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Jersey Private Funds

From 18 April 2017, the Jersey Financial Services Commission (the "JFSC") introduced a new, consolidated and streamlined funds regime, known as the Jersey Private Fund ("JPF") regime, which will enhance Jersey's competiveness as a leading jurisdiction to establish funds. It has further been clarified with the introduction of a new JPF Guide (the "Guide").

The JPF replaces three previous fund structures (COBO Only Funds, Private Placement Funds and Very Private Funds), however, it will not have a retroactive effect. Existing funds will continue their operations until the end of their natural life, and will be regulated in accordance with their current regime, unless they apply to convert.

Overview

A JPF is a private investment fund involving the pooling of capital raised and operates on the principle of risk spreading. Therefore, more than one investor is needed (for pooling of capital) and a number of assets need to be acquired (for risk spreading). It is not intended that holding companies, joint venture vehicles, securitisation vehicles, family office vehicles or incentive arrangements will fall within the definition of a JPF.

Main Points

Some of the main benefits of the new funds regime include:

- A JPF can be established as a Jersey company, cell company, limited partnership or unit trust.
- Notably a JPF can also be established as a non-Jersey entity provided the required COBO consent is obtained in Jersey.
- A JPF is not required to have Jersey resident directors, a Jersey resident general partner or a Jersey based trustee.
- The JFSC's new streamlined approach aims to authorise a JPF within 48 hours of receipt by it of a complete application.
- A JPF may only be offered to Professional or Eligible Investors (see further below).
- The promoter of the JPF does not need prior approval of the JFSC.
- It may be open or closed ended.
- It must make no more than 50 offers.
- There are no borrowing restrictions.
- A JPF must not be listed.
- A JPF must appoint a Jersey based Designated Service Provider ("DSP") who will act as administrator.

- A JPF is not required to have an offer document, unless it is marketed into the EEA, where it must then comply with AIF Codes which may require one.
- It shall be possible for the JPF to be compliant for AIFMD purposes.
- A JPF does not need to appoint an auditor or provide audited accounts, unless it is required to do so by its constitutional document.

Professional Investor

The Guide has introduced a new definition of a ‘Professional Investor’ which includes:

- Any person who invests by way of business;
- Individuals with a net worth (or joint net worth) of greater than US$1million, excluding their permanent residence or any rights under a contract of insurance;
- Any entity carrying on Trust Company Business, Fund Services Business or Investment Business with connection to the JPF (including all senior employees, directors, shareholders, consultants or partners of the entity);
- Investment structures containing assets valued at US$1million or greater; and
- Any related carried interest scheme.

Eligible Investor

The Guide also provides a definition of an ‘Eligible Investor’ and includes:

- An investor making an investment/commitment of at least £250,000.
- Any holder of non-participating founder/management shares or interests in the JPF.
- Any holder by way of an involuntary transfer of an interest in the JPF (e.g. on death or bankruptcy of the transferor).
- Any investment manager acquiring an interest for (or on behalf of) a non-professional or non-eligible investors.

The 50 or fewer investors test:

The Guide assists in determining whether there are 50 or fewer offers made. An offer means an offer that is capable of acceptance, and is not intended to capture pre-marketing material. In summary, these guidelines are:

- The transfer of units/shares/interest from one investor to another is permitted, provided that the amount of investors at any given time does not exceed 50.
- Top-up investments by a pre-existing investor in a JPF shall be treated as a part of the original offer to that investor.
- A split (transfer) of part of the investor’s holding of a unit/share/interest to another is permitted, provided that the number of investors at any given time does not exceed 50.
- A person acquiring a non-participating interest in the profits of the JPF shall not be regarded as an investor.
- Any general partner that does not commit co-investment capital to the JPF shall not be regarded as an investor.

- A carried interest vehicle which is established for the sole purpose of sharing in the profits of the JPF will not be regarded as an investor. However, each participant in the carried interest vehicle must be a professional investor or an eligible investor.
- A professional investor is capable of acquiring an interest for/on behalf of retail investors. There is no need to look at the number of underlying investors.
- However the JFSC applies a "look through" approach to any ancillary scheme or arrangement whose sole or exclusive purpose is to invest in a JPF. This is to ensure the investors are professional or eligible investors. If they are not then the consent of the JFSC is required to permit its use. Each underlying investor will be counted for the purposes of the test.

Designated Service Provider ("DSP")

The DSP appointed by the JPF must be a regulated entity in Jersey, such as a Jersey trust company or fund administrator. Once the DSP has been appointed, there may be no change to the DSP without prior approval of the JFSC.

The duties and responsibilities that fall to the DSP do not replace those of the governing body of the JPF. The DSP takes responsibility for:

- Making reasonable enquiries and ensuring all eligible criteria are met by the JPF, not only at its establishment, but on an ongoing basis.
- Making sure that all necessary client due diligence documentation ("CDD") on the JPF and all related parties (promoter and service providers) are obtained and updated.
- Making sure that all CDD is easily accessible in Jersey.
- Ensuring that the necessary Jersey AML/CFT requirements are met.
- Completing and submitting the JPF application form. This form includes the name, registered address, minimum investment amounts and all other relevant information required by the JFSC.
- Notifying the JFSC, as soon as possible and within 28 days, of any material change to the information contained in the JPF application form. The DSP must also notify the JFSC of any non-compliance by the JPF with Jersey's AML/CTF obligations.
- The DSP will complete and submit an annual compliance return for the JPF.

Summary

The introduction of JPFs is a welcome simplification of the rules applicable to private funds in Jersey. It retains the flexibility previously offered but now in one easily understandable regime. In addition, the information set out in the Guide will be welcomed by advisors and promoters as a clear statement of how the JFSC will view a range of circumstances which in the past have been open to interpretations.

About Hatstone

Hatstone is a leading boutique multi-jurisdicitional law firm with offices in BVI, Jersey, Panama and South Africa.

Our philosophy revolves around a Partner-led client service.

We believe that the right people will attract the best work and we have put in place a first class team to assist you. The team has been carefully chosen to ensure that there is experience and strength-in-depth.

- **Partner-led:** Our Partners each have a wealth of experience in banking and finance, the establishment and maintenance of investment funds, corporate and commercial, acquisitions and mergers, private equity and venture capital, structured finance, financial services and regulatory law, trusts and foundations. We believe that our clients benefit from having their affairs overseen by senior staff with the necessary experience.

- **Client Focus:** We are dedicated to providing a client focused services. Knowing our clients and understanding what drives their businesses is fundamental to us. We enjoy a very strong rapport with our clients whom have access to our lawyers 24/7 through the latest technology. Our principal aim is to help clients achieve their objectives by offering them pragmatic advice and solutions.

- **Transparency:** We are happy to work on a fixed fee basis (in most circumstances) and are transparent about our fees.

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