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Jersey: a home for fund managers

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An increasing number of fund managers are establishing a physical presence in Jersey. In fact, a number of globally recognised fund managers in the hedge, private equity and alternatives spaces now call Jersey home, with continuing interest from potential new arrivals.

The principal drivers for relocations

The drivers are primarily business, economic and regulatory related, but re-domiciling to Jersey is often also a lifestyle choice for many senior fund management professionals and their families. Jersey's established and sophisticated funds services offering enables the island to offer operational advantages for fund managers relocating to Jersey. Underscoring this has been a political desire within Jersey to diversify Jersey's economy, which has resulted in the introduction of tax regimes and policies which encourage and support the growth of high value industries, such as the fund management industry and the digital sector into the island.

As the UK continues to represent a large proportion of European fund managers, political instability and potential UK tax changes are undoubtedly contributing to the growing interest among fund managers in creating a real presence outside the UK. Jersey provides a very natural location for these mobile executives and their businesses. The following are some of the reasons why.

Straightforward tax regime

Jersey's tax regime is simple. There is no capital gains tax (including in relation to carried interest), gift tax or inheritance tax. Jersey residents are subject to personal income tax at a maximum rate of 20% on worldwide income. Certain high-net-worth individuals who become resident in Jersey may, however (subject to a number of conditions), have a significant proportion of their non-Jersey income taxed at a rate as low as 1%. Additionally, since the introduction of the "zero-ten" tax regime, the profits of a Jersey based and regulated investment manager are typically taxed at a corporate income tax rate of 0%. These tax advantages clearly make Jersey an attractive proposition for fund managers.

Commitment to the highest regulatory standards

The ease of regulatory compliance in Jersey, while at the same time adhering to the highest international regulatory standards (resulting in endorsements from the IMF, OECD, EU and MONEYVAL), is another big factor. For example, Jersey is one of a few jurisdictions with a central beneficial ownership register for companies, as recommended by the FATF. Jersey has also recently been subject to an assessment of its anti-money laundering, countering the financing of terrorism and countering proliferation financing regime by MONEYVAL.

In addition, the introduction, in response to the EU Code of Conduct Group's "fair taxation" requirements and the OECD's BEPS initiative, of economic substance rules for fund management companies (among others) which are tax resident in Jersey (in respect of which please see below), led to Jersey being assessed as a cooperative jurisdiction and very much played to the island's strengths because the governance model for fund managers in Jersey has always been to have real substance on the ground. This proved particularly important during the COVID-19 lockdown and continues to be relevant, as the requirement to be "directed and managed" in Jersey (meaning that board meetings must be held in Jersey and the majority of the directors attending board meetings must be physically present in Jersey) could be met by the Jersey-resident directors.

Proportionate sustainable finance regime

Jersey also aspires to be recognised as a leading jurisdiction for sustainable finance and much thought has been put into the preparation and delivery of its sustainable finance strategy. Of interest to fund managers is the sustainable investment disclosure regime which was introduced in 2021 to combat the risk of greenwashing.

Speed and cost of obtaining regulatory licences

The necessary regulatory licence for Jersey fund managers (in respect of which please see below) can be obtained within a matter of weeks and the costs are very low, compared with those of the UK and EU member states.

Access to UK and EU capital

Finally, for fund managers wishing to access capital from UK and European investors, the fact that Jersey does not form part of the EU but that Jersey-based fund managers are permitted to continue to access EU and UK investors via the respective EU and UK national private placement regimes is enormously important. This enables a Jersey-based fund manager to benefit from a reduced UK / EU AIFMD disclosure and transparency burden, in particular enabling it to avoid being bound by the remuneration disclosure rules applicable to UK / EU fund managers. Additionally, at the point at which the AIFMD passport becomes available to non-EU fund managers, the existing availability of fully AIFMD-compliant regulations for those managers who wish to “opt-in” to the AIFMD, means that Jersey will be ideally placed to be able to benefit from this marketing passport, as and when it becomes available.

Regulation of fund managers in Jersey

Entities conducting fund management business (**FSB**) are, in principle, required to be licensed by the Jersey Financial Services Commission (**JFSC**) under the Financial Services (Jersey) Law 1998 (**FSJ Law**). The application process for a licence is straightforward and the timing for the issuance of a licence is usually between six and eight weeks from the date of submission. Alongside the application process, the principal persons of the fund manager (namely the ultimate beneficial owners and directors) will be subject to vetting as 'fit and proper' by the JFSC. Where an individual is already approved by another regulator, such as the FCA, the vetting process is much quicker. Fund managers which are regulated under the FSJ Law are required to comply with the Code of Practice for Fund Services Businesses issued by the JFSC. Regulated fund managers are able to service managed accounts alongside their main fund, subject to the arrangements meeting certain criteria which are set out in further detail below.

While most fund managers which set up a presence in Jersey are required to be regulated under the FSJ Law, it is possible for managers of certain funds to benefit from an exemption to such regulation. In particular, a Jersey fund manager will not require a regulatory licence if the fund managed by it has fewer than 50 investors, all of which are professional (as defined in the relevant exemption order) or make a minimum commitment to the fund of at least £250,000. This is a very useful exemption which provides flexibility for start-up managers which are building their investor base or managers established specifically for the purpose of managing funds for single or multi family structures, small pools of very sophisticated or institutional investors as well as co-investment or parallel investment vehicles.

Qualifying segregated managed accounts (QSMAs)

Jersey has taken steps to adapt its regulatory and legal framework to further enhance its attractiveness to hedge fund managers by introducing an exemption which enables hedge fund managers that are already regulated under the FSJ Law to carry out fund services business to also service QSMAs without the need to seek additional regulatory permissions which would otherwise be required for the conduct of investment business under the FSJ Law.

As well as simplifying the regulatory position this also allows Jersey managers of QSMAs to continue to be able to benefit from a 0% corporate tax rate.

The QSMA exemption recognises that those who utilise managed accounts in the hedge-fund space are typically very sophisticated investors. The QSMA exemption is open to managed accounts meeting the following criteria:

- minimum initial subscription of US$1million
- the manager must be licensed for the conduct of FSB as a manager, investment manager, trustee or general partner and must be appointed as manager to hedge funds
- the QSMA must only pursue hedge-fund strategies that replicate, or be comprised of elements from, the hedge-fund strategies currently employed by one or more funds to which the manager is appointed to provide FSB services and the manager must ensure fair treatment of investors as between each other
- the manager must file a notice with the JFSC confirming reliance on the exemption together with an annual fee, and must report on an ongoing basis the number of QSMAs and the aggregate value of investments managed in such QSMAs
- there must be a single investor (although this may include employees of the manager jointly or members of the same family jointly) who has received and signed a prescribed investment warning
- the Jersey manager must be the only manager of the QSMA and cannot hold or otherwise have custody of the assets under management

Jersey economic substance requirements for fund managers

A Jersey entity conducting "fund management business" will fall within the scope of the Taxation (Companies - Economic Substance) (Jersey) Law 2019 or the Taxation (Partnerships – Economic Substance) (Jersey) Law 2021 (together, the **Economic Substance Laws**), and such entity will be required to ensure that it is governed and operated in a way that complies with the economic substance test set out in the respective law, namely that:

- all of its "core income-generating activities" (**CIGAs**) are carried out in Jersey (fund managers must conduct all of their CIGAs in Jersey and must be able to monitor and control any CIGA outsourced to another entity in Jersey)
- it is "directed and managed" in Jersey in relation to the relevant CIGA (it is expected that the majority of board meetings will be held in Jersey with a quorum of directors being physically present, the board must be the decision-making body, and all company records and board minutes must be retained in Jersey)
- it has adequate employees, expenditure and physical premises in Jersey (these can be provided by an outsourced service provider in Jersey, if required)

Fund vehicles themselves are outside the scope of the Economic Substance Laws, other than self-managed funds (ie corporate funds which do not appoint an external manager but which are managed internally by their board of directors).

How Ogier can assist

Ogier's team is advising on all aspects of fund manager relocation, establishment and licensing, including advising in relation to:

- business licence requirements
- employment permissions, work permits, visas and immigration matters
- high value residency applications
- regulatory advice
- compliance with economic substance requirements
- applications for fund services business licences
- reviewing the contractual arrangements between the fund manager, the fund and/or managed account(s)
- compliance with securities laws relating to the circulation of fund offer documents to Jersey resident investors
- private matters, including wills and property purchases

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