Jersey private funds

January 2018

In early 2017 the Jersey Financial Services Commission (**JFSC**) issued its Jersey Private Fund guide (the **Guide**). This set out the criteria for a new fund product called the Jersey Private Fund (**JPF**), which replaces COBO-only Funds, Private Placement Funds and Very Private Funds (although existing funds are not required to convert to become a JPF). JPFs are lightly regulated and do not require an audit or for a prospectus to be produced.

Excluded Arrangements

The Guide expressly states that certain arrangements will not fall within the definition of a JPF. These are:

- holding companies;
- joint ventures;
- securitisation schemes (as defined in the Collective Investment Fund (Restriction of Scope) (Jersey) Order 2000);
- family office vehicles; and
- carry/incentivisation vehicles.

Eligibility Criteria

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". Provided that a JPF has no more than 50 investors at any one time and makes no more than 50 offers that are capable of acceptance, a JPF can be either open or closed ended. It can also be established in Jersey or abroad.

A JPF can be structured as a company, a limited partnership or a unit trust (or their equivalent if in another jurisdiction). However, a JPF may not be a listed fund or list debt/conduct a technical listing.

There is no requirement for a JPF (or its general partner or trustee, as applicable) to have Jersey resident directors, or for its general partner or trustee to be incorporated in Jersey.

Additionally there is no requirement for the mind and management of the JPF to be in Jersey. However, the JFSC expects that the majority of JPFs will have at least one Jersey resident director.

Designated Service Provider

A JPF must appoint a Designated Service Provider (**DSP**) who is registered with the JFSC for Funds Service Business, unless the JPF has 15 investors or fewer in which case the DSP can be registered for any class of Trust Company Business. The DSP must be a full substance entity and will be responsible, among other things, for ensuring that the fund meets the JPF eligibility criteria and ensuring compliance with Jersey's AML/CFT requirements.

A JPF is not considered a collective investment fund under the Collective Investment Funds (Jersey) Law 1988 and does not have to comply with the Code of Practice for Certified Funds. The promoter of a JPF does not need approval from the JFSC, and the JFSC's outsourcing policy does not apply to a JPF. The DSP will need to conduct its own due diligence on the promoter, and regard to the JFSC's Sound Business Practice policy will be required.

Marketing Considerations

There is no obligation for a JPF to produce an offer document (however, if it does the document must contain all the material information which investors and their professional advisors would reasonably require and reasonably expect to find for the purpose of making an investment in the fund).

However, all offering materials (which may be a term sheet, for example) that are produced for a JPF must contain the investment warning and disclosure statement that can be found in the Guide.

Finally, if a JPF is an Alternative Investment Fund (**AIF**) under the EU Alternative Investment Fund Managers Directive (**AIFMD**) and going to be marketed into Europe, then the Jersey AIFMD regime will apply. Compliance with the national private placement regime of the relevant member state will be required.

Professional and Eligible Investors

An offer to invest in a JPF must be addressed to a restricted circle of persons.

Each investor must be a "professional investor" as defined in the Guide or an "eligible investor". To be an "eligible investor" the investor must generally be investing at least £250,000, or be investing on behalf of clients who are able to bear the economic consequences of investing in the JPF.

All investors must acknowledge in writing the receipt and acceptance of the investment warning and disclosure statement, as set out in the Guide.

50 or Fewer Test

As mentioned above, a JPF cannot have more than 50 investors and must not make more than 50 offers that are capable of acceptance. The 50 or fewer test defines who is, and isn't, an investor for the purpose of the JPF.

For example, a carried interest vehicle is not counted as an investor, and it is not necessary to look through a professional investor to count any underlying investors.

Investors cannot transfer or split up an interest if it will result in there being more than 50 investors. However, the JFSC may provide derogations in exceptional circumstances.

Application and ongoing reporting

The DSP must apply to the JFSC for authorisation of the JPF along with an application fee. Authorisation should take place within 48 hours provided no matters require clarification.

Once authorised, any material changes to the JPF should be notified to the JFSC as soon as reasonably practicable and each year the DSP is required to submit a compliance report in relation to the JPF.

The JPF cannot change it's DSP without permission from the JFSC.

For more information on Jersey Private Funds, please get in touch.