

• JERSEY FUNDS OVERVIEW

This overview outlines legal and regulatory issues related to investment funds in Jersey.

There are two key issues to consider in relation to investment funds in Jersey, the first being the legal structure by which the fund will be established, and the second being the level of regulation (if any) to which the fund and/or any service provider to the fund will be subject.

LEGAL STRUCTURE

The main legal structures used for the formation of an investment fund in Jersey are companies, partnerships and trusts. Funds usually take the form of a limited company, limited partnership or unit trust.

Specialist vehicles are also available. These include unlimited companies, guarantee companies, limited life companies, cell companies (both protected cell companies and incorporated cell companies), limited liability partnerships, incorporated limited partnerships, special limited partnerships, discretionary trusts and foundations.

REGULATION OF FUNDS

The Jersey Financial Services Commission ("JFSC") is charged with the regulation of funds in Jersey. Funds are basically categorised by whether they make more than fifty offers or less than fifty offers.

1) More than Fifty Offers

Funds which make a public offer include any fund which makes more than fifty offers or will be listed on any stock exchange within one year of a public offer being made. These funds are referred to as "collective investment funds" in Jersey.

Collective investment funds are categorised into Recognised Funds and Unclassified Funds, the latter further divided into Expert Funds and Listed Funds. Unregulated Funds are funds which would fall within the definition of a collective investment fund but for the fact that they meet certain criteria qualifying them for exemption.

The above referred categories of fund may be summarised as follows.

Recognised Funds

Funds intended to be marketed widely to the public in the UK can take advantage of Jersey's designated territory status by complying with the detailed statutory requirements for Recognised Funds. These funds are highly regulated. There is no limit on the number of investors who may invest in a Recognised Fund and also no minimum investment required. Accordingly, these funds are appropriate for retail or public funds. Recognised Funds may take the form of an open-ended company or unit trust only.

Unclassified Funds

All funds which comprise collective investment funds but are not Recognised Funds comprise Unclassified Funds.

There is no limit on the number of investors who may invest in an Unclassified Fund and also no minimum investment required. There are also no qualifying criteria for investors in Unclassified Funds. Accordingly, although not enjoying the same marketing freedom as Recognised Funds, Unclassified Funds are also appropriate for retail or public funds, and may be used for a wide range of fund types provided they meet the investment strategy and restrictions imposed for the fund type.

Although Unclassified Funds are in general subject to stringent regulation, certain Unclassified Funds qualify for lighter touch regulation as either Expert Funds or Listed Funds.

Expert Funds

These funds are ideal for a wide range of funds which are available for investment only by Expert Investors, basically being investors who make a minimum initial investment of US\$100,000 or currency equivalent, alternatively investors who are sophisticated or have a high net worth. Without limitation, Expert Funds are ideal for alternative investment funds, including private equity, venture capital, property and hedge funds.

There is no limit on the number of investors who may invest in an Expert Fund. Expert Funds may take the form of an open or closed-ended company, partnership or trust. An Expert Fund may only list on a stock exchange which permits restrictions upon transfers of interests within the fund. This is in order to ensure that only Expert Investors are allowed to invest in the fund.

Listed Funds

A Listed Fund is subject to a similar level of regulation as an Expert Fund, the key difference being that there is no requirement for investors to be Expert Investors and the securities of a Listed Fund must be listed on a recognised stock exchange or market.

The key advantage of a Listed Fund over an Expert Fund is that it is possible to establish a Listed Fund with no minimum investment level or other eligibility criteria applicable to the Fund. There is no limit on the number of investors who may invest in a Listed Fund.

Listed Funds may take the form of a closed-ended company only.

Unregulated Funds

Unregulated Funds comprise two categories of unregulated funds, namely Unregulated Eligible Investor Funds and Unregulated Exchange Traded Funds.

Both of the Unregulated Funds may be established as a company, trust or partnership. However, the Unregulated Exchange Traded Fund must take the form of a closed-ended fund.

Unregulated Eligible Investor Fund

An Unregulated Eligible Investor Fund is a scheme or arrangement which is available to Eligible Investors only. These funds are ideal for a wide range of funds which require a minimum initial investment of US\$1 million or currency equivalent, alternatively target sophisticated or high net worth investors. Unregulated Eligible Investor Funds are ideal

for alternative investment funds, including private equity, venture capital, property and hedge funds. There is no limit on the number of investors who may invest in an Eligible Investor Fund.

The fund may only list on a stock exchange which permits restrictions upon transfers of interests within the fund. This is in order to ensure that only Eligible Investors are allowed to invest in the fund.

Unregulated Exchange Traded Fund

An Unregulated Exchange Traded Fund is a form of unregulated listed fund which need not be regulated by the JFSC on the basis that it is already regulated by a stock exchange. In order to qualify under this category the units in the fund must be listed on one or more recognised exchanges.

There are no specific criteria for investors to be eligible for an Unregulated Exchange Traded Fund. There is no limit on the number of investors who may invest in an Unregulated Exchange Traded Fund.

2) Fifty or Fewer Offers

A fund which is not offered to more than 50 investors and will not be listed within one year, is considered a private fund in the form of a Private Fund or Very Private Structure.

Regulatory requirements in relation to Private Funds are governed by policy rather than statute and are flexible. A Private Fund and Very Private Structure may take the form of an open-ended or closed-ended fund. Neither a Private Fund nor a Very Private Structure may be listed.

Private Funds

An investment vehicle which may be made available to a restricted circle of persons, basically meaning not more than fifty investors.

Private Funds are regulated in accordance with regulatory policy developed by the JFSC. However, two specific categories of Private Funds qualify for lighter touch regulation, namely Private Placement Funds and Professional Investor Regulated Schemes.

Private Placement Funds

Private Placement Funds must be closed-ended and only available to Professional Investors or Sophisticated Investors. There are eleven categories of Professional Investor including tests relating to net worth. A Sophisticated Investor is any person who makes a minimum initial investment of £250,000 or currency equivalent.

Professional Investor Regulated Scheme

Investor eligibility requirements for Professional Investor Regulated Schemes are similar to Private Placement Funds. Private Funds which meet these requirements may be open or closed-ended and are subject to lighter touch regulation by the JFSC, including the exemption of certain service providers from financial services business regulatory control and supervision.

Very Private Structures

An investment vehicle established for a small number of pre-selected investors (up to a maximum of fifteen) is treated in the same way as a joint venture company and subject to a very light touch of regulation. Offers as well as investors may not exceed fifteen.

FUND SERVICES BUSINESS

A person carries on fund services business if by way of business the person is:

- a manager, manager of a managed entity, administrator, registrar, investment manager or investment adviser;
- a distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent or repurchase agent;
- a trustee, custodian, depository;
- a member (except a limited partner) of a partnership, including a partnership constituted under the law of a country or territory outside Jersey;

In relation to an Unclassified Fund or an Unregulated Fund. Registration requirements apply to persons carrying on fund services business, unless a relevant exemption applies.

Although service providers to private funds do not fall within the definition of fund services, regulatory requirements may still apply, subject to certain exemptions where applicable. Service providers to other fund types, including Recognised Funds, may be subject to additional regulatory requirements.

FOR MORE INFORMATION, PLEASE CONTACT:



MARK RAWLINS

PARTNER

t: +44 (0)1534 601 750

e: mark.rawlins@collascrill.com



ADRIAN ODELL

SENIOR ASSOCIATE

t: +44 (0)1534 601753

e: adrian.odell@collascrill.com

Collas Crill Jersey

40 Don Street,

St Helier,

Jersey, JE1 4XD

t: +44 (0) 1534 601700

f: +44 (0) 1534 601701

e: jersey@collascrill.com

w: www.collascrill.com