Jersey Funds Update

Summer 2021

Quick Updates

1. New economic substance law for partnerships

A new economic substance law for partnerships was adopted by the Government of Jersey on 29 June 2021 and is expected to come into force later this year.

It will apply to certain partnerships which carry on 'relevant activities' (as per the relevant activities set out in the economic substance law for companies). Fund partnerships will not be in scope. The new law will apply to Jersey general partnerships, limited partnerships, SLPs, ILPs and LLPs which have their place of effective management (**POEM**) in Jersey (or another low tax, non-substance jurisdiction), and also to relevant foreign limited partnerships with their POEM in Jersey.

Once the law is in force, new partnerships will have to comply immediately, and partnerships existing before that date, from 1 January 2022. For more detail, you can find our briefing note here.

2. Self-managed corporate funds in scope of economic substance law

A reminder that the economic substance law for companies has been amended to apply to self-managed corporate funds in the context of their 'fund management' activity for financial periods starting after 1 January 2021. For more detail, you can find our briefing note here.

3. Latest position on the status and impact of the EU Sustainable Finance Disclosure Regulation (SFDR) on Jersey funds

The EU's SFDR is part of the wider European sustainable finance initiative to integrate harmonised ESG considerations across financial sectors; driven by rising investor interest, it examines the disclosure of 'sustainability risk' as a potential risk to the financial value of an investment. Compliance with the high level principles (Level 1) of the SFDR has been required since 10 March 2021.

Two recent developments:

- Application of the regulatory technical standard, which contains the more detailed requirements for the SFDR (Level 2), has been delayed by a further six months to 1 July 2022.
- The European Commission confirmed in an open letter dated 26 July 2021 that non-EU AIFMs that actively market in a member state by means of the state's National Private Placement Regime must comply with the SFDR, including the financial product related provisions.

A Jersey AIFM that falls within scope of the SFDR will need to ensure relevant sustainability risks are integrated within its investment decision-making process and remuneration policies.

A Jersey fund which falls within scope of the SFDR will be required to make certain basic disclosures as to the way it addresses sustainability risk in its policies and procedures, and its sustainability risk impact assessment. Any fund which either promotes environmental or social characteristics or has a sustainable investment objective will need to make additional disclosures on how those characteristics or objectives are met. These additional disclosures will be dealt with in the impending Taxonomy Regulations due to be published in two instalments in January 2022 and January 2023.

Even if a Jersey AIFM or fund falls out of scope, however, it may be asked to provide assistance to other fund parties or investors who are required to comply with the SFDR in their own right (eg information sharing, agreeing to introduce compliant policies and procedures). For more detail, you can find our briefing note here.

4. JPF Guide and Codes updated

As the international regulatory position in relation to sustainable investments evolves, the Jersey Financial Services Commission (**JFSC**) is also updating and adapting the Jersey requirements.

Following a sustainable investments consultation, the Jersey Private Fund Guide, the Code of Practice for Fund Services Business and the Code of Practice for Certified Funds have been amended. These changes apply from 15 July 2021 for new funds. Funds existing prior to that date have a six month transition period.

Jersey funds promoted on the basis of making sustainable investments, and the FSB providers which govern the fund or accept responsibility for the marketing documents, are required to disclose all material information on the fund's sustainable investment objectives and strategy.

Further details are set out in our briefing note here.

5. EEA marketing post-Brexit and pre-AIFMD II

Following Brexit in January this year, Jersey AIFMs wishing to market funds into the UK will need to rely on the UK's domestic private placement rules. The political fall-out from Brexit looks set to influence the draft text for AIFMD II, expected later this year, with the delegation model expected to come under scrutiny following an open letter from ESMA. The draft text is also expected to take steps towards harmonising the approach to national marketing rules between EU member states.

August 2021 will also see member states adopt the EU's new directive on the 'cross-border distribution of collective investment undertakings'. This directive includes new, and arguably more restrictive, definitions of 'pre-marketing' and 'reverse solicitation' and Jersey AIFMs will need to familiarise themselves with these before carrying out pre-marketing and marketing activities.

Quick Updates

6. Jersey Private Fund (JPF) thematic review by JFSC

The JFSC has published its findings from its themed examination of the role of designated service providers (**DSPs**) to JPFs. The JFSC emphasised, in particular, that both DSPs and JPF governing bodies need to:

- fully understand their obligations under the JPF Guide and Section 14 of the AML/CFT Handbook;
- give all relevant staff training on those obligations;
- make sure that the requirements of the JPF Guide and the AML/CFT Handbook are properly reflected in the processes, policies and procedures of the DSP and the JPF;
- record the DSP services in a written contract and actually provide those services; and
- have systems and processes to make sure declarations and returns to the JFSC are correct.

Our recommendation to DSPs and directors of a JPF's governing body is to read the JFSC findings carefully, identify if there are any similar deficiencies in your own business model and take steps to rectify them. Failure to act on the JFSC's guidance will be relevant to the questions of breaches and penalties in future examinations.

7. JFSC's areas of priority against the backdrop of the NRA and the forthcoming MONEYVAL assessment

The JFSC has a number of priorities and it continues to raise its expectations of registered persons in certain areas including: evidencing effectiveness; MONEYVAL preparation and AML focus; exemptions review; regulatory perimeter; principal and key person focus, Covid impact on the regulatory agenda; and supervision priorities.

Evidencing effectiveness is a key priority:

- As you update and make changes to your key documents, such as the Business Risk Assessment, ensure that you evidence and record the changes, flag why changes are made and don't forget to record the board review/debate/approval. You need to show, evidence and demonstrate you have done what is required.
- Have you reviewed your board and governance effectiveness recently? Obviously it's good practice, but the JFSC Codes require firms to regularly review all aspects of corporate governance arrangements to ensure their continuing adequacy in light of the registered person's business activities and risk profiles, and include a periodic self-assessment, and/or external assessment, of the board's effectiveness.

Further details on evidencing effectiveness are set out in our briefing note here.

8. JFSC amends Sound Business Practice Policy (SBPP)

Following changes to Jersey's Proceeds of Crime legislation, the JFSC has amended the SBPP to make it clearer when the JFSC is likely to grant consent for structures involving investment in lawful cannabis related activities.

As noted in the SBPP, this is a developing industry and as regulations develop internationally, the approach may be subject to review in the future.

An update on proceeds of crime and legal overseas cannabis production is set out in our briefing note here.

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