

# Expert Funds

## Introduction

In recent years, the financial world has seen the emergence of small, specialised collective investment vehicles. The investors in this new type of vehicle are usually sophisticated, high-net worth or institutional investors. Other jurisdictions have adopted legislation and policy in order to provide for these new investors. Following consultation between the Jersey Financial Services Commission (the “Commission”) and industry in Jersey, the Commission introduced the Expert Fund regime in February 2004.

## What is an Expert Fund?

An Expert Fund is a collective investment fund that falls within Article 2 of the Collective Investment Funds (Jersey) Law 1988 (the “Law”), is established in Jersey and in which only Expert Investors (as defined below) can invest.

Expert Funds are aimed at sophisticated, high net worth, professional and institutional investors.

## Who is an Expert Investor?

An Expert Investor is:

1. a professional or institutional investor; or
2. an investor with a net worth, or joint net worth with that person’s spouse above \$1,000,000 (excluding the principal place of residence); or
3. an investor making a minimum investment of \$100,000.

An Expert Investor is deemed capable of evaluating the financial risks of investing in the Expert Fund and bearing the economic consequences of such investment including any possibility of the total loss of his investment, therefore requiring less regulatory protection.

## Structure of the Expert Fund

- May take any form recognised under Jersey law, including but not limited to companies, limited partnerships and unit trusts.
- May be an open-ended fund or a closed-ended fund (closed-ended funds are less regulated by the Commission).
- If the Expert Fund is established as a fund company, a limited partnership or a unit trust, a Jersey entity with at least two Jersey resident directors with appropriate experience should be appointed to the board, act as the general partner or act as the trustee, as relevant.
- An Expert Fund shall appoint an administrator, or a manager and/or in relation to a closed fund that is a unit trust, a trustee with at least two Jersey resident directors with staff and a presence in the Island.

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- An investment manager or distributor may be appointed to the Expert Fund but must be monitored by the regulated Jersey company, general partner or trustee which is subject to the standards laid down by the Jersey regulatory authorities. It is worth noting that there is scope to outsource the performance of the functions of the Jersey functionary outside the Island provided certain guidelines are followed.
- The fund must appoint an auditor and annual audited accounts must be prepared.
- Safe custody arrangements must be in place although there is no requirement for these to be carried out by an independent Jersey custodian (other than for an open-ended fund).

#### **Establishment and Regulatory Process**

In order to establish an Expert Fund, an application form must be completed by the Jersey regulated administrator, trustee or manager and countersigned by the directors of the fund or the general partner of the limited partnership or the manager or trustee of the unit trust. In addition, each functionary to the Expert Fund must complete a permit application form to obtain the consent of the Commission to the carrying out of the specific function of the applicant, e.g. custodial services, administrative services, investment management services.

Expert Funds benefit from significantly less regulation and can therefore be established in a matter of two to three days. The Commission largely depends on a Jersey regulated provider to certify that the Fund complies with guidelines. The process is as follows:

- The administrator/manager completes and signs an application form setting out the main features of the expert fund and confirming that the fund meets the Commission's requirements for Expert Funds. The application is lodged with the Commission together with offering/constitutive documents.
- The Commission reviews the application to confirm that it has been completed properly, but will not carry out a regulatory review of the Expert Fund, nor will it review the fund documentation unless in exceptional circumstances.
- If the fund satisfies the Commission's criteria, permits and consents are issued on the basis of the application.

As part of the application, the investment manager must confirm to the Commission that it satisfies certain criteria including but not limited to factors such as relevant experience, solvency and having had no relevant disciplinary sanctions imposed and no relevant criminal convictions. The administrator, manager or trustee must counter-sign such confirmation, stating that it has carried out its own general due diligence against the investment manager and has no reason to believe that the statement of the investment manager is incorrect.

Each Expert Fund must put in place adequate custody arrangements to safeguard the assets of the fund. Open-ended funds must appoint a Jersey custodian.

The promoter of an Expert Fund is not subject to any regulatory review/approval.

### **Benefits of an Expert Fund**

- The authorisation process is extremely streamlined, taking only two to three days.
- Emphasis is on adequate disclosure of risks rather than elimination of such risks.
- Movement towards self-regulation/self-certification as each expert fund structure is required to have a Jersey based monitoring functionary whose duties include monitoring the actions of the investment manager.
- There are no investment or borrowing restrictions.
- Offers a sophisticated approach to asset selection.
- There is no limit on the number of investors.
- Aimed at investor protection.
- Shares in a closed-ended Expert Fund may be listed.
- Funds structured as limited partnerships, unit trusts or companies may be converted to Expert Funds (e.g. a private unit trust (which can only have a maximum of 15 investor unitholders) can be converted to an Expert Fund to increase the amount of unitholders).

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## Funds Services

This briefing is intended as a general introduction to Jersey Expert Funds as at April 2006. It should not be taken as detailed advice. You should not act or refrain from acting on the basis of this general outline without taking professional advice on the specific facts of your case.

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