Jersey Private Fund Guide: an overview of the key updates

Insights - 02/07/2024

The Jersey Private Fund regime has proven an immense success since its inception in April 2017, with well over 700 funds benefitting from the swift authorisation, flexibility and light-touch regulation the regime offers.

The Jersey Financial Services Commission (**JFSC**) has now published a revised version of the Jersey Private Fund Guide, in consultation with the Jersey funds industry, which looks set to widen yet further the JPF regime's appeal.

The changes include enhancements as well as useful clarifications and certain updates to reflect recent regulatory developments.

The key amendments are summarised below. Find out more in our detailed briefing on the Jersey Private Fund (**JPF**) regime: A Guide to Jersey Private Funds | Ogier

Combined carry and co-investment vehicles

The revised JPF Guide provides managers with greater flexibility to structure carried interest and/or co-investment schemes, which will be deemed as "professional investors" and able to invest in a JPF without counting against the 50 offer / investor limit. This is on the basis that a carry / co-invest arrangement aligns interests and/or incentivises the fund's management and advisory team.

Each participant of the scheme must be a "professional" or "eligible" investor as defined in the JPF Guide, although the governing body of the carry / co-invest scheme may participate on behalf of persons who are not professional investors provided it is satisfied that the investment is suitable for the underlying investors and that the investors are able to bear the economic consequences of investment (including the potential loss of their entire investment).

Incentivisation schemes will still not need to be established as JPFs, even if they co-invest in or alongside the fund, if they meet the employment connection test in Annex B to the JPF Guide.

Wider professional investor definitions

The definition of professional investors (who are eligible to invest in a JPF) has been widened to include all financially sophisticated employees of investment businesses or other service providers, not just senior employees.

Helpfully, the revised guide clarifies that investor eligibility is determined at the outset (meaning if, for instance, an individual ceases to qualify as a professional investor upon resigning or retiring from an employment role, this will not impact their entitlement to continue as an investor, subject to the terms of the scheme).

It has also been clarified that where an interest is transferred involuntarily (such as on death or bankruptcy of an investor), although any transferee must satisfy eligibility requirements, they do not need to do so via the same category as the initial investor.

More flexibility for family office and employee incentive arrangements

The existing carve-outs for arrangements between investors with a family or employment connection have been improved. These arrangements fall outside the scope of the regime as set out in Annex B to the JPF Guide, but had required one or the other to apply – the carve-outs could not be combined.

It is now possible for a vehicle to rely on an Annex B carve-out where its participants are linked under either a family connection or a related employment connection, as part of the same scheme.

An employment relationship for these purposes will exist in a broader set of circumstances, with eligible employees now including all financially sophisticated employees (not just senior employees) of the group, and including expert consultants (in addition to partners and directors). These participants can also use investment structures for themselves, their dependents and, under the updated JPF Guide, any other person with whom they have a family connection as set out in Annex B.

The defined family relationships have also been widened, now including first cousins.

JPFs established outside Jersey

The revised guide clarifies that the JFSC expects a fund established under the JPF Guide to be established in Jersey or, if established elsewhere, managed and controlled in Jersey or to have its governing body on the island.

There may be circumstances in which other funds seek authorisation under the JPF regime despite not having this Jersey link. The JFSC is expected to seek further information in these cases, to understand any indirect nexus.

Applications for funds without a Jersey nexus may still be made, pending a standalone application process expected in due course.

AMLSP regime

For clarity, the JPF Guide expressly states that a JPF established in Jersey or with its governing body and management and control in Jersey will be subject to Jersey's anti-money laundering, counter-terrorist financing and counter-proliferation (**AML / CFT / CPF**) regime.

Any such JPF may elect to appoint an Anti-Money Laundering Services Provider (**AMLSP**), which may also be the designated service provider (**DSP**), the Jersey regulated service provider responsible for operation of the fund in accordance with the JPF Guide.

Where the AMLSP is not also the DSP, the JPF Guide requires appropriate controls to be implemented and documented to ensure that the division of AML / CFT / CPF responsibilities and any conflicts of interest are properly managed and mitigated.

The guide also reminds JPFs that, in respect of any such AML / CFT / CPF compliance, the fund will need to comply with the JFSC's outsourcing policy (unless appointing an AMLSP or otherwise exempt under the outsourcing policy).

Designated service providers

The revised guide removes the ability for investment businesses registered with the JFSC (not also registered to conduct fund services business or trust company business) to act as DSP. In practice this is not expected to have an input as we understand all DSPs possess a fund services business and/or trust company business registration of the appropriate kind.

Summary

The consultative and collaborative approach taken by the JFSC in developing the revised JPF Guide, and the many helpful changes within it, have been welcomed by industry.

Funds and fund managers will also welcome the increased flexibility, and we expect the JPF regime will continue on its successful trajectory as a leading structuring option for private alternative investment funds.

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