Both Jersey and Guernsey have recently released new private fund regimes, which are expected to be of considerable interest to fund promoters who are looking to launch new funds in either of the jurisdictions, but where a fully regulated product would not be necessary or appropriate at the time of launch. This guide summarises the key features of each new regime.

Jersey Private Fund Guide

On 15 March 2017, the Jersey Financial Services Commission ("JFSC") announced a new Jersey Private Fund Guide ("JPF"), to be effective from Tuesday 18 April 2017. The introduction of the JPF aims to amalgamate and replace the three other Jersey products: the Very Private Funds, Private Placement Funds and COBO Only Funds. Once the use of JPFs becomes effective, new applications under the older regimes will not be possible.

Why?

The JFSC, together with the Government, undertook a joint consultation in 2016 after listening to industry feedback. This consultation focused on consolidating Jersey's private fund regimes. The JFSC also took into account product developments in other jurisdictions.

What does this mean to existing private funds?

Despite the phasing out of the aforementioned Jersey private products, existing private funds under the old regimes will be able to continue to operate as such until the end of their natural life. Alternatively, existing private funds have the ability to convert to the new JPF regime, provided key requirements are met.

Key requirements and eligibility criteria

First and foremost, a JPF requires a consent to be issued by the JFSC.

A JPF Fund:

- can be marketed to 50 or fewer “professionals” or eligible investors (those with a minimum investment value of £250,000);
- can be open-ended or closed-ended;
- has no requirements for promoter policy/approval;
- has no requirement for Jersey-resident directors;
- has no requirement for an offering document;
- possesses no set restrictions on investment and borrowing, but there is a requirement for investment warning and disclosure statement;
- has no requirement for audited accounts, but any qualified audit must be reported (except in the circumstances when adopting modified GAAP);
- must appoint a designated service provider ("DSP"), which is registered pursuant to the Financial Services (Jersey) Law 1998;
must have any notice of change or event signed off by the DSP;
» must have annual JPF return signed off by the DSP; and
» does not require personal questionnaires in relation to the JPF itself.

What happens to qualifying funds
Funds qualifying under the JPF regime will receive approval within 48 hours from when the application has been received. A one-off application fee of £1070 will be due, followed by an annual fee of £500.

Guernsey Private Investment Fund Regime (“PIF”)
Similar to the new Jersey Private Funds Regime, the Guernsey Financial Services Commission (“GFSC”) introduced the Private Investment Fund Rules 2016 (the “PIF Rules”) in November 2016. The PIF Rules create a new class of private fund which may be registered with the GFSC under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended) (the “POI Law”). PIFs may be either open or closed-ended, and are aimed at the situation where a manager has a close working relationship with a small group of investors. In this situation a more informal and flexible regulatory regime may be appropriate for the fund and its investors.

The key features of the PIF Rules are:
» there should be no more than 50 investors (or persons holding an ultimate economic interest) in a PIF;
» for open-ended PIFs the manager must apply a continuous rolling test whereby in the previous twelve months no more than 30 new ultimate investors may be added to the PIF;
» there is no requirement to produce information particulars (i.e. an offering document or prospectus) for a PIF;
» a licensee domiciled in Guernsey (other than the locally licensed administrator) must take responsibility for the management of the PIF (the “Manager”) and also warrant to the GFSC that it has assessed that the investors are able to sustain any loss of investment in the PIF;
» a Guernsey licensed administrator must also be appointed by the PIF;
» PIFs may be established as companies, limited partnerships or unit trusts;
» a PIF is not required to appoint a custodian; and
» there is a window of opportunity (running until 16 November 2017) for existing registered funds to elect to be treated as PIFs under the PIF Rules.

If the fund meets the requirements above, the PIF Rules allow that fund the opportunity to be registered as a collective investment scheme in Guernsey, but without the Manager or the fund needing to go through the usual approval process under the POI Law, and with significantly reduced ongoing obligations for both the Manager and the fund.

The PIF regime is therefore expected to be attractive to promoters of funds where the number of investors is small, and will particularly appeal to “start-up” promoters, where the establishment and ongoing costs of a fully-regulated fund would likely have a disproportionate effect on investors in that fund.

Comparison between Jersey and Guernsey regimes
A comparison table between the two regimes is set out below:

<table>
<thead>
<tr>
<th>Feature</th>
<th>Jersey JPF</th>
<th>Guernsey PIF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of investors</td>
<td>Up to 50 offers and investors permitted.</td>
<td>No limit on the number of investors that may be marketed to, but instead there is a cap on the number of investors taken into the fund (no more than 50, subject to an exemption for managers acting as agent for investors in a collective investment scheme).</td>
</tr>
<tr>
<td>Open ended / closed-ended</td>
<td>Can be either</td>
<td>Can be either</td>
</tr>
</tbody>
</table>
### Feature

<table>
<thead>
<tr>
<th>Feature</th>
<th>Jersey JPF</th>
<th>Guernsey PIF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promoter approval</td>
<td>No requirement</td>
<td>No requirement</td>
</tr>
<tr>
<td>Resident directors</td>
<td>No requirement (but tax and commercial considerations may necessitate resident directors)</td>
<td>No requirement (but tax and commercial considerations may necessitate resident directors)</td>
</tr>
<tr>
<td>Offering document</td>
<td>No requirement</td>
<td>No requirement</td>
</tr>
<tr>
<td>Risk warnings</td>
<td>Requirement for investment warning and disclosure statement.</td>
<td>No requirement, but nevertheless it would be commercially prudent to include such warnings.</td>
</tr>
<tr>
<td>Audited accounts requirement</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Service provider appointments</td>
<td>Must appoint a designated service provider, registered under the FSJL.</td>
<td>Must appoint a Guernsey licensed administrator. Each PIF also needs a Guernsey Manager (application can be made for this entity at the same time as the fund).</td>
</tr>
<tr>
<td>Minimum investment</td>
<td>Effectively £250,000 (unless the investor is a “professional investor”)</td>
<td>No minimum, but Manager needs to be able to give a warranty to the GFSC that investors can bear the loss of their investment.</td>
</tr>
<tr>
<td>Notification requirements</td>
<td>DSP must notify the JFSC of material changes to the information provided to the JFSC upon authorisation.</td>
<td>Limited notification requirements – generally imposed on the administrator.</td>
</tr>
</tbody>
</table>

### Contacts

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