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JERSEY PRIVATE PLACEMENT FUNDS

Introduction

From January 2012 a new streamlined regulatory authorisation process for the establishment of privately placed funds is available in Jersey.

The new private placement fund ("PPF") regime will add welcome speed and certainty to the regulation of Closed-ended Funds established or managed in Jersey, providing a cost-effective and non-intrusive regulatory environment for funds making offers to 50 or fewer professional or sophisticated investors worldwide.

The PPF regime will benefit from a 72 hour response time from the JFSC, and will be of particular appeal to promoters of real estate, private equity, venture capital, mezzanine, and infrastructure funds, as well as other alternative asset classes employing a closed-ended model.

Private placement regimes are already used extensively to market alternative funds across the world and the EU's forthcoming Alternative Investment Fund Manager's Directive (AIFMD) specifically contemplates the continued private placement of funds established or managed in Jersey to professional investors in the EU until at least 2018. Passive marketing (also known as "reverse solicitation") is not prohibited by the AIFMD.

PPFs are regulated by the JFSC under the Control of Borrowing (Jersey) Order. The new regime essentially replaces the pre-existing "COBO-only fund" regime applicable to privately offered closed-ended funds, improving significantly on the regulatory timeframe (previously 20 working days) and adding certainty to the regulatory policy.

Jersey's international good standing and its high levels of compliance with international regulatory standards, as assessed by independent bodies including the OECD, IMF, IOSCO and the Financial Action Task Force, mark it out as a highly reputable jurisdiction in which to structure or manage alternative investment funds. Jersey offers a full range of fund regimes (see below) tailored to provide an appropriate regulatory environment for alternative funds, depending on the number and nature of the targeted investors. These factors, combined with the ready availability of a range of highly experienced and pro-active alternative fund service providers, make Jersey a true domicile of choice.

Please refer to the Glossary at the end of this briefing for the definitions of various capitalised terms.

What is a PPF?

In order to take advantage of the new fast-track regulatory procedure, a fund must satisfy the eligibility conditions set out in the JFSC's PPF Guide.

A PPF is a fund:

- which is either established in Jersey as a Closed-ended Fund or established outside Jersey but managed in Jersey as a Closed-ended Fund;

- units in which are offered to not more than 50 potential investors in Jersey or elsewhere; and
- each of the investors in which is a Professional Investor or a Sophisticated Investor (see definitions below).

A PPF established in Jersey can be a Jersey company (including a protected cell company, an incorporated cell company or any cell thereof) or one or more partnerships (including limited partnerships, limited liability partnerships, separate limited partnerships or incorporated limited partnerships) or a unit trust. A PPF established in a country or territory outside Jersey (but managed in Jersey) must be incorporated or constituted, as applicable, in such equivalent form as is permitted under the laws of such other country or territory.

Management and Administration

Fund Entity	Management/board requirements:
Jersey company	Not less than two Jersey resident directors with appropriate experience.
Company established in a country or territory outside Jersey	Either: Not less than two Jersey resident directors with appropriate experience must be appointed to the board of the fund; or A Jersey company having not less than two Jersey resident directors with appropriate experience must be appointed as manager of the fund.
Limited partnership(s) (including separate and incorporated limited partnerships) established in Jersey or in a country or territory outside Jersey	At least one general partner which is either: A Jersey company which has not less than two Jersey resident directors with appropriate experience; or Itself a limited partnership, separate limited partnership or incorporated limited partnership that has at least one general partner which is a Jersey company which has not less than two Jersey resident directors with appropriate experience.
Unit trust established in Jersey or in a country or territory outside Jersey	Each of the trustee and the manager (or single managing trustee, if applicable) must be a Jersey company which has not less than two Jersey resident directors with appropriate experience.

It is anticipated that the Jersey management entity (whether a general partner, trustee, manager or managing trustee) will in most cases be able to avail itself of an exemption under the FS Law which will avoid the need for it to make a licence application or comply with Codes of Practice under the FS Law. There are no regulatory capital requirements applicable to the PPF or its management entities.

A PPF must appoint a Jersey administrator as its Designated Service Provider, whose principal functions will be:

- to provide a registered office to the relevant Jersey company, limited partnership(s) or unit trust trustee/manager or, in relation to a non-Jersey PPF, to its Jersey management entity, as applicable;
- to carry out promoter due diligence and make the required certifications in the JFSC application in relation to the PPF's promoter and PPM content requirements (see below); and
- to support the PPF with its anti-money laundering obligations.

This does not preclude the possibility of appointing additional administrators to carry out additional services for the PPF.

Permitted Investors

Only Professional Investors or Sophisticated Investors (each as defined in the Glossary), or investment managers acquiring an interest in a PPF for or on behalf of non-professional or non-sophisticated investors, may invest in the PPF. Each of them (or their investment manager) must have received and acknowledged an investment warning substantially in the form set out in the PPF Guide, which will be contained in the PPM and the subscription agreement for the PPF.

No Investment and/or leverage restrictions

There are no restrictions on investment strategy or use of leverage in the PPF Guide.

PPM content requirements

The PPF must issue a PPM to investors which must contain "all material information which investors and their professional advisers would reasonably require" including summary information relating to:

- key offer/subscription terms
- investment strategy (and associated risks) and, if relevant, use of leverage
- valuation methodology
- capital structure of the PPF
- voting arrangements
- fees and expenses
- material contracts
- conflicts of interest
- registered office/location of the investor register of the PPF
- management structure (director and adviser details)
- custody arrangements
- term of the PPF
- certain regulatory matters, including a responsibility statement (given by the PPF's directors or management entity), JFSC exculpation language and the prescribed investor warning

Accounts

The accounts of a PPF need to be audited but need only be filed with the JFSC if they are qualified.

Promoter requirements

The JFSC's usual "promoter policy" in relation to COBO only funds (requiring JFSC pre-clearance of a new promoter) does not apply to PPFs. Instead, the PPF Guide contains suitability requirements in relation to the promoter of a PPF which must be confirmed by the promoter and certified by the Designated Service Provider in making the JFSC application for authorisation.

In summary, the promoter must be of good standing and solvent and it and its Principal Persons must not recently have been subject to relevant disciplinary sanctions or convictions. The promoter must be established in an OECD member state or another jurisdiction with which the JFSC has a relevant regulatory memorandum of understanding and must either be: (i) regulated in such state or jurisdiction; or (ii) possess amongst its Principal Persons relevant experience in relation to promoting, managing or advising institutional, professional or sophisticated investors' investments using similar strategies to the PPF.

Where promoters fail to meet these requirements, Jersey's "Unregulated Eligible Investor Fund" regime, which has no such promoter requirements, may be of interest.

What if a fund does not fully satisfy the eligibility conditions?

If a proposed fund does not fully satisfy the eligibility conditions, a request may be made to the JFSC for derogations to be granted on such terms as the JFSC may determine.

Fast-track JFSC authorisation process

Consent to the issue of units in a PPF under COBO will be issued by the JFSC within 72 hours from receipt of a correctly completed application containing the following:

- a written statement from the promoter to the JFSC confirming that it satisfies the promoter requirements set out in the PPF Guide, counter-signed by the Designated Service Provider of the PPF, certifying that it has carried out its own general due diligence in relation to the promoter and has no reason to believe that the promoter's statement is incorrect;
- a written certificate of the PPF's Designated Service Provider certifying that the PPM complies with the content requirements of the PPF Guide;
- a draft of the PPM; and
- details (full name, date of birth and residential address) of all of the promoter's Principal Persons, including those named in the PPM.

Following the issue of the requisite COBO consent, the JFSC will carry out its own regulatory checks in relation to the promoter and its Principal Persons and, should such checks give rise to a concern, the JFSC may take remedial action.

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Jersey's other fund regimes

The new PPF regime complements the range of other fund regimes available in Jersey, which include:

- unregulated funds (listed or offered to any number of institutional or high net worth "eligible investors");
- very private funds (offered to no more than 15 "professional investors");
- expert funds (offered to any number of "expert investors"); and
- listed funds.

Unclassified funds and recognised funds are also available to a retail investor base.

Glossary

CIF Law: Collective Investment Funds (Jersey) Law 1988

Closed-ended Fund: a fund that is not an Open-ended Fund

COBO: Control of Borrowing (Jersey) Order 1958

Designated Service Provider: an administrator which is registered by the JFSC to carry on Fund Services Business as an administrator within the meaning of the FS Law and which is not a managed entity within the meaning of the FSB Codes

FSB Codes: Codes of Practice for Fund Services Business

FS Law: Financial Services (Jersey) Law 1998

JFSC: Jersey Financial Services Commission

Open-ended Fund: a fund whose constitutive documents provide that unitholders are entitled to have units repurchased:

- out of the property of the fund or out of property provided by or at the instigation of the fund;
- at any time or from time to time; and
- at a price related to the net value of the property of the fund to which the units in question relate

PPF Guide: the JFSC's Jersey Private Placement Fund Guide which sets out the eligibility conditions for a PPF and the associated application form. Both are available from the JFSC website at http://www.jerseyfsc.org

PPM: private placement memorandum

Principal Persons: as defined in the CIF Law

Professional Investor: the complete definition is contained in the PPF Guide but the definition includes persons who habitually invest (as principal or agent) by way of business; investment structures with assets valued at over USD10M; certain "eligible employees" of the PPF's investment manager or advisor who carry on investment business in relation to the PPF; and senior employees, directors, partners, shareholders or consultants of the PPF or its investment management or advisory team, who receive their interests by way of remuneration or carried interest

Sophisticated Investor: an investor who makes a minimum initial investment or investment commitment of £250,000 (or currency equivalent) in the PPF, whether through the initial offering or subsequent acquisition

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