



Private Funds - The New Channel Islands Approach

In the last twelve months, both Jersey and Guernsey have launched new “private fund” regimes, which are designed to enhance speed to market and to offer an alternative to the more regulated products which may not be necessary or appropriate at the time of launch.

Jersey Private Funds

Launched in April 2017, the regime amalgamates and replaces three other products aimed at the private fund market, thereby simplify and streamlining Jersey’s offering in this area. Based on industry feedback and an analysis of competitor products in other jurisdictions, the regime represents a welcome development in the product range offered by Jersey and recognises the need for regulatory flexibility for private funds targeted at investors at a professional level of sophistication. The regime is likely to be of considerable interest to the private equity and real estate funds markets.

The key characteristics of a Jersey Private Fund are:

- all usual investment vehicle forms are available (company, limited partnership, unit trust);
- can be marketed to 50 or fewer “professional” or “eligible investors” (those making a minimum investment of £250,000);
- can be open-ended or closed-ended;
- no requirement for Jersey-resident directors (albeit onshore tax considerations need to be considered when deciding on the location of the board);
- prior approval of the directors by the regulator is not required;
- no requirement for an offering document (albeit an offering document is usually prepared);
- not set investment and borrowing restrictions
- 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”), usually the administrator, which is registered pursuant to the Financial Services (Jersey) Law 1998; and
- annual return must be signed off and filed by the DSP.

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Funds qualifying under the regime will receive approval within 48 hours from when the application has been received by the regulator. A one-off application fee of £1,070 will be due, followed by an annual fee of £500. Other than the annual return referred to above there are not ongoing filing or reporting requirements.

The regime has been well received by the market with more than 40 products being launched in the first few months following launch.

Guernsey Private Funds

The Guernsey Financial Services Commission introduced the new Private Investment Fund regime in November 2016. The regime creates a new class of private fund which may be registered with the regulator. Such funds 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 is appropriate.

The key features of the Guernsey Private Fund are:

- all usual investment vehicle forms are available (company, limited partnership, unit trust);
- there can be no more than 50 investors (or persons holding an ultimate economic interest);
- no requirement for Guernsey resident directors (albeit onshore tax considerations need to be considered when deciding on the location of the board);
- for open-ended funds 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 fund;
- there is no requirement to produce information particulars (i.e. an offering document or prospectus);
- a licensee domiciled in Guernsey (other than the locally licensed administrator) must take responsibility for the management of the fund (the "Manager") and also warrant to the regulator that it has assessed that the investors are able to sustain any loss of investment in the fund; and
- a Guernsey licensed administrator must also be appointed by the fund.

If the fund meets the requirements above, the fund can be registered as a collective investment scheme in Guernsey, without the Manager or the fund needing to go through the usual approval processes under applicable regulatory laws, and with significantly reduced ongoing obligations for both the Manager and the fund.

The 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.

Jurisdiction Comparison

Feature	Jersey JPF	Guernsey PIF
Number of Investors	Up to 50 offers and investors permitted	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).
Open ended / closed ended	Can be either	Can be either
Promoter approval	No requirement	No requirement
Resident directors	No requirement (but tax and commercial considerations may necessitate resident directors)	No requirement (but tax and commercial considerations may necessitate resident directors)
Offering document	No requirement	No requirement



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Feature	Jersey JPF	Guernsey PIF
Risk warnings	Requirement for investment warning and disclosure statement.	No requirement, but nevertheless it would be commercially prudent to include such warnings.
Audited accounts requirement	No	Yes
Local Service provider requirements	Must appoint a designated service provider, registered under the FSJL.	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).
Minimum investment	Effectively £250,000 (unless the investor is a "professional investor")	No minimum, but Manager needs to be able to give a warranty to the GFSC that investors can bear the loss of their investment.
Notification requirements	DSP must notify the JFSC of material changes to the information provided to the JFSC upon authorisation.	Limited notification requirements – generally imposed on the administrator.

Contacts

If you would like any further information about the above please contact us and we would be happy to help.

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