



Jersey Financial  
Services Commission

# **Collective Investment Funds (Jersey) Law 1988**

**Code of Practice**

**For Certified Funds**

**Schedule 2**

**Jersey Expert Fund Guide**

Effective from: 2 April 2012

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## Objective

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, variances and approval may be sought from the *JFSC* on a case-by-case basis.

In all cases, applications for necessary certificates and consents should be accompanied by a completed application form, which can be found at:

[Http://www.jerseyfsc.org/funds\\_securities\\_issues/forms/index.asp](http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp)

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.

## Glossary of Terms

The following table provides a glossary of terms used in this guide:

Applicable Rules	Has the meaning to be assigned to it in any <i>Codes of Practice</i> .
Application Form	Means the application form which can be found at <a href="http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp">http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp</a>
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.
CFPO	Means the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012, as amended.
Closed Fund	Means a fund which is not an <i>Open Fund</i> .
Codes of Practice	Means such Codes of Practice for Certified Funds and Fund Services Business as may from time to time be issued by the <i>JFSC</i> and be in force pursuant to Article 15 of the <i>Law</i> and Article 19 of the Financial Services (Jersey) Law 1998, as amended.
Collective investment fund	Has the meaning set out in Article 3 of the <i>Law</i> .
Constitutive Documents	Means the principal documents constituting the Expert Fund, which may include: <ul style="list-style-type: none"> <li>› The administration agreement;</li> <li>› The Expert Fund rules;</li> <li>› The investment advisory agreement;</li> <li>› The investment management agreement;</li> <li>› The limited partnership agreement, where the Expert Fund is a limited partnership;</li> <li>› The management agreement, if applicable;</li> <li>› The memorandum and articles of association, where the Expert Fund is a company;</li> <li>› The trust deed, where the Expert Fund is a unit trust; and</li> <li>› Where the Expert Fund has a custodian in Jersey, the agreement appointing such a custodian.</li> </ul>

Fund service provider	Has the meaning set out in Article 1 of the <i>Law</i> .
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 <i>Manager</i> if no separate investment manager is to be appointed <sup>i</sup> .
IOSCO	Means the International Organisation of Securities Commissions.
JFSC	Means the Jersey Financial Services Commission.
Law	Means the Collective Investment Funds (Jersey) Law, 1988, as amended.
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 <i>Units</i> 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 <i>Unitholders</i> .
Principal person	Has the same meaning set out in the <i>Law</i> .
Protected cell company	Has the meaning set out in Article 1 of the Companies (Jersey) Law 1991, as amended.
Umbrella	In relation to structure or fund means there is more than one class of redeemable shares or <i>Units</i> and where the assets are held as a single pool.
Unit	Has the same meaning as in the <i>Law</i> .
Unitholder	Means a person registered as the holder of a <i>Unit</i> in an Expert Fund.

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# Section 1

## 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 paragraph 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 paragraph 3.6 of this guide may invest in an Expert Fund.<sup>ii</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 *fund service provider* to the Expert Fund or an *Associate of a fund service provider* to the Expert Fund; or
  - 1.5.5 A person who is an employee, director, consultant or shareholder of or to a *fund service provider* of the Expert Fund or an *Associate of a fund service provider* to the Expert Fund, who is acquiring an investment in the Expert Fund as part of his remuneration or an incentive arrangement or by way of co-investment; or
  - 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 *JFSC* 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 *JFSC* to extend the definition of Expert Investor in respect of any other types of “carried interest” investors is likely to be treated sympathetically.
- 1.7 With reference to paragraph 1.5.1, the *JFSC* 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>iii</sup>

## Section 2

### 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 a certificate 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 *JFSC* has entered into a Memorandum of Understanding (or equivalent) on investment business and *collective investment funds*<sup>iv</sup>, and is either:
    - 2.7.4.1 Regulated in that state or jurisdiction; or
    - 2.7.4.2 Granted approval to act in relation to the Expert Fund by the *JFSC*, 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; and



- 2.7.6 Satisfy the *JFSC's* general principles of corporate governance in relation to the span of control over a business as set out in Appendix 1, 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 *JFSC* that it satisfies the requirements set out in paragraphs 2.7 and 2.8, and provide documentary evidence in relation to the requirement at paragraph 2.7.4. In addition, the administrator, *Manager* or trustee<sup>v</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>vi</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 *JFSC*. An *Investment Manager* that has previously been granted consent to establish an Expert Fund may, in satisfaction of the requirement set out at paragraph 2.9, confirm in writing to the *JFSC* that there have been no material changes to the information most recently provided to the *JFSC* 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 *JFSC*. 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 if this did not result in a disciplinary sanction.

**Note:**

- 1 ***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 paragraph 2.7.5) shall apply to the distributor as if it were an Investment Manager:***
- a. *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.*
- b. *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:

## Section 2: The Structure of the Expert Fund

- 2.12.1 An administrator; or
  - 2.12.2 A *Manager*; and/or, in relation to a *Closed Fund* that is a unit trust<sup>vii</sup>,
  - 2.12.3 A trustee
  - 2.12.4 Which has at least two Jersey resident directors with appropriate experience together with staff and a physical presence in the Island.
- 2.13 Any outsourcing by the administrator, *Manager* or trustee (as applicable) must comply with the *JFSC's* policy on outsourcing as may be updated from time to time.

**Note:**

- 1 ***It may be possible to establish an Expert Fund with the responsibility set out in paragraphs 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 JFSC 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 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 *JFSC* unless the Expert Fund satisfies paragraph 2.18.
- 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 *JFSC* 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.

### Fund service providers

- 2.23 Any Jersey entity acting as a *fund service provider* to an Expert Fund must be registered as a fund services business under the Financial Services (Jersey) Law 1998, as amended, to conduct fund services business 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 *JFSC*. In such a case, the *JFSC* reserves the right to undertake additional scrutiny.

### Transfers of Interests

- 2.25 The *JFSC* is concerned that only persons who satisfy the criteria for Expert Investors set out in paragraphs 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 paragraphs 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 *JFSC* 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 *JFSC* 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 *JFSC* 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; and

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- 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 *JFSC's* website.

## Section 3

### 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 the *CFPO*.
- 3.2 Any variations from the requirements imposed by the *CFPO* must be set out in the *Application Form*.
- 3.3 In addition to the specific requirements stated in the *CFPO*, Article 18 of the schedule of the *CFPO* provides that the *Offer Document* must contain any other material information that investors would reasonably require to enable investors to make an informed judgement about: (i) the merits of participating in the Expert Fund; and (ii) the nature and levels of the risks accepted by making such a purchase. The *JFSC* considers the following additional information to be material:
  - 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 *fund service providers* 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 *fund service providers* 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 *JFSC's* published policies applicable to Expert Funds will require the prior consent of the *JFSC*);
  - 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;

## Section 3: The Offer Document 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 *JFSC*. 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 *JFSC* in connection with an Expert Fund should be notified to the *JFSC* 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 certificate condition applicable to that Expert Fund will require the prior consent of a duly authorised officer of the *JFSC*.

## Section 4

### 4 Authorisation of the Expert Fund

- 4.1 In order to authorise an Expert Fund, the *JFSC* 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 *JFSC*.
- 4.3 Upon receipt of a completed *Application Form*, the *JFSC* will take steps to authorise the Expert Fund and/or its *fund service providers* 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 a duly authorised officer of the *JFSC*, the *JFSC* will authorise the Expert Fund in reliance upon the *Application Form*. In other cases the *JFSC* will discuss with the applicant those deviations that have not been previously agreed.
- 4.4 The relevant certificate application forms and fees shall be submitted at the time the application is made and prior to the issue of any certificate and other consents.
- 4.5 For an *Umbrella* Expert Fund, an *incorporated cell company*, or a *protected cell company*, which has already been granted a certificate under the *Law*, a sub-fund, incorporated cell or protected cell certificate application and fee will need to be submitted for each additional sub-fund, incorporated cell or protected cell that is added prior to an amended certificate being issued. In the case of an *incorporated cell company*, the incorporated cell certificate application form is to be used.



# Appendix 1

## 1 Span of Control Requirements

- 1.1 This appendix expands on the general principles of corporate governance in relation to “span of control” principle as referred to at paragraph 2.7.6.
- 1.2 All *Investment Managers* are advised to read the following and to discuss the contents with their Jersey legal adviser in order to ensure that they satisfy the principle.
- 1.3 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.
- 1.4 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*.
- 1.5 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 are *principal persons* of the *Investment Manager*.
- 1.6 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.
- 1.7 The *JFSC* 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.
- 1.8 With respect to 1.5, where close family are eligible to form part of the span of control only one member may be counted. In this respect close family comprises spouses (including co-habitees), civil partners, children, dependants, parents, brothers and sisters.

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<sup>i</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.

<sup>ii</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.

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

<sup>iv</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) from the International Co-operation section.

<sup>v</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.

<sup>vi</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.

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