

# Jersey Investment Funds - Regulatory Options

Jersey is long established as a primary centre for the establishment of offshore funds and has been at the forefront of international developments which have attracted international sponsors, promoters, fund managers, advisors and investors. One of the key features of Jersey's fund industry is the flexibility and range of structures and corresponding regulatory and commercial approaches that can be used for funds.

The range of regulatory categories which may be applied to fund structures by the Jersey regulator, the Jersey Financial Services Commission (the “**JFSC**”) is summarised in the accompanying diagram.

## **Very Private Structures**

A fund vehicle which is established for a small number of co-investors (up to a maximum of 15) or for a single purpose and where there is no formal offering of securities is regarded as a “very private” structure.

- such funds are regulated under a regulation known as the COBO Order and can be established within a short period, usually within a few days upon disclosure only of the identity of the proposed investor(s) to the JFSC.
- this type of structure is appropriate for single investor vehicles, as well as for joint ventures and co-investment structures.

## **COBO only/Private Placement Funds**

Where a fund is offered to not more than 50 investors and is not listed, then a fund will be treated as a “COBO only” or private placement fund which falls outside the scope of regulation as a collective investment fund. However the JFSC will exercise regulation both through a preliminary review of the “promoter” behind the scheme as well as a review of the private placement memorandum prior to the issue of a COBO consent.

- ongoing regulation of the fund will be applied through compliance with the conditions set out in the COBO consent.
- in order for the promoter to satisfy the JFSC’s promoter policy, the JFSC will need to be satisfied as to the track record, reputation and experience of the promoter as well as such issues as spread of ownership and financial resources.
- where each investor is either a professional investor or is investing at least £250,000 and, in either case, formally acknowledges a prescribed investment warning, then there is wide flexibility as to how service providers to the scheme, which may rely on exemptions from regulation of their activities under the Financial Services (Jersey) Law, will be overseen.

## **Unregulated Funds**

Unregulated funds are exempted from regulation as collective investment funds by virtue of an exemption order which specifies schemes or arrangements which have been established as either:

- an unregulated exchange-traded fund, being a scheme or arrangement established in Jersey, which is a closed-ended fund and which is listed

on a stock exchange or market or which is applying for its shares or units to be granted such a listing; or

- an unregulated eligible investor fund, being a scheme or arrangement established in Jersey and in which only eligible investors may invest, being either an investor who makes a minimum

initial investment of US\$1 million or the currency equivalent (whether through the initial offering or by subsequent acquisition) or, alternatively, institutional investors or professional investors, as defined in the order. An unregulated eligible investor fund may be open or closed and transfers of interests are only possible to other eligible investors. Stock exchange listings for unregulated eligible investor funds will be possible subject to transfer restrictions, as referred to above, still applying.

- either type of unregulated fund may take any form recognised under the laws of Jersey as being a Jersey company (including a cell structure), a Jersey limited partnership having at least one Jersey corporate general partner or a unit trust having a Jersey corporate trustee or manager.
- subject to the structure complying with the order, there is no regulatory review or oversight of the terms or conduct of such an unregulated fund and, therefore, processes for their establishment will depend only on being carried out in accordance with the exemption order.
- the offer and / or listing document of an unregulated fund must contain a prominent statement that the fund is unregulated, together with a prescribed form of investment warning.
- in order to claim exemption as an unregulated fund, a completed notice needs to be filed with the Jersey registrar of companies.

## Expert Funds

Where a fund is to be regulated as a collective investment fund, which means an unlimited number of offers can be made to an unlimited number of investors, then a regulatory light touch is still possible providing all investors qualify as expert investors and expressly acknowledge an investment warning, which allows a fund to qualify as an “expert fund” under the JFSC Expert Fund Guide. Expert investors include amongst other tests any person investing at least \$100,000 or currency equivalent. The approval process for seeking a permit for the fund is streamlined and allows for establishment of a fund within as little as three days of the formal filing of the application.

- the investment manager must be regulated in a state being an OECD member or subject to a memorandum of undertaking with the JFSC or otherwise approved by the JFSC.
- an expert fund is available only to expert investors.
- the offer document for an expert fund must comply with certain content requirements.
- the fund company, general partner or trustee requires at least 2 Jersey resident directors and the fund itself must be a Jersey company or have a Jersey general partner (if a limited partnership) or a Jersey trustee (if a unit trust).
- an expert fund must have a Jersey “monitoring functionary” being either an administrator or a manager in Jersey.

## **Listed Funds**

Introduced in 2007, the JFSC Listed Fund Guide provides a fast track process, based on the success of the expert fund, for the establishment of corporate closed-ended funds which are listed on recognised stock exchanges or markets.

The investment manager of a listed fund must be established in an OECD state or in a jurisdiction with which the JFSC has entered into a memorandum of understanding or otherwise be approved by the JFSC.

- listed funds must have at least 2 Jersey resident directors and a Jersey based monitoring functionary to ensure compliance with the listed fund guide.
- treatment as a listed fund is currently only available to closed-ended Jersey corporates.
- listed funds enjoy a fast track approval process modelled on the expert fund approach.
- there is no minimum subscription and listed funds are available to any investor category.

## **Unclassified Funds**

To the extent that a fund is to be offered to more than 50 investors or to be listed and the fund is not able to fall under the expedited regulatory approach offered under either the Expert Fund Guide or the Listed Fund Guide, a collective investment fund may be regulated as an unclassified fund. In this situation the JFSC will regulate the fund in accordance with its policy, which will need to include compliance by the promoter of the fund with the JFSC's promoter policy. This will include an evaluation of the track record, experience and reputation of the promoter of the fund as well as of the financial resources and spread of ownership of the promoter. The JFSC will review the

prospectus, constitutional documents and material agreements relating to the fund. The fund operation and investment and borrowing restrictions will need to comply with certain established standards against which the JFSC will evaluate funds of this type.

- the extent of compliance with regulatory guidelines will depend on the minimum investment level and whether the fund is open-ended (more tightly regulated) or closed-ended.
- structures of an unclassified fund will, for an open-ended fund, require a Jersey resident manager and custodian. For a closed-ended fund, no separate custodian is required.
- the lower the minimum investment requirement, the more closely the JFSC will regulate a fund of this type.

## **Recognised Funds**

Recognised funds are authorised as collective investment funds complying with a separate prescriptive Order. Funds of this type may be marketed directly to the “retail” public in the UK under the United Kingdom Financial Services & Markets Act 2000, taking advantage of Jersey’s designated territory status for the purpose of this legislation. Recognised funds are more highly regulated and provide investors with access to a statutory compensation scheme. Recognised funds may also be marketed to the public in a number of other territories, including Australia, Belgium, Hong Kong, the Netherlands and South Africa. Functionaries of “recognised funds” continue to be regulated under the CIF law.

## **Regulation of service providers to funds**

The regulation of service providers to funds in Jersey is under the Financial Services (Jersey) Law, as providers of “fund services business”. Once an entity is registered for a class of funds service business it no longer needs to

apply for authorisation in relation to each new fund for which it provides that class of services.

This regime has also provided significant advantages for the provision of Jersey fund services to non-Jersey domiciled funds, which means that non-Jersey domiciled funds are subject only to a notification procedure in relation to their service providers and no longer need to seek fund by fund regulation.

## **Tax**

Jersey offers a location for investment funds which does not impose its own tax burden on an investment fund or its investors.

## **Fund Structures**

Jersey domiciled investment funds may be structured as companies, limited partnerships or unit trusts. They may be open- or closed-ended. Jersey has recently added to the range of corporate structures by introducing protected cell company and incorporated cell company legislation. A number of enhancements to Jersey's existing company law have further developed the flexibility for funds structured as companies.