



ICLG

The International Comparative Legal Guide to:

Alternative Investment Funds 2019

7th Edition

A practical cross-border insight into Alternative Investment Funds work

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Jersey

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1 Regulatory Framework

1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

The principal pieces of legislation governing funds in Jersey is the Collective Investment Funds (Jersey) Law 1988 (**CIF Law**) for public funds and the Control of Borrowing (Jersey) Order 1958 (**COBO**) for private funds. Jersey also has various funds products with their own sub-set of rules. For example, the Jersey Financial Services Commission (the **JFSC**) has published guides for each of Jersey Private Funds (**JPFs**), Expert Funds and Listed Funds, each of which contain the rules which govern the respective fund types. Similarly, Recognised Funds, which are the most highly regulated funds available in Jersey, are governed by the Collective Investment Funds (Recognised Funds) Rules 2003 (**Recognised Funds Rules**) in addition to being subject to the CIF Law and open ended Unclassified Funds, which are also a highly regulated fund product that is suitable for marketing to retail clients, are governed by the Guide to Jersey Open-Ended Unclassified Collective Investment Funds Offered to the General Public (**OCIF Guide**).

If the fund will be an AIF that is marketing into Europe it will also need to apply to the JFSC for an AIF certificate under Jersey's Alternative Investment Funds (Jersey) Regulations and adhere to the Jersey AIF Codes, which broadly mirror the requirements of AIFMD.

More broadly, depending on the structure of the fund, the Jersey entities making up the structure will be subject to the legislation governing the type of entity used; for example, a company will be subject to the Companies (Jersey) Law 1991, and a limited partnership will be subject to the Limited Partnership (Jersey) Law 1994.

1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Managers or advisers that are based in Jersey are likely to be subject to the Financial Services (Jersey) Law 1998 (the **FSJL**), which is the primary piece of legislation governing financial services in Jersey. In particular, a person acting as a manager or adviser of an alternative investment fund is likely to be carrying on fund services business or investment business for the purposes of the FSJL, and so would be required to apply for a licence and be regulated by the JFSC. There are various exemptions which would allow a Jersey entity to provide services to a private fund without having to become regulated.

1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Every alternative investment fund launched in Jersey will need to apply to the JFSC for a consent under COBO, if a private fund, or a certificate under the CIF Law if there will be more than 50 investors or more than 50 offers to the public.

1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity v hedge)) and, if so, how?

With the exception of Listed Funds (which must be closed-ended) there is no clear distinction based on strategy, and both open- and closed-ended funds are required to procure a COBO consent or a CIF Certificate (as applicable) in the same manner. However, certain funds do have restrictions which may limit a sponsor's ability to implement certain strategies. For example, a JPF may only admit, or make offers to admit, up to 50 investors, all of whom must be "professional investors" as defined in the Jersey Private Fund Guide (**JPF Guide**).

1.5 What does the authorisation process involve and how long does the process typically take?

The process varies depending on whether the fund is private or public. For Jersey Private Funds an online application form is submitted by the Jersey designated services provider, and the COBO Consent is usually issued within 48 hours. For public funds, the application forms, a structure chart, and offering document is submitted to the JFSC by Jersey counsel and the certificate is typically issued within three working days (for expert funds).

1.6 Are there local residence or other local qualification requirements?

Public funds such as Jersey Expert Funds are required to have at least two Jersey resident directors with appropriate experience appointed to the fund's board if the fund is a corporate fund. If the fund is formed as a limited partnership or a unit trust, Jersey resident directors with appropriate experience must be appointed to the board of the general partner or trustee (as applicable).

The majority of the board of a Jersey Listed Funds must be made up of independent directors, including at least two Jersey resident directors.

Funds formed as Jersey Private Funds or Unregulated Eligible Investor Funds are not strictly required to appoint Jersey resident directors, but the JFSC guidance suggests that they would generally expect Jersey resident directors to be appointed to the board of the fund or general partner (as applicable) of a Jersey Private Fund.

Unclassified Collective Investment Funds are required to appoint a Jersey-based trustee or custodian and must either: (i) have a manager that is a Jersey company; or (ii) appoint a Jersey-based administrator.

1.7 What service providers are required?

Jersey Private Funds are required to appoint a Jersey fund administrator with the appropriate regulatory licences as its designated service provider (**DSP**). The DSP will take responsibility for ensuring the fund's compliance with the Jersey Private Fund Guide.

Jersey Expert Funds are required to have arrangements in place to deal with the safe custody of assets and a separate custodian with a physical presence in Jersey is required for open-ended (but not closed-ended) funds. This requirement is waived where a prime broker with a minimum credit rating of A1/P1 is appointed.

Listed funds and Eligible Investor Funds must make arrangements to deal with safe custody and must appoint a Jersey resident manager or administrator. Open-Ended Eligible Investor Funds must appoint a separate custodian.

Unclassified Collective Investment Funds must have a Jersey-based trustee or custodian with issued and paid-up capital and non-distributable capital reserves of at least £250,000, and must maintain aggregate net shareholders' funds of at least £250,000. The fund's manager must be a Jersey company. If a Jersey-based company with staff and a physical presence in the Island is appointed as administrator, the manager does not need to meet these requirements.

1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

The Expert Fund Guide requires that the fund's investment manager/adviser must meet certain criteria, for example that it is established in an OECD Member State or a state with which the JFSC has a memorandum of understanding, that its regulated and that there are no disciplinary actions being taken against it.

For unclassified funds, the manager must meet the criteria set out in the JFSC's Promoter Policy, which sets out certain guidelines on what the JFSC will expect to see based on factors such as the manager's experience and track record, reputation and financial resources.

1.9 What co-operation or information sharing agreements have been entered into with other governments or regulators?

Jersey is a BEPS Associate, a member of the BEPS Inclusive Framework and a signatory to the multilateral instrument that forms part of the BEPS framework.

Jersey has also recently introduced the Taxation (Companies – Economic Substance) (Jersey) Law 2019 (the **Economic Substance Law**) which introduces new standards for economic substance for Jersey entities as part of an initiative led by the EU Code of Conduct

Group (Business Taxation) (**EU CCG**). The Economic Substance Law makes provision for information on Jersey companies to be shared with the tax authorities in EU Member States. At the time of writing, amendments have been proposed to the Economic Substance Law to allow information to be shared with tax authorities globally to ensure compliance with the OECD's Forum for Harmful Tax Practice global standard for substantial activities.

Jersey signed an agreement with the United States in December 2013 in respect of FATCA reporting. The Jersey Comptroller of Taxes collates the data shared with the US Internal Revenue Service, and the relevant information must be submitted to the Comptroller by 30 June each year.

In January 2016, Jersey passed the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations which implement the OECD's Common Reporting (**CRS**) Standard in Jersey. CRS forms are required to be submitted to the Jersey tax office and the relevant information is then shared with the participating jurisdictions. Separate agreements also exist for the automatic sharing of tax information with Guernsey and the Isle of Man.

2 Fund Structures

2.1 What are the principal legal structures used for Alternative Investment Funds?

Alternative investment funds are generally formed as limited companies, limited partnerships, separate limited partnerships (**SLPs**), incorporated limited partnerships (**ILPs**) or unit trusts.

2.2 Please describe the limited liability of investors.

Investors in funds formed as Jersey limited companies are liable only up to the value of any unpaid shares that they hold in the company and will not be required to make any contribution to the assets of the company on winding-up beyond the value of any unpaid shares they hold.

Investors in limited partnerships, SLPs or ILPs are liable only up to the amount they have agreed to commit to the capital of the limited partnership, SLP or ILP, provided they do not participate in the management of the limited partnership, SLP or ILP. Various safe harbours setting out activities that investors can undertake without endangering their limited liability are set out in the relevant laws governing these entities.

An investor in a trust is liable only up to the value of the amount that it has contributed to the assets of the trust.

2.3 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

Managers and advisers are generally formed as limited companies, resident in Jersey, the UK or other jurisdictions. Manager and adviser entities are also often formed as LLPs.

2.4 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

Generally there are no restrictions under Jersey law. The exception is open-ended Unclassified Funds where redemptions may only be

suspended in exceptional circumstances, having regard to the interest of investors and the manager must immediately notify the JFSC of any suspension and during the period of suspension a notice must be published at least monthly in a newspaper where details of the pricing of the units are normally published.

2.5 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?

There are no restrictions on the ability to transfer interests set out in legislation, provided the transferee meets the relevant category of investor (expert funds can only have investors that fall within the definition of "expert investor", for example).

2.6 Are there any other limitations on a manager's ability to manage its funds (e.g. diversification requirements, asset stripping rules)?

Recognised Funds and open-ended Unclassified Funds have prescriptive criteria for the types of assets that may be held by the fund and in what proportion different asset classes must be held, as set out in the Collective Investment Funds (Recognised Funds) (Rules) (Jersey) Order 2003 (**Recognised Funds Order**) and the OCIF Guide, respectively.

The Jersey AIF Codes broadly mirror the AIFMD, and therefore if the fund is an AIF that markets into the EU, the AIFMD's asset stripping rules (as replicated in the Jersey AIF Codes) are likely to apply.

3 Marketing

3.1 What legislation governs the production and offering of marketing materials?

Offering document content requirements for Jersey public funds are set out in the Collective Investment Funds (Certified Prospectuses) (Jersey) Order 2012 (**CFPO**).

Whether or not the requirement to produce a prospectus applies in respect of the various types of funds is set out in the relevant legislation and/or regulation governing the relevant fund product. Broadly Expert Funds, Unclassified Collective Investment Funds, Listed Funds and Eligible Investor Funds are required to produce CFPO compliant prospectuses. There is no requirement for JPFs to produce any form of marketing document, but if an offering document is produced it must not be misleading and must contain all of the information on the fund an investor would reasonably expect to see.

3.2 Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

The concept of "pre-marketing" is specifically addressed in the JPF Guide, which clarifies that only "offers capable of acceptance" count towards the 50 offers limit imposed by the JPF Guide, and so pre-marketing materials do not constitute an offer. Similarly, the CFPO provides that there is marketing if units are being "offered for sale"; for non-Jersey funds marketing into Jersey, COBO applies to "offers" being circulated in Jersey, and so if there is no offer being made that is capable of acceptance there would not be "marketing" under the JPF Guide, CFPO or COBO. The practice of using draft offer documents to gauge interest in Jersey funds before they have received the necessary regulatory consents is common, but the

documents must clearly be marked as "draft" until the consents are received and the subscription and other documents can be finalised.

3.3 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

The CFPO sets out the content requirements for Jersey funds required to issue prospectuses (such as expert funds). Broadly these include details of matters such as the identity of the key stakeholders, valuation methodology, fund strategy, conflicts of interest, how fund assets will be held and various statutory statements. Where a prospectus is required additional content requirements may be set out in the regulation constituting the relevant fund product. Additional information may also need to be included to ensure compliance with the AIF Codes (where the fund will be an AIF marketing into Europe). Aside from prospectuses, financial services advertisements are governed by the Advertising Order which contains certain content and record keeping requirements.

3.4 Do the marketing or legal documents need to be registered with or approved by the local regulator?

Any prospectus prepared in compliance with the CFPO must be submitted to the JFSC for approval.

3.5 What restrictions are there on marketing Alternative Investment Funds?

Where the fund is to be marketed into Europe the fund must obtain an AIF certificate under the Alternative Investment Funds (Jersey) Regulations and comply with Jersey's AIF Codes, which broadly mirror the requirements of AIFMD.

3.6 Can Alternative Investment Funds be marketed to retail investors?

Recognised Funds, Unclassified Collective Investment Funds and Listed Funds can be marketed to retail investors. Regulated managers can invest on behalf of retail investors in Expert Funds and JPFs if they are satisfied that the investment is suitable for the underlying investor and that the underlying investor is able to bear the economic consequences of investment in the fund, including the possibility of the loss of their entire investment.

3.7 What qualification requirements must be carried out in relation to prospective investors?

Investors in JPFs must be "professional investors" as defined in the JPF Guide, or must invest at least £250,000 (or currency equivalent).

Investors in a Jersey Expert Fund must be "expert investors" as defined in the Expert Fund Guide.

Investors in Eligible Investor Funds must be "eligible investors" as defined in the Eligible Investor Fund Guide.

3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

There are no additional restrictions from a Jersey law perspective.

3.9 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

There are no additional Jersey law requirements other than that the details of advisers will need to be disclosed in the prospectus (if a CFPO prospectus is required).

3.10 Are there any restrictions on the participation in Alternative Investment Funds by particular types of investors, such as financial institutions (whether as sponsors or investors)?

There are no Jersey law restrictions.

4 Investments

4.1 Are there any restrictions on the types of activities that can be performed by Alternative Investment Funds?

Generally there are no specific restrictions of the activities that can be carried out by Jersey funds, but as noted above there are prescriptive criteria that govern Recognised Funds and Unclassified Collective Investment Funds. The JFSC has published a Sound Business Practice Policy (SBPP) where certain activities will be scrutinised more closely with a view to protecting the reputation of the Island, it covers investment in industries such as mining or drilling for natural resources and cryptocurrency.

4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio whether for diversification reasons or otherwise?

As noted above, Recognised Funds and Unclassified Collective Investment Funds are subject to prescriptive criteria on the type of assets they can hold and in what proportion.

Other types of Jersey funds do not have the same limitations on the types of investments they can make, except under the SBPP.

4.3 Are there any restrictions on borrowing by the Alternative Investment Fund?

Recognised Funds and Unclassified Collective Investment Funds are subject to the rules on borrowing which are set out in the Recognised Funds Order and the OCIF Guide respectively. There are no statutory restrictions on the ability of an Expert Fund to borrow, but the funds approach to borrowing and gearing must be set out in the offer document, and if the fund can borrow more than 200% of the net asset value of the fund, then full details of how the risk posed by such borrowing is to be managed is to be disclosed to the JFSC in the application and the JFSC can undertake additional scrutiny.

5 Disclosure of Information

5.1 What public disclosure must the Alternative Investment Fund or its manager make?

The amount of information made public on Jersey funds is limited. Companies incorporated in Jersey will appear on the Jersey

Registry, which is searchable online. The company's constitutional documents are made available for public inspection, including the memorandum and articles. Special resolutions passed by the company must also be filed and will be made available for inspection as will the company's annual return, which shows a company's legal (but not beneficial) owners. As well as corporate funds, a general partner of a limited partnership and a trustee of a unit trust will also generally be formed as a limited company.

A search of the Jersey registry will also show any limited partnerships established in Jersey. There is no need for the Limited Partnership Agreement to be filed and no requirement to file a return detailing who the partners in the limited partnership are.

5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example for the purposes of a public (or non-public) register of beneficial owners?

Yes – the shareholders/controllers will be notified to the JFSC as part of the application to form the entity. A condition is typically added to the consent granted under COBO when the entity is formed requiring the entity to update the JFSC if any shareholder or beneficial owner increases or reduces their holding or beneficial ownership above or below certain thresholds, or if any controller becomes or ceases to be a controller. This information is not made public. The only ownership information that is publicly available is the name of the legal owner of shares in a Jersey company, which is available on the company's annual return.

5.3 What are the reporting requirements in relation to Alternative Investment Funds or their managers?

Both Recognised Funds and Unclassified Collective Investment Funds have set reporting requirements which are set out in the Recognised Fund Order and the OCIF Guide respectively.

If the fund is to be marketed into Europe it will also be required to apply to the JFSC for an AIF certificate and will be subject to the AIF Codes. The AIF Codes contain reporting requirements that broadly mirror the requirements under AIFMD.

5.4 Is the use of side letters restricted?

There are no Jersey law restrictions on the entry of Jersey funds into side letters.

6 Taxation

6.1 What is the tax treatment of the principal forms of Alternative Investment Funds identified in question 2.1?

Jersey companies are tax opaque for the purposes of Jersey law and are generally taxed at a rate of 0%. Jersey companies are required to submit tax returns to the Jersey tax office.

Jersey limited partnerships, SLPs and ILPs are all tax transparent for Jersey law purposes.

6.2 What is the tax treatment of the principal forms of investment manager / adviser identified in question 2.3?

As noted above, Jersey companies are generally taxed at 0%. Jersey LLPs are tax transparent entities for Jersey law purposes.

6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

There are no transfer taxes payable in Jersey on the transfer of an investor's participation in a Jersey fund.

6.4 What is the tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors in Alternative Investment Funds?

Investors resident in Jersey will be subject to Jersey tax. Investors that are not resident in Jersey (including pension funds or fund of funds) will not be subject to Jersey tax.

6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund?

No, tax rulings are not generally sought ahead of the formation of a Jersey fund.

6.6 What steps have been or are being taken to implement the US Foreign Account and Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the Common Reporting Standard?

The States of Jersey and the US Government have entered into an agreement whereby the Jersey tax office will provide the Internal Revenue Service with any information required to ensure compliance with FATCA. As part of the agreement the 30% withholding tax and account closure requirements of FATCA will not apply in Jersey.

As noted above, CRS forms are required to be submitted to the Jersey tax office and the relevant information is then shared with the participating jurisdictions. Separate agreements also exist for the automatic sharing of tax information with Guernsey and the Isle of Man.

6.7 What steps are being taken to implement the OECD's Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 6 and 7, insofar as they affect Alternative Investment Funds' operations?

Jersey is a BEPS Associate, a member of the BEPS Inclusive Framework and a signatory to the multilateral instrument that forms part of the BEPS framework.

As noted above, Jersey has also recently introduced the Economic Substance Law in order to comply with the standard set by the EU CCG. Whilst the Economic Substance Law has been introduced specifically to comply with the requirements set by the EU CCG, it is also relevant to Action 7 of BEPS.

6.8 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?

As noted above, entities used as fund vehicles for Jersey funds are tax neutral, for Jersey law purposes.

6.9 Are there any other material tax issues for investors, managers, advisers or AIFs?

Jersey fund vehicles are tax neutral, so tax matters tend to be driven by considerations relating to the jurisdictions in which the manager and/or investors are based rather than local tax issues.

6.10 Are there any meaningful tax changes anticipated in the coming 12 months?

We are not aware of any significant changes that are expected to be made to Jersey's tax laws in the next 12 months.

7 Reforms

7.1 What reforms (if any) are proposed?

Jersey is in the process of introducing a new limited liability company (LLC) entity. LLCs, which are most commonly associated with the United States, share a number of characteristics with limited partnerships and are often described as a "hybrid" between a company and partnership. The Jersey LLC is expected to closely mirror LLCs as they exist in the US and offer its members limited liability combined with the flexibility of being able to draft an LLC agreement to set the terms of their relationship. Like LLCs in the US, it is expected that it will be possible to create series within the Jersey LLC, each with its own separate legal personality.

Given the popularity of the LLC in fund structures in the US, the LLC is expected to play a significant role in the Jersey funds industry once it is launched.



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Dilmun is a funds, corporate and regulatory lawyer based in Jersey, ranked as "highly regarded" by *IFLR 1000* and a "rising star" by *Chambers and Partners*.

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Dilmun is actively involved in the Jersey finance industry, which has included responding to industry consultations for example on LLCs and the Jersey Private Fund regime, is a committee member of the Jersey Funds Association and a member of the Jersey Association of Directors.



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