

Regulation of Fund Services Business in Jersey

Introduction

Since changes to the law were introduced in November 2007 the focus of fund regulation in Jersey has shifted away from product-by-product regulation in favour of the licensing of fund service providers by the Jersey Financial Services Commission (the “**JFSC**”). Jersey funds remain regulated under the provisions of the Collective Investment Funds (Jersey) Law 1988 (the “**CIFL**”). Functionaries of both Jersey domiciled funds and non-Jersey domiciled funds are now regulated pursuant to the provisions of the Financial Services (Jersey) Law 1998 (the “**FSJL**”).

Application of FSJL

Regulation of fund services business under the FSJL applies to fund services provided to:-

- unclassified funds including Jersey expert or listed funds; and
- subject to amendments to the FSJL expected to be effective by April 08, Jersey unregulated funds

where the business is carried on in or from within Jersey or by a Jersey company anywhere in the world.

Fund services provided from Jersey to non-Jersey domiciled funds are equally subject to regulation under the terms of the FSJL.

The regulation entails the registration of that fund services business for the provision of one or more class of fund services business. The relevant classes are listed within the FSJL and generally include principal functions which are provided to fund structures.

Codes of Practice have been introduced in conjunction with the recent legislative changes which set out the principles and standards of conduct expected of persons registered under the FSJL for carrying on fund services business activities. Once registered for a specific class of fund services business, a fund services business can provide similar services to both Jersey domiciled and non-Jersey domiciled funds, but, in the case of the latter, must notify details of the non-domiciled fund(s) to the JFSC for record keeping and statistical purposes.

Application of Codes of Practice

All registered fund services business providers are required to comply with Codes of Practice issued by the JFSC (the “**Codes**”). These apply to any entity carrying out fund services business as referred to above.

The Core Principles of the Codes

The seven core principles for the conduct of fund services business are that a registered person must:

- conduct its business with integrity.
- have due regard for the interests of the fund.
- organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems.

- be transparent in its business arrangements with the fund.
- maintain, and be able to demonstrate the existence of, both adequate financial resources and adequate insurance.
- deal with the JFSC and other authorities in the Island in an open and co-operative manner.
- not make statements that are misleading, false or deceptive.

Compliance with the Codes must be demonstrated in the practice and procedures of the fund services business in a way which is visible to external regulatory inspection. Variance in practice from the Codes is possible on a case by case basis where strict compliance would have an anomalous result. The requirement to comply with Jersey anti-money laundering legislation is inherent in the core principle which requires a registered person to organise and control its affairs effectively and in particular operate internal control systems to ensure compliance with applicable rules.

Managed Entities and Managers of Managed Entities

Managed entities are those functionaries who are managed or administered by third party service providers in the Island. Such entities may enter into agreements with such third party service providers for the provision of fund services relating to compliance with all or any part of the Codes. The provision of such third party services is itself a class of fund services business for which separate registration is required. This class is called “manager of a managed entity” or “MoME” and is typically carried on by existing regulated fund services businesses.

Managed entities which are established for the purpose of acting for an expert fund, unregulated fund or materially equivalent fund (see below) are only required to satisfy the core principles of the codes.

Managed entities may also be subject to licence conditions issued by the JFSC.

Standard licence conditions should include that the managed entities being registered persons under the FSJL:-

- may not act for new or further funds without first obtaining prior JFSC consent.
- must appoint a person to act as its manager i.e. a Manager of a Managed Entity (a **“MoME”**).
- must notify the JFSC of its intention to change its MoME.
- must adhere to such notification and consent requirements as the JFSC has set out in the Codes.
- will permit the JFSC to conduct inspections.
- must adhere to such advertising standards as the JFSC has set out in the Codes.
- must adhere to such record keeping requirements as the JFSC has set out in the Codes which may be delegated to its “MoME”.
- must appoint a compliance officer and money laundering reporting officer and comply with the relevant notification and consent requirements as set out in the Codes.

Managed entities who have been established for unclassified funds other than expert funds, related expert funds or materially equivalent funds must comply with the Codes in full.

Services to Non-Jersey Domiciled Funds

The criteria for determining whether a non-Jersey domiciled fund is “materially equivalent” to a Jersey expert fund, (as referred to above) include the following:-

- the fund must describe itself as only being suitable for a specific class of investors. This class may be described as expert, experienced, institutional, sophisticated or in some other way, but the Fund must clearly not be aimed at the retail investor.
- the fund must impose a minimum initial investment requirement of at least US\$100,000 (or currency equivalent) in the fund. This requirement need not apply to investors who fall within classes defined on the basis of substantial net worth, professional knowledge, a relationship between the investor and either the fund or any entity which is a fund services business for the fund, or of carried interest arrangements.
- the Offer Document must contain a clear investment warning. The exact nature of the warning is not prescribed, but the warning must indicate that the fund is not suitable for all investors, be commensurate to the risks involved in investing in the Fund and sufficient to give investors a true understanding of the total potential losses that may occur.
- the Offer Document must contain all the material information that investors would reasonably require and reasonably expect to have drawn to their attention for the purposes of making an informed judgement about the merits of participating in the fund.
- the fund must produce independently audited accounts on at least an annual basis.

Application of other provisions of FSJL to fund service business providers

General provisions of the FSJL which apply to all financial service businesses registered under the FSJL, apply equally to fund services business service providers. Such provisions include the supervisory, directional and investigative powers which are vested in the JFSC pursuant to the FSJL to ensure that persons carrying on fund services business activities are duly registered under the FSJL.