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GUIDE

Jersey Private Funds

Last reviewed: January 2025

Introduction

Following the popularity and widespread use of the pre-existing 'very private', private placement and COBO only fund products, the JFSC launched its new, consolidated, Jersey Private Fund (**JPF**) regime in March 2017.

The JPF regime provides a streamlined fast-track regulatory authorisation process for the establishment of private investment funds as well as providing certainty in respect of the eligibility conditions through the introduction of the JPF Guide.

A JPF is suitable for funds making offers to 50 or fewer Professional Investors or Eligible Investors (see below) where a cost-effective and non-intrusive regulatory environment is sought.

On 2 July 2024, the JFSC announced amendments to improve the JPF regime. The enhancements are reflected in this guide but also see our Updates to the JPF Guide for a summary of the amendments.

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

Key features of a JPF

- A JPF may only be offered to Professional or Eligible Investors (see below).
- The JFSC's published timescale for authorising a JPF is two working days subject to prior approval of the JPF's designated service provider (see below).
- Fund interests may be offered to not more than 50 potential investors in Jersey or elsewhere. Please see below for a summary of the test for the number of offers/investors.
- A JPF can be established using any of the common forms of investment vehicle, including a limited liability company and a non-Jersey vehicle, and no investment or borrowing restrictions are set by the JFSC.
- A JPF can be closed or open-ended provided that the test for the 50 or fewer offers/investors is met.
- A JPF must not be listed (including a technical listing).
- The JFSC's general expectation is for a JPF: (i) to be established in Jersey and/or (ii) to have its governing body and management and control in Jersey. However, a Non-domiciled JPF that has its governing body and/or its management and control outside of Jersey can still be authorised under the JPF Guide but it is expected that the JFSC will request additional data on its relevant nexus to Jersey post-authorisation.
- Whilst there is no explicit requirement for the governing body and management and control of a JPF to be in Jersey, the JFSC's expectation is for at least one or more Jersey resident directors to be appointed to the board of a JPF or its governing body.
- A JPF is not required to have an offer document (but see immediately below).
- A JPF which will be marketed into the EEA/UK must comply with the applicable sections of the AIF Code and may require an offer document.

- Unless required by its constitutional documents, there is no need to produce audited accounts of a JPF.
- A JPF must appoint a Jersey-based, 'full substance' designated service provider (DSP) (ie usually its administrator), whose principal obligations as DSP will be to apply for JFSC consent and update the JFSC in respect of information supplied (see below).
- Jersey tax-resident fund management companies (ie managers, investment managers, trustees (where there is no separate manager) and general partners (where there is no separate manager)) must satisfy the requirements of the Taxation (Companies - Economic Substance) (Jersey) Law 2019.
- Where there are more than 15 offers made in respect of a JPF, the appointed DSP must be registered by the JFSC to carry on one or more of class V (Administrator), class U (Manager), class X (Investment Manager) or class ZG (Trustee) of Fund Services Business (FSB).
- Where there are 15 or fewer offers made in respect of a JPF, the appointed DSP may be registered for any class of FSB and/or Trust Company Business (TCB).
- The activity of the JPF is subject to the JFSC's Sound Business Practice Policy which oversees investment by Jersey vehicles in certain 'high-risk' areas (including arms and unlicensed pharmaceutical goods).
- The promoter of a JPF does not need the prior approval of the JFSC.
- It is not intended that 'non-fund' entities, such as holding entities and joint ventures, will fall within the definition of a JPF, and they may be established by simple application to the Jersey registry.
- Additional requirements in relation to sustainable investments (ie investments which contribute to either an environmental or social objective) were introduced on 15 July 2021. When a JPF is marketed on the basis of investing in a sustainable investment, it must disclose all material information in relation to the sustainable investment strategy and objectives.

Investors in a JPF

A JPF may only be offered to:

- Professional Investors: the definition of Professional Investor is set out in full in the JPF Guide but includes: people who invest (as principal and agent) by way of business; individuals with a net worth (or joint net worth with their partner) of greater than US$1m, excluding their principal place of residence; investment structures with assets valued at US$1m or greater; an entity which carries on FSB, TCB or Investment Business in relation to the JPF, and financially sophisticated employees, directors, partners, shareholders, expert consultants or shareholders of such an entity; and any related carried interest scheme and/or co-investment arrangement; and
- Eligible Investors: the definition of Eligible Investor is set out in full in the JPF Guide but includes: an investor who makes an initial investment or investment commitment of £250,000 (or currency equivalent) in the JPF, whether through the initial offering or subsequent acquisition; holders of founder, nominal or management interests in the JPF which have been created to facilitate the formation of the JPF, the exercise of voting or management rights or to give entitlement to performance related fees as part of remuneration arrangements; and investment managers acquiring interests for or on behalf of non-professional or non-eligible investors.

Each of the investors must have received and acknowledged an investment warning substantially in the form set out in the JPF Guide, which will typically be contained in the subscription agreement for the JPF.

Test for number of offers

When determining whether there are 50 or fewer offers and Eligible and/or Professional Investors the key points to note are:

- Investor eligibility is determined at the time of admittance to the JPF. That eligibility can continue to be relied upon notwithstanding a status change, eg a departing employee, director, partner or expert consultant;
- the JFSC applies a 'look through' approach to feeder funds into a JPF;
- transfers of units/a split of units to Eligible and/or Professional Investors are permitted as long as there are 50 or fewer investors in the JPF at any given time;
- for any involuntary transfer, such as on death or bankruptcy, there is no requirement for the transferee to qualify through the same criteria as the transferor, but the transferee will, itself, need to meet the investor eligibility requirements as defined in the JPF Guide;

- a top-up investment by a pre-existing investor will be deemed to be part of the original offer to that investor;
- management shareholders (with no economic interest), carried interest vehicles and co-investment arrangements (provided they meet the requirements of the JPF Guide) will generally not count as an investor for the purposes of the test;
- general partners that do not commit co-investment capital to JPFs structured as limited partnerships will not count as an investor for the purposes of the test;
- any professional investor who is a discretionary investment manager for a wider group of retail stakeholders, can be counted as one investor; and
- the circulation of pre-marketing materials (ie red herring documents) will not generally be counted as an offer in applying the 50 or fewer offers analysis.

If a proposed offer or investor does not fully satisfy the above eligibility conditions, a request may be made to the JFSC for derogations to be granted on such terms as the JFSC may determine, but this will impact on application timings.

Authorisation process for a JPF

In order to establish a JPF, an application must be made to the JFSC by the DSP containing the following:

- Details of the JPF including: its name, registered address, minimum investment amounts (if applicable), the 'relevant consent' being applied for, its investment policy, the name and function of each Jersey based service provider, any regulatory exemptions being relied on by Jersey based service providers (if applicable), and confirmation as to whether an auditor will be appointed.
- Confirmation: that all investors will be Professional Investors or Eligible Investors; that the number of offers and the number of investors shall not exceed 50 (applying the guidelines in the JPF Guide); and that the Jersey DSP will complete all CDD checks before the launch of the JPF and will ensure compliance with all AML/CFT/CPF requirements on an ongoing basis.
- Applications must be made online via the myJFSC system.

Designated Service Provider

The DSP shall be responsible for:

- making reasonable enquires to ensure that the JPF meets the eligibility criteria, including assessing the status of Professional and Eligible Investors, on an ongoing basis;
- carrying out, and keeping readily accessible records of, due diligence on the promoter of the JPF and the JPF itself and ensuring that the promoter has put in place appropriate measures to determine whether any service providers to the JPF are fit and proper;
- ensuring that the JPF or Non-domiciled JPF having its governing body and management and control in Jersey is complying with all AML/CFT/CPF requirements;
- completing the application form and notifying the JFSC of any material changes to the information supplied; and
- submitting an annual compliance return confirming certain matters in respect of the JPF.

Exemption under the FS Law

The JPF's Jersey management entity (whether a general partner, managing trustee or manager) should, in most cases (subject to any AIFMD requirements below), be exempt from registration under the FS Law, which will avoid the need for it to apply for regulatory licences or comply with Codes of Practice issued by the JFSC under the FS Law.

AIF Regulations/AIFMD

A JPF that will be marketed in the EEA/UK requires a certificate pursuant to the AIF Regulations and its manager may also need to register to conduct AIFSB under the FS Law unless it is 'sub threshold', and significant owners, directors and certain other officers of the manager not previously approved are required to seek confirmation that the JFSC has no objection to their appointment in relation to the JPF by completing an application on the JFSC's myProfile system. In addition, the JPF must have an offer document and comply with the applicable sections of the AIF Code. These sections mirror the Transparency and Asset Stripping provisions of Chapters IV and V of AIFMD.

Transitional provisions and conversion

Any private funds which have already been established under the 'very private', private placement or COBO only fund regimes (an **Existing Fund**) will continue to be regulated under that relevant regime. An Existing Fund may make an application to the JFSC to convert into a JPF, subject to compliance with the eligibility criteria set out in the JPF Guide.

Statutory fees

A fee of £1,849 is payable to the JFSC in respect of an application for a COBO consent for a JPF, with an annual fee of £1,475 also payable (pro-rated for the year in which the JPF is established).

If the JPF is to be marketed in the EEA/UK, a separate fee of £2,195 is payable in respect of the application for an AIF certificate, plus a further fee of £2,195 where the manager is required to register for AIFSB.

A copy of the JPF Guide is available at www.jerseyfsc.org.

Glossary

AIF an alternative investment fund as defined in the AIF Regulations.

AIF Code the Code of Practice for Alternative Investment Funds and AIFSB issued by the JFSC.

AIF Regulations Alternative Investment Funds (Jersey) Regulations 2012.

AIFM a manager of one or more AIFs.

AIFMD the European Union's Alternative Investment Fund Managers Directive.

AIFSB a person carries on AIF services business if its regular business is managing one or more AIFs.

AML/CFT/CPF anti-money laundering, countering the financing of terrorism and countering proliferation financing.

COBO Control of Borrowing (Jersey) Order 1958.

EEA European Economic Area.

Feeder Fund any ancillary scheme or arrangement which is associated to the JPF.

FS Law Financial Services (Jersey) Law 1998.

JFSC the Jersey Financial Services Commission.

JPF Guide the Jersey Private Fund Guide published by the JFSC.

Non-domiciled JPF a JPF established in a country or territory outside of Jersey.

Principal Persons as defined in the Collective Investment Funds (Jersey) Law 1988.

Contacts

For further information in relation to this subject matter, please contact one of our industry leading experts. A full list of our senior funds team can be found on our website.