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Chambers Global Practice Guides
Investment Funds 2024 – Jersey

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1. Market Overview

1.1 State of the Market

Jersey is one of the world's major international finance centres, and offers expertise extending across all asset classes, with recent growth being particularly focused on alternative asset classes. Jersey is widely considered to be a key player in the world of domiciling, administering and managing various types of investment funds. This growth is underpinned by Jersey's tax neutrality and a legal framework that provides certainty both to investors and managers. The Jersey government's determination to encourage high-quality business, coupled with Jersey's comprehensive and forward-thinking legal infrastructure, has been pivotal in driving investor confidence and capital inflows into the island. Over the past year, the market has shown remarkable resilience and adaptability, cementing Jersey's status as a premier choice for fund domiciliation and management.

Regulatory versatility is a cornerstone of Jersey's appeal. From highly regulated retail funds (which may be offered to the general public) to those with minimal supervision for sophisticated investors, Jersey caters to a wide spectrum of investor preferences. The Jersey Financial Services Commission (JFSC) plays a vital role, authorising and overseeing investment funds with an ethos of protecting investors while promoting competition and innovation.

The Jersey private fund (JPF), with a 48-hour regulatory consent turnaround, continues to attract significant interest, offering a streamlined and cost-effective solution for managers targeting "professional investors" or investors who invest at least GBP250,000 (or currency equivalent). Since their inception in 2017, JPFs have gained popularity for their quick set-up process and operational flexibility meeting the needs of emerging managers and established institutions. As an additional benefit the JPF regime provides an exemption to the Financial Services (Jersey) Law 1998 (FSJL), which permits SPV managers, general partners and other service providers to act for JPFs without being regulated in Jersey.

Other popular fund types in Jersey include the notification-only Jersey unregulated eligible investor funds ("notification-only funds") and Jersey expert funds, which may be offered to an unlimited number of qualifying investors who invest a minimum of USD1 million (in the case of notification-only funds) or USD100,000 (in the case of expert funds), or who meet certain other criteria.

Jersey has a particular relationship with both the UK and the EU. It has been treated by the EU as a "third country" for financial service purposes for many years, and since the introduction of the Alternative Investment Funds Managers Directive (AIFMD) has proven a popular location for managers and funds wishing to access EU/EEA markets using national private placement routes.

Jersey's strategy in relation to the AIFMD and, more recently, the UK AIFM Regulations is to have the correct frameworks in place to continue to provide fund establishment, management and administration services on a "business as usual" basis. Jersey has achieved this by placing an AIFMD/UK AIFM Regulations "overlay" on existing regulatory frameworks such that a Jersey fund need only comply with the AIFMD/ UK AIFM Regulations to the extent that it is necessary, and without imposing any additional Jersey-specific reporting or other requirements.

2. Alternative Investment Funds

2.1 Fund Formation

2.1.1 Fund Structures

Alternative investment funds in Jersey are typically structured as companies (including protected cell and incorporated cell companies), limited partnerships or unit trusts, each offering distinct advantages tailored to specific investment strategies and investor requirements.

Company

Overview

A Jersey company has its own separate legal personality and may sue, and be sued, in its own name.

Advantages

The Companies (Jersey) Law 1991 is based on the familiar UK company law but with certain enhancements that allow for a more flexible and practical regime. There are a number of advantages to Jersey companies, including as follows.

- The law provides for a flexible capital maintenance regime and, subject to the board giving a 12-month forward-looking cash-flow-based solvency test, a Jersey company may fund a distribution from any source other than its nominal capital account (in the case of a company whose shares have a nominal value) or any capital redemption reserve. This means a Jersey company may still be able to make distributions when it has accumulated losses (including where it has a negative profit and loss account).
- There is no requirement for distributable profits in order to fund a repurchase or redemption of shares out of a non-capital account, and there is no requirement for available profits in order to fund a repurchase or redemption out of capital. Subject to a solvency statement requirement, shares can be repurchased out of any company account (including capital accounts).
- A private company is not required to appoint an auditor or file its accounts.
- Jersey does not levy stamp duty or any equivalent transfer tax on transfers of shares (subject to limited exceptions in respect of local property).

Interests

A Jersey company issues shares, which can consist of different classes of shares with different rights attached to each class. Investors usually hold redeemable participating shares, whereas the manager holds non-redeemable shares.

Types

In addition to private and public, par value and no par value limited companies, Jersey also offers two types of cell companies, namely:

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- protected cell companies – the protected cell company and its protected cells together form a single company, but the assets of each are legally segregated; and
- incorporated cell companies – each cell is a separate company in its own right.

Open-ended funds, including hedge funds, are often established as limited companies, and it is a requirement that listed funds be structured as companies.

Cell company structures are popular for umbrella funds, as they enable multiple cells to be created with administrative ease and minimal cost, while enabling each cell to be ring-fenced for liability purposes. The cells may have different capital structures, boards of directors and articles of association, but must have the same registered office and company secretary.

Limited Partnership

Overview

The Jersey limited partnership is familiar to investors worldwide, and usually comprises:

- one or more general partners, which are jointly and severally liable for the partnership's debts; and
- one or more limited partners, which are only liable to the partnership to the extent of their agreed contribution.

Advantages

The main advantages of a Jersey limited partnership are as follows:

- treated as transparent for UK tax purposes;
- publicly available information does not include the identity of the limited partners or the limited partnership agreement (LPA), and therefore confidentiality is preserved;
- extremely flexible in respect of the commercial terms that can be provided for;
- no limit on the number of limited partners which can be admitted, subject to regulatory restrictions;
- Jersey law contains a helpful list of "safe harbours" which allows the limited partner a greater degree of involvement in the management of the limited partnership compared to some other jurisdictions, without them losing their limited liability; and
- the legislation, regulation and policy governing this area are subject to regular review and updated to maintain Jersey's international reputation and competitive advantage

Interests

Investors hold limited partnership interests, and different classes or series of limited partnership interests are possible.

Types

A limited partnership can be established as any of the following:

- limited partnership (in the traditional sense, similar to an English limited partnership) established under the Limited Partnerships (Jersey) Law 1994;
- separate limited partnership under the Separate Limited Partnerships (Jersey) Law 2011, which has separate legal personality and is therefore similar to Scottish limited partnerships;
- incorporated limited partnership under the Incorporated Limited Partnerships (Jersey) Law 2011, which has separate legal personality and is a body corporate; and
- limited liability partnership (LLP) under the Limited Liability Partnerships (Jersey) Law 2017, whereby a partner of the LLP is generally not liable for the LLP's debts or losses (including those caused by another partner).

Jersey limited partnerships are commonly utilised by fund managers for closed-ended funds – particularly private equity, venture capital, private credit and real estate funds. Separate limited partnerships are also used for closed-ended funds (particularly "fund of fund" vehicles) and carried interest vehicles.

Unit Trusts

Overview

A unit trust has no separate legal personality and is constituted by a trust instrument entered into by the trustee(s) and the manager, if one has been appointed.

Advantages

Jersey unit trusts are popular for the following reasons:

- easy and quick to establish;
- extremely flexible in respect of the commercial terms that can be provided for;
- can be structured to be treated as transparent for UK tax purposes;
- publicly available information does not include the identity of the unit-holders or the trust instrument, and therefore confidentiality is preserved; and
- no limit on the number of unit-holders which can be admitted, subject to regulatory restrictions.

Interests

Investors are issued units, and different classes or series of units are possible.

Jersey property unit trusts (JPUTs) remain a popular structure for real estate funds. Unit trusts can be used for any regulatory category and, in the context of retail funds, can be structured as open-ended unclassified collective investment funds (OCIFs).

Limited Liability Companies (LLCs)

Overview

The Jersey limited liability company has recently been introduced and combines the limited liability protection of a company with the constitutional flexibility and privacy of a partnership, while enabling a choice between the management structure and tax treatment of both. An LLC consists of one or more members who are bound, together with a manager (if any), by an LLC agreement.

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Interests
Investors hold an "LLC interest".

Advantages
The LLC will be familiar to US investors, and has the following additional advantages:

- the LLC agreement is not publicly fileable;
- the LLC agreement can supersede statutory default positions – for example, all debts of the LLC will lie solely with the LLC, unless the members agree otherwise;
- no limit on the number of members which can be admitted, subject to regulatory restrictions; and
- treated as tax-transparent, but can elect to be a body corporate.

An LLC can be established as a JPF, but is more likely to be used as the general partner, fund manager, carried interest recipient or holding vehicle.

2.1.2 Common Process for Setting Up Investment Funds

Regulatory Categories
The key features of each main regulatory category of Jersey funds are set out below, including, where relevant, indicative application timescales. The fund type most suitable for a promoter will depend largely upon commercial factors, such as the types of investors sought and the level of flexibility required.

All Jersey funds (other than notification-only funds) are eligible to be marketed into the European Union and European Economic Area (EU/EEA), in accordance with the AIFMD through individual EU member states' national private placement regimes (NPPRs) and (once available) through the passporting regime. Jersey funds with a Jersey manager that are not actively marketed into the EU/EEA fall outside the scope of the AIFMD.

Jersey Private Funds
A JPF is quick to establish, flexible and cost-efficient and has minimal regulatory requirements for funds with 50 investors or less. The key features of a JPF are as follows.

- Maximum of 50 investors at any time and a maximum of 50 initial offers. The JPF may not be listed on a stock exchange.
- Investors must qualify as "professional" investors and/or make an initial investment of at least GBP250,000 (or currency equivalent), and must sign a simple investment warning (usually included in the subscription document).
- No limit on fund size.
- No investment or borrowing restrictions.
- May be open or closed for redemptions by investors.
- No need for Jersey directors or Jersey service providers, other than a Jersey-regulated "designated service provider" (DSP) who must be appointed to ensure compliance with the necessary criteria and applicable anti-money laundering legislation, to carry out due diligence on the promoter and to file an annual compliance statement.
- Jersey "special purpose" vehicles can be established to act as service providers (such as a general partner, trustee or investment manager/adviser) and are generally not required to be regulated.
- "Fast track" approval, as indicated below (self-certification by the fund administrator).

The following are key features for establishing a JPF without active EU/EEA marketing:

- 48-hour regulatory approval following an online application by the DSP;
- no requirement to prepare an offering memorandum; no need for Jersey resident directors or service providers, and no audit requirement; and
- the fund is not regulated by the JFSC on an ongoing basis.

The following are key features for establishing a JPF with EU/EEA marketing (where there is a sub-threshold Jersey AIFM):

- ten-day regulatory approval for an AIF certificate
- no requirement for Jersey directors or service providers, and no audit requirement;
- for a Jersey AIFM, simple JFSC consent is required (there is no ongoing regulation); and minimal requirements will apply under the Code of Practice for Alternative Investment Funds and AIF Services Business published by the JFSC (the "AIF Code").

The following are key features for establishing a JPF with EU/EEA marketing (where the Jersey AIFM is not sub-threshold).

- Ten-day regulatory approval for an AIF certificate plus a JFSC personal questionnaire review process (four to six weeks) for directors and 10% beneficial owners of the Jersey AIFM (if applicable).
- Two resident Jersey directors required.
- Where the AIFM is a Jersey entity (such as a general partner or trustee, or an external manager), it must obtain a licence under the JFSC's AIFMD regime.
- An AIF certificate is needed to permit EU/EEA marketing. Ongoing JFSC regulation is limited to compliance with the limited applicable AIFMD provisions.
- The JFSC assesses the suitability of the fund's promoter, having regard to its track record and relevant experience, reputation, financial resources and spread of ultimate ownership, in light of the level of sophistication of the target investor group.
- Audit and certain regulatory and investor disclosure requirements will also apply.

Regulated Public Funds
Public funds are governed by Jersey's collective investment funds law and are suitable for funds with more than 50 investors or where a regulated product is needed. They include expert funds, listed funds and eligible investor funds (each, a "Regulated Fund"). The JFSC has published a Code of Practice which includes guides (together, the "JFSC Guides") in relation to Jersey Regulated Funds, setting out the structural and ongoing requirements applicable to the relevant fund type.

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The key features of a Regulated Fund are as follows:

- published three-day approval timeframe following completed application (ten days for a new "special purpose" service provider company);
- no investment or borrowing restrictions;
- suitable for EU/EEA marketing;
- unlimited number of investors;
- relatively light-touch regulatory approach;
- audit requirement;
- the offer document must comply with certain content requirements (please see 2.1.4 Disclosure Requirements) and investors must sign a prescribed investment warning; and
- derogations from the relevant JFSC Guide may be sought on a "case-by-case" basis.

Jersey service providers to a Regulated Fund will need to hold a licence to conduct the relevant class(es) of fund service business (an "FSB Licence"). Accordingly, if any SPV service providers, such as a general partner or manager, will be established to act for the fund, an FSB Licence will need to be sought for each such entity. Such service providers are also required to comply with the Code of Practice issued by the JFSC, which covers fund service businesses and AIFs (including their AIFMs and depositaries, where these are Jersey entities).

Expert Funds

The expert fund is attractive for non-retail schemes, whether hedge funds, private equity funds or other schemes aimed at "expert investors". An expert fund can be established quickly and cost-effectively and must comply with the Jersey Expert Fund Guide (the "EF Guide"). 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 three-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. The key features of an expert fund are as follows.

- Open only to those investing at least USD100,000 or who otherwise qualify as expert investors (that is, investors with a net worth of more than USD1 million, excluding their principal place of residence, or who are in the business of buying or selling investments). Investors must sign a prescribed form of investment warning (usually contained in the subscription document).
- Discretionary investment managers may invest on behalf of non-expert investors, provided they are satisfied that the investment is suitable for them and they are able to bear the economic consequences of the investment.
- May be open-ended (open for redemption at the option of investors) or closed-ended (no absolute investor right to redeem).
- At least two Jersey resident directors with appropriate experience must be appointed to the fund board (or, if applicable, the board of the general partner or trustee).
- A licensed Jersey manager or administrator which has two Jersey resident directors with appropriate experience and staff and a physical presence in Jersey is required (unless the fund is a unit trust with a Jersey trustee).
- A Jersey custodian is needed if the fund is open-ended (or an international prime broker, in the case of a hedge fund).
- The offer document must set out all material information in respect of the fund.
- The fund must be audited.
- The investment manager/adviser must be:
  - (a) established in an Organisation for the Economic Co-operation and Development (OECD) member or any other state or jurisdiction with which the JFSC has entered into a memorandum of understanding;
  - (b) regulated in its home jurisdiction (or, if not required to be so regulated, approved by the JFSC);
  - (c) without convictions or disciplinary sanctions;
  - (d) solvent; and
  - (e) experienced in using similar investment strategies to those adopted by the fund.
- If the investment manager/adviser does not meet the above requirements, it may approach the JFSC on a case-by-case basis. Of course, if permission is then granted, in the absence of 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 self-managed funds, such as direct real estate or feeder funds.
- There are no investment or borrowing restrictions imposed on the fund, nor is there any limitation on the number of investors the fund may have.
- The EF Guide aims to make a "safe harbour" available to most non-retail funds. On occasion, where derogations from the EF Guide are required, these are considered on an expedited basis.
- Ongoing requirements are limited. Future changes to the fund generally do not require regulatory approval unless they are contrary to the EF Guide or there is a change to the fund's directors or service providers.
- The fund may be marketed into the EU/EEA in accordance with the AIFMD through individual EU member states' NPPR (and, when available, third-country passporting).

Listed Funds

A listed fund must comply with the Jersey Listed Fund 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. A listed fund is 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 three days. There is no minimum investment requirement. The key features of a listed fund are as follows.

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- The fund must be a closed-ended Jersey company (no absolute investor right to redeem). The fund's offering document must carry a clear investment warning and contain all information necessary for potential investors to make an informed decision.
- At least two Jersey resident directors with appropriate experience must be appointed to the fund's board, including the chair. A majority of the board must be independent (in particular, independent directors should not be an employee or recent employee of the manager, investment manager or any of their associates).
- 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, Johannesburg Stock Exchange and The International Stock Exchange (TISE).
- The fund's 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.
- A licensed Jersey manager or administrator which has two Jersey-resident directors with appropriate experience and staff and has a physical presence in Jersey, is required.
- Adequate arrangements must be made for the safe custody of the fund's property, though there is no requirement to appoint a custodian.
- The fund must be audited.
- The fund may be marketed into the EU/EEA in accordance with the AIFMD through the NPPR (and, when available, through third-country passporting).

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, the investment manager will remain eligible for the fast-track authorisation process provided it is:

- the subsidiary of an entity that is regulated in relation to managing or advising on investment funds in its home jurisdiction;
- an entity or the subsidiary of an entity with a market capitalisation of above USD500 million; or
- a manager with a trading record of at least five years or whose principal persons can demonstrate relevant experience or qualifications

If an investment manager/adviser does not meet these requirements, it may approach the JFSC on a case-by-case basis. If permission is then granted, in the absence of 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 self-managed funds, such as direct real estate or feeder funds.

Eligible Investor Funds

The structural, authorisation and ongoing regulatory requirements of the Jersey eligible investor fund is similar to those for the expert fund, save that there is a higher threshold for qualifying as an "eligible investor" compared to as an "expert investor". Like the expert fund, the eligible investor fund is used for non-retail schemes (including hedge funds, private equity funds and other schemes aimed at "eligible investors") and can be established quickly and cost-effectively. It has the following key features.

- Must be an AIF and marketed into at least one EU/EEA country for the purposes of the AIFMD.
- For "eligible investors" only – any one of 11 categories, including:

  (a) an investor of USD1 million or more;

  (b) investors with a net worth of more than USD10 million (excluding their principal place of residence); and

  (c) those whose ordinary business or professional activity includes dealing in, managing, underwriting or giving advice on investments (same as for notification only funds, see below).
- Reduced requirements apply to the fund's offering document, given the sophisticated nature of investors in such funds.
- Open or closed for redemptions by investors.
- The regime expressly recognises that a discretionary investment manager may make investments on behalf of investors who do not qualify as "eligible investors", provided it is satisfied that the investment is suitable for the underlying investors and they are able to bear the economic consequences of the investment.
- The fund may be marketed into the EU/EEA in accordance with the AIFMD through the NPPR (and, when available, through third-country passporting).

Notification-Only Funds

This fund is highly flexible and provides a low-cost structure ideal for sophisticated investors where the fund will not be marketed into the EU/EEA. A notification only fund may be open/closed-ended, and is restricted to sophisticated investors. The JFSC Guides do not apply to notification only funds. 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.

The key features are as follows.

- No need for JFSC approval and no ongoing regulation, established on a "notification only" basis.
- For "eligible investors" only – any one of 11 categories, including:

  (a) an investor of USD1 million or more;

  (b) investors with a net worth of more than USD10 million (excluding their principal place of residence); and

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(c) those whose ordinary business or professional activity includes dealing in, managing, underwriting or giving advice on investments.

- A discretionary investment manager may make investments on behalf of investors who do not qualify as "eligible investors", provided it is satisfied that the investment is suitable for such investors and they are able to bear the economic consequences of the investment.
- No need for Jersey directors or service providers, but a local administrator must be appointed to provide the registered office for any fund company.
- May be listed, provided that the stock exchange allows restrictions on transfers (such that only "eligible investors" may invest).
- There is no audit requirement (unless the fund is a company) and no investment or borrowing restrictions.
- No limitation on the number of investors.

Please refer to 3. Retail Funds for details of Jersey regulatory classifications suitable for retail funds.

Investment Vehicles That 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 capital which has as its object or as one of its objects the collective investment of capital, and:

- operates on the principle of risk-spreading; or
- where 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
- where units will be issued continuously or in blocks at short intervals.

Joint ventures, single-asset vehicles, single-investor vehicles or vehicles which carry on a business (such as property development) also generally fall outside Jersey's funds regulatory regime.

The Application Process

As a first step, personal questionnaires should be submitted to the JFSC in respect of:

- each director of a corporate Regulated Fund or corporate JPF which is not a sub-threshold AIFM; and
- the directors and 10%-plus beneficial owners of any Jersey service provider to a Regulated Fund which is seeking an FSB licence.

These should be submitted in advance of the fund application, as the JFSC's regulatory checks typically take four to six weeks where the proposed director is not already known to it. The requirement for personal questionnaires does not apply to JPFs, unless marketed into the EU/EEA and not sub-threshold. A JPF is subject to a fast-track process whereby the JPF's proposed "designated service provider" makes an application via the JFSC's online portal.

In respect of a Regulated Fund, a formal application to the JFSC enclosing (among other things) the fund's offering document and the relevant JFSC application forms would follow. The cost of the application will vary according to the number of pools of assets (if the fund is an umbrella fund) and the fund's intended Jersey service providers.

Core Documents

The core documents for a Jersey fund are as follows:

- offering document (not required for a JPF or a notification-only fund);
- constitutional documents (eg, memorandum and articles of association, limited partnership agreement or trust instrument);
- subscription documentation for investors and any side letters;
- fund rules, in the case of umbrella funds; and
- material contracts appointing the fund service providers (eg, management agreement, administration agreement, custody agreement and investment management/advisory agreement).

2.1.3 Limited Liability

Jersey fund structures are designed to limit investor liability to their capital contribution.

For a limited partnership, this is contingent upon the limited partners not engaging in the active management of the fund. Jersey's limited partnership law expressly provides for "safe harbours" for a number of specific activities which may otherwise constitute management by a limited partner, including the following (among others):

- Consulting with and advising a general partner with respect to the activities of the limited partnership;
- Voting on, or otherwise signifying approval or disapproval of, matters such as:
  (a) the dissolution and winding-up of the limited partnership;
  (b) the purchase, sale or other dealing in any asset by or of the limited partnership;
  (c) the creation or renewal of an obligation by the limited partnership; or
  (d) a change in the nature of the activities of the limited partnership.

A Jersey company provides investors (as shareholders) with a natural limitation of liability due to the company's distinct legal personality. The circumstances in which the courts may "pierce the corporate veil" and have recourse to shareholders are broadly the same in Jersey as in England – for instance, where a person who is subject to an existing legal obligation deliberately attempts to evade that obligation by interposing a company under their control.

2.1.4 Disclosure Requirements

Jersey Private Funds

A private placement memorandum (PPM) or other offering document is not required for a JPF (although certain AIF Code investor disclosures need to be made, if relevant). However, a PPM may be issued provided the document contains a

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directors' responsibility statement, together with all of the material information which investors and their professional investors would reasonably require to make an informed judgement about the merits of investing in the fund, and the nature and level of the risks accepted by so investing.

There are also ongoing investor notification requirements if the fund is marketed into the EU under the NPPR. Under the AIF Code, a Jersey AIFM from among Jersey AIFs (that is not sub-threshold) is required to periodically disclose matters such as the fund's liquidity arrangements (including special arrangements such as side pockets) and risk-profile and risk-management systems to investors and the JFSC.

Regulated Funds
A PPM is required to be issued in relation to a Regulated Fund. The PPM will need to contain the content and disclosures set out in:

- the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012 (unless the fund is an eligible investor fund);
- the relevant JFSC Guide; and
- the AIF Code if the fund is an AIF that is not sub-threshold.

Investors should also be notified of any material changes which may affect their investment. Additional reporting requirements apply in the case of retail funds (please refer to 3.1.4 Disclosure Requirements).

Finally, the JFSC Guides set out details of matters which need to be notified to the JFSC or which require its prior consent.

Public Companies
A fund which is a public company (of any regulatory classification must file and send to investors annual audited financial statements, and Regulated Funds must file audited accounts with the JFSC.

2.2 Fund Investment

2.2.1 Types of Investors in Alternative Funds
Jersey's alternative funds attract a sophisticated investor base, predominantly comprising institutional investors, high net worth individuals, and family office. The island's stable regulatory environment and tax neutrality make it particularly appealing for these discerning investor categories.

2.2.2 Legal Structures Used by Fund Managers
Fund managers and/or investment advisers of alternative investment funds are commonly established in Jersey as companies or limited partnerships, providing them with the flexibility and governance structure conducive to fund-management activities.

Where a special purpose Jersey entity needs to be regulated to be appointed as manager or adviser (for example, where acting as AIFM to a JPF which is not sub-threshold, or for a Regulated Fund), a simplified licensing regime applies under the JFSC's "managed entity" regime. The key features of this regime are as follows.

- The entity must be administered by a regulated Jersey administrator, which assumes responsibility for ongoing regulatory compliance and often provides one or more directors.
- There is no minimum regulatory capital requirement, but the entity should have such financial resources as are, in the opinion of the directors, sufficient to meet commitments.
- Each director of the entity (and each of its beneficial owners with a 10% or greater interest) is required to submit a personal questionnaire and obtain approval from the JFSC. As international regulatory checks often take three weeks or more to complete for individuals who have not already been approved by the JFSC, these should be completed and submitted as early as possible.
- Registration under the FSJL typically takes two weeks (if, as is usual, personal questionnaires are filed in advance).

2.2.3 Restrictions on Investors
The investor eligibility requirements for each type of fund are summarised below.

Jersey Private Funds
Each investor in a JPF must be a person who invests at least GBP250,000 (or currency equivalent) or who qualifies as a "professional investor". A "professional investor" includes:

- a natural or legal person, partnership, trust or other unincorporated association whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments whether as principal or agent, or the giving of advice on investments and their senior employees, directors, partners or expert consultants;
- certain appropriately regulated service providers and their senior employees, directors, partners, expert consultants or shareholders (in each case, as part of remuneration or as an incentive, benefit or reward for acting in such a role);
- a family trust settled by or for the benefit of one or more persons referred to above or their spouses, civil partners or dependants;
- a trustee of an employment benefit or executive incentive arrangement/scheme established for the benefit of one or more persons referred to above or their spouses, civil partners or dependants;
- an individual who has a net worth, or joint net worth with that person's spouse or civil partner, greater than USD1 million (or currency equivalent) excluding that person's principal place of residence, as well as any rights under a contract of insurance;
- a body corporate, partnership, trust or other unincorporated association which has assets available for investment of not less than USD1 million (or currency equivalent);
- a carried interest scheme or arrangement established in relation to a JPF;
- a government, local authority, public authority or supranational body in Jersey or elsewhere;

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- a "professional client" within the meaning of Annex II to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments; or
- on application to the JFSC, such other natural or legal persons as the JFSC may deem appropriate on a case-by-case basis.

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

Expert Funds
An expert fund investor must be one of the following:

- an investor making a minimum initial investment or commitment of USD100,000 (or its foreign currency equivalent);
- in the business of acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or giving advice on investments;
- a person with a net worth (or joint net worth with that person's spouse) of more than USD1 million (or its foreign currency equivalent), excluding their principal residence;
- an entity with at least USD1 million (or its foreign currency equivalent) of assets available for investment, connected with the fund or a service provider of the fund (there is a flexible approach for carried interest arrangements); or
- a government, local authority, public authority or supranational body in Jersey or elsewhere.

Listed Funds
The JFSC Guides do not impose any restrictions on who can invest in a Jersey listed fund.

Notification-Only Funds
An "eligible investor" who may invest in a notification only fund is a person:

- who makes a minimum initial investment or commitment of USD1 million (or its foreign currency 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 USD10 million or its foreign currency equivalent (calculated alone or jointly with their spouse and excluding their principal place of residence);
- which is a company, limited partnership, trust or other unincorporated association, and which either has a market value of USD10 million or equivalent (calculated either alone or together with its associates) or has only "eligible investors" as members, partners or beneficiaries
- who is, or acts for, a public sector body;
- who is the trustee of a trust that was either established by an "eligible investor" or was established for the benefit of one or more eligible investors; or
- who 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 relevant investment by way of remuneration or reward).

2.3 Regulatory Environment

2.3.1 Regulatory Regime
Please refer to 2.1.2 Common Process for Setting Up Investment Funds. Details of the regulatory classification of a Jersey fund will determine which investment limitations or other restrictions (if any) apply to it.

2.3.2 Requirements for Non-local Service Providers
Jersey's financial services legislation applies to companies incorporated in Jersey carrying out financial services business anywhere in the world, and to all persons carrying out financial services business in or from within Jersey.

Accordingly, non-Jersey managers or investment managers/advisers of a Jersey fund are not required to become regulated in Jersey under the FSJL, provided that their functions are not carried out in or from within Jersey.

However, the JFSC's prior approval is needed for the appointment of any service providers to a Regulated Fund of any category. An investment manager/adviser of a Regulated Fund is required to provide a confirmation to the JFSC regarding various matters, including that it is:

- regulated in its home jurisdiction (or otherwise approved by the JFSC);
- without convictions or disciplinary sanctions;
- solvent; and
- experienced in using similar investment strategies to those adopted by the fund.

Please refer to 2.1.2 Common Process for Setting Up Investment Funds regarding the requirement for arranging for a Jersey SPV manager or other service provider to be licensed by the JFSC.

2.3.3 Local Regulatory Requirements for Non-local Managers
Please refer to 2.3.2 Requirements for Non-local Service Providers.

A manager registered in another jurisdiction may, in principle, provide services to a Jersey fund, provided that the requirements of the relevant JFSC Guide are met (for example, a manager which retains the investment management function must be able to provide the confirmations referred to in 2.1.2 Common Process for Setting Up Investment Funds if acting for a Regulated Fund).

However, certain fund types must have a Jersey manager or administrator with two appropriately experienced directors, staff and a physical presence in Jersey, unless a derogation from the relevant JFSC Guide is obtained (please see 2.1.2 Common Process for Setting Up Investment Funds for further information on this point).

Continued

2.3.4 Regulatory Approval Process
The regulatory approval process is efficient with varying timeframes depending on the type of fund. Fast-track authorisation for JPFs can be 48 hours or less; whereas for Regulated Funds it can take several weeks for final JFSC approval, if the JFSC raises questions on the fund's application for regulatory approval.

Please refer to 2.1.2 Common Process for Setting Up Investment Funds for details of the approximate lead time for obtaining regulatory approval for a given category of fund, together with details of which such categories have a fast-track authorisation process.

Retail funds (see 3. Retail Funds) are more heavily regulated in Jersey, and this is reflected in the time it typically takes to obtain regulatory approval for such funds.

2.3.5 Rules Concerning Pre-marketing of Alternative Funds
There is no Jersey legal definition of "pre-marketing". The EU Pre-marketing Directive does not apply to Jersey managers marketing funds into the EU under the NPPR; however, individual member states may impose their own pre-marketing requirements.

2.3.6 Rules Concerning Marketing of Alternative Funds
Marketing Jersey Funds to Jersey Investors
There are no marketing restrictions on promoting a Jersey fund to Jersey investors, provided that where relevant (for example, in relation to an expert fund), those persons meet the investor eligibility criteria.

Any marketing of the fund in Jersey should be undertaken by a distributor which holds the relevant registration in Jersey, or by the fund itself (if a company). Otherwise, any marketing activities in Jersey should be minimal, such that they fall outside the scope of the FSJL.

Marketing Non-domiciled Funds to Jersey Investors
Jersey funds are generally used to raise capital from investors internationally. However, many non-domiciled funds are marketed to Jersey investors each year, and each such fund is required to obtain consent from the Jersey Registry in relation to the circulation of its offering documents in Jersey (subject to certain exemptions available to funds structured as companies or unit trusts).

The processing time for an application for consent is usually around five working days, and a statutory fee is payable.

As mentioned, there is an exemption for funds structured as companies or unit trusts where the fund has no "relevant connection" with Jersey (for example, the management or administration of the fund is not carried on in Jersey) and where the offer is one of the following.

- The offer is not an offer to the public (it must be made personally to a maximum of 50 persons in Jersey).
- The offer is valid in the UK or Guernsey. In summary, this test requires that:
  - (a) the offer complies with the Financial Services and Markets Act 2000 in the UK (FSMA), or the fund is authorised under the Protection of Investors (Bailiwick of Guernsey) Law 1987 in Guernsey; and
  - (b) the offer is made to a similar type of investor and in a similar manner in Jersey as in the UK or Guernsey (as applicable).

Persons Permitted to Market Non-domiciled Funds Into Jersey
The considerations set out above in relation to Jersey funds apply.

Regulated, non-Jersey distributors who wish to market certain fund categories to Jersey investors (such as UCITS funds, authorised unit trusts or authorised open-ended investment companies within the meaning of the FSMA) are exempt from regulation in Jersey as "overseas distributors". Such marketing must take place on a reverse solicitation basis or by way of advertisements meeting certain content requirements.

2.3.7 Marketing of Alternative Funds
Alternative investment funds in Jersey can be marketed to a wide range of investors, provided they meet the eligibility criteria for the specific fund type being promoted.

Please refer to 2.3.6 Rules Concerning Marketing of Alternative Funds.

2.3.8 Marketing Authorisation/Notification Process
Please refer to 2.3.6 Rules Concerning Marketing of Alternative Funds.

2.3.9 Post-marketing Ongoing Requirements
Please refer to 2.1.4 Disclosure Requirements.

2.3.10 Investor Protection Rules
Please refer to 2.1.3 Common Process for Setting Up Investment Funds and 2.2.3 Restrictions on Investors. Any ownership and other restrictions imposed on funds will depend on the regulatory classification of the fund, rather than on its structure.

The JFSC Certified Funds Code of Practice requires Regulated Funds to:

- conduct their business with integrity;
- always act in the best interests of unit-holders;
- organise and control their affairs effectively for the proper performance of their activities, and be able to demonstrate the existence of adequate risk-management systems;
- be transparent in their business arrangements with unit-holders;
- maintain, and be able to demonstrate the existence of, both adequate financial resources and adequate insurance;
- deal with the JFSC and other authorities in Jersey in an open and co-operative manner;
- not make statements that are misleading, false or deceptive;
- at all times comply and be operated in accordance with any applicable JFSC Guide; and
- comply, where relevant, with the applicable sections of the AIF Code.

Continued

The JFSC Guides set out details of matters which need to be notified to the JFSC or which require its prior consent – these include any change of fund service provider and any changes to the fund that are not in accordance with the applicable JFSC Guide. The JFSC Guides relating to funds which target retail investors naturally contain more stringent structural and other restrictions than those aimed at sophisticated or expert investors, for investor protection reasons.

In respect of a Regulated Fund, the following must be provided to the JFSC:

- the audited financial statements of the fund; and
- any interim report and accounts of the fund that may be prepared and provided to investors.

In respect of JPFs, the regulated designated service provider (DSP) is required to complete and submit a JPF annual compliance return with the JFSC in each relevant year. In addition, the DSP must submit a notice of change or event to the JFSC on the occurrence of any:

- material change in relation to the JPF which would impact on the accuracy of the information provided to the JFSC in the JPF application (including the termination of the JPF (under any circumstances) or any change to the JPF's Jersey service provider(s) other than the DSP (on the basis that there shall be no change in the DSP without the prior approval of an office of the JFSC));
- non-compliance with the JPF's Jersey AML/CFT obligations;
- material/unresolved complaint(s) made in relation to the JPF; or
- qualified audit of the JPF's annual accounts and financial statements (where the JPF has appointed an auditor).

2.3.11 Approach of the Regulator

The JFSC takes a pragmatic and co-operative approach, and Carey Olsen works closely with the JFSC's Authorisations team to resolve any regulatory questions or issues as and when they arise during a fund application. The JFSC generally publishes guidance whenever it issues a new policy, and tends to be punctual in processing applications, particularly where a degree of commercial urgency is involved.

2.4 Operational Requirements

Any restrictions are mostly contained in the relevant JFSC Guide, although the JFSC's Sound Business Practice Policy also sets out principles regarding the activities that the JFSC considers sensitive from a reputation perspective (including, for example, investments in certain goods or services which require payment in advance and pose a risk of fraud, or in weapons, mining or certain crypto-assets).

Please refer to 2.1.2 Common Process for Setting Up Investment Funds for details of investment restrictions and any specific requirements relating to the custodian.

As mentioned previously, Jersey service providers to Regulated Funds are required to be licensed under the FSJL, which provides for matters such as:

- insider dealing;
- market manipulation; and
- the provision of misleading information to persons for the purpose of inducing them to enter into an agreement, the performance of which may constitute financial services business under the FSJL.

2.5 Fund Finance

There are generally no restrictions in regard to access to fund finance.

Borrowing Restrictions/Requirements

From a regulatory perspective, there are generally no restrictions in the context of non-retail funds. However, the JFSC may undertake additional scrutiny where the permitted borrowing level is high (for example, where an expert fund or a listed fund is permitted to borrow more than 200% of the fund's NAV).

A full review of the limited partnership agreement (or other constitutional documents) of the fund would be required to ensure that there were no restrictions on borrowing or granting security, and, in the case of a feeder fund or parallel fund, that there were no restrictions on that fund granting security to secure the borrowings of the main fund.

It is now common for limited partnership agreements, and for constitutional documents of Jersey funds structured as companies and unit trusts, to contain provisions permitting:

- borrowing (albeit with restrictions in some cases – for example, as to amount or term);
- the granting of security; and
- the provision of guarantees in respect of borrowings.

Securing Finance

A typical security package would consist of:

- the granting of a security interest over the general partner's right to issue call notices to investors in respect of undrawn capital contributions;
- the proceeds of the issue of such call notices; and
- the bank account(s) into which capital call proceeds are paid.

The security interest agreement would include the granting of a power of attorney from the general partner or manager of the fund, so that the secured party could step into the shoes of the general partner to issue capital call notices to investors on an enforcement of the security, if the general partner or manager failed to do so.

A financing statement in respect of the security would usually be registered on the Jersey Security Interests Register.

Common Issues in Relation to Fund Finance

Lenders will usually require a review of any side letters entered into with investors, to ensure there are no provisions that may cut across any security which may be granted, or which could affect the general partner's rights to make capital calls from investors.

In order to perfect any capital call security, it is not necessary for notice of such security to be provided to investors. However, there remain advantages to electing to give notice to investors.

Continued

Any other relevant regulatory issues should be considered – for example, where a fund is an AIF, the AIFMD analysis may require that the fund be unleveraged or that leverage be kept to below a certain level.

2.6 Tax Regime

Tax Framework

Jersey funds (regardless of their structure) are not generally subject to any Jersey tax. There are no capital gains, capital transfer, wealth or inheritance taxes which are payable in relation to the issuance or realisation of investments in a Jersey fund (assuming that the fund does not invest in Jersey property or buildings). Additionally, no corporation tax, profits tax or stamp duty is payable, and distributions may be made without withholding or deduction for payment of Jersey income tax.

There is no distinction between types of investor for tax purposes. If distributions are of an income nature, investors who are Jersey-resident individuals will need to declare and pay Jersey income tax in the usual manner (this is the case regardless of whether the fund is domiciled in Jersey or elsewhere), but there is no capital gains tax in Jersey. Non-Jersey investors should seek taxation advice in their own countries of residence to ensure that an investment is suitable for them.

Tax Treaty Network

Please refer to the FATCA and CRS regimes, for details of the information exchange arrangements relating to FATCA and the CRS. The main impact of those arrangements is that certain information regarding funds' investors is required to be collected and reported by Jersey funds, and that information may, in turn, be shared between Jersey's and other countries' taxation authorities.

Jersey also has information exchange and/or double taxation agreements with a number of countries, and is able to comply with all required international reporting and transparency requirements.

The FATCA and CRS Regimes

Jersey has concluded an intergovernmental agreement (IGA) with the USA to implement FATCA. Jersey funds are generally foreign (non-US) financial institutions for these purposes, and will need to provide information about the identity of limited partners who are US persons or limited partners with beneficial owners who are US persons to the Comptroller of Revenue in Jersey. The Comptroller will then forward that information to the competent authority in the USA. Provided that a fund complies with its obligations, it should not suffer any FATCA withholding taxes.

In addition to the inter-governmental agreement (IGA) entered into with the USA, the States of Jersey and the UK government have entered into an IGA (UK IGA, and together with the US IGA, the "IGAs") for the implementation of information-exchange arrangements, based on FATCA, whereby relevant information reported to the Jersey authorities in respect of a person or entity resident in the UK for tax purposes is shared with the UK's HMRC. Under the UK IGA, Jersey funds may be required to provide information to the Jersey authorities about their investors and about such persons' beneficial owners and interests in the fund in order to fully discharge their reporting obligations. In the event of any failure or inability to comply with the proposed arrangements, they may suffer a financial penalty or other sanction under Jersey law.

The OECD has since released the Standard for Automatic Exchange of Financial Account Information in Tax Matters (CRS), following approval by the OECD Council. This includes a model regime to serve as the common standard for reporting and due diligence regarding financial account information. Like FATCA and the IGAs, the CRS requires financial institutions in participating jurisdictions to follow common due diligence procedures and to report specified financial information to their tax authorities, which is then automatically exchanged with other participating jurisdictions. Jersey is committed to domestic implementation of the CRS, and Jersey funds are usually expected to be financial institutions for CRS purposes.

Economic Substance Regime

Jersey has implemented economic substance legislation, whereby any company which is resident in Jersey for tax purposes, and which receives income from activities such as fund management in Jersey, is required to meet an economic substance test. The test therefore applies to Jersey fund managers (and general partners if the fund has not appointed a separate manager). Self-managed funds (ie, those which have not appointed a separate manager) have subsequently been brought within scope.

The legislation came into effect in response to the EU Code of Conduct Group's assessment of Jersey's tax policy framework, aimed at ensuring the island adheres to the principles of fair taxation and aligns with the EU's and OECD's standards to prevent base erosion and profit shifting (BEPS). Although Jersey received the highest possible rating in all ten assessed areas and was confirmed as a co-operative tax jurisdiction, the Code Group expressed concern that the absence of a statutory substance requirement increased the risk of profits being registered in Jersey which do not reflect real economic activity in the jurisdiction. While these changes present new compliance considerations, they are in line with Jersey's commitment to upholding international tax co-operation and maintaining its status as a co-operative jurisdiction. The adjustments reinforce the island's reputation as a transparent and well-regulated financial centre.

The economic substance test is met if:

- the company is directed and managed in Jersey (for example, most board meetings are held in Jersey and the quorum is met by those physically present at the meeting);
- core-income generating activity (for example, taking decisions on the holding and selling of investments, calculating risks and reserves and/or preparing reports and returns to investors and the JFSC) in relation to fund management is principally carried out in Jersey; and
- there are adequate employees and physical assets, and an adequate level of expenditure is incurred, in Jersey.

Continued

As most fund managers in Jersey already meet the above requirements, the economic substance law has not had a substantial impact on the funds industry in Jersey.

3. Retail Funds

3.1 Fund Formation

3.1.1 Fund Structures

Please refer to 2.1.1 Fund Structures. The same types of legal vehicles are available to retail funds and, in experience, OCIFs are typically established as unit trusts or companies.

3.1.2 Common Process for Setting Up Investment Funds

Retail Funds in Jersey

Retail funds in Jersey encompass open-ended funds to be offered to retail investors and which do not qualify as an expert fund, listed fund or eligible investor fund. The first stage of the approval process is the approval of the promoter. 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.

Under the JFSC's Guide for Open-Ended Collective Investment Funds (the "OCIF Guide"), 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.

The JFSC's assessment will depend on the type of investor to which the proposed fund is targeted – the higher the minimum investment and/or the more the fund is targeted towards professional or institutional investors who have knowledge of the industry and the experience and resources to look after themselves, the more the JFSC will be inclined to relax its requirements.

OCIFs

Funds which do not fall into any of the regulatory classifications referred to in 2.1.2 Common Process for Setting Up Investment Funds and which may be offered to retail investors (OCIFs) can be established under the OCIF Guide.

This is a more heavily regulated category of fund, which contains additional investor protections, such as:

- criteria applicable to the promoter;
- investment restrictions (which vary according to the fund type – for example, special rules apply to feeder funds and to funds of funds); and
- a requirement for the JFSC to approve all the material fund documentation.

Derogations may be sought from the OCIF Guide, but the JFSC will have regard to matters such as minimum investment when deciding whether to grant these.

Recognised Funds

Recognised funds are rarely established in Jersey, and a number of prescriptive rules apply to them. This category of fund is intended to be freely marketable to retail investors in the UK and elsewhere. Given the rarity of recognised funds in Jersey, they are not considered further in this section.

3.1.3 Limited Liability

Please refer to 2.1.3 Limited Liability.

3.1.4 Disclosure Requirements

Please refer to 2.1.4 Disclosure Requirements. The fund documents should be carefully checked against the OCIF Guide to ensure compliance with the various requirements set out therein (which cover, among other things, the matters referred to in 3.4 Operational Requirements).

Various investor reporting requirements are also contained in the OCIF Guide, including that at least two reports must be published and sent to investors each year. Investors must be notified of all changes to the fund's constitutive documents, unless the trustee or custodian certifies that in its opinion the changes will not prejudice investors' interests, and files that certification with the JFSC.

The latest available selling and redemption prices or net asset value must be available to all investors.

3.2 Fund Investment

3.2.1 Types of Investors in Retail Funds

The market in Jersey generally targets sophisticated investors who fall within the institutional or high net worth categories (in the authors' experience, there is currently less investor appetite for Jersey retail funds than for non-retail options).

3.2.2 Legal Structures Used by Fund Managers

Please refer to 2.1.1 Fund Structures.

3.2.3 Restrictions on Investors

OCIFs are available to a broad range of potential investors, subject to any eligibility requirements provided for in the constitutive documents of the OCIF.

3.3 Regulatory Environment

3.3.1 Regulatory Regime

The OCIF Guide contains a number of investment and borrowing restrictions which vary according to the type of fund – for example, whether it is a general securities fund, a fund of funds or a feeder fund. However, Carey Olsen has successfully obtained derogations from certain investment restrictions set out in the OCIF Guide (noting that such derogations must be applied for on a case-by-case basis and are not available in every instance).

Where the OCIF is an umbrella fund, each of its sub-funds will be treated separately for the purposes of determining which restrictions apply to that sub-fund.

Continued

3.3.2 Requirements for Non-local Service Providers
Please refer to 2.3.2 Local Regulatory Requirements for Non-local Service Providers.

The OCIF Guide sets out specific requirements regarding service providers such as the manager (see 3.3.3 Local Regulatory Requirements for Non-local Managers) and the trustee/custodian, which must be a company that is a member of a major banking or insurance group of companies, or be an institution that is acceptable to the JFSC.

The OCIF Guide also contains the requirement that certain service providers, including the manager/administrator and trustee/custodian must be an appropriately licensed Jersey company with staff and premises in Jersey. Again, it is possible to seek a derogation from such requirements.

3.3.3 Local Regulatory Requirements for Nonlocal Managers
Please refer to 2.3.3 Local Regulatory Requirements for Non-local Managers.

A manager of an OCIF is required to be engaged primarily in the business of fund management, and to have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities. In particular, it must be in compliance with the financial resource requirements of the relevant JFSC Code of Practice.

As mentioned previously, the manager is required to be a company incorporated and resident in Jersey. It is not, however, essential for the manager to have staff and premises on the island if a Jersey-incorporated company which does have staff and premises on the island is appointed as administrator.

3.3.4 Regulatory Approval Process
Retail funds are more heavily regulated in Jersey, and this is reflected in the time it typically takes to obtain regulatory approval in relation to them.

There is a two-stage JFSC review process and an application generally takes a matter of weeks to process.

3.3.5 Rules Concerning Pre-marketing of Retail Funds
Please refer to 2.3.5 Rules Concerning Pre-marketing of Alternative Funds.

3.3.6 Rules Concerning Marketing of Retail Funds
There are no specific restrictions. The OCIF Guide contains the criteria the JFSC would expect to be met in relation to an OCIF that is to be marketed to members of the general public who might be regarded as inexperienced in matters of investment, and as least able to bear the consequences of any loss of their investments.

3.3.7 Marketing of Retail Funds
Please refer to 3.3.6 Rules Concerning Marketing of Retail Funds.

3.3.8 Marketing Authorisation/Notification Process
Please refer to 2.3.6 Rules Concerning Marketing of Alternative Funds.

3.3.9 Post-marketing Ongoing Requirements
Please refer to 2.1.4 Disclosure Requirements.

3.3.10 Investor Protection Rules
Please refer to 2.3.10 Investor Protection Rules and 3.4 Operational Requirements. Given the nature of an OCIF's potential investors, the OCIF Guide is more prescriptive in terms of structural and investment restrictions than is the case for non-retail funds (for example, an OCIF may not lend, guarantee or otherwise become liable for any obligations or indebtedness of any person without the prior, written consent of its trustee or custodian).

The JFSC's prior consent is typically required for any material changes to the fund documents.

3.3.11 Approach of the Regulator
Please refer to 2.3.11 Approach of the Regulator. The JFSC typically takes a more stringent approach when considering issues which arise or material changes in the context of an OCIF.

3.4 Operational Requirements
Please refer to 2.4 Operational Requirements and 3.3.2 Requirements for Non-local Service Providers.

The OCIF Guide contains specific requirements regarding the valuation and pricing of an OCIF's assets, and regarding matters such as:

- meetings;
- charges and fees;
- investment limits;
- borrowing powers;
- the frequency of dealing; and
- redemptions.

Additionally, the OCIF Guide applies safeguards in certain cases – for example, where an OCIF permits the issuance of units to investors for assets other than cash.

3.5 Fund Finance
Please refer to 2.5 Fund Finance. In the case of an OCIF, there are certain additional restrictions (for example, a feeder fund or a fund of funds may only borrow up to 10% of its NAV on a temporary basis for the purposes of meeting redemption requests or defraying operating expenses).

3.6 Tax Regime
Please refer to 2.6 Tax Regime.

4. Legal, Regulatory or Tax Changes

4.1 Recent Developments and Proposals for Reform
In light of the UK's departure from the EU, Jersey's regulatory framework continues to provide stability and a degree of certainty for investment funds. The island's authorities remain engaged in dialogue with industry stakeholders, to ensure that Jersey's regulatory environment stays conducive to investment and aligned with international standards. Looking ahead, discussions are ongoing about refining the regulatory framework governing investment funds. The aim is to streamline processes, where feasible, to encourage efficiency and accessibility without compromising the robust oversight integral to investor protection.

Continued

Jersey's ability to adapt its legislative and regulatory structures is indicative of the island's forward-thinking approach. This agility ensures that Jersey remains a competitive jurisdiction for fund establishment and management. The focus remains on ensuring that regulatory changes protect investors and the integrity of the market, while also facilitating business growth and innovation within the funds sector.

The JFSC continues to provide clear guidance on these changes, assisting entities in understanding and implementing the necessary measures to comply with the economic substance requirements. The JFSC's approach is to work in collaboration with industry professionals to ensure that any reforms are pragmatic and reflective of the needs of the industry, while meeting international regulatory standards.

Carey Olsen, as a legal firm deeply engaged in the funds industry, remains prepared to assist clients in interpreting these reforms and understanding their implications. The firm is expected to continue playing an active role in providing feedback on proposed legislative changes, ensuring that the views and concerns of industry participants are considered.

In summary, the recent and proposed changes to Jersey's legal, regulatory and tax framework are designed to ensure that the jurisdiction remains compliant with international standards, fostering a secure and attractive environment for investment funds.

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Chris has broad experience of general international corporate and funds work. He has particular expertise in private equity, hedge and digital asset funds, having spent ten years as a corporate and funds lawyer in London. Chris advises on all aspects of fund and corporate transactions (including the legal and regulatory aspects of fund launches) and joint ventures. As part of the Jersey funds team, he also has considerable experience in dealing with the Jersey Financial Services Commission as regards navigating investment vehicles through the Jersey regulatory approval process. He also spearheads Carey Olsen's digital assets practice, having advised on a series of token issuances, digital asset funds and exchanges

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Nienke is counsel in Carey Olsen Jersey's corporate team and is a Jersey-qualified lawyer with over a decade of experience in investment funds, corporate and international commercial matters. She helps experienced and emerging fund managers achieve their goals through a client-centric and practical solution-driven approach, and advises on the full spectrum of generalist funds and sector funds, including real estate, private equity, buyout, venture capital, infrastructure, housing, technology, healthcare and impact funds. Having practised in South Africa, New York and Jersey, Nienke has worked with global clients across multiple asset classes, and creates lasting relationships with her clients.

The Investment Funds 2024 guide covers 20 jurisdictions. The guide provides the latest information on alternative investment funds and retail funds, including fund formation, restrictions on investors, the regulatory environment, operational requirements and the tax regime.

PLEASE NOTE

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