Jersey

A Gateway to Europe for US Fund Managers

Jersey Finance

Delivering Insight ▪ Driving Innovation

Direct access to UK and EU capital

Future-proofing in view of Brexit

Six weeks to set-up

Limited remuneration disclosure

A recognised path

Jersey-based fund managers are located in a 'third country' from a European Union (EU) perspective and therefore the full scope of The Alternative Investment Fund Managers Directive (AIFMD) need not apply. This means that they may not be required to comply with certain more onerous elements, such as reporting and disclosure of remuneration. Importantly, the benefits of a Jersey manager can apply wherever the funds themselves are domiciled, be it in Jersey or elsewhere.

Put simply, access to Europe through the National Private Placement Regimes (NPPR) using a Jersey manager is a well-established model offering clear advantages.

NPPR is a recognised path and a model that has worked, and continues to work extremely well. At the end of December 2019, there were 183 managers in Jersey marketing over 320 funds into the EU alone using the NPPR route. Jersey-based fund promoters include US managers such as Blackrock, Kennedy Wilson, Citigroup and Blackstone.

Figures from Preqin show that 55% of European investors in alternative real estate and 62% in private equity are based in the UK, Switzerland or the Netherlands. From 2021, only one of those three countries will be in the EU, therefore the ongoing onerous regulation and expense in order to access only one or two EU Member States will be disproportionate when a simpler alternative is available. The reality is that few managers need blanket access to all EU Member States. In cases where they do, then an onshore option works best, but with European Commission figures suggesting that 97% of managers actually market to three EU markets or less, then private placement offers a very credible, fast, cost-effective and sensible option.

A global hub

For decades, Jersey has set itself apart as a reputable, centrally located jurisdiction for investors from key global markets. Jersey provides excellent third country access to the EU market through the use of NPPR to non-EU countries.

- Speed to market: The process, including regulatory applications and approvals, takes weeks not months, with the regulator committing to approve this type of fund launch in six weeks.
- Cost effectiveness offers better returns: Jersey's streamlined regulatory regime can result in lower running costs and higher investor returns in a jurisdiction free from value added tax (VAT).
- Regulatory certainty and innovation: The JFSC is an approachable, globally respected and co-operative regulator, supervising pragmatic regulation that meets international standards (the International Monetary Fund, the International Organisation of Securities Commissions, the European Securities and Markets Authority and the Financial Action Task Force).
- Tax simplicity: Jersey offers a tax-neutral environment with no VAT or capital gains tax (CGT) and is not reliant upon a complex system of tax rulings, exemptions and deductions, hybrid financing or double tax treaty networks.
- Political and economic stability: Jersey is a politically and fiscally autonomous and stable British Crown Dependency with a secure, special relationship with the United Kingdom (UK), but outside of the UK and outside of the EU. We are therefore perfectly positioned with regards to Brexit developments.
- Remuneration: To obtain a full AIFMD 'passport' in Europe, the manager is required to disclose remuneration details of key employees including partners. If a US manager does not need to market on a pan-European basis, there is no great benefit to an AIFMD passport and a lighter approach is permissible under the NPPR.

Case study one

Jersey feeder funds up to €100m open-ended (and also applies to closed-ended funds up to €500m if no leverage at fund level)

Scenario

A US-based fund manager directly manages a successful open-ended fund domiciled in a Caribbean jurisdiction ("the Caribbean Fund").

There has been input from the Investor Relations team that there is significant demand from European investors, particularly in the UK and the Netherlands, but i) certain European investors are unable to invest through Caribbean structures and ii) they are aware that the EU AIFMD restricts the marketing that can be done to those investors and potentially imposes ongoing compliance obligations on the fund manager (AIFM).

It was suggested that a feeder fund (the "Feeder Fund") for investors in the European Economic Area (EEA) would be a possible solution. The Feeder Fund would be expected to raise up to €100m and fewer than fifty offers to investors (meaning the provision of a final private placement memorandum, PPM, plus subscription pack) were expected to be made. It was therefore vital that the Feeder Fund be set up as economically as possible and did not impose significant additional compliance or other requirements on the existing US manager.

The Jersey solution

Given Jersey's unique location and regulatory regime, Jersey is a jurisdiction of choice for setting up feeder funds that are marketed into the EEA.

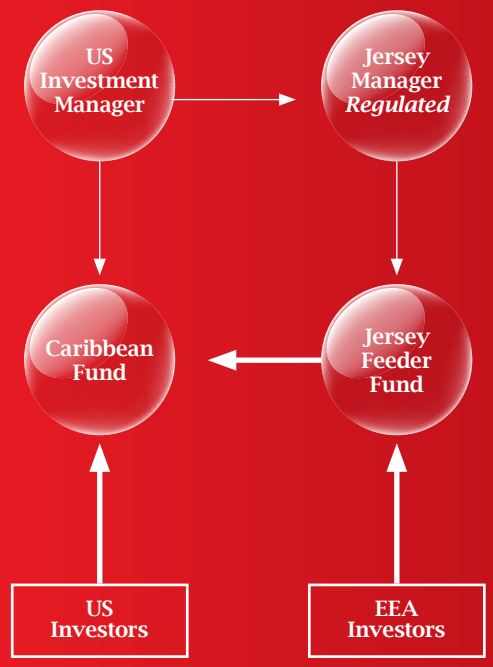
Setting up the Feeder Fund and manager structure in Jersey is very straightforward. A Jersey limited partnership or company can act as the Feeder Fund vehicle. This can be established on a same-day basis with a private limited company acting as the general partner/manager (the "Jersey Manager") and AIFM. An administrator will provide all accounting, director and administration services to the Jersey entities.

Once the limited partnership and the company are set up, the lawyer will apply to the JFSC for the licences/consents in order for the Feeder Fund to be regulated as a Jersey Private Fund that is eligible to be marketed into the EEA and for the Jersey Manager to be regulated to act as AIFM. The lawyer will also draft a brief wrapper for the PPM of the Caribbean Fund containing additional information on the Feeder Fund. The Feeder Fund can then be registered and marketed in each relevant EEA jurisdiction under their NPPRs.

Benefits of the Jersey solution

- Keeps the existing US manager out of scope of AIFMD.
- Having the AIFM in Jersey ensures easy and inexpensive access to the EEA through NPPR.
- Jersey's access to UK investors is unlikely to be affected by the UK leaving the EU.
- The Jersey regulator is a respected regulator and meets international standards set by the IMF, IOSCO, ESMA and FATF – all positive from an investor relations perspective. There is also an element of future-proofing as ESMA have already approved Jersey's regulatory regime for when a third country passport is introduced.
- A local administrator, as the provider of manager services, will carry out all compliance and reporting obligations for the Jersey Manager – this will greatly reduce the operating costs. Further, the Jersey Manager will be subject to light-touch regulation and will only have to comply with the most basic elements of AIFMD. However, this will not affect the portfolio management function, which will continue to be fulfilled by the US manager.
- The Jersey Manager will not be subject to the full remuneration reporting requirements of AIFMD.
- The Jersey Manager will be tax neutral regarding the services it performs and in respect of any fees it receives, with no VAT, goods and services tax, CGT or corporation tax chargeable. It will be subject to the 0% rate of Jersey income tax. The Feeder Fund will also be tax neutral.

Typical feeder fund and Jersey manager structure



Case study two

Marketing an existing Caribbean fund (over US$100m AUM and open-ended) into the EEA

Scenario

A large US-based fund manager operates a successful fund domiciled in a Caribbean jurisdiction ("the Caribbean Fund"). The Caribbean Fund is managed by a Caribbean incorporated company (the "Caribbean Manager")

The business development team of the fund manager has produced a report describing high demand from European investors, particularly the UK and the Netherlands. The directors are keen to explore these opportunities but are worried about potential market access issues. They are aware that the EU AIFMD restricts the marketing that can be done to those investors and potentially imposes ongoing compliance obligations on the fund manager (AIFM).

Jersey can clearly demonstrate substance, particularly in light of incoming changes to international tax practice as a result of BEPS (Base Erosion and Profit Shifting). This could be more difficult for other jurisdictions.

The Jersey solution

In order to build substance and mitigate the compliance and regulatory costs of obtaining marketing access to the EEA, it was suggested that migrating the Caribbean Manager to Jersey would be a viable option.

Migration of the Caribbean Manager to Jersey is a straightforward process at the completion of which the Caribbean Manager will become a Jersey company. A Jersey lawyer will coordinate the process seamlessly, and the regulators in both jurisdictions are familiar with the process involved. The Jersey company can adopt constitutional documents similar to those of the Caribbean company, and the existing contractual framework around the Caribbean Manager will remain in force, ensuring minimum disruption to the operation of the Fund.

In order for the Fund to be marketed to the EEA, the Jersey Manager must be regulated as an Alternative Investment Fund Services Business (AIFSB) in Jersey. A local administrator will be appointed as the service provider to the Jersey Manager and will carry out all compliance and reporting obligations, as well as providing directors and key persons with genuine expertise and substance. This appointment will be designed such that it takes effect immediately upon the completion of the migration to Jersey.

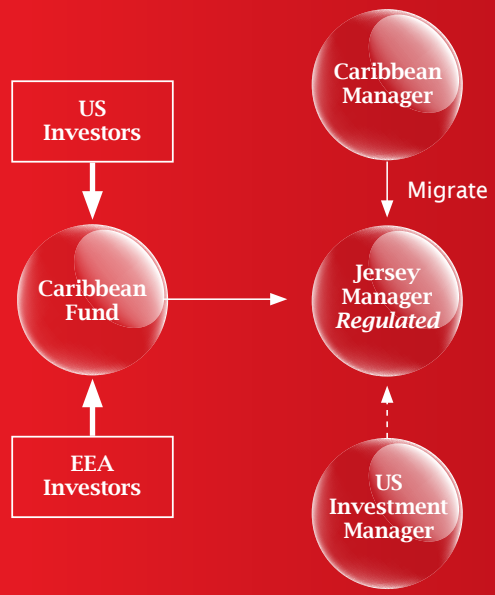
The local lawyer will coordinate with the Jersey regulator (JFSC) to progress the regulatory applications in relation to the Jersey Manager so that it is able to act as the manager to the Fund immediately upon the completion of the migration to Jersey. The Jersey lawyer will draft a wrapper document to the existing Offering Memorandum of the Fund in order to comply with any AIFMD disclosure requirements and set out the revisions to the structure.

Immediately upon the completion of the migration and grant of the regulatory licences, the Jersey Manager will be able to apply to the local regulators in the UK and the Netherlands (and other EEA countries if needed) to market the Fund through the NPPR, comprising a significantly lighter touch than full AIFMD.

Benefits of the Jersey solution

- Due to familiarity with the corporate regimes across the jurisdictions, the migration process from the Caribbean is seamless, and minimises impact on the fund/manager structure.
- Having the manager in Jersey ensures easy and relatively inexpensive access to the EEA through the NPPR, which involves a simple registration process. As the regulators in most EEA countries are well acquainted with Jersey Managers, the process is very straightforward.
- The Jersey regulator is a respected regulator and meets international standards set by the IMF, IOSCO, ESMA and FATF – this is great from an investor relations perspective. There is also an element of future-proofing as ESMA has already approved Jersey's regulatory regime for when a third country passport is introduced.
- The local administrators, as the providers of manager services, will carry out all compliance and reporting obligations for the Jersey Manager – this will greatly reduce operating costs of the Jersey Manager. As a result of appointing a local administrator, the Jersey Manager will be subject to light-touch regulation and will only have to comply with the basic standards of the AIFMD. However, this will not affect the portfolio management/advisory function, which can continue to be directed by the US investment adviser/manager.
- The Jersey Manager will not be subject to the full remuneration reporting requirements of AIFMD, due to the approved Jersey service structure provided by a Jersey administrator.
- The Jersey Manager will be tax neutral for the services it performs, with no VAT, GST, CGT or income/corporation tax chargeable.

Post-migration structure



Assets under administration in Jersey

Assets by US promoter origin up 198% in the last five years

Monterey Jersey Fund Report 2019

US promoters = the third biggest source of assets by promoter origin

Monterey Jersey Fund Report 2019

About Jersey

'Old' Jersey is a leading, future-focussed international finance centre, located between the UK and France. Our Island's unique constitutional position as a British Crown Dependency means that we have domestic autonomy, which has been preserved for the last 800 years. Our strong and respected regulatory framework is internationally recognised and sets us apart.

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Elliot is focussed on defining the strategy and execution of marketing Jersey as both a domicile and destination for hedge and private equity management companies and funds based in the UK, US, Switzerland and Europe.