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Jersey investment funds: Making the right regulatory choice

MARCH 2018

With its structured yet flexible regulatory regime and tax neutrality, set against the backdrop of its political and economical stability and financial expertise, Jersey is an ideal jurisdiction in which to establish an investment fund.

Jersey offers a wide range of funds from regulated Recognised Funds for retail investors down to the lightly regulated Jersey Private Funds and Unregulated Funds.

The guides published by the Jersey Financial Services Commission (**JFSC**) create certainty for those setting up a fund and the JFSC has committed to establishing procedures to allow a fund to be authorised quickly, easily and cost effectively.

This briefing provides a whistle-stop tour of the various types of investment funds and identifies the key regulatory considerations to help you assess what kind of fund might be suitable for you.

Fund structures

Funds established in Jersey can take one of several different structures.

They can be companies (including incorporated cell companies or protected cell companies), unit trusts or limited partnerships (including separate or incorporated limited partnerships).

Jersey has specifically developed its Companies Law to allow flexibility for funds which are established as a company.

The regulatory framework

The JFSC is the Island's regulator, and plays a similar role to that of the Financial Conduct Authority (**FCA**) in the UK, protecting consumers and the Island's reputation and commercial and financial industries.

The level of interaction with and oversight by the JFSC will depend on the type of investment fund. Listed below are the main types of funds, in descending order from those with the lightest regulatory touch down to the most highly regulated.

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Types of fund

Unregulated funds

What are they:

An 'Unregulated Eligible Investor Fund' can be open or closed-ended and only eligible investors may invest in it. These are (broadly) professional or institutional investors or an investor who makes a minimum initial investment of USD 1,000,000 (or currency equivalent). These funds cannot be marketed to EU/EEA investors.

Regulatory regime:

For these funds the regulatory requirements are extremely light.

- a notice must be filed with the JFSC confirming that it is an unregulated fund;
- the offer document must contain both a prominent declaration that the fund is unregulated and an investment warning that must be acknowledged in writing by any prospective investors; and
- if the fund is a company, it must have a registered office provided by a duly licenced Jersey fund administrator holding a fund services business license.

Jersey Private Funds (JPFs)

What are they:

In April 2017 JPFs replaced "COBO-only funds" (approved under the Control of Borrowing (Jersey) Order 1958), private placement funds and very private funds. They can be open or closed-ended.

A JPF is defined as "a private investment fund involving the pooling of capital raised for the fund and which operates on the principle of risk spreading" [our emphasis]. In practice this means that at least two investors are "pooling" their capital; and there must be at least two assets such that there is "risk spreading". To qualify as a JPF, certain criteria must be met, including that:

- The maximum number of investors is 50 or less at all times and there can be no more than 50 offers made to potential investors.
- The investors are 'professional' (as defined in the Jersey Private Fund Guide (the **JPF Guide**)) or 'eligible' (which includes investors who make a minimum investment or commitment of not less than £250,000). Retail investors are not permitted unless they are investing through a discretionary investment manager who is satisfied that the investment is suitable for the underlying investor.
- There is no requirement for an offer document. However, any offering materials issued must include an investment warning and disclosure statement as set out in the JPF Guide, and investors must confirm written receipt of the same, typically in the subscription agreement.
- A JPF is not permitted to be listed.

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Regulatory regime:

A JPF has no borrowing restrictions and can appoint a non-Jersey administrator. A Jersey Designated Service Provider (**DSP**) must be appointed. The DSP must be registered with the JFSC and the DSP must not be changed without prior JFSC approval. A JPF is not required to appoint an auditor, but may do so.

There is a fast track process for JPFs, whereby the DSP files an application form with the JFSC on behalf of the fund and, provided the criteria are met and no complexities arise, authorisation should be achieved within 48 hours.

For more information please see our Jersey Private Fund briefing note.

Eligible Investor Funds (EIFs)

What are they:

EIFs were introduced as a new form of certified fund following the introduction of the AIFMD, and are designed for when the fund will be marketed into the EU/EEA.

As the name suggests, EIFs are only open to 'eligible' investors, who must fall within at least one of several categories, which include that person:

- making a minimum initial investment or commitment of USD 1,000,000 (or currency equivalent);
- providing investment advice or managing/dealing in investments as part of that persons' ordinary business; or
- having property with a total market value of not less than USD 10,000,000.

EIFs can be traded on a stock exchange or stock market subject to certain requirements, including that transfers are restricted so that only eligible investors can acquire units in the EIF, a declaration must be signed by the investor, and a different declaration is required to be signed if the investment is being made by an investment manager on behalf of investors who are not eligible investors.

The investment manager/promoter of the fund does not need to be located in Jersey, but must be established in an OECD state (or other state that is approved by the JFSC).

However, EIFs must have a suitably regulated Jersey based administrator, manager or trustee (dependent on its structure), and at least two Jersey resident directors. If it is an open ended EIF, a Jersey resident custodian will also need to be appointed (or a prime broker of sufficient credit rating for a hedge fund). An EIF must appoint an auditor.

Regulatory regime:

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An EIF must be an alternative investment fund under the Alternative Investment Managers Directive (**AIFMD**) and so can only be used when they will be marketed in the EU/EEA.

The offering document for an EIF does not need to comply with the normal Jersey disclosure requirements for certified funds, but must comply with the disclosure requirements set out in the EIF Guide and the code of practice for alternative investment funds each as issued by the JFSC.

The fund will be regulated under the Collective Investment Funds (Jersey) Law 1988. EIFs are attractive non-retail schemes and can normally be processed in a timely and cost effective manner.

Expert Funds

What are they:

Like EIFs these are certified funds specifically designed for expert investors. Investors must fall within at least one of several categories of expert investor which include:

- persons investing at least USD 100,000 (or currency equivalent);
- institutional or sophisticated investors; and
- persons with a net worth (excluding their primary residence) of at least USD 1,000,000.

Expert Funds also have a fast track application process which may be as quick as three days.

Expert Funds may be offered to an unlimited number of expert investors and can be open or closed-ended funds.

The fund company, trustee or general partner itself must be established in Jersey, the fund must have two Jersey resident directors of either the fund company, trustee, or general partner (as applicable) and a licensed Jersey administrator, manager or trustee.

Regulatory regime:

Once established, the ongoing regulatory requirements are limited but the fund will be regulated under the Collective Investment Funds (Jersey) Law 1988.

The offer document, which is to be filed with the JFSC, must:

- comply with the Expert Fund Guide;
- comply with the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012;
- include an investment warning (which is to be expressly acknowledged by investors); and
- contain all material information relating to the fund.The fund must also be audited.

Listed Funds

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What are they?

Listed funds are a form of certified fund and once again there is a fast track approval procedure. The JFSC aims to have Listed Funds approved within three days of an application. These funds are corporate closed-ended funds which must be listed on a recognised stock exchange or market. There is no minimum subscription amount and no restriction on the type of investors, but investors are expected to be professional or experienced investors, or who have taken appropriate professional advice.

The investment manager of the fund does not need to be located in Jersey, but must be established in an OECD state (or other state that approved is by the JFSC).

Regulatory regime

The fund must comply with the Jersey Listed Funds Guide. The offering document must contain a clear investment warning as well all material information relating to the fund so that investors have all necessary information.

Additionally, Listed Funds must have a Jersey based administrator, manager or trustee (dependent on its structure), and at least two Jersey resident directors and the majority of it's board of directors must be independent.

Once approved there are limited regulatory requirements but the fund will be regulated under the Collective Investment Funds (Jersey) Law 1988. The fund must be audited.

Open-Ended Unclassified Collective Investment Funds (OCIFs)

What are they?

OCIFs are a form of open-ended public fund which may be offered to retail investors.

Regulatory regime

The fund must comply with the Open-Ended Unclassified Collective Investment Funds Guide.

The promoter (which is described as the driving force behind the fund) of an OCIF must comply with the JFSC's promoter policy. The fund must have a Jersey based manager and a Jersey based custodian. An auditor must be appointed and must be independent of both the manager and the custodian.

The fund will be regulated under the Collective Investment Funds (Jersey) Law 1988 (**CIF Law**).

Unclassified Funds

What are they?

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These are certified funds that are not OCIF, Expert, Listed or Eligible Investor Funds as defined in the relevant guides.

Regulatory regime

These are regulated by the JFSC on a case by case basis. The JFSC will look at the prospectus, constitutional documents, the material agreements of the fund and the fund structure and investment level in order to determine to what extend the fund must comply with the regulatory guidelines.

The promoter of such a fund must comply with the JFSC promotor policy. The fund must have a Jersey based manager and, where it is open-ended, a Jersey based custodian. The fund will be regulated under the CIF Law.

Recognised Funds

What are they?

Recognised funds are authorised by the JFSC as collective investment funds. They can be marketed directly to the UK as well as Australia, Belgium, Hong Kong, the Netherlands and South Africa. Investors have recourse to a statutory compensation scheme.

Regulatory regime

Recognised funds are the most highly regulated of Jersey Funds. They are authorised under the Collective Investment Funds (Recognised Funds) (Rules) (Jersey) Order 2003 and are regulated under the Collective Investment Funds (Jersey) Law 1988.

If you would like to know more about the different types of fund or would like us to help you with the establishment of your fund, please get in touch.

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