



JERSEY FINANCIAL SERVICES COMMISSION

CLASSIFICATION GUIDE

NON-JERSEY DOMICILED FUND GUIDE

The purpose of this Guide is to provide guidance to persons wishing to become Functionaries of Non-Jersey domiciled Funds. If the Non-Jersey domiciled Fund does not meet the requirements set out in this Guide, derogations and approval may be sought from the Commission on a case-by-case basis.

In all cases, applications for necessary Permits and Consents should be accompanied by a completed application form, a copy of which is set out at Appendix 1 to this Guide.

SECTION 1

INTRODUCTION

- 1.1 Defined terms shall have the meanings set out in Section 3. Where there is any conflict between these definitions and those contained in the Law the latter shall prevail.
- 1.2 The purpose of this Guide is to provide guidance to persons wishing to become Functionaries of Non-Jersey domiciled Funds.
- 1.3 All applications for Consents and Permits to become Functionaries of Non-Jersey domiciled Funds should be made by submitting to the Commission a completed Application Form, together with copies of all necessary supporting documentation.
- 1.4 If a Non-Jersey domiciled Fund meets the criteria set out in paragraphs 2.1 or 2.2 of this Guide, or meets the criteria set out in paragraph 2.1 save in respect of derogations that have previously been agreed by an officer of the Commission, only sections 1 and 2 of the Application Form should be completed. In such cases, the Commission will take steps to issue the necessary Consents and Permits using a streamlined authorisation process.
- 1.5 Under the streamlined authorisation process, the Commission will issue Consents and Permits to the applicant on the basis of information set out in the Application Form.
- 1.6 In all other circumstances sections 1, 2 and 3 of the Application Form should be completed. Consents and Permits will be issued, if appropriate, following a review of the Offer Document and/or any other document that may be requested.
- 1.7 In all cases, the Commission may request further information in respect of any application to become a Functionary of a Non-Jersey domiciled Fund.
- 1.8 If responsibility for the management of a Non-Jersey domiciled Fund is to be assumed by a Jersey based entity, the Commission will treat the Fund for authorisation purposes as if it were a Fund established in Jersey.
In such cases, applicants should complete part 4 of the Application Form and sign the additional declaration for managers of a Non-Jersey domiciled Fund at the end of the Application Form.
- 1.9 All material changes to information provided to the Commission in connection with a Non-Jersey domiciled Fund should be notified to the Commission as soon as possible and in any event within 28 days of such change taking place.
- 1.10 Any change to a Non-Jersey domiciled Fund that would not meet the criteria set out in this Guide or that would breach any Permit condition applicable to that Non-Jersey domiciled Fund will require the prior consent of an officer of the Commission.

- 1.11 This Guide is aimed primarily at providing guidance for persons already holding Permits who wish to obtain additional Permits to be Functionaries of Non-Jersey domiciled Funds. If a person who does not already hold a Permit wishes to become a Functionary of a Non-Jersey domiciled Fund, the Securities Division should be approached for guidance prior to making a formal application. If the proposed new Functionary would not have staff or premises in Jersey but would be managed by a Functionary that already holds Permits, provided the other requirements set out in this Guide are met, the Securities Division would ordinarily expect to issue the necessary Consents and Permits on an expedited basis.
- 1.12 It is no longer a requirement for a Non-Jersey domiciled Fund company to hold a Permit provided it does not have an Established Place of Business in Jersey. This applies notwithstanding that the Fund has Jersey resident directors or that the board of directors of the Fund company meets in the Island.

SECTION 2

THE AUTHORISATION PROCESS

2.1 Non-Jersey domiciled Funds materially equivalent to Jersey Expert Funds

2.1.1 A person holding a current Permit as a Functionary may use the streamlined authorisation process when applying for Consents and Permits to be a Functionary of the same description of a Non-Jersey domiciled Fund that is materially equivalent to a Jersey Expert Fund.

2.1.2 Such a person must take steps to reasonably satisfy itself that a Non-Jersey domiciled Fund is materially equivalent to a Jersey Expert Fund. Particular weight should be attached to the following requirements:

2.1.2.1 The Fund must describe itself as only being suitable for a specific class of investors. This class may be described as expert, experienced, institutional, sophisticated or in some other way, but the Fund must clearly not be aimed at the retail investor.

2.1.2.2 The Fund must impose a minimum initial investment requirement of at least US\$100,000 (or currency equivalent) in the Fund. This requirement need not apply to investors who fall within classes defined on the basis of substantial net worth, professional knowledge, a relationship between the investor and either the Fund or any entity appointed to be a Functionary of the Fund, or of carried interest arrangements.

2.1.2.3 The Offer Document must contain a clear investment warning. The exact nature of the warning is not prescribed, but the warning must indicate that the Fund is not suitable for all investors, be commensurate to the risks involved in investing in the Fund and sufficient to give investors a true understanding of the total potential losses that may occur.

2.1.2.4 The Offer Document must contain all the material information that investors would reasonably require and reasonably expect to have drawn to their attention for the purposes of making an informed judgement about the merits of participating in the Fund.

2.1.2.5 The Fund must produce independently audited accounts on at least an annual basis that are made available to all investors in the Fund.

2.1.3 If the Non-Jersey domiciled Fund satisfies the requirements set out in 2.1.2.1 to 2.1.2.5 above, it will be deemed materially equivalent to a Jersey Expert Fund.

2.1.4 In addition to satisfying itself that the Non-Jersey domiciled Fund is materially equivalent to a Jersey Expert Fund, the applicant must take reasonable steps¹ to

¹ Reasonable steps may include the applicant obtaining confirmation in writing from the Investment Manager to the Commission that it satisfies the requirements set out in 2.1.4, and providing

satisfy itself that the Investment Manager (and, in the case of 2.1.4.1 and 2.1.4.2 below, each Principal Person of the Investment Manager):

2.1.4.1 has had no disciplinary sanctions imposed upon it by any supervisory authority in the previous five years;

2.1.4.2 has no convictions for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty or be the parent, subsidiary or an associate company of any company which has such a conviction;

2.1.4.3 is able to pay its debts as they fall due;

2.1.4.4 is either:

2.1.4.4.1 regulated in an OECD member state or any other state or jurisdiction with which the Commission has entered into a Memorandum of Understanding (or equivalent) on investment business and collective investment funds²; or

2.1.4.4.2 granted approval to act in relation to the Non-Jersey domiciled Fund by the Commission, noting that if the Investment Manager is not regulated because the activity that it undertakes is not a regulated activity in its home state, provided the other criteria set out in 2.1.4 are met, such approval will ordinarily be granted on an expedited basis;

2.1.4.5 possesses relevant experience in relation to managing or advising on investors' funds using similar investment strategies to those to be adopted by the Fund; and

2.1.4.6 satisfies the Commission's "span of control" requirements. Essentially, at least two individuals must be actively involved in the management of an Investment Manager that cannot handle client monies and at least three individuals must be actively involved in the management of an Investment Manager that can handle client monies.

Note: If a distributor of a Non-Jersey domiciled Fund that is materially equivalent to a Jersey Expert Fund is not the Investment Manager or one of its associates and it falls within one of the following definitions, the provisions of paragraph 2.1.4 (with the exception of 2.1.4.5) shall apply to the distributor as if it were an Investment Manager:

- *The distributor is the driving force behind the Fund, such that, if the*

documentary evidence in relation to the requirement at 2.1.4.4. In such circumstances the applicant must counter-sign such confirmation, stating that it has carried out its own general due diligence in relation to the Investment Manager and has no reason to believe that the statement of the Investment Manager is incorrect.

² A list of the OECD member states and those countries with which the Commission has entered into a Memorandum of Understanding on investment business and collective investment funds may be obtained on the Commission's website, www.jerseyfsc.org under the 'Funds & Securities' tab.

distributor were to withdraw from the proposal the Fund would not go ahead. Evidence of this would be, for example, the name of the Fund being linked with the distributor.

- *The majority of investors going into the Fund are put into the Fund by the distributor or its agents.*

2.1.5 If the Investment Manager does not satisfy the above criteria then application should be made for a derogation to the Commission in advance. In the majority of cases the Commission would expect to respond to requests for derogations on an expedited basis.

2.2 Non-Jersey domiciled Funds that are equivalent to a Jersey Recognized Fund or that are compliant with the EU UCITS Directive

2.2.1 A Functionary that holds a current Permit to act as a distributor or registrar (or to carry out activities ancillary thereto³) of a Fund may use the streamlined authorisation process when applying for Consents and Permits to become a Functionary of the same description of a Non-Jersey domiciled Fund that is equivalent to a Jersey Recognized Fund or that is compliant with the EU UCITS Directive.

2.2.2 A Functionary that holds a current Permit to act as a Functionary of a Jersey Recognized Fund, or a Non-Jersey domiciled Fund that is equivalent to a Jersey Recognized Fund or compliant with the EU UCITS Directive, may use the streamlined authorisation process when applying for Consents and Permits to become a Functionary of the same description of a Non-Jersey domiciled Fund that is equivalent to a Jersey Recognized Fund or compliant with the EU UCITS Directive.

2.2.3 In all other cases where a person wishes to become a Functionary of a Non-Jersey domiciled Fund that is equivalent to a Jersey Recognized Fund or compliant with the EU UCITS Directive, the Securities Division should be approached for guidance prior to making a formal application.

2.3 Non-Jersey domiciled Funds that do not fall in the above categories

2.3.1 In all other circumstances, the Commission will consider applications for Consents and Permits to become Functionaries of a Non-Jersey domiciled Fund on an expedited case-by-case basis.

2.3.2 It is expected that the majority of Non-Jersey domiciled Funds falling into this category will be retail in nature. In general, the Commission will expect a Non-Jersey domiciled Fund that is retail in nature to be of a type that would have been acceptable had it been established in Jersey.

2.3.3 Sections 1, 2 and 3 of the Application Form should be completed and submitted to the Securities Division of the Commission. The Securities Division will require

³ For this purpose, “activities ancillary thereto” shall include all of the services ordinarily provided by the Functionaries listed in Group 3 of Part 2 of the Schedule to the Law.

the draft Offer Document and the agreement appointing the Jersey Functionary for review.

SECTION 3
DEFINITIONS

“Application Form” means the application form set out in Appendix 1 to this Guide.

“Commission” means the Jersey Financial Services Commission.

“Consent” means a consent granted under the Control of Borrowing (Jersey) Order 1958, as amended from time to time.

“Established Place of Business” includes, in relation to a Fund company:

- (a) a branch, in Jersey, of the business of the company;
- (b) an office, in Jersey, of the company.

“EU UCITS Directive” means European Union council directive (85/611/EEC) as amended from time to time.

“Functionary” has the same meaning as in the Law.

“Fund” means a collective investment fund that falls within Article 3 of the Law.

“Investment Manager” includes investment adviser.

“Jersey Expert Fund” means a Fund established in Jersey in accordance with the criteria set out in the Jersey Expert Fund Guide.

“Jersey Expert Fund Guide” means the guide with that name published by the Commission (as amended from time to time).

“Law” means the Collective Investment Funds (Jersey) Law, 1988, as amended from time to time.

“Non-Jersey domiciled Fund” means a Fund where the fund vehicle(s) (the company issuing units, limited partnership, unit trust or other similar vehicle) is established in a jurisdiction other than Jersey.

“Offer Document” means any prospectus or other offering document offering for subscription, sale or exchange units in a Fund.

“Permit” means a permit granted under the Law.

“Principal Person” has the same meaning as in the Law.

“Promoter” means a promoter as defined in the Commission’s policy statement “Promoters of Public and Private Collective Investment Funds”

“Recognized Fund” means a Fund which is classified as a recognized fund under the Law.

APPENDIX 1

Application Form Non-Jersey domiciled Fund

[insert name of Fund] (the “Fund”)
[insert name of Functionary] (the “Functionary”)

1.	<p>The Fund is:</p> <ul style="list-style-type: none">• materially equivalent to a Jersey Expert Fund; or• equivalent to a Jersey Recognized Fund; or• is compliant with the EU UCITS Directive <p>(delete as appropriate) and is eligible for the streamlined authorisation process.</p> <p>Complete sections 1 and 2 of the Application Form.</p>	
2.	<p>The Fund is materially equivalent to a Jersey Expert Fund save in the following respects, which have been previously approved in writing by an officer of the Commission.</p> <p>Complete sections 1 and 2 of the Application Form.</p>	
3.	<p>The Fund is a Non-Jersey domiciled Fund that is not eligible for the streamlined authorisation process.</p> <p>Please briefly explain why the Fund does not fall within either of the categories above.</p> <p>Complete sections 1, 2 and 3 of the Application Form.</p>	
4.	<p>Responsibility for the management of the Non-Jersey domiciled Fund is to be assumed by a Jersey based entity.</p> <p>Complete additional declaration on page [] of the Application Form</p>	

Please tick and complete/delete as appropriate.

SECTION 1 - SUMMARY OF FUND

1	What is the Fund's name?	
2	Where is the Fund domiciled?	
3	When was the Fund established?	
4	What is the legal structure of the Fund (e.g. limited company, limited partnership, unit trust etc.)?	
5	Which entity has ultimate responsibility for the management and control of the Fund?	
6	Will a consent under the Control of Borrowing (Jersey) Order 1958, as amended, be sought and if so, under what Article (s)?	
7	Is the Fund a collective investment fund as defined in Article 3 of the Collective Investment Funds (Jersey) Law, 1988?	
8	Does the Offer Document fall within the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 ("UFPO")? ¹	
9	If so, has the UFPO been complied with? If derogations are sought please provide details.	
10	Is the Fund open or closed ended?	
11	If open-ended, how frequently does the Fund deal? (daily, weekly, etc.)	
12	Does the Fund have a single class or multi class series or umbrella structure?	
13	Is the Fund a hedge fund? If the answer is yes, what are the characteristics that support this description?	
14	What does the Fund invest in?	
15	Are the units of the Fund listed? If so, please name the exchange(s).	
16	What type of investor is targeted? (e.g., general public, high net worth, sophisticated, institutional, etc.)	
17	What is the minimum investment level?	
18	What is the expected life of the Fund?	
19	Who is responsible for the safe custody of the Fund's assets?	
20	Is the manager independent of the custodian or trustee?	

¹ This may be applicable where the Fund is open ended and, in the case of a unit trust, the manager is a permit holder, or, in the case of an investment company, the Fund and the manager are permit holders.

21	(Umbrella funds only) If any particular sub-fund becomes unable to meet all of its liabilities out of its assets, will those excess liabilities have to be met out of the assets of other sub-funds (so called “cross-loss” risk)? If yes, what steps will be taken to reduce cross-loss risk?	
22	Does an investment in the Fund involve any unusual risk factors? If so, please give details.	
23	Does the Fund invest in instruments, or use investment techniques (e.g. short selling), which could potentially carry an unlimited liability? If yes, please give details.	
24	(Closed-ended funds only) Will there be subsequent offerings?	
25	Please list any conflicts of interest that may arise in respect of the Fund.	
26	What is the full legal title of the Investment Manager?	
27	What is the Investment Manager’s registered office address?	
28	If the Investment Manager or its ultimate holding company is a regulated financial business, please provide the name of the overseeing regulatory body, with a contact name (if possible).	
29	If the Investment Manager or its ultimate holding company has a web site, what is the address?	
30	What is the maximum level of borrowing permitted by the Fund?	
31	If the maximum level of borrowing exceeds 200%, what procedures are in place to manage the risk to which this gives rise?	
32	Which type of functionary permit do you seek?	
33	Do you currently hold a permit issued under the Law to act as a functionary of the type proposed in respect of the Fund? Please provide a reference to the most recent permit issued.	
34	Does the Fund company have an Established Place of Business in Jersey?	

SECTION 2 – FUNCTIONARIES AND OTHERS²

Type	Name	Domicile	Permit required under CIF?
Company Issuing Units			
Manager			
Administrator			
Registrar			
Investment Manager			
Investment Adviser			
Distributor			
Subscription Agent			
Redemption Agent			
Premium Receiving Agent			
Policy Proceeds Paying Agent			
Purchase Agent			
Repurchase Agent			
Trustee			
Custodian			
Depository			
Member of a partnership (except a limited partner)			
Auditor			
Any other Functionary (please give title)			

² It is not necessary that there be a Functionary appointed for each of the positions set out in the list.

SECTION 3 - PROMOTER

(Only complete this section if the Fund falls within paragraph 2.3 of the Guide)

1	What is the full legal title of the promoter?	
2	What is the address of the promoter's registered office?	
3	Is the promoter the ultimate holding company in a group of companies?	
4	Is the promoter a member of a group of companies but not the ultimate holding company? If yes, what is the name of the ultimate holding company?	
5	Are the shares of the promoter (or if the promoter is a member of a group, the ultimate holding company) quoted on a stock exchange? If yes, please provide the name of the stock exchange.	
6	Please provide the following information about persons or entities beneficially owning 10% or more of the promoter or its ultimate holding company:- <ul style="list-style-type: none"> • Full legal name/title • Date of birth (individuals) • Percentage holding 	
7	If the promoter or its ultimate holding company is a regulated financial business, please provide the name of the overseeing regulatory body, telephone and facsimile numbers and a contact name (if possible).	
8	If the promoter or its ultimate holding company has a web site, what is the address?	
9	What is the total value of funds under management by the promoter?	
10	Please provide the following information in relation to existing funds initiated by the promoter:-	

	<ul style="list-style-type: none"> • Name • Domicile • Type (e.g. Equity/Bond/Hedge/ Venture Capital, etc.) • Type of investor (e.g. general public, sophisticated, institutional, etc.) • Date established 	
11	<p>Please provide information to evidence the reputation of the promoter.</p> <p>For example:-</p> <p>Newspaper/Magazine articles Curricula Vitae References Analysts' reports Rating Agency reports</p> <p>(This list is not exclusive.)</p>	
12	<p>Please attach the promoter's and (if applicable) the group's latest consolidated audit report and accounts; and</p> <p>if more recently produced, the interim report and consolidated accounts of the promoter and (if applicable) the group.</p> <p>Note: If in a foreign language, please provide an English translation.</p>	

The following documents are included with this application:

1. Permit application form(s) (**Please list**):
2. Cheque in the sum of £[] made payable to the Jersey Financial Services Commission.
3. Latest draft of the Offer Document.
4. In the event that the Offer Document is in a language other than English, a copy of an English language version of the document that is materially identical to the Offer Document.
5. A structure chart of the Fund.
6. The Investment Manager's confirmation with supporting documentation (if applicable), counter-signed by the administrator, Manager or trustee (as applicable).
7. Personal Questionnaires for directors or any other Principal Person as defined in Article 1 of the Law in respect of any new Functionaries based in Jersey who have not previously been approved. With regard to those directors and Principal Persons who have already received approval, the Commission requires to be notified of any material change to the information previously provided.
8. For Funds applying under section 2.2 or 2.3 of the Guide, the latest draft of the agreement appointing the Jersey Functionary.

DECLARATION

I/We declare that the information given herein is accurate, complete and correct to the best of my/our knowledge and belief, having made all due enquiry.

For and on behalf of: _____

Signature: _____

Name (printed): _____

Position/title: _____

Date: _____

It should be noted that every permit under the Collective Investment Funds (Jersey) Law, 1988, and every Control of Borrowing consent is issued, inter alia, “**on the basis of the information provided...**”. It is therefore important that any material changes prior to the launch of the Fund to answers supplied in this checklist are brought to our attention as soon as possible.

Additional Declaration to be signed by any entity assuming responsibility for the management and control of a Non-Jersey domiciled Fund

I/We declare that we accept ultimate responsibility for the management and control of the Fund in accordance with and subject to the Constitutive Documents and applicable law and that proper systems and procedures will be implemented in respect of the Fund to meet the Commission’s Policy Statement and Guidance Notes on Outsourcing.

For and on behalf of: _____

Signature: _____

Name (printed): _____

Position/title: _____

Date: _____

Guidance Notes

1. In order to ensure that relevant consents and permits are issued as soon as possible, it is imperative that any proposed derogations from the Non-Jersey

domiciled Fund Guide be set out in detail, complete with page references and (if applicable) references to any correspondence from the Commission or from the Fund's home regulator in relation to such proposed derogations.

2. Applicants may refer to derogations from the contents of the Non-Jersey domiciled Fund Guide agreed to by the Commission in relation to funds other than the Fund under consideration. Although the Commission is not bound by its previous decisions to allow deviations, such a reference will be of persuasive effect and will assist in expediting consideration of a specific deviation.
3. This form must be signed personally by the functionary applying for the permit and not by its authorised representatives, lawyers or attorneys acting under a power of attorney.