Jersey

Private Funds

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Jersey Private Fund (JPF) in overview

Light-touch regulation

Which meets international standards, on the basis that the Jersey-based designated service provider (DSP) carries out appropriate due diligence

Easy access to European investors

Through national private placement regimes (NPPRs), if marketing into the European Union (EU) is desired

Consolidates and simplifies the private funds regimes

Replacing COBO only funds, private placement funds, and very private funds

Speed and ease of establishment

A 48-hour regulatory turnaround

Versatility

Open or closed-ended, and any type of investment vehicle

Key features of a JPF

- Is for fewer than 50 offers and fewer than 50 investors in Jersey or elsewhere
- Can only be invested in by ‘professional investors’ or ‘eligible investors’ who have acknowledged in writing receipt and acceptance of an investment warning and disclosure statement
- May be open or closed-ended
- May not be listed, including a technical listing
- No requirement to appoint an auditor
- Every JPF must appoint a regulated full substance designated service provider (DSP) in Jersey
- Is subject to the JFSC’s sound business practice policy
- Consent is required under Control of Borrowing (Jersey) 1958 Order
- May be an alternative investment fund (AIF), in which case Jersey’s Alternative Investment Fund Managers Directive (AIFMD) legislation and code of practice for AIFs and AIF services business will apply
- No explicit *requirement to appoint Jersey-resident directors (or Jersey resident GP or trustee director as appropriate), although the Jersey Financial Services Commission (JFSC) would ordinarily expect it

Provided that certain criteria are met:

- The JPF will not be required to comply with the Code of Practice for Certified Funds
- The promoter of the JPF will not require prior JFSC approval
- Personal questionnaires will not be required for any director, beneficial owner/controller, money laundering reporting/compliance officer or service provider to the JPF other than the DSP (through the DSP’s own regulatory requirements)
- The JPF will not be required to have an offering document but may do so (however, if the fund is marketed into the EU, it must comply with the applicable sections of the AIF code of practice and may require an offer document)
- The JFSC’s policy on outsourcing will not apply to the JPF (but will apply to the DSP)

Structure of a JPF

A JPF established in Jersey may take the following forms:

- A company (including a protected cell company, incorporated cell company or any cell thereof);
- One or more limited partnerships (including limited partnerships, limited liability partnerships, separate limited partnerships or incorporated limited partnerships)
- A unit trust constituted under the laws of Jersey
- Almost any non-Jersey structure, so long as COBO consent is required.

The designated service provider (DSP)

A JPF must appoint an existing full-substance Jersey-based DSP and cannot change the DSP without JFSC approval (the DSP cannot be a managed entity for fund services business (FSB) purposes).

If there are 15 or fewer offers/investors, the DSP may be registered by the JFSC to conduct any class of FSB, trust company business and/or investment business within the meaning of the Financial Services (Jersey) Law 1998 (FSJL).

Where there are more than 15 offers, the DSP must be registered by the JFSC under the FSJL to carry on one or more of class V (administrator), class U (manager), class X (investment manager) or class ZG (trustee) of FSB.

While the JPF regulation focusses on the DSP rather than the fund itself, the duties and responsibilities of the DSP do not replace those of the JPF's governing body, which remains responsible for marketing and capital raising etc.

Jersey service providers to a JPF may continue to rely on the Financial Services (Investment Business) (Restricted Investment Business – Exemption) (Jersey) Order 2001 and/or the Financial Services (Trust Company Business) (Exemption No.5) (Jersey) Order 2001 (the PIRS orders), so as not to be required to be licensed to provide services to a JPF.

The DSP is responsible for:

- Making all reasonable enquiries to ensure that the JPF meets all the establishment and ongoing eligibility criteria (these are set out in the JFSC's JPF Guide)
- Ensuring that all due diligence is carried out and that all relevant AML requirements are met
- Ensuring that all documentation relating to any due diligence enquiries will be readily retrievable in Jersey
- Completing and submitting an application form for authorisation of the JPF and any notices of change or event
- Completing and submitting an annual JPF compliance return

Investors of a JPF

There can be up to 50 offers to professional and/or eligible investors, as defined under the following:

- A person acquiring an interest in a JPF with no rights other than management and/or control rights (i.e. no profit-sharing rights), will not be considered an investor
- A top-up of investment by an investor shall be treated as part of the original offer
- A transfer or split of an interest in a JPF is permitted providing the number of investors does not exceed 50
- Carried interest vehicles established solely for sharing the profits of the JPF or any other vehicle promoted or advised by the JPF's promoter will not be counted as an investor, but each participant in the vehicle, however, must be a 'professional' or 'eligible' investor
- General partners of JPFs established as limited partnerships, separate limited partnerships or incorporated limited partnerships or managing partners of limited liability partnerships will not be considered as an investor provided the general partner or managing partner (as the case may be) does not commit co-investment capital in the limited partnership
- A 'professional' investor (for example a discretionary investment manager) acting for retail investors (who are 'professional' investors) can be counted as just one investor
- JFSC policy is to apply a 'look through' approach regarding feeder funds (that is each 'professional' or 'eligible' investor in the feeder fund will be counted for the purposes of the 50 or fewer test, however the feeder fund itself will not)

The JFSC will consider derogations from these rules on a case by case basis, although it will delay authorisation.

Timescale and costs

If all the criteria are met, a JPF may be authorised by the JFSC within 48 hours. Fees are specified by the JFSC and available on their website. Separate application timescales and fees are applicable for the incorporation or registration of the Jersey company or partnership or where the JPF is also an AIF.