



# JERSEY FINANCIAL SERVICES COMMISSION

## CLASSIFICATION GUIDE

### JERSEY EXPERT FUND GUIDE

**The purpose of this Guide is to define an Expert Fund and to set out the characteristics that such a fund would usually be expected to have. If an Expert Fund does not meet such requirements, 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.**

**An Expert Fund meeting the criteria set out in this Guide may be established using a streamlined authorisation process, as described in Section 4 of this Guide.**

## SECTION 1

### EXPERT FUNDS AND EXPERT INVESTORS

- 1.1. An Expert Fund is a collective investment fund that falls within Article 3 of the **Law**, is established in Jersey and in which only Expert Investors (as defined at 1.5 of this Guide) may invest.
- 1.2. Only Expert Investors who have acknowledged in writing receipt and acceptance of the investment warning set out at 3.7 of this Guide may invest in an Expert Fund.<sup>1</sup>
- 1.3. An Expert Investor is deemed able:
  - 1.3.1. to evaluate the financial risks of investing in the Expert Fund; and
  - 1.3.2. to bear the economic consequences of investment in the Expert Fund including any possibility of the loss of the entire investment.
- 1.4. In view of the above, an Expert Investor is deemed to require only limited regulatory protection in relation to the manner in which the Expert Fund is structured.
- 1.5. An Expert Investor is:
  - 1.5.1. 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
  - 1.5.2. an individual who has a net worth, or joint net worth with that person's spouse, greater than US \$1,000,000 (or currency equivalent) excluding that person's principal place of residence; or
  - 1.5.3. 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 \$1,000,000 (or currency equivalent) or every member, partner or beneficiary of which falls within the definition of Expert Investor; or
  - 1.5.4. a Functionary to the Expert Fund or an Associate of a Functionary to the Expert Fund; or
  - 1.5.5. a person who is an employee, director, consultant or shareholder of or to a Functionary of the Expert Fund or an Associate of a Functionary to the Expert Fund, who is acquiring an investment in the Expert Fund as part of his

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<sup>1</sup> The acquisition of non-participating shares in an Expert Fund (e.g. non-redeemable founders' shares) does not constitute an investment in the Fund for the purposes of this Guide. The same applies to founder or nominal interests in limited partnerships (or the equivalent founder or nominal interests in unit trusts), which are created or issued to facilitate the formation and structuring of the Fund and which are not for genuine investment or participation in the profits of the Fund.

remuneration or an incentive arrangement or by way of co-investment; or

- 1.5.6. any employee, director, partner or consultant to or of any person referred to in paragraph 1.5.1; or
  - 1.5.7. a trustee of a family trust settled by or for the benefit of one or more persons referred to in paragraphs 1.5.5 or 1.5.6; or
  - 1.5.8. a trustee of an employment benefit or executive incentive trust established for the benefit of persons referred to in paragraphs 1.5.5 or 1.5.6 or their dependants; or
  - 1.5.9. a government, local authority, public authority or supra-national body in Jersey or elsewhere; or
  - 1.5.10. 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 subsequent acquisition.
- 1.6. The Commission believes that those involved in establishing and providing services to an Expert Fund who wish to invest in that fund should be encouraged to do so. Accordingly, any application made to the Securities Division to extend the definition of Expert Investor in respect of any other types of “carried interest” investors is likely to be treated sympathetically by the Commission.
- 1.7. With reference to paragraph 1.5.1, the Commission expects any discretionary investment manager acquiring an interest in the 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.<sup>2</sup>

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<sup>2</sup> For the avoidance of doubt, it is not intended that the Jersey based monitoring functionary referred to in paragraph 2.14 should procure compliance with this paragraph.

## SECTION 2

### THE STRUCTURE OF THE EXPERT FUND

#### The Expert Fund

- 2.1. An Expert Fund may take any form recognised under the laws of Jersey. It will be issued with one or more permits under the Law.
- 2.2. An Expert Fund may be an Open Fund or a Closed Fund.
- 2.3. If the Expert Fund is established as a fund company in Jersey, at least two Jersey resident directors with appropriate experience must be appointed to the board.
- 2.4. 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.
- 2.5. 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.
- 2.6. The board of directors of a fund company, or the general partner of a limited partnership, or the trustee or Manager of a unit trust, as appropriate, is ultimately responsible for the management and control of the Expert Fund in accordance with and subject to the Constitutive Documents and applicable law and this ultimate responsibility cannot be delegated.

#### Investment Manager

- 2.7. The Investment Manager should be of good standing and in particular should:
  - 2.7.1 have had no disciplinary sanctions imposed on it by any supervisory authority or professional body in the previous five years;
  - 2.7.2 have 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 associated company of any company which has such a conviction;
  - 2.7.3 be able to pay its debts as they fall due;
  - 2.7.4 be established 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 funds<sup>3</sup>, and is either:
    - 2.7.4.1. regulated in that state or jurisdiction; or

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<sup>3</sup> A list of the OECD member states and those countries with which the Commission has entered into a Memorandum of Understanding (either on a bilateral basis or through the IOSCO Multilateral Memorandum of Understanding) covering investment business and collective investment funds may be obtained on the Commission's website, [www.jerseyfsc.org](http://www.jerseyfsc.org), under the 'Funds Business' tab - 'Guidance notes'.

- 2.7.4.2.** granted approval to act in relation to the Expert Fund by the Commission, noting that if the Investment Manager is not regulated because the activity it proposes to undertake in relation to the Expert Fund is not a regulated activity in its home state or jurisdiction, provided the other requirements set out in paragraphs 2.7 and 2.8 are met, such approval will ordinarily be granted on an expedited basis;
- 2.7.5.** possess relevant experience in relation to managing or advising on investors' funds using similar investment strategies to those to be adopted by the Expert Fund;
- 2.7.6** satisfy the Commission's general principles of corporate governance in relation to the span of control over a business as set out in Appendix 2, meeting the four-eyes principle if the Investment Manager cannot handle client monies, and the six-eyes principle if it can handle such monies.
- 2.8.** In addition, no Principal Person of the Investment Manager shall:
- 2.8.1** have had any disciplinary sanctions imposed on him by any supervisory authority or professional body in the previous five years; or
- 2.8.2** have been convicted for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty.
- 2.9.** As part of the application process for establishing an Expert Fund, the Investment Manager should confirm in writing to the Commission that it satisfies the requirements set out in 2.7 and 2.8 above, and provide documentary evidence in relation to the requirement at 2.7.4. In addition, the administrator, Manager or trustee<sup>4</sup> (as applicable) 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.<sup>5</sup>
- 2.10.** In the event that the Investment Manager does not fulfil these criteria (for example, a global institution may have committed a number of regulatory breaches in different jurisdictions), prior clearance should be sought from the Commission. An Investment Manager that has previously been granted consent to establish an Expert Fund may, in satisfaction of the requirement set out at 2.9, confirm in writing to the Commission that there have been no material changes to the information most recently provided to the Commission in that regard.
- 2.11.** Where the administrator, Manager or trustee (as applicable) becomes aware of any other issue, in addition to those mentioned in paragraphs 2.7 and 2.8, which might cast doubt on the good standing of the Investment Manager (or any of its Principal Persons), they should bring the matter to the attention of the Commission. Relevant issues might, for example, include knowledge that the Investment Manager (or any of its Principal Persons) has been the subject of a formal investigation by a supervisory authority or professional body, even

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<sup>4</sup> In relation to a Closed Fund that is a unit trust, there is no requirement for a separate administrator or Manager, provided that the trustee carries out the administration or management role, including the monitoring function described in paragraphs 2.14 and 2.15 below.

<sup>5</sup> In the Commission's view, it is implicit that an administrator's/Manager's/trustee's due diligence enquiries can only extend to sources of enquiry available to it, and not to those beyond its reach.

if this did not result in a disciplinary sanction.

*Note: If a distributor of an Expert Fund is not the Investment Manager or one of its associates, and it falls within one of the following definitions, the provisions of paragraphs 2.7 – 2.11 inclusive (with the exception of 2.7.5) shall apply to the distributor as if it were an Investment Manager:*

- *The distributor is the driving force behind the Expert Fund such that, if the distributor were to withdraw from the proposal, the Expert Fund would not go ahead. Evidence of this would be, for example, the name of the Expert Fund being linked with the distributor.*
- *The majority of investors going into the Expert Fund are put into the Expert Fund by the distributor or its agents.*

## **Administration/Management**

**2.12.** Every Expert Fund shall appoint:

- (a) an administrator; or
- (b) a Manager; and/or, in relation to a Closed Fund that is a unit trust <sup>6</sup>,
- (c) a trustee

which has at least two Jersey resident directors with appropriate experience together with staff and a physical presence in the Island.

**2.13.** Any delegation of the duties assumed by the administrator, Manager or trustee (as applicable) must be subject to and in accordance with the Commission's Policy Statement and Guidance Notes on Outsourcing.

*Note: It may be possible to establish an Expert Fund with the responsibility set out in 2.14 and 2.15 being assumed by an entity other than an administrator, Manager or trustee: for example, a general partner or the fund company itself. In such circumstances the Commission should be approached in advance on a case by case basis.*

## **Monitoring of the Investment Manager**

**2.14.** The responsibility of the administrator, Manager or trustee (as applicable) in relation to the actions of the Investment Manager shall be to take reasonable measures to satisfy itself that such actions do not breach the investment and borrowing restrictions applicable to the Expert Fund, as set out in the Offer Document and the Constitutive Documents, and to promptly notify the entity that appointed the Investment Manager of any concerns it has in that regard so that appropriate action may be taken.

**2.15.** The administrator, Manager or trustee (as applicable) must maintain in Jersey sufficient records (in electronic or documentary form) to enable it to fulfil its monitoring functions, and should be able to obtain other relevant records on demand.

## **Custody Arrangements**

**2.16.** Every Expert Fund shall have adequate arrangements for the safe custody of the property of the fund including, if applicable, prime brokerage arrangements. Such arrangements

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<sup>6</sup> See footnote 4 to paragraph 2.9.

should be fully disclosed in the Offer Document.

- 2.17. Where the Expert Fund is an Open Fund, custody arrangements must be sourced from a separate custodian/trustee with staff and a physical presence in the Island that is subject to any applicable Codes of Practice. Prior clearance for any deviation from this requirement should be obtained from the Commission unless the Expert Fund satisfies paragraph 2.18 below.
- 2.18. If the Expert Fund is a hedge fund, the requirement for a custodian will be waived provided a prime broker that is part of a group with a minimum credit rating of A1/P1 or long term equivalent is appointed. Prior clearance will only be required for any prime broker with a rating below this level.
- 2.19. If in doubt, application should be made to the Commission on a case-by-case basis.

### **The Name of the Expert Fund**

- 2.20. 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 and in the manner in which the Expert Fund maintains the majority of its non-cash assets.

### **The Auditor**

- 2.21. An auditor is to be appointed for an Expert Fund.
- 2.22. The auditor is to have the same qualifications as are required under the Companies (Jersey) Law 1991, as amended.

### **Functionaries**

- 2.23. Any Jersey entity acting as a Functionary to an Expert Fund must be granted a permit under the Law by the Commission to do so and be managed and operated in accordance with any applicable Codes of Practice.

### **Borrowing and Gearing**

- 2.24. There are no restrictions imposed upon the level of borrowing or gearing adopted by an Expert Fund, provided that the approach to borrowing or gearing is clearly disclosed in the Offer Document. If the fund is permitted to borrow money in excess of 200% of the net asset value of the fund, full details of the manner in which the risk posed by such borrowing is to be managed must be set out in the Application Form submitted to the Commission. In such a case, the Commission reserves the right to undertake additional scrutiny.

### **Transfers of Interests**

- 2.25. The Commission is concerned that only persons who satisfy the criteria for Expert Investors set out in 1.3 and 1.5 are able to participate in an Expert Fund. Where the Expert Fund is not listed on a stock exchange, and subject to 1.5.1 and 1.7, reasonable steps should be taken in order to ensure that any person who is not an Expert Investor does not become

a registered holder of an interest in the Expert Fund.

- 2.26.** Where a transfer of interest occurs involuntarily, such as on the death or bankruptcy of a registered holder, in the absence of provision in the Constitutive Documents, the personal representatives or trustee in bankruptcy will be regarded as complying with the criteria for Expert Investors. The Commission expects, however, the criteria to apply on a transfer to the new beneficial owner once the administration is complete.

### **Stock Exchange Listings**

- 2.27.** Where listing is intended on a stock exchange, certain exchanges allow restrictions to be imposed on who may invest in a listed fund. For instance, as a special condition of listing an exchange may permit limits on the categories of investors that are allowed to invest, and the minimum transaction size of lots which may be traded. The Commission will consider confirming that it does not object to a listing on those exchanges that permit the imposition of restrictions of this nature and where such restrictions mirror the requirements for an Expert Fund. In not objecting to the listing, the Commission requires confirmation of the following:

- 2.27.1** that the relevant exchange permits restrictions on transfers of interests in order to ensure, so far as reasonably possible, that no one other than an Expert Investor is allowed to participate in the fund and that suitable mechanisms are in place to prevent a non-qualifying investor from becoming a registered holder of the securities;
- 2.27.2** that the Expert Fund requires each new investor to confirm in writing that he has received and accepts the investment warning set out in paragraph 3.7, and has seen the statement on Expert Funds at paragraph 3.3.18 referring to the Commission's website.

## SECTION 3

### THE OFFER DOCUMENT OF THE EXPERT FUND

#### General

- 3.1. The Offer Document issued by an Expert Fund must comply with the legislation applicable to such document. In particular:
  - 3.1.1. Open Expert Funds structured as fund companies or unit trusts issuing a prospectus (as defined in the UFPO) must ensure that the prospectus complies with the requirements set out in that Order;
  - 3.1.2. Closed Expert Funds structured as fund companies issuing a prospectus (as defined in the Companies (Jersey) Law 1991) must comply with the requirements set out in the CGPO.
- 3.2. Any variations from the requirements imposed by the UFPO and/or the CGPO must be set out in the Application Form.
- 3.3. The Offer Document must contain all the information that investors and their professional advisers (if any) would reasonably require and would reasonably expect to have brought fairly to their attention in the Offer Document for the purpose of making an informed judgement about the merits of participating in the Expert Fund and the extent of the risks accepted by so participating. Without prejudice to the generality of the above, this information shall cover:
  - 3.3.1. the structure of the Expert Fund, including brief particulars of all documents constituting the Expert Fund and details of how to obtain complete copies of such documents;
  - 3.3.2. the Functionaries to the Expert Fund, including details such as their registered office, place and date of incorporation, details of share capital and the manner in which Functionaries may be appointed and replaced;
  - 3.3.3. the name and address of the auditor of the Expert Fund and the legal adviser(s) to the Expert Fund;
  - 3.3.4. any conflicts of interest that may exist in relation to the Expert Fund;
  - 3.3.5. the investment objective and investment management strategies to be employed by the Expert Fund (including the Expert Fund's approach to borrowing and gearing) and any investment or borrowing restrictions applicable to the Expert Fund;
  - 3.3.6. the manner in which changes likely to have a material effect on investors may be made to the Expert Fund (noting that any changes that would be contrary to the terms of this Guide or contrary to any of the Commission's published policies applicable to Expert Funds will require the prior consent of the Commission);
  - 3.3.7. the basis upon which dealing in the Expert Fund is to take place, if applicable;
  - 3.3.8. in the case of a Closed Fund, the basis upon which any subsequent offerings in the

Expert Fund may be made;

- 3.3.9. the basis upon which the value of the Expert Fund is to be calculated and (in the case of an Open Fund) how the value of units in the Expert Fund is to be determined;
- 3.3.10. the manner in which units in the Expert Fund are to be created, issued and paid for and (in the case of an Open Fund) cancelled and redeemed;
- 3.3.11. the manner in which votes to be held by unitholders are conducted, and the manner in which meetings of unitholders are to be convened and managed generally;
- 3.3.12. the fees, charges and expenses payable from the property of the Expert Fund;
- 3.3.13. the address at which the most recent audited annual report and accounts of the Expert Fund may be inspected;
- 3.3.14. the address, if any, where the register of unitholders can be inspected;
- 3.3.15. the manner in which any voting rights in underlying assets held by the Expert Fund will be exercised;
- 3.3.16. the safe custody arrangements for the property of the Expert Fund including disclosure, if applicable, of prime broker arrangements;
- 3.3.17. in the case of Umbrella structures, details of the “ring-fencing” of assets within sub-funds, or, if there is no such arrangement, a statement to the effect that “in the event of the Expert Fund being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to such sub-fund, the excess liabilities may be met out of the assets attributable to the other sub-funds” and an explanation of the manner in which such liabilities may be apportioned; and
- 3.3.18. a statement to the effect that:

“Further information in relation to the regulatory treatment of Expert Funds in Jersey may be found on the website of the Jersey Financial Services Commission at [www.jerseyfsc.org](http://www.jerseyfsc.org)”.

- 3.4. A statement to the following effect shall be included in the Offer Document:

“The [directors of the company/general partner/manager/trustee] have/has taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of fact or of opinion. The [directors/general partner/manager/trustee] accept responsibility accordingly.”

- 3.5. Nothing in any of the Constitutive Documents of an Expert Fund may exclude the jurisdiction of the courts of Jersey to entertain an action concerning the Expert Fund.
- 3.6. In the event that an Offer Document is issued in a language other than English, a copy of an English language version of the document must be lodged with the Commission. A

statement should be included in both the original Offer Document and the translation stating which version will take precedence in the event of a dispute.

### **Investment Warning**

- 3.7. All Expert Funds must contain an investment warning in a prominent position in the Offer Document in substantially the following terms:

“[This fund] has been established in Jersey as an expert fund. It is suitable only for those who fall within the definition of “expert investors” published by the Jersey Financial Services Commission.

Requirements which may be deemed necessary for the protection of retail or non-expert investors, do not apply to expert funds. By acknowledging this statement you are expressly agreeing that you fall within the definition of an “expert investor” and accept the reduced requirements accordingly.

If you are an investment manager acquiring an interest in [this fund], directly or indirectly, for or on behalf of non-expert investors, the Jersey Financial Services Commission expects you 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.

You are wholly responsible for ensuring that all aspects of [this fund] are acceptable to you. Investment in expert funds may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of [this fund] and the potential risks inherent in [this fund] you should not invest in [this fund].”

The investor or his duly authorised agent must acknowledge in writing that he has received and accepted this investment warning.

### **Ongoing Requirements**

- 3.8. All material changes to information provided to the Commission in connection with an Expert Fund should be notified to the Commission as soon as possible and, in any event, within 28 days of such change taking place.
- 3.9. Any change to an Expert Fund that would not meet the criteria set out in this Guide or that would breach any permit condition applicable to that Expert Fund will require the prior consent of an officer of the Commission.

## SECTION 4

### AUTHORISATION OF THE EXPERT FUND

- 4.1. In order to authorise an Expert Fund, the Commission must receive a completed copy of the Application Form.
- 4.2. The administrator, Manager or trustee (as applicable) shall:
  - 4.2.1. complete and sign a copy of the Application Form;
  - 4.2.2. arrange for such form to be countersigned on behalf of the board of the fund company, the general partner of a limited partnership or the Manager or trustee of a unit trust, as applicable; and
  - 4.2.3. forward a copy of the completed Application Form and the stated supporting documentation to the Commission.
- 4.3. Upon receipt of a completed Application Form, the Commission will take steps to authorise the Expert Fund and/or its functionaries as the case requires. In the event that the Application Form states that the Expert Fund complies with the terms of this Guide, or that any deviation from the terms of this Guide has previously been agreed in writing by an officer of the Commission, the Commission will authorise the Expert Fund in reliance upon the Application Form. In other cases the Commission will discuss with the applicant those deviations that have not been previously agreed.
- 4.4. The relevant permit application forms and fees shall be submitted at the time the application is made and prior to the issue of any permits and consents.
- 4.5. For an Umbrella Expert Fund, an Incorporated Cell Company, or a Protected Cell Company, which has already been granted permits under the Law, a sub-fund, incorporated cell or protected cell permit application and fee will need to be submitted for each additional sub-fund, incorporated cell or protected cell that is added prior to amended permits being issued. In the case of an Incorporated Cell Company, the incorporated cell permit application form is to be used.

## DEFINITIONS

“Applicable Rules” has the meaning to be assigned to it in any Codes of Practice.

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

“Associate” means, in relation to a company, any company which is a subsidiary or a holding body of that company or a subsidiary of any such holding body and any individual, partnership or other unincorporated association or firm which has direct or indirect control of that company and any company, which is directly or indirectly controlled by any such individual, partnership or other unincorporated association, or firm and, in relation to an individual, partnership or other unincorporated association, means any company directly or indirectly controlled by that individual, partnership or other unincorporated association. For these purposes, ‘holding body’ and ‘subsidiary’ shall have the meanings set out in the Companies (Jersey) Law 1991, as amended.

“CGPO” means the Companies (General Provisions) (Jersey) Order 2002, as amended from time to time.

“Closed Fund” means a fund which is not an Open Fund.

“Codes of Practice” means such Codes of Practice for Permit Holders as may from time to time be issued by the Commission and be in force pursuant to Article 15 of the Law.

“Collective Investment Fund” has the meaning set out in Article 3 of the Law.

“Commission” means the Jersey Financial Services Commission.

“Constitutive Documents” means the principal documents constituting the Expert Fund, which may include:

- the trust deed, where the Expert Fund is a unit trust;
- the memorandum and articles of association, where the Expert Fund is a company;
- the limited partnership agreement, where the Expert Fund is a limited partnership;
- the Expert Fund rules;
- the administration agreement;
- the investment management agreement;
- the investment advisory agreement;
- the management agreement, if applicable; and
- where the Expert Fund has a custodian in Jersey, the agreement appointing such a custodian.

“Functionary” means any of the functionaries referred to in Part 2 of the Schedule to the Law.

“Incorporated Cell Company” has the meaning set out in Article 1 of the Companies (Jersey) Law 1991, as amended.

“Investment Manager” includes an investment adviser and may be the Manager if no separate investment manager is to be appointed<sup>7</sup>.

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

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<sup>7</sup> In a fund of funds, the investment managers of the underlying funds will not be considered Investment Managers for the purpose of this Guide.

“Manager” shall, in the case of a limited partnership, include the general partner.

“OECD” means the Organisation for Economic Co-Operation and Development.

“Offer Document” means any prospectus or other offering document offering units in an Expert Fund for subscription, sale or exchange and includes any listing document.

“Open Fund” means a fund that is normally open for both subscriptions and redemptions at the option of unitholders.

“Outsourcing Policy” means the “Policy Statement and Guidance Notes on Outsourcing” issued by the Commission on 19 August 2002 (as amended).

“Principal Person” has the same meaning set out in the Law.

“Protected Cell Company” has the meaning set out in Article 1 of the Companies (Jersey) Law 1991, as amended.

“UFPO” means the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995, as amended.

“Umbrella” in relation to structure or fund means there is more than one class of redeemable shares or units and where the assets are held as a single pool.

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

“Unitholder” means a person registered as the holder of a unit in an Expert Fund.

## APPENDIX 1

### Jersey Expert Fund Application Form for Authorisation

[insert name of Expert Fund] (the "Fund")

1.	The Fund meets all of the criteria set out in the Expert Fund Guide published by the Jersey Financial Services Commission.	
2.	The Fund meets all of the criteria set out in the Expert Fund Guide published by the Jersey Financial Services Commission save in the following respects, which have been previously approved in writing in respect of the Fund by an officer of the Commission.	
3.	The Fund meets all of the criteria set out in the Expert Fund Guide published by the Jersey Financial Services Commission save in the following respects, which have not been previously approved in writing in respect of the Fund by an officer of the Commission.	

Please tick one of the above boxes and complete as appropriate.

Please note that in giving replies to the attached Summary of Fund, the Commission would appreciate it if references to the Fund documents and to correspondence with the Commission could be kept to a minimum. Repeated cross-references in this manner increases the time taken to process the application and may result in approval being delayed.

## SUMMARY OF FUND

1	What name is proposed for the Fund?	
2	What will the legal structure of the Fund be (e.g. limited company, limited partnership, unit trust, Protected Cell Company or Incorporated Cell Company etc.)?	
3	Will a consent under the Control of Borrowing (Jersey) Order 1958, as amended, be sought and if so, under what Article (s)?	
4	Please confirm that the Fund is a collective investment fund as defined in Article 3 of the Collective Investment Funds (Jersey) Law, 1988 .	
5	Will a consent to issue a prospectus pursuant to Article 5 of the CGPO be required?	
6	If so, has the CGPO been complied with? If derogations are required please provide details.	
7	Will the prospectus fall within the UFPO?	
8	If so, has the UFPO been complied with? If derogations are sought please provide details.	
9	Will the Fund be open or closed ended?	
10	Will the Fund have a single class or multi class series or Umbrella structure?	
11	<p>Is the Fund a hedge fund?</p> <p>11.1 If the Fund is a hedge fund, what are the characteristics that support this description?</p> <p>11.2 If the Fund is a hedge fund and the applicant wishes to take advantage of the terms of paragraph 2.18, please confirm that a prime broker will be appointed that is part of a group with a minimum credit rating of A1/P1 or long term equivalent, and please provide details of the rating.</p>	

12	What will the Fund invest in?	
13	<p>Will the units of the Fund be listed? If so, please name the exchange(s).</p> <p>Please also confirm the following:</p> <p>13.1 each of the exchanges named permits restrictions on transfers of interests in order to ensure, so far as reasonably possible, that no one other than an Expert Investor is allowed to participate in the Fund;</p> <p>13.2 it is a requirement for each new investor in the Fund to confirm in writing that it has received and accepts the investment warning set out in 3.7 of the Guide, and that it has seen the statement on Expert Funds at paragraph 3.3.18 of the Guide referring to the Commission's website; and</p> <p>13.3 where an investor is unable to satisfy the criteria for an Expert Investor, mechanisms are in place to prevent such investor from becoming a registered holder of an interest in the Fund.</p>	
14	What is the minimum investment level?	
15	What is the expected life of the Fund?	
16	Who will have the responsibility for monitoring the Investment Manager in accordance with paragraphs 2.14 and 2.15?	
17	Who will be responsible for the safe custody of the Fund's assets?	
18	<p>Will an investment in the Fund involve any unusual risk factors?</p> <p>If so, please give details.</p>	
19	Please list any conflicts of interest that may arise in respect of the Fund.	

20	What is the full legal title of the Investment Manager?	
21	What is the Investment Manager's registered office?	
22	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).	
23	If the Investment Manager or its ultimate holding company has a web site, what is the address?	
24	What is the maximum level of borrowing permitted by the Fund?	
25	If the maximum level of borrowing exceeds 200%, what procedures are in place to manage the risk to which this gives rise?	

**Functionaries<sup>8</sup> and others**

<b>Type</b>	<b>Name</b>	<b>Domicile</b>	<b>Permit required under CIF?</b>
Fund Company			
Manager			
Administrator			
Registrar			
Investment Manager			
Investment Adviser			
Distributor			
Subscription Agent			
Redemption Agent			
Prime Broker			
Premium Receiving Agent			
Policy Proceeds Paying Agent			
Purchase Agent			
Repurchase Agent			
Trustee			
Custodian			
Depository			
Member of partnership (except a limited partner)			
Auditor			
Any other functionary (please give title)			

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<sup>8</sup> It is not necessary that there be a Functionary appointed for each of the positions set out in the list.

The following documents are included with this application:

1. The following permit application forms:
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. Please refer to the Personal Questionnaire and Associated Guidance Notes on the Commission's website under the 'Funds Business' tab - 'Personal Questionnaire'.

## DECLARATION

I/We declare that the information given herein and in any documents included in support of this application is accurate, complete and correct to the best of my/our knowledge and belief.

For and on behalf of: \_\_\_\_\_, the administrator, Manager or trustee (as applicable) in relation to the Fund.

Signature: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Position/ title: \_\_\_\_\_

Date: \_\_\_\_\_

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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: \_\_\_\_\_, the board/general partner/trustee or Manager of the Fund (delete as appropriate).

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.

## Guidance Notes

1. In the majority of cases, this form will be completed and signed by the administrator, Manager or trustee (as applicable). However, the Commission may accept applications completed by another Functionary to the Fund, provided that functionary is an entity regulated under the Collective Investment Funds (Jersey) Law 1988 as amended and subject to any Codes of Practice issued and in force in relation thereto.
2. The form must be countersigned for and on behalf of the fund company, the general partner of the limited partnership, or the trustee or Manager of the unit trust, as appropriate.
3. In order to ensure that relevant consents and permits are issued as soon as possible, it is imperative that any proposed deviations from the Expert Fund Guide or any relevant Order applicable to Offer Document contents be set out in detail, complete with page references and (if applicable) references to any correspondence from the Commission in relation to such proposed deviations.
4. This form must be signed personally by the persons described in notes 1 and 2 above and not by their authorised representatives, lawyers or attorneys acting under a power of attorney.

## APPENDIX 2

### Span of Control Requirements

A guidance note in relation to the “span of control” principle referred to at 2.7.6 can be found on the Commission website at:

[http://www.jerseyfsc.org/trust\\_company\\_business/guidance\\_notes/spanofcontrol.asp](http://www.jerseyfsc.org/trust_company_business/guidance_notes/spanofcontrol.asp)

This appendix summarises this principle for guidance purposes only. All Investment Managers are advised to read the guidance note and to discuss its contents with their Jersey legal adviser in order to ensure that they satisfy the principle.

In the context of the Investment Manager, the principle requires that the Investment Manager be able to demonstrate that its business is actively managed by two or three skilled, experienced individuals: two persons if the Investment Manager cannot handle client monies, three if it can.

The “four eyes” or “six eyes” are the principal persons of the business, who must be able to exercise executive power on behalf of the Investment Manager. These individuals must be actively involved in the day-to-day management of the business and able to exercise executive powers on behalf of the Investment Manager. Normally, such persons will be directors of the Investment Manager.

They must be able to demonstrate independence, competence, experience and integrity and be able to effectively exercise management control over the Investment Manager. Together, the persons providing the “four or six eyes” should be able to demonstrate a balance of appropriate qualifications, skills and experience. As part of the independence requirement care must be taken where members of the same family form principal persons of the Investment Manager.

Although the individuals making up the span of control do not need to be involved in the day-to-day execution of the Investment Manager’s policy, they should have day-to-day involvement in general management as well as knowledge of and influence upon the way in which the company’s strategy is being implemented through day-to day policy.

The Commission acknowledges there may be exceptional circumstances for allowing some degree of relaxation of the principles outlined above. Each request for a relaxation will be considered on its merits and on a case by case basis, however, it must be borne in mind that requests of this nature will not be granted lightly and that, once granted, are not to be treated as setting a precedent notwithstanding any similarity of circumstances. Furthermore, consideration of such requests may increase the time taken to process an application.

