

## JERSEY EXPERT FUNDS

### OCORIAN BRIEFING

July 2012

This briefing explains the regulatory classification for collective investment funds established in Jersey qualifying as "expert funds". The expert fund classification provides a flexible "fast track" procedure for the establishment of investment funds in Jersey which is aimed at sophisticated, institutional and high-net-worth investors. Such funds benefit from a lighter regulatory touch and are capable of being established in a matter of days as a result of a streamlined, authorisation process.

#### Key features

Whilst the detailed provisions of the expert fund classification are set out below, the key features of that classification are as follows:

- **Relaxed criteria:** the criteria for qualification as an "expert investor", being the category of persons who can invest in an expert fund, are relatively simple to meet. For example, a fund with a minimum investment requirement of US\$100,000 (or currency equivalent) would qualify.
- **"Fast track" authorisation process:** expert funds can "self-certify" compliance with the Jersey Financial Services Commission's ("JFSC") policy requirements (rather than being subjected to detailed scrutiny) and can therefore be established in a matter of days.
- **Promoter policy relaxed:** the criteria as to who may act as investment manager to an expert fund are easier to satisfy than the "promoter policy" which would apply to funds offered to the general public. An investment manager which comprises two or three individuals with relevant experience and based in an OECD member state (or any other state or jurisdiction with which the JFSC has entered into a Memorandum of Understanding (or equivalent) on investment business and collective investment funds) will be acceptable.
- **Risk warning notice:** investors must sign an acknowledgement of receipt of a prescribed investment warning in order for the fund to qualify as an expert fund.
- **Codes of practice:** new codes of practice for certified funds (the "Certified Funds Codes") were introduced by the JFSC in April 2012 and apply to all unclassified funds (that is, all funds which have been issued with a certificate ("CIF Certificate") pursuant to the Collective Investment Funds (Jersey) Law 1988 (the "CIF Law"), including expert funds. The JFSC has also issued codes of practice governing the provision of fund services business in Jersey (the "FSB Codes") which apply to Jersey-based fund service providers of expert funds to varying degrees.
- **Limited need for Jersey based functionaries:** the minimum requirements are for a Jersey-based manager/administrator and two Jersey resident directors. There may also need to be a Jersey-based custodian for open-ended funds.
- **Listings:** expert funds may be listed on a stock exchange, provided the exchange permits restrictions ensuring that only expert investors can invest in the fund.

## Background

Recent years have seen the establishment in Jersey of increasing numbers of specialised investment funds and funds aimed at sophisticated, institutional and high-net-worth investors. The JFSC appreciates that investment managers/promoters wish to establish funds quickly, and with a great degree of flexibility as to the fund's investment parameters. There is also an awareness that recent years have seen the emergence of a number of smaller and niche investment management firms. It is also clear that there is appetite for less closely-regulated funds from expert investors, who are prepared to assess risks for themselves and to bear the economic consequences of their investment.

The expert fund classification reflects the market environment. It provides for special treatment of "expert funds", allowing funds to be established within a matter of days on the basis of self-certification of compliance with the JFSC's guidelines. Rather than reviewing the structure and documentation relating to each fund when established, the regime also focuses on licensing of the Jersey service providers to a fund and their compliance with prescribed guidelines. Investor protection is maintained by a requirement for full disclosure of material facts and for each investor to sign an acknowledgement of receipt of a prescribed form of investment warning. The expert fund classification thus meets the goals of flexibility and speed of establishment whilst maintaining an appropriate level of regulatory overview.

## The fund

### Qualifying as an expert fund

In order to qualify as an expert fund, all investors in the fund must qualify as "expert investors" and must sign an investment warning prior to investing in the fund. There is no upper or lower limit on the number of investors.

An expert investor is defined in the expert fund guide as:

- a) a person, partnership or other unincorporated association or body corporate, whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or the giving of advice on investments; or
- b) an individual who has a net worth, or joint net worth with that person's spouse, greater than

- US\$1 million (or currency equivalent) excluding that person's principal place of residence; or
- c) a company, partnership, trust or other association of persons which has (or which is a wholly owned subsidiary of a body corporate which has) assets available for investment of not less than US\$1 million (or currency equivalent) or every member, partner or beneficiary of which falls within the definition of expert investor; or
  - d) a functionary to the expert fund or an associate of a functionary to the expert fund; or
  - e) a person who is an employee, director, consultant or shareholder of or to a functionary of the expert fund or an associate of a service provider to the expert fund, who is acquiring an investment in the expert fund as part of his remuneration or an incentive arrangement or by way of co-investment; or
  - f) any employee, director, partner or consultant to or of any person referred to in paragraph (a) above; or
  - g) a trustee of a family trust settled by or for the benefit of one or more persons referred to in paragraphs (e) or (f) above; or
  - h) a trustee of an employment benefit or executive incentive trust established for the benefit of persons referred to in paragraphs (e) or (f) above or their dependants; or
  - i) a government, local authority, public authority or supra-national body in Jersey or elsewhere; or
  - j) an investor who makes a minimum initial investment or commitment of US\$100,000 (or currency equivalent) in the expert fund, whether through the initial offering or by any subsequent acquisition.

In addition, the JFSC believes that those involved in establishing and providing services to an expert fund should be encouraged to invest in the fund and, accordingly, is prepared to be flexible in extending the definition of expert investor in respect of any other types of "carried interest investors".

With reference to paragraph (a), the JFSC expects any discretionary investment manager acquiring an interest in an expert fund, directly or indirectly, for or on behalf of non-expert investors, to be satisfied

that the investment is suitable for the underlying investors, and that the underlying investors are able to bear the economic consequences of investment in the fund, including the possibility of the loss of the entire investment.

### Legal structure and control

Expert funds can take any form recognised under the law of Jersey: a company, limited partnership or unit trust. Such funds may be open- or closed-ended.

If the expert fund is established as a company in Jersey, at least two Jersey-resident directors with appropriate experience must be appointed to the board. If the expert fund is established as a limited partnership, a Jersey entity with at least two Jersey-resident directors with appropriate experience should act as the general partner. If the expert fund is established as a unit trust, a Jersey entity with at least two Jersey-resident directors with appropriate experience should act as the trustee.

### Codes of practice

All expert funds are required to comply with the Certified Funds Codes as well as any bespoke conditions attaching to the funds' CIF Certificate.

### The name of the fund

The name of the expert fund must not be undesirable or misleading. If the name of the expert fund indicates a particular objective, geographic region or market, this should be reflected in its investment policy.

### Investment restrictions

Full details of the investment strategy of the expert fund must be set out in all offering documents. However, there are no mandatory investment restrictions applicable to expert funds.

### Borrowing/gearing

There are no restrictions imposed by the JFSC as to levels of borrowing or gearing which may be adopted by an expert fund, but the fund's approach to borrowing and gearing must be explained in the offering document. In addition, if the permitted borrowing is to be above 200% of net assets, details of how the attendant risk is to be managed must be set out in the application form for the expert fund and the JFSC reserves the right to undertake additional scrutiny before registering the fund.

### Audit

Annual accounts of an expert fund must be prepared and audited.

### Marketing restrictions

There are no limitations imposed by Jersey law on the method of marketing or the number of persons to whom an expert fund can be marketed. Accordingly, an expert fund may be a suitable vehicle for investment schemes to be made available only to a small group of associated investors as well as for more widely marketed funds.

### The service providers

#### The investment manager

Persons wishing to establish a fund in Jersey must meet certain criteria. These criteria have for some time been relaxed for more privately-held funds. In the case of expert funds, the JFSC has also relaxed the criteria for the promoters/investment managers of such funds. The investment manager will usually be based outside Jersey.

The criteria are that an investment manager of an expert fund should:

- have relevant experience;
- be solvent;
- be without criminal convictions relating to financial services business or involving fraud or dishonesty, and have had no regulatory sanctions imposed on it;
- be established in an OECD member state or any other state or jurisdiction with which the JFSC has entered into a Memorandum of Understanding (or equivalent) on investment business and collective investment funds and either be regulated in that state or jurisdiction or, when not so regulated, be approved by the JFSC to act as an investment manager; and
- satisfy the JFSC's general principals of corporate governance in relation to the span of control over a business; this will require the investment manager to have two or three appropriately skilled and experienced individuals actively involved in the day-to-day management of the business.

Investment managers who do not meet all of these criteria may approach the JFSC on a case by case basis for prior clearance to act as investment manager, with the JFSC adopting a flexible approach commensurate with offering adequate protection to the expert fund's investors and the Island's reputation.

#### Distributors (where applicable)

Where an expert fund has a distributor which is the driving force behind the expert fund such that either the fund would not go ahead without the distributor and/or a majority of investors are introduced to the fund by that distributor, then it must meet the same criteria as the investment manager (save for relevant experience of investment management).

### Jersey-based service providers

Any Jersey entity acting as a service provider to an expert fund is subject to the FSB Codes to varying degrees: "real presence" entities are subject to the full FSB Codes, whereas "managed" entities acting exclusively for expert funds or materially equivalent expert funds are subject only to the core principles of the FSB Codes (unless they elect to follow the FSB Codes in full).

### Management/administration

Every expert fund must appoint a manager or administrator having staff and a physical presence in Jersey which is run subject to and in accordance with the FSB Codes. Where the expert fund is open-ended, the duties of such a Jersey-based service provider will ordinarily include exercising reasonable care to ensure that any valuation calculations made in respect of the expert fund are carried out in accordance with the terms of the fund's prospectus/offering document. However, functions, such as valuations and accounting, may be delegated by the manager/ administrator to parties outside Jersey, subject to compliance with the JFSC's policy on outsourcing and delegation.

The Jersey-based manager/administrator must also have in place procedures to ensure that the investment manager manages the fund in accordance with its prospectus/ offering document. These must include taking reasonable steps to ensure that the investment and borrowing restrictions of the expert fund (if any) are adhered to and ensuring that any concerns relating to the running of the fund are brought promptly to the attention of the entity which appointed the investment manager, so that appropriate action can be taken.

The Jersey-based service provider must also ensure that it holds in Jersey full records relating to the fund and its management or is able to obtain such records on demand from the investment manager.

Ocorian can provide administration services and act as the Jersey-based service provider for expert funds and can provide or procure the services of Jersey-based directors for such funds.

### Custody arrangements

As part of the application process for expert funds, the Jersey-based service provider is required to confirm that adequate safe custody or prime brokerage arrangements are in place with respect to the fund assets. Where the expert fund is open-ended, such custody arrangements will normally need to be provided by a custodian/trustee having a staff and a physical presence in Jersey and which operates in accordance with the FSB Codes. This function may sometimes be delegated on

application to the JFSC and, in particular, in the case of hedge funds, it is accepted that a prime broker outside Jersey may be appointed with a minimum credit rating of A1/P1 instead of a Jersey-based custodian.

### The offering document

An overriding principle of the expert funds regime is that any prospectus or other offering document sets out clearly and fully all material information that a prospective investor would reasonably require or expect to be brought to their attention in respect of the fund for the purposes of making an informed judgment about the merits of participating in the fund and the risks accepted by participating.

For example, information should be provided on:

- The structure of the fund and details of the functionaries;
- the investment objectives and investment management strategies, and any investment or borrowing restrictions;
- risks associated with the fund, including any conflicts of interests, the ability to make changes to the fund, any risks of "contagion" between sub-funds, etc.;
- details of the dealing basis and the method for the calculation of the value of the fund or units therein;
- details of fees and charges; and
- details of safe custody arrangements.

A statement in which the directors/general partner/manager/trustee accept(s) responsibility for the content of the offering document must also be included in the offering document.

In addition, the offering document must contain a prominent investment warning in a prescribed form explaining that the fund is only suitable for expert investors who understand and accept the nature of the fund and the risks associated with investing in the fund. Each investor must sign an acknowledgement that he or she has received and accepted this investment warning.

### The authorisation process: self certification

In order to establish an expert fund, an application form, completed by the Jersey-based service provider and countersigned by the directors of the fund (or the general partner of a limited partnership or the manager or trustee of a unit trust) must be lodged with the JFSC. The latest draft of the offering document and other specified documentation must also accompany the application. Provided the application form confirms that the fund meets the JFSC's published guidelines for expert funds (or alternatively confirms that any derogation from the guidelines has been previously agreed with the JFSC), all necessary consents and permits will be

issued on an expedited basis in reliance upon the application form.

Thus, the Jersey-based service provider itself certifies that the fund qualifies as an expert fund, and the JFSC does not take time scrutinising any of the fund documentation prior to approving the fund. Accordingly, the authorisation process normally takes only a matter of days.

### **Flexibility**

Whilst the JFSC has for many years been flexible in its approach to the establishment of closely-held investment funds, the expert fund classification extends flexibility to expert funds that are more widely held and provides clarity as to the criteria for approval. Where there are difficulties in meeting any of the criteria relating to expert funds, the JFSC has stated its intention to rely on the primary safeguard of requiring full disclosure of all material facts and risks, and to consider any applications for derogation from the published guidelines pragmatically on a case by case basis. At the same time, the JFSC has confirmed that it is generally committed to reducing timescales for authorisation.

Accordingly, the expert fund classification offers speed of establishment, flexibility and a much lighter regulatory touch to those wishing to establish funds targeted at sophisticated investors.

### **Alternative arrangements**

Although there are no Jersey-imposed marketing restrictions on an expert fund, which is classified as a collective investment fund under Jersey law, in certain circumstances it may still be appropriate that a private investment scheme based in Jersey is not structured as a fund or an expert fund at all. Such investment schemes have always been permitted under Jersey law, subject to the consent of the JFSC being granted, pursuant to the Control of Borrowing (Jersey) Order 1958. Such private investment schemes, which are not funds, will fall outside the scope of the expert fund regime, but are still acceptable on application to the JFSC.

## KEY CONTACTS

---

### JERSEY



**RICHARD HANSFORD**  
**Associate Director**  
T +44 (0)1534 507242  
E richard.hansford@ocorian.com

### DISCLAIMER AND REGULATORY

The content of this document (including any opinion expressed) is intended for general information purposes only and it does not constitute and should not be interpreted as an offer, an invitation to contract or legal or any other form of professional advice and nor should it be used or relied upon as such. Unless expressly stated otherwise, information is not intended to be comprehensive and is only current at the time of initial publication or, if this document is dated, as at that date and Ocorian gives no warranty as to the adequacy, accuracy or completeness of any information. Should you require legal or other professional advice, it is recommended that you contact a suitably-qualified lawyer or other relevant professional. Neither Ocorian Limited nor any of its subsidiaries or affiliates from time to time accepts any liability or responsibility whatsoever for any loss that may arise from the use by any person of this document or its content.

Ocorian Limited is regulated by the Jersey Financial Services Commission. Ocorian Fund Services (Jersey) Limited is regulated by the Jersey Financial Services Commission. Ocorian (Luxembourg) S.à r.l is authorised to conduct business by the Ministère des Classes moyennes. Ocorian (UK) Limited is authorised and regulated by the Financial Conduct Authority of the United Kingdom. Ocorian (Mauritius) Limited is regulated by the Financial Services Commission Mauritius. Singapore Trust Company Pte Ltd is regulated by the Monetary Authority of Singapore. Ocorian (Guernsey) Limited (registered Guernsey 45342) is licensed and registered by the Guernsey Financial Services Commission under the Regulation of Fiduciaries, Administration Business and Company Directors, etc. (Bailiwick of Guernsey) Law 2000. Ocorian (Ireland) Limited is an authorised trust or company service provider in accordance with Section 89(6) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 of Ireland.