Jersey Private Funds

Fund Services - Briefing Note

On 18 April 2017, the Jersey Financial Services Commission ("JFSC") issued the Jersey Private Fund Guide ("JPFG"). The JPFG introduces the Jersey Private Fund ("JPF"), which amalgamates three other earlier Jersey products: Very Private Funds, Private Placement Funds and COBO Only Funds. The JPF will be of interest to promoters who are looking to launch funds for groups of investors where a fully-regulated product might not be necessary or appropriate.

What is a JPF?

A JPF is a private investment fund involving the pooling of capital under the principle of risk spreading. Therefore, in order to fall within the scope of the JPFG, a structure would need to have at least two investors pooling their capital and a number of assets being acquired, such that there would be "risk spreading".

The JPF regime is designed to be flexible and a JPF can take the form of a company (including a protected cell company, an incorporated cell company or any cell thereof), a partnership or a unit trust.

Helpfully, the following are expressly not intended to fall within the definition of a JPF:

- holding companies;
- joint ventures;
- SPV/securitisation vehicles;
- family office vehicles; and
- carry/incentivisation vehicles.

What are the key requirements and eligibility criteria?

A JPF:

- can be marketed to 50 or fewer "professional" or "eligible" investors as defined in the JPFG;
- must not be listed;
- is subject to a basic investment warning and disclosure statement as provided in the JPFG;
- cannot have retail investors investing directly into it;
- can be open-ended or closed-ended;
- has no requirements for promoter policy/approval;
- has no requirement for Jersey-resident directors;
- has no requirement for an offering document;
- has no set restrictions on investment and borrowing;
- has no requirement for audited accounts;
- must appoint a designated service provider ("DSP"), which is registered pursuant to the Financial Services (Jersey) Law 1998 (the "Law");es; and
- activity is subject to the Sound Business Practice Policy.

What are the key application and ongoing obligations?

A JPF must have a consent issued by the JFSC under the Control of Borrowing (Jersey) Order 1958.

The DSP of each JPF must complete and file an application form for the authorisation of that JPF ("JPF Form"). A one-off application fee is payable to the JFSC followed by an annual fee payable in July each year.

The JPFG provides for a streamlined, 48-hour authorisation process for all JPFs that meet the eligibility criteria, provided that the JFSC's authorisation team receives the completed JPF Form and requisite application fee in good order.

Any material changes from the information provided in the JPF Form prior to the launch of a JPF must be notified to the JFSC as soon as possible. Any material changes to the JPF following the launch must be notified to the JFSC as soon as is reasonably practicable and within 28 days.

The DSP is required to submit an annual compliance return ("JPF Return") in respect of the JPF.

A Professional Investor is:

Broadly, people who invest (as principal and/or agent) by way of business including;

- people with a net worth (or joint net worth) of greater than US$1m excluding their principal place of residence;
- investment structures with assets valued at US$1m or greater;
- a person who is authorised to carry on fund services business, trust company business or investment business within the meaning of the Law; or
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- a person who is authorised in another jurisdiction to carry on materially equivalent services by way of business to or in connection with a JPF (including senior employees, directors, partners, shareholders, consultants and shareholders of such a business) and any related carried interest scheme.

An Eligible Investor is:

- broadly, an investor who makes an minimum investment of £250,000,
- holders of non-participating interests in the JPF (which have been created to facilitate the JPF's formation, the exercise of voting or management rights or to give entitlement to performance related fees as part of remuneration arrangements); and
- discretionary managers acquiring interests on behalf of non-professional or non-eligible investors.

What is a Designated Service Provider (DSP)?

The DSP must be registered pursuant to the Financial Services (Jersey) Law 1998 and must be an existing, full-service Jersey entity regulated by the JFSC.

The DSP is responsible for:

- making reasonable enquiry to ensure that the JPF meets all eligibility criteria, both on its establishment and on a continuing basis;
- ensuring that all necessary due diligence on the JPF and all related parties (including the promoter and service providers) is carried out;
- ensuring compliance with all necessary Jersey AML/CFT requirements;
- ensuring all documents relating to its due diligence enquiries are readily retrievable in Jersey;
- completing and submitting the JPF Form and the JPF Return;
- notifying the JFSC in writing as soon as reasonably practicable (and within 28 days) of any material changes which would reflect the accuracy of the information provided to the JFSC in relation to the JPF in respect of non-compliance, complaints or a qualified audit of the JPF's financial statements (in circumstances where the JPF has elected to appoint an auditor).

Where can I find further information?

The JPFG can be downloaded from the JFSC's website as per the below details:

https://www.jerseyfsc.org/pdf/15.03.2017-Appendix_C-JPF_Guide.pdf

Fiduchi can provide formation, administration and DSP services for Jersey Private Funds. We focus particularly on supporting closed ended funds, with private equity or real estate investment strategies. For further information please contact:

Robert Ayliffe
Executive Director
+44 (0) 7700 349 750
robert.ayliffe@fiduchi.com

Terry Northcott
Associate Director - Corporate Services
+44 (0) 7797 715 421
terry.northcott@fiduchi.com

LONDON
Tallis House, 2 Tallis Street
Blackfriars
London EC4Y 0AB
United Kingdom.
+44 207 975 1475

JERSEY
Kensington Chambers
46/50 Kensington Place
St Helier, Jersey JE4 0ZE
Channel Islands.
+44 1534 755 155

DUBAI
Unit No:1521 DMCC Business
Centre, Level No. 1,
Jewellery & Gemplex 3,
Dubai, United Arab Emirates.
+971 52 957 8301

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