

Setting up an alternative investment fund in Jersey

By *Oliver.bradley*

Created 06/07/2010 - 10:03

Jersey

The Jersey financial services regulator, the Jersey Financial Services Commission (the "JFSC"), uses its regulatory powers to protect investors and to maintain the Island's reputation. Jersey has steadily established a sophisticated infrastructure to foster the establishment of investment funds both at a regulatory and professional level.

The criteria for granting approval and the manner in which the fund will be regulated largely depends on whether the fund is private or public and whether it is open or closed ended. In particular, a light regulatory touch is applied in the case of funds created for the benefit of sophisticated or institutional investors or where the fund has a high minimum level of investment, provided that the appropriate risk warnings are included in the offer document.

Private funds are authorised by the issue of a consent under the Control of Borrowing (Jersey) Order 1958 and are regulated by the conditions on such consent.

Publicly offered investment funds are regulated under the Collective Investment Funds (Jersey) Law 1988, in the case of "recognized" funds (offered to retail investors in the UK) pursuant to a detailed series of statutory rules, and in the case of all other publicly offered funds, through the JFSC's regulatory policies.

There is a streamlined process for certain types of funds (such as Expert, Listed and Unregulated Funds) which are constructed within specified frameworks and offered to sophisticated investors.

Most alternative investment funds domiciled in Jersey are set up as Expert Funds and therefore the remainder of this article focuses on them.

Expert Fund Guide

The JFSC's policy on Expert Funds is contained in its Expert Fund Guide. Although the Guide is reasonably comprehensive, derogations from certain requirements of the Guide may be granted where the JFSC considers that that would be appropriate.

Investor restrictions

An Expert Fund may only be offered to Expert Investors, which 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 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. Transfers of interests may only be made to other Expert Investors.

Investment warning

Each investor must acknowledge, in writing, receipt and acceptance of a prescribed investment warning in the offer document, and this typically forms part of the fund's standard subscription documentation.

Listing

Expert Funds may be listed if the holding of interests in the fund is always restricted to Expert Investors.

Investment manager requirements

There are no requirements as to promoters, but the investment manager must be qualified in accordance with published criteria and sign a statement confirming its regulatory position and stature (it must be established in an OECD member state or another jurisdiction with which the JFSC has entered into a memorandum of understanding). The statement must be counter-signed by a Jersey fund service provider (typically the administrator of the fund) confirming that it has conducted its own general due diligence on the investment manager and has no reason to believe the investment manager's statement to be incorrect. The JFSC has demonstrated a willingness to approve applications in respect of funds whose investment manager or adviser is unable to comply fully with the criteria if it can be satisfied as to the ability of the manager to fulfil its functions in relation to the fund.

Service provider conditions

Each Jersey fund service provider to an Expert Fund (including, in the case of a limited partnership fund, the general partner) must be registered under the Financial Services (Jersey) Law 1998 to carry on fund services business. All registered fund service providers are required to comply with codes of practice for the conduct of fund services business.

One of the Jersey fund service providers (typically the administrator) must take responsibility to the JFSC to monitor the investment manager's compliance with investment and borrowing restrictions (if any) and to maintain adequate records in Jersey.

Director/general partner/trustee requirements

The fund company, general partner or trustee (as the case may be) must have at least two Jersey-resident directors. An Expert Fund which is a unit trust or limited partnership must have a Jersey trustee/general partner.

Structural/investment/leverage restrictions

An Expert Fund can be open or closed ended, can be established using any of the common forms of investment vehicle (i.e. corporate, limited partnership or unit trust) and no investment or borrowing restrictions are set by the JFSC. If the fund is permitted to borrow money in excess of 200% of its NAV, the JFSC will require to be provided with detail on the manner in which the risk posed will be managed.

Valuation rules

No particular valuation methodologies are prescribed by the JFSC.

Custody/prime broker requirements

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 Jersey custodian will be waived provided a prime broker with a credit rating of A1/P1 is appointed.

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 the offer document, fees and a declaration certifying that the Expert Fund complies with the requirements of the Expert Fund Guide. The process concludes with the issue by the JFSC of a fund certificate in relation to the Expert Fund.

Conditions relating to the Expert Fund will be attached to the Fund Certificate which will be 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.

Timescale for authorisation

The JFSC's published timescale for authorising an Expert Fund is 72 hours. This timescale is based on the JFSC receiving a fully completed application and satisfactory responses to enquiries, and on the JFSC having already given approval to the proposed directors/principals of the fund and of the Jersey regulated service providers.

Statutory fees

A fee of £1,000 is payable on application for the fund certificate plus £1,000 in respect of each of the fund's Jersey fund service providers.

The amount of annual fees depends on the total number of pools of assets (e.g. sub-funds) in the fund. This ranges from £2,000 if there is only one pool of assets to £20,000 if there are 200 or more pools of assets.

Statutory fees are also payable by the Jersey fund service providers.

Prospectus/offering document requirements

The 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, an open ended Expert Fund structured as a company or a unit trust and a closed ended Expert Fund structured as a company may be required to comply with certain additional statutory content requirements, but these are also not onerous.

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

Ongoing regulation requirements

Changes made to an Expert Fund (other than changes to service providers) do not require the prior approval of the JFSC provided the criteria in the Expert Fund Guide continue to be met.

Taxation

The Expert Fund will typically be tax neutral in Jersey. However, specific rules apply to Jersey resident investors. The investment manager will typically not be based in Jersey and will therefore

not be subject to taxation there. However, for managers of Expert Funds that are based in Jersey, a 0% rate of income tax for companies may be applicable.

By Ed Devenport, Partner, Mourant Ozannes

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[Please click here to access the full regulatory and structuring details for Jersey and to read the full guide](#) [1]

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