



Funds and Private Equity

A Guide to Funds and Private Equity in Jersey



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1. Carey Olsen

Carey Olsen is a leading law firm in the Channel Islands and acts for a number of institutional clients in large, multi-jurisdictional transactions, as well as for governments, corporates, professional firms and high net worth individuals.

Carey Olsen offers a full range of legal services, including corporate and commercial, funds and private equity, banking and finance, trusts and fiduciary, commercial and residential property, employment, restructuring, litigation and dispute resolution.

Carey Olsen's position as a top tier provider of legal services is recognised by Chambers UK, Legal 500, Practical Law Company and other independent market commentators and reflected by the quality of the transactions and cases the firm advises on.

Our people are recognised as outstanding leaders in their practice areas of expertise. Chambers UK 2012 recognises 26 of Carey Olsen's lawyers as leaders.

'it is like dealing with a magic circle firm outside London'
Source: Chambers and Partners 2010.

Our Investment Funds and Private Equity Team

Carey Olsen's Investment Funds and Private Equity Team is at the forefront of investment vehicle structuring and formation. We are recognised as one of the leaders in the field in the Channel Islands and have substantial presences in both Jersey and Guernsey and offices in London. The team is committed to delivering a client-centric service and providing commercially driven legal advice that is both comprehensive and pragmatic. We are able to ensure that the appropriate resources and expertise are available for your projects at all times. We are available when you need us and we recognise the importance of responsiveness.

The Investment Funds and Private Equity Team acted in the establishment of the Channel Islands Stock Exchange (CISX) and can advise on all aspects of listing on it. Carey Olsen Corporate Finance Limited, a member of the Carey Olsen Group, is a category 1 member of the CISX and can act as a fund's sponsor for listing purposes.

The firm's expertise in investment funds was endorsed by the Legal Media Group's Guide to the World's Leading Investment Funds Lawyers 2010 publication which included four of the firm's partners in its international analysis of the top global investment funds lawyers.

'pragmatic, can-do service' - Chambers UK

Our Clients

Our client base is wide-ranging and encompasses fund promoters, asset managers, investment banks, hedge fund managers, private equity houses, financial institutions and international law firms. We advise on every aspect of the establishment, operation and restructuring of investment funds.

The Morningstar Professional Rankings survey (formerly Hemscott) places Carey Olsen in the Top 10 law firms by the number of London Stock Exchange (LSE) and AIM clients it advises. It is the only offshore law firm to be ranked alongside UK legal advisers in the top ten by Hemscott, a leading directory for the finance sector (Source: The Morningstar Professional Rankings Guide, November 2011 report).

2. Jersey: an International Finance Centre

Jersey is one of the world's major international finance centres. Its successful combination of stability and reliability combined with tax neutrality has kept Jersey at the forefront of global finance for almost half a century. During this time Jersey has gained a strong reputation as a prime location in which to establish investment funds.

The industry has developed within the Island's stable political and fiscal infrastructure. Government determination to encourage high quality business to the Island, and the support offered by the sophisticated and comprehensive infrastructure of laws and regulations, combine to promote investor confidence.

The wealth of experience and expertise offered by the Island's highly skilled financial service providers gives an unparalleled welcome to businesses and investors alike.

With a business day that begins before Tokyo closes and continues well into New York trading time and a close proximity to Europe whilst retaining independence from the European Union, Jersey offers both location and time zone benefits.

3. Jersey Funds Regulation in Brief

Jersey regulatory classifications provide a "safe harbour" with 3 day approval (or no approval needed) from the Jersey Financial Services Commission ("JFSC") for the majority of non-retail funds.

Jersey funds are divided into the following main categories:

Collective Investment Funds ("CIFs"), which are regulated by the JFSC under the Collective Investment Funds (Jersey) Law 1988 (the "CIF Law") and have no limit on the number of investors. See the Appendix for a fuller definition of a CIF. This category includes Expert Funds and Listed Funds, which both benefit from a 3 day approval process:

- **Expert Funds:** only for investors falling within any one of the 10 categories of "expert investors", including those investing or committing a minimum of US \$100,000 or currency equivalent. Investors must receive and acknowledge an investment warning (usually included in the subscription document).
- **Listed Funds:** closed-ended funds whose units are listed on an approved stock exchange or market - an extensive list which includes all exchanges upon which listings are ordinarily sought has been pre-approved, including the London Stock Exchange (the Main Market, AIM and the SFM), NYSE, NASDAQ, HKEx, Euronext and the CISX.

Expert Funds and Listed Funds are established on self-certification (confirmed by the fund administrator) that the fund complies with the JFSC's published criteria and, accordingly, are capable of being established in Jersey within a matter of days. The JFSC does not need to review the fund's structure, documentation or promoter.

Unregulated Funds, which can be established on a same day basis by filing a notice and which are not approved or regulated by the JFSC. Unregulated Funds are subject to minimal requirements, with no limit on the number of investors, no investment or borrowing restrictions, no audit requirement for limited partnerships and unit trusts and no need for Jersey service-providers. Two separate categories exist:

- **Unregulated Eligible Investor Funds:** only for investors falling within any one of the 11 categories of "eligible investors", including those investing or committing US \$1 million or currency equivalent.
- **Unregulated Exchange Traded Funds:** must be closed-ended and listed on an approved stock exchange or market - again an extensive list which includes all exchanges upon which listings are ordinarily sought has been pre-approved, including the London Stock Exchange (the Main Market, AIM and the SFM), NYSE, NASDAQ, HKEx, Euronext and the CISX.

Very Private Structures, which have no more than 15 investors and can be established quickly (on a same day basis for companies) and with no regulatory requirements (including no investor qualification requirements or investment or borrowing restrictions). JFSC approval is given under the Control of Borrowing (Jersey) Order 1958 ("**COBO**") without any review of documents.

Private Placement Funds, which are closed-ended funds either established in Jersey or managed in Jersey with less than 50 investors who must fall within one of the categories of "sophisticated investors" or "professional investors" (including those investing a minimum of £250,000 or currency equivalent). JFSC approval is given on a 3 day fast track basis without applying its "promoter policy" (see paragraph 14 below), relying instead on certain written confirmations from the fund's administrator in relation to the fund's promoter.

An Overview of Jersey Funds

| TYPE OF FUND | NOTIFICATION ONLY | | VERY PRIVATE STRUCTURE | PRIVATE PLACEMENT REGIME | COLLECTIVE INVESTMENT FUNDS (CIFs) | | |
|--|--|------------------------------------|---|-------------------------------------|--|--------------------------------------|--------------------------------------|
| | Eligible Investor Funds | Closed Ended Exchange-Traded Funds | | | Expert | Listed | Retail/other |
| REGULATORY INVESTOR RESTRICTIONS | Fund for investment by Eligible Investors (e.g. US \$1 million minimum investment) | None | Fund with up to 15 offers/investors | Fund with up to 50 offers/investors | Fund for investment by Expert Investors (e.g. US \$100,000 minimum investment) | None | None |
| REGULATORY CONDITIONS | None | None | COBO consent limiting number of investors | COBO consent with some conditions | Usual conditions in fund certificate | Usual conditions in fund certificate | Usual conditions in fund certificate |
| REGULATORY ESTABLISHMENT TIME | Notification only | Notification only | 1 to 10 days | 3 days | 3 days | 3 days | Variable |
| PERSONAL QUESTIONNAIRES (See Appendix) | No | No | No | No | Yes | Yes | Yes |
| PROMOTER POLICY APPLIED? | No | No | No | No | No | No | Yes |
| LAW | Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 | | Control of Borrowing (Jersey) Order 1958 (COBO) | | Collective Investment Funds (Jersey) Law 1988 (the Law) | | |
| LEVEL OF REGULATION | Very light | Very light | Light | Light | Medium | Medium | Medium to High |

All funds are subject to Jersey's internationally compliant laws and regulations in respect of the prevention and detection of money laundering and the financing of terrorism.

Please note that non-Jersey domiciled funds do not require a separate authorisation in Jersey per se (although consents under COBO may be required depending upon the nature of the activities undertaken in Jersey in relation to such funds). As long as Jersey service providers have a licence from the Jersey Financial Services Commission to act as a Fund Services Business, they can act for a non-Jersey domiciled fund upon making the necessary notification.

3. Jersey Funds Regulation in Brief - continued

Investment Vehicles which are not Funds

An investment vehicle will not be regulated as a fund in Jersey unless it is a scheme or arrangement for the investment of money which (a) has as its object or one of its objects the collective investment of capital; and (b) the fund operates on the principle of risk spreading, or units are to be bought back or redeemed continuously or in blocks at short intervals upon the request of the holder and out of the assets of the fund, or units will be issued continuously or in blocks at short intervals. Vehicles which hold a single asset or which carry on a business (such as property development) may not fall within Jersey's funds regulations.

Fund vehicles

All Jersey funds can be established as a limited partnership, separate limited partnership, or incorporated limited partnership, or as a unit trust or as a Jersey company, protected cell company ("PCC") or incorporated cell company ("ICC").

Fund Service Providers

- An expedited approval process exists allowing licensing in around two weeks with the support of a local administrator. A "special purpose" Jersey vehicle can be established to act as manager, investment manager/adviser, general partner or trustee to one or more Jersey or non-Jersey funds.
- Jersey fund service providers (including administrators, custodians, fund managers, general partners and trustees) must be licensed by the JFSC. Exemptions exist for private structures and for general partners and trustees of Unregulated Funds.
- No person from outside Jersey may provide investment advice, investment dealing services or discretionary investment management from within Jersey without a licence.
- The acceptance of subscription monies from prospective investors is subject to international standard "know your customer" regulations.

4. Expert Funds

Expert Funds are attractive for non-retail schemes, whether joint ventures, hedge funds, private equity vehicles or other schemes aimed at "expert investors". Expert Funds can be established quickly and cost effectively and must comply with the Jersey Expert Funds Guide (the "**EF Guide**").

Approval Process

The JFSC does not need to review the fund structure, documentation or the promoter. Instead the fund administrator certifies to the JFSC that the fund complies with the EF Guide and once the certification and the fund's offer document are filed, the JFSC aims for a 3 day turnaround on the application for approval. The EF Guide provides fund promoters with certainty, efficiency and cost effectiveness in the establishment of a new fund.

What is an Expert Fund?

An Expert Fund is a fund meeting the following criteria:-

- Clearly, the definition of an "expert investor" is crucial. An investor must be one of the following: in the business of buying or selling investments; a person with a net worth of more than US \$1m, excluding principal place of residence; an entity with at least US \$1m available for distribution; connected with the fund or a fund service provider (there is a flexible approach to carried-interest arrangements); an investor making a minimum investment or commitment of US \$100,000 or currency equivalent.
- All investors must sign a prescribed form of investment warning before being registered as subscribers in an Expert Fund.
- The investment manager/adviser must be established in an OECD member or any other state or jurisdiction with which the JFSC has entered into a Memorandum of Understanding or equivalent; regulated in its home jurisdiction (or, if not required to be, approved by the JFSC, which usually occurs on an expedited basis); without convictions or disciplinary sanctions; solvent; experienced in using similar investment strategies to those adopted by the Expert Fund; and able to demonstrate an adequate span of control over the business. If the investment manager/adviser does not meet these requirements, it may approach the JFSC on a case by case basis. Of course, if permission

is granted then, absent any material change, the investment manager/adviser will not need specific approval to establish further Expert Funds. An investment manager/adviser is not required for certain funds, such as direct real estate or feeder funds.

A small number of key structural requirements are imposed on Expert Funds:

- The offer document must set out all material information in respect of the fund;
- The fund must audited;
- A licensed Jersey administrator or manager (which may be a special purpose vehicle) must be appointed (save in the case of a closed ended unit trust where a trustee is the only local functionary required) and must satisfy itself that the investment manager/adviser is acting in accordance with its mandate ;
- A Jersey custodian or (in the case of hedge funds) an international prime broker must be appointed for open-ended funds; and
- Two Jersey resident directors with appropriate experience must be appointed to the board of the fund company/general partner/trustee.

Flexibility

There are no investment or borrowing restrictions imposed on the fund, nor is there any limitation on the number of investors such a fund may have.

Derogations

The EF Guide aims to provide a "safe harbour" available to the majority of non-retail funds. However, in addition, as well as bringing certainty to the process of establishing funds that fall within this safe harbour, the Expert Fund policy aims to free up JFSC time so that derogations from the EF Guide may also be considered on an expedited case by case basis.

Ongoing requirements

Ongoing requirements are limited and the fund need only obtain JFSC consent for changes which are contrary to the EF Guide and for changes to the fund's director and service provider.

5. Listed Funds

Listed Funds must comply with the Jersey Listed Funds Guide (the "**LF Guide**"). The LF Guide does not place any restrictions or qualification criteria on who can invest in a Listed Fund and provides certainty to those wishing to establish a listed fund in a quick and cost-effective manner. There is no minimum investment requirement.

Approval Process

Listed Funds are established on certification by the fund administrator that the fund complies with the criteria set out in the LF Guide. The JFSC issues the relevant certificate on receipt of the certification and the fund's offer document. As a result, a Listed Fund can be established in Jersey within 3 days.

What is a Listed Fund?

A Listed Fund is a fund meeting the following criteria:-

- The fund must be listed on an exchange or market recognised by the JFSC. The list of pre-approved exchanges is numerous and global in scope, and includes all exchanges upon which listings are ordinarily sought, including the London Stock Exchange (the Main Market, AIM and the SFM), NYSE, NASDAQ, HKEx, Euronext and the CISX.
- The investment manager/adviser must be of good standing, established and regulated (if appropriate) in an OECD member state or a jurisdiction with which the JFSC has a memorandum of understanding.

The JFSC understands that some investment managers/advisers may not be regulated because the type of activity they undertake is not regulated in their home jurisdiction: real property investment management being one example. In such cases, provided the investment manager is (i) the subsidiary of an entity that is regulated in relation to managing or advising on investment funds in its home jurisdiction, (ii) an entity or the subsidiary of an entity with a market capitalization of above US \$500m, or (iii) a manager

with a trading record of at least 5 years or whose principal persons can demonstrate relevant experience or qualifications, it will remain eligible for the fast-track authorisation process. If an investment manager/adviser does not meet these requirements, it may approach the JFSC on a case by case basis. Of course, if permission is granted then, absent any material change, the investment manager/adviser will not need specific approval to establish further Listed Funds. An investment manager/adviser is not required for certain funds, such as direct real estate or feeder funds.

A small number of key structural requirements are imposed on Listed Funds:

- The fund must be closed-ended (meaning that it is not normally open for subscriptions and redemptions at the option of investors).
- The fund's offering document must carry a clear investment warning and contain all information necessary for potential investors to make an informed decision;
- The fund must be audited.
- A licensed Jersey administrator or manager (which may be a special purpose vehicle) must be appointed;
- Adequate custody arrangements must be in place (though there is no requirement for a Jersey custodian);
- A majority of the directors of the board of the fund company (including the Chairman) must be independent. Independence will generally be a matter for the board itself to determine, often using the requirements of any relevant listing authority for guidance; and
- Two Jersey resident directors must be appointed to the board of the fund company.

Flexibility

There are no investment or borrowing restrictions imposed on Listed Funds. There is no limit on the number or type of investors in such funds.

5. Listed Funds - continued

Derogations

The LF Guide aims to provide a "safe harbour" available to the majority of Listed Funds. However, in addition, as well as bringing certainty to the process of establishing funds that fall within this safe harbour, the Listed Fund policy aims to free up JFSC time so that derogations from the LF Guide may also be considered on an expedited case by case basis.

The LF Guide only applies directly to funds structured as companies, but applications for limited partnerships or unit trusts can be made on a case-by-case basis.

Since the introduction of Unregulated Exchange Traded Funds (refer to page 10), listed funds are now only used if there is a specific desire for a closed-ended listed fund to be regulated.

Ongoing requirements

Ongoing requirements are limited and the fund need only obtain JFSC consent for changes which are contrary to the LF Guide and for changes to the fund's director and service provider.

6. Unregulated Funds

There are two separate categories of Unregulated Funds:

Unregulated Eligible Investor Funds: open/closed ended and restricted to sophisticated investors (including those investing a minimum amount equivalent to US \$1 million); and

Unregulated Exchange Traded Funds: closed ended and listed on an approved stock exchange or market.

There is no audit requirement (unless the fund is a company), no need for Jersey service-providers or Jersey directors and no investment or borrowing restrictions imposed on an Unregulated Fund. Nor is there any limitation on the number of investors such a fund may have.

The key benefits of this regime for fund promoters are that it provides unparalleled flexibility coupled with the certainty of being able to establish the fund at any time simply by filing the required notice and without the need to obtain JFSC approval.

Unregulated Funds can be established as a Jersey company (including as a PCC or ICC), as a limited partnership with at least one general partner which is a Jersey company or as a unit trust with at least one trustee or manager which is a Jersey company.

Unregulated Eligible Investor Funds

An Unregulated Eligible Investor Fund:

- can be open or closed-ended and may be sold to or held by an unlimited number of "eligible investors";
- does not need to produce audited accounts (unless a company);
- has no need for Jersey service-providers or for any Jersey directors on the fund company, the trustee or the general partner;
- has no investment or borrowing restrictions and no limitation on the number of investors;

6. Unregulated Funds - continued

- may be listed, provided that the exchange permits transfer restrictions (to ensure that only eligible investors are allowed to invest in the fund); and
- must obtain a written acknowledgement from each investor confirming their acceptance of the risks involved in the fund (typically dealt with on the application form).

There are 11 categories of "eligible investor", which include those investors:

- who make a minimum initial investment or commitment of US \$1,000,000 (or equivalent);
- whose ordinary business or professional activity includes dealing in, managing, underwriting or giving advice on investments (or an employee, director, consultant or shareholder of such a person);
- who is an individual with a net worth of over US \$10,000,000 or equivalent (calculated alone or jointly with their spouse and excluding a principal place of residence);
- which is a company, limited partnership, trust or other unincorporated association and which either (i) has a market value of US \$10,000,000 or equivalent (calculated either alone or together with its associates), or (ii) has only "eligible investors" as members, partners or beneficiaries;
- which is, or acts for, a public sector body;
- which is the trustee of a trust which either (i) was established by an "eligible investor", or (ii) is established for the benefit of one or more eligible investors; or
- which is, or is an associate of, a service-provider to the fund (or an employee, director, consultant or shareholder of such a service-provider or associate and who acquires the investment as remuneration or reward).

The regime also expressly recognises that a discretionary investment manager may make investments on behalf of investors who do not qualify as "eligible investors", provided that it is satisfied that the investment is suitable for the underlying investors and they are able to bear the economic consequences of the investment.

Unregulated Exchange Traded Funds

An Unregulated Exchange Traded Fund:

- must be listed on one or more approved stock exchanges - again the list of pre-approved exchanges is numerous and global in scope, and includes all exchanges upon which listings are ordinarily sought, including the London Stock Exchange (the Main Market, AIM and the SFM), NYSE, NASDAQ, HKEx, Euronext and the CISX;
- must be closed-ended and will be subject to the rules of any exchange on which it lists;
- does not need to produce audited accounts (unless the fund is a company);
- has no need for Jersey service-providers;
- has no minimum investment level or other investor qualification requirements and no limit on the number of investors; and
- must include a specified investment warning in its offer documents notifying investors that the fund is not regulated in Jersey.

Unregulated Exchange Traded Funds can be attractive, where a "technical" listing is not overly onerous to achieve and may expand the fund's potential investor base.

Unregulated Funds: the fund vehicle

Once the fund vehicle is established in the usual way, no further regulatory approvals of any kind will be required if the fund meets the requirements for qualifying as an Unregulated Fund. A notice must be filed with the JFSC confirming that the relevant eligibility requirements are met. Existing funds established on or after 19 February 2008 can convert to become Unregulated Funds.

The usual application procedure for incorporating a company or registering a limited partnership will apply, each of which can often be completed on the same working day. Using a unit trust avoids even these requirements. An Unregulated Fund has no obligation to have any Jersey resident directors or any Jersey based administrator, custodian or other service providers.

Unregulated Funds remain subject to Jersey's anti-money laundering regulations, which meet international standards.

7. Retail Funds and Other CIFs

This category encompasses open-ended funds which are to be offered to retail investors and other CIFs which do not qualify as an Expert Fund or Listed Fund. The first stage of the approval process is the approval of the promoter (see "Promoter Policy" in section 13). This approval can be sought simultaneously with the submission of documents for review by the JFSC. Once such approval has been obtained, any JFSC comments on the documents have been resolved and the JFSC has approved the identity of the fund's service providers, the JFSC will issue the necessary consents.

The extent of the JFSC's review and of the regulatory requirements it imposes will depend on the nature of the fund and, in particular, on any minimum level of investment or other restrictions on who can invest and whether the fund is open or closed-ended.

8. Very Private Structures

A Very Private Structure must have 15 or fewer investors at all times. These funds are largely unregulated and the JFSC does not review the constituent documents.

- maximum of 15 investors at any time (a maximum of 15 initial offers may also apply);
- no minimum investment or other investor qualification requirements;
- no investment or borrowing restrictions;
- no need to prepare an offering memorandum; and
- no need for Jersey directors or service-providers and no audit requirement.

These structures are approved by the JFSC under COBO and are not regulated by the JFSC on an ongoing basis.

For companies, there are no further requirements after the establishment of the fund vehicle, which can be incorporated on a "same day" basis. For a unit trust or limited partnership, the required JFSC consent is generally obtained by letter within a few days and without the need to submit documents.

9. Private Placement Funds

A Private Placement Fund is a fund:

- which is either established in Jersey or managed in Jersey
- which is closed-ended
- whose units are not offered to more than fifty investors
- which only admits "professional investors" or "sophisticated investors" (essentially, investors who either make a minimum investment of £250,000 or whose ordinary business involves acquiring, holding, managing or disposing of investments).

If a fund meets these criteria, JFSC approval is given on a 3 day fast track basis. In considering an application, the JFSC will not apply its promoter policy (see paragraph 14 below), relying instead on certain confirmations from the fund's administrator. At least two Jersey resident directors must sit on the board of the entity with governance responsibility for the fund. The fund is also required to produce a private placement memorandum.

10. Recognized Funds

This category of funds are intended to be freely marketed to retail investors in the United Kingdom or elsewhere and which are generally more heavily regulated than other types of Jersey funds. Recognized Funds are outside the scope of this guide.

11. Fund Vehicles

A Jersey fund can be established as:

- a **unit trust**
- a **company** (including a PCC or ICC)
- a **limited partnership** (including a separate LP or incorporated LP)

Unit Trusts

A unit trust is not a separate legal entity but is constituted by an agreement in writing, commonly known as a "trust instrument", between a manager and a trustee (or by a trustee which also acts as manager). The trust concept has been recognised in Jersey for over one hundred years and trusts generally are now governed by the provisions of the Trusts (Jersey) Law, 1984. The assets of a unit trust are held by its trustee and are managed by the manager, who may appoint one or more investment managers/advisers to assist it. Contracts in relation to the management and administration of the trust fund will be entered into by the manager, whereas the trustee will enter into contracts in relation to the assets themselves, such as bank deposits, borrowings and security agreements. There is no limit to the number of investors.

Limited Partnerships

Limited partnerships ("**LPs**") are now the favoured vehicles for closed-ended private equity funds and can be established in three ways:

- "traditional" Jersey LPs ("**JLPs**"), which are similar to English LPs, are established under the Limited Partnerships (Jersey) Law 1994;
- separate LPs ("**SLPs**"), which have separate legal personality and are therefore similar to Scottish LPs, are established under the Separate Limited Partnerships (Jersey) Law 2011;
- incorporated LPs ("**ILPs**"), which have separate legal personality and are bodies corporate, are established under the Incorporated Limited Partnerships (Jersey) Law 2011.

A JLP/SLP/ILP is usually created by a written partnership agreement which is signed after the LP has been issued with a certificate of registration. A JLP/SLP/ILP consists of one or more general partners who are jointly and severally liable for all the debts of the partnership and one or more limited partners, who are not liable for any debts of the partnership beyond the

amounts they contribute or agree to contribute. Among the features which make these Jersey limited partnerships attractive to fund promoters as fund vehicles, GP vehicles and carried interest vehicles are the following:

- JLPs are treated as transparent for all UK tax purposes and counsel's advice is that SLPs and ILPs will receive the same treatment;
- Jersey LPs are "stackable" - a JLP/SLP/ILP can act as a general partner or limited partner to another JLP/SLP/ILP (or any foreign LP) without prejudicing the limited liability of its limited partners. This makes them ideal for carried interest and other profit distribution structures.
- A JLP/SLP/ILP can distribute both capital and profits without formality provided that it is solvent before and after the distribution.
- The names of the limited partners do not appear on any register which is open to public inspection (public information is limited to the limited partnership's name and registered office, the general partner's place of incorporation and registered/principal office and the term, if any, for which the LP is to exist).
- Subject to any requirements of the LPs regulatory category: no Jersey service-providers are required; the general partner is not required to be a Jersey company, be resident in Jersey or have Jersey directors, there is no on-going registration charge, no requirement to file any annual return or accounts and no audit requirement (where the LP is regulated its accounts must be audited but do not need to comply with any GAAP).
- A limited partner may have greater involvement in management than in some other jurisdictions. There is no limit on the number of limited partners who may be members of a limited partnership. The general partner need not make any capital contribution to the limited partnership.
- There is great flexibility in defining the extent of the limited partners' rights (including rights of redemption), any rights of any partner(s) to receive carried interest, profit share and/or other payments and the scope of any restrictions on the general partner's discretion.
- For SLPs and ILPs, the laws under which they are established have been tailored to reinforce the existence of separate legal personality and body corporate status (e.g. ILPs have perpetual succession and detailed winding up provisions, similar to a Jersey company).

More information on Jersey limited partnerships is available in a separate publication.

11. Fund Vehicles - continued

Companies

Companies are incorporated under the provisions of the Companies (Jersey) Law 1991 (the "**Companies Law**"). Fund companies which are established as open-ended so that investors have the right to realise their investment in the company will normally issue redeemable preference shares to facilitate this, as par or no par value shares.

All companies formed under Jersey law have separate legal personality and are capable of suing and being sued in their own names. Management and control is vested in a board of directors although, particularly in the case of open-ended companies, it is often the case that investment management will be delegated to a management company.

Protected Cell Companies and Incorporated Cell Companies

Cell company structures (which are popular for umbrella fund structures) are also established under the Companies Law. The cells all share the same registered office and company secretary, but can have different boards of directors, different capital structures and different articles of association. In Jersey, two kinds of cell company structure are available:

- the **Protected Cell Company** (PCC): a "second generation" protected cell company that represents the first significant advance from the PCC model used in other jurisdictions (for example, a cell in a Jersey PCC can invest in other cells within the same PCC) - the PCC and its cells together form a single company, but Jersey's company law provides for the legal segregation of the assets of the PCC and of each of its cells;
- the **Incorporated Cell Company** (ICC): a true innovation which provides unmatched segregation of liabilities and flexibility. Each cell of an ICC is a separate company.

PCCs and ICCs can offer significant advantages and recently introduced changes further increase their flexibility, while maintaining the "bankruptcy remoteness" of each cell.

More information on PCC and ICC structures is available in a separate publication.

12. Taxation

The paragraphs below summarise the current tax position in Jersey. The States of Jersey has announced plans to introduce a voluntary exemption for funds from taxation in Jersey, but the paragraphs below will continue to apply once this exemption is introduced if a fund does not elect to be treated as exempt.

General

Profits of a capital nature are not liable to Jersey income tax (unless arising from the development of land or buildings in Jersey). Accordingly, gains made on the disposal of assets held by a fund by way of investment will not be liable to Jersey income tax. There are no capital taxes in Jersey.

Companies

Jersey fund companies which are resident for tax purposes in Jersey will be subject to income tax in Jersey at a rate of zero per cent.

Dividends on shares and redemption proceeds may be paid by the fund company without withholding or deduction for or on account of Jersey income tax and holders of shares (other than residents of Jersey) will not be subject to any tax in Jersey in respect of the holding, sale or other disposition of such shares.

Unit Trusts

Funds established as unit trusts are exempt from tax on foreign income and bank interest (either automatically or, where there are Jersey resident individual unitholders, by application).

Unitholders who are not resident for income tax purposes in Jersey are not subject to taxation in Jersey in respect of any income or gains arising in respect of units held by them (other than any Jersey source income excluding bank deposit interest).

Unitholders who are resident for income tax purposes in Jersey will be subject to income tax in Jersey on any income arising from units held by them or on their behalf and income tax is required to be deducted by the trustee(s) on payment of any such distributions.

Limited Partnerships

A Jersey limited partnership is not subject to assessment to taxation in Jersey in its own name. The partners are assessed in their own names as follows:

- investors who are not resident for taxation purposes in Jersey will not be liable to Jersey income tax in practice on distributions from (or interest receivable from a loan made to) the limited partnership and confirmations in this regard are generally obtained from the Comptroller of Income Tax in Jersey; and
- investors who are resident for taxation purposes in Jersey are charged to Jersey income tax on the whole of their share of the income profits arising to the limited partnership.

Other taxes

In Jersey, no stamp duty is levied on the creation, transfer, redemption or cancellation of shares, units or limited partnership interests. Stamp duties may be payable in Jersey where such securities form part of the Jersey estate of a deceased individual on a sliding scale at a rate of up to 0.75%. Jersey does not otherwise levy taxes upon capital, inheritances, capital gains or gifts nor are there otherwise estate duties.

European Union Directive on the Taxation of Savings Income

On 1 July 2005, agreements on the taxation of savings income which were entered into between Jersey and each of the EU Member States came into effect. These agreements provided the same provisions as the EU Savings Tax Directive and required, in certain circumstances, the retention of tax from payments made by certain Jersey collective investment vehicles to EU resident individuals. Jersey fund vehicles are generally outside the scope of those agreements.

13. Promoter Policy

The approval of the JFSC is required in respect of the promoter of (i) a CIF which is not an Expert Fund or Listed Fund, or (ii) a Private Placement Fund. This requirement does not apply to Unregulated Funds, Expert Funds, Listed Funds or Very Private Structures.

Under the JFSC's published policy, in assessing a proposed promoter or promoting group, the JFSC will have regard to its: track record and relevant experience; reputation; financial resources; and spread of ultimate ownership. Their assessment will depend on the type of investor to which the proposed fund is targeted: the higher the minimum investment and/or the more that the fund is targeted towards professional or institutional investors who have knowledge of the industry and have the experience and resources to look after themselves, the more the JFSC is inclined to relax their requirements.

14. The Channel Islands Stock Exchange

The Channel Islands Stock Exchange ("**CISX**") was established in 1998 primarily to provide trading and listing of investment funds, debt instruments and shares in companies. The CISX is designed to bring the expertise available in the Channel Islands to the growing number of international businesses requiring first class offshore financial services within the European time-zone.

The CISX provides a listing facility and screen-based trading. In October 2003, the CISX was approved as an Affiliate Member of the International Organisation of Securities Commissions ("**IOSCO**"). The CISX was officially recognised by the Australian Stock Exchange in July 2000 and, in September 2002, was recognised as a Designated Offshore Securities Market ("**DOSM**") by the U.S. Securities & Exchange Commission under Regulation S of the U.S. Securities & Exchanges Act 1933. On the 11th December 2002, the CISX announced that the UK Inland Revenue had designated the CISX as recognised under Section 841 of the Income and Corporation Taxes Act 1988 ("**ICTA**") and in addition, the UK Financial Services Authority has approved the CISX, with effect from the 1st February 2004, as a Designated Investment Exchange within the meaning of the Financial Services and Markets Act 2000.

Carey Olsen Corporate Finance Limited, a member of the Carey Olsen Group, is a category 1 member of the CISX and can act as a fund's sponsor for listing purposes.

Jersey funds have equivalence on Euronext and have acted on a Euronext listing of a Jersey Fund.

15. Fund Service Providers

Subject to the requirements applicable to the fund's regulatory category, the service providers to a Jersey fund can be (i) an established Jersey service provider; and/or (ii) a "special purpose" Jersey vehicle which is established to act as manager, investment manager/adviser, general partner or trustee to one or more Jersey or non-Jersey funds; and/or (iii) any other (Jersey or non-Jersey) person or entity.

CIFs and Unregulated Funds: Fund Services Business

Jersey service providers to CIFs and Unregulated Funds must be licensed by the JFSC to conduct "fund services business" under the Financial Services (Jersey) Law 1998 (the "**Financial Services Law**"): this includes administrators, custodians, distributors, fund managers, investment advisers/managers, general partners and trustees. Established Jersey service providers will already hold these licences.

An exemption from the licensing requirement exists for special purpose companies established in Jersey to act as general partners and trustees of Unregulated Funds, thus ensuring that these structures can remain entirely unregulated by the JFSC (while still being subject to Jersey's anti-money laundering regulations).

CIFs and Unregulated Funds: special purpose managers etc

A simplified licensing regime exists for "special purpose" Jersey vehicles which are established (i) to act as manager, investment manager/adviser, general partner or trustee to one or more CIFs or (ii) to act as manager or investment manager/adviser to one or more Unregulated Funds (exemptions are in place for general partners or trustees of Unregulated Funds).

The following is summary of the requirements for a "special purpose" Jersey service provider ("SPSP") vehicle:

- The SPSP will need to be administered by a regulated Jersey administrator, which will assume a responsible role for regulatory purposes, including providing one or more directors as well as the Money Laundering Compliance and Reporting Officers.

- Regulatory approval will be subject to the Licensing Policy published by the JFSC.
- The SPSP will be required to comply with the Codes of Practice for Fund Services Business. These contain detailed requirements, including as to capitalisation and corporate governance (including a requirement that the board of the SPSP is appropriately experienced). Where the SPSP only provides services to Unregulated Funds and/or Expert Funds, the SPSP will be able to elect for a reduced level of compliance with the Codes.
- Each director of the SPSP and each beneficial owner of the SPSP with a 10% or greater interest will (if not already approved by the JFSC) be required to submit a personal questionnaire (see Appendix) to seek approval from the JFSC. As international regulatory checks often take four to six weeks to complete, these should be completed and submitted as early as possible.
- Registration under the Financial Services law typically takes 3 weeks.

Very Private Structures

Jersey service providers to Very Private Structures will need to be licensed by the JFSC to conduct "trust company business" and/or "investment business" under the Financial Services Law unless they can take advantage of a relevant exemption. Established Jersey service providers generally hold these licences.

For special purpose companies established in Jersey:

- exemptions are usually available for general partners and trustees; and
- a number of exemptions are available for investment managers, including both for "connected companies" and where the fund is a "professional investor regulated scheme", which requires only that the investor sign a simple specified form of investment warning and either (i) qualify as a "professional investor" (which includes "a person whose ordinary activities involve the person in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of the person's business or who it is reasonable to expect will acquire, hold, arrange or dispose of investments (as principal or agent) for the purposes of that business") or (ii) make a minimum investment of £250,000 or currency equivalent.

Private Placement Funds

A Private Placement Fund must appoint an administrator licensed by the JFSC, providing a minimum of registered office services and support for the fund's anti-money laundering obligations.

Other Jersey service providers must meet the same licensing requirements as providers to Very Private Structures unless they can take advantage of one of the exemptions (as described above). However, a Private Placement Fund is automatically a “professional investor regulated scheme” so the fund's investment manager will be exempt from the requirement to be licensed by the JFSC.

Appendix

What is a CIF?

Only funds which fall within the definition of a "CIF" are required to be regulated by the JFSC under the "CIF Law". These funds may offer their units to an unlimited number of potential investors. Fund structures which are not CIFs must be approved by the JFSC under COBO and (subject to compliance with any approval conditions) are not regulated by the JFSC on an ongoing basis.

A fund will be a CIF if it has as an object the collective investment of capital acquired by means of an "offer to the public" of units for subscription, sale or exchange, being any such offer:

- (a) which is not addressed to an identifiable category of persons
 - (i) to whom it is directly communicated by the offeror or the offeror's appointed agent
 - (ii) who are the only persons who may accept the offer
 - (iii) who have sufficient information to make a reasonable evaluation of the offer
- (b) which is communicated to 50 or more persons, or
- (c) where the offered units are to be listed on any stock exchange within one year.

A fund requires a certificate under the CIF Law if

- (a) it is a Jersey company or it is a body corporate with an established place of business in Jersey
- (b) it is a unit trust managed from within Jersey or governed by Jersey law
- (c) it is a Jersey limited partnership.

An Unregulated Fund is a fund which meets the requirements of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008, but which would be a CIF if it did not meet those requirements.

Personal Questionnaires

JFSC approval is required for any individuals who are directors of a CIF fund company, general partner or trustee (or who are directors or beneficial owners of any "special purpose" Jersey manager or investment adviser). As international regulatory checks can take some time to complete, personal questionnaire forms should be completed and submitted as early as possible for any individuals who have not already been approved by the JFSC. This requirement does not apply to Unregulated Funds, Private Placement Funds or Very Private Structures.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.

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