Jersey Private Funds – Introduction of a new streamlined and simplified consolidated Private Fund Regime | 1

Further to our briefing regarding the proposed rationalisation and consolidation of Jersey's private fund and unregulated fund regime, Jersey has now introduced a new simplified fund regime with additional beneficial features and increased flexibility. The regime came into effect on 18 April 2017.

The new regime was introduced as part of Jersey's constant and continuous effort to evolve its offering as a leading international finance centre. In particular, the Jersey Private Fund (the "**JPF**") regime was designed to achieve the bipartite aims of the rationalising the Jersey Private Fund sphere whilst enhancing the speed and certainty of the authorisation process.

There is a streamlined fast-track authorisation process and enhanced certainty with the introduction of a new JPF Guide (the "**JPF Guide**") for those structuring funds through Jersey; furthermore, it was also designed to maintain the appropriate degree of regulation required to satisfy global standards. The regulation is principally achieved through the requirement for every JPF to have a regulated full substance "Designated Service Provider" in Jersey (the "**DSP**"). The intention and effect is that the regulation is focused on the service provider rather than on the JPF itself.

What is a JPF?

The JPF Guide defines a JPF as a private fund involving the pooling of capital (at least two investors are therefore necessary) raised for the fund and which operates on the principle of risk spreading (a number of assets must also therefore be acquired). However, certain vehicles which may involve the pooling of capital or the spreading of risk are expressly excluded by the JPF Guide from falling within the scope of a JPF. These are:

- securitisation vehicles;
- joint venture arrangements;
- holding companies; and
- family office and carry or incentivisation vehicles.

A JPF must have a consent issued pursuant to the Control of Borrowing (Jersey) Order 1958, as amended. Therefore, a JPF is not a collective investment fund within the meaning of the Collective Investment Funds (Jersey) Law 1988, as amended (the "**CIF Law**"). An offer for subscription, sale or exchange of units of a JPF must therefore not constitute an "offer to the public" as defined within the CIF Law.

When launching the JPF the JSFC has also undertaken the phasing out of all other Jersey private products (that is "COBO Only Funds", "Private Placement Funds" and "Very Private Funds"). These private fund products are moribund as, although each of these existing private funds will be able to continue to operate under their current regime until the end of their natural life, no new COBO Only, Private Placement, or Very Private Funds may be created. Alternatively, these funds can apply to the Jersey Financial Services Commission (the "**JFSC**") to convert into another Jersey fund product, including the JPF.

Principal Features of the JPF

- interests in the JPF may not be offered to more than 50 potential investors in Jersey or elsewhere (an offer is not intended to capture pre-marketing material);
- only "professional investors" or "eligible investors" who have acknowledged in writing receipt and acceptance of an investment warning and disclosure statement may invest in a JPF;
- a JPF may be authorised within 48 hours;
- a JPF established in Jersey may take the form of a company (including a protected cell company, incorporated cell company or any cell thereof) or one or more limited partnerships (including limited partnerships, limited liability partnerships, separate limited partnerships or incorporated limited partnerships) or any unit trust constituted under the laws of Jersey;
- a JPF may also be established in a country or territory outside of Jersey in such equivalent form as is permitted under the laws of such country or territory (in this instance, there is no requirement to appoint Jersey resident directors to its board although the JFSC would ordinarily expect, in most cases, for one or more Jersey resident directors to be appointed to the JPF's governing body);
- there is no requirement for the JPF to appoint an auditor (unless required by its constitutional documents);
- a JPF may be open or closed-ended;
- it may not be listed (this includes a technical listing);
- the JPF must appoint a DSP;
- no retail investors are permitted (however, please see the "50 or Fewer Test" section below);
- the activity of the JPF will be subject to the JFSC's sound business practice policy (this deals with investments by Jersey vehicles in "high-risk" areas);
- if the JPF is an alternative investment fund ("**AIF**"), Jersey's AIFMD legislation and code of practice for AIFs and AIF services business applies; and
- provided certain criteria are met:
  - the JPF will not be required to comply with the Code of Practice for Certified Funds;
  - the promoter of the JPF will not require prior JFSC approval;
  - personal questionnaires will not be required for any director, beneficial owner/controller, money laundering reporting/compliance officer or service provider to the JPF other than the DSP (through the DSP's own regulatory requirements);
  - the JPF will not be required to have an offering document but may do so (however, if the fund is marketed into the EEA, it must comply with the applicable sections of the AIF code of practice and may require an offer document); and
  - the JFSC's policy on outsourcing will not apply to the JPF (but will apply to the DSP).

The DSP

The DSP must be an existing "full-substance" Jersey based entity (and may not be a "managed entity" for Fund Services Business ("**FSB**") purposes) and there can be no change in the DSP without prior approval from the JFSC.

Where there are more than 15 offers made in respect of a JPF, the DSP must be registered by the JFSC under the Financial Services (Jersey) Law 1998, as amended (the "**FSJL**") to carry on one or more of class V (administrator), class U (manager), class X (Investment Manager) or class ZG (Trustee) of FSB.

Where there are 15 offers or less made in respect of a JPF, the DSP may instead be registered by the JFSC under the FSJL to conduct any class of FSB, Trust Company Business and/or Investment Business within the meaning of the FSJL.

As mentioned previously, under the JPF regime regulation is focused on the DSP rather than on the fund itself. It is important, however, to note that the duties and responsibilities of the DSP do not replace the duties and responsibilities of the governing body of the JPF (for example marketing and capital raising).

Specifically though, the DSP is responsible for performing the following duties:

- making all reasonable enquiries to ensure that the JPF meets all the establishment and ongoing eligibility criteria (as set out in part D of the JPF Guide);
- ensuring that all the necessary due diligence is carried out and that all relevant AML requirements and MLO provisions are met;
- ensuring that all documentation relating to any due diligence enquiries will be readily retrievable in Jersey;
- completing and submitting to the JFSC an application form for authorisation of the JPF and any notices of change or event (which in certain circumstances must be made within 28 days); and
- completing and submitting an annual JPF compliance return.

Jersey service providers to a JPF may continue to rely on the Financial Services (Investment Business) (Restricted Investment Business – Exemption)) (Jersey) Order 2001 and/or the Financial Services (Trust Company Business) (Exemption No.5) (Jersey) Order 2001 dispensing with the requirement to be registered, and therefore applying for a licence, under the FSJL or complying with the Code of Practice.

The 50 or Fewer Test

In determining whether there are 50 or fewer offers and "professional" and/or "eligible" investors, the following rules apply:

- a person acquiring an interest in a JPF with no rights other than management and/or control rights (i.e. no profit- sharing rights), will not be considered as an investor;
- a top-up of investment by an investor shall be treated as part of the original offer;
- a transfer or split of an interest in a JPF is permitted providing the number of investors does not exceed 50;
- carried interest vehicles established for the sole purpose of sharing in the profits of the JPF or any other vehicle promoted or advised by the promoter of the JPF shall not be counted as an investor. Each participant in the vehicle however must be a "professional" or "eligible" investor;
- general partners of JPFs established as limited partnerships, separate limited partnerships or incorporated limited partnerships or managing partners of limited liability partnerships will not be

considered as an investor provided the general partner or managing partner (as the case may be) does not commit co-investment capital in the limited partnership;
- a "professional" investor (for example a discretionary investment manager) acting for retail investors (who are "professional" investors) can be counted just as one investor; and
- JFSC policy is to apply a "look through" approach regarding feeder funds (that is each "professional" or "eligible" investor in the feeder fund will be counted for the purposes of the 50 or Fewer Test, however the feeder fund itself will not).

It is important to note that the JFSC will consider derogations, on a case by case basis, from the above-mentioned rules. This will, however, impact on application timescales.

Application Timescales and Costs

A JPF may be authorised under the new streamlined authorisation process within 48 hours provided that all the eligibility criteria set out in the JPF Guide are satisfied.

The following fees apply:

- £1,105 (application fee)
- £1,000 (annual fee)
- £1,315 (Manager's AIFSB registration) (if applicable)
- £1,315 (AIF Certificate) (if applicable)

Separate application timescales and fees are applicable for the incorporation or registration of the Jersey company or partnership or where the JPF is also an AIF.

Why Use Voisin?

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Our focussed, proactive and friendly team provides efficient, seamless and prompt advice and boasts a portfolio of clients which includes some of the world's leading players. Our close relationship with, amongst others, local regulatory authorities, investment firms, listing authorities, service providers, fund managers and advisers worldwide enables us to work as part of any team.

We are passionate about our work and strive for excellence in everything we do.

For further information or specific advice, please contact Kate Anderson or Chris Le Quesne of Voisin.