relation to sustainable investments (ie investments which contribute to either an environmental or social objective) were introduced on 15 July 2021. When an Expert Fund is marketed on the basis of investing in a sustainable investment, it must disclose all material information in relation to the sustainable investment strategy and objectives.

What if an expert investor fund does not meet the criteria?

We have experience in successfully negotiating variations from certain requirements of the Jersey Expert Fund Guide where the JFSC has been satisfied in respect of the appropriateness of the particular scheme.

Alternatively, the traditional regime for the authorisation of a public fund continues to exist for anyone wishing to establish a fund via that route. A separate Mourant guide on Public Funds is available.

A copy of the Jersey Expert Fund Guide is available at www.jerseyfsc.org.

Glossary

AIF an alternative investment fund as defined in the AIF Regulations.

AIF Code the Code of Practice for Alternative Investment Funds and AIFSB issued by the JFSC.

AIF Regulations the Alternative Investment Funds (Jersey) Regulations 2012.

AIFM a manager of one or more AIFs.

AIFMD the European Union's Alternative Investment Fund Managers Directive.

AIFSB a person carries on AIF services business if its regular business is managing one or more AIFs.

Certified Fund a fund in relation to which a Fund Certificate has been issued.

Certified Funds Code the Code of Practice for Certified Funds issued by the JFSC.

CFPO the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012.

CIF Law the Collective Investment Funds (Jersey) Law 1988.

EEA the European Economic Area.

FS Law the Financial Services (Jersey) Law 1998.

FSB Code the Code of Practice for Fund Services Business issued by the JFSC.

Fund Certificate a certificate issued by the JFSC pursuant to the CIF Law.

Fund Service Provider a person who carries on fund services business within the meaning of the FS Law, which would include any of the following:

- a manager, manager of a managed entity, administrator, registrar, investment manager, or investment adviser;

- a distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent, or repurchase agent;
- a trustee, custodian, or depositary; or
- a member (except a limited partner) of a partnership, including a partnership constituted under the law of a country outside Jersey.

JFSC the Jersey Financial Services Commission.

Managed Entity broadly, a Fund Service Provider who is managed or administered by a third party service provider in Jersey under the supervision of a board (usually of non-executive directors).

Contacts

For further information in relation to this subject matter, please contact one of our industry leading experts. A full list of our senior funds team can be found on our [website](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](#). © 2023 MOURANT OZANNES ALL RIGHTS RESERVED