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JERSEY INVESTMENT FUNDS: AN OVERVIEW

OCORIAN BRIEFING

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Jersey is one of the premier offshore jurisdictions for the establishment of investment funds and other investment structures. Jersey is highly regarded for the quality of its regulatory regime and its legal and other service providers. Investment funds contribute significantly to Jersey's finance industry and many innovative products and structures are available to suit all types of investor and promoter. This briefing provides an overview of the range of investment funds which can be established in Jersey and the regulatory controls which may be applied to such funds by the Jersey Financial Services Commission (the "JFSC").

The form which a Jersey fund takes, and the level of regulatory oversight applicable to the fund, can depend, amongst other things, on how widely the fund is held, whether any formal offering document is used, the number of offers made to potential investors and the status, or sophistication, of investors.

An important additional factor is whether a Jersey fund is to be marketed to investors in the European Union, in which case rules which dovetail with the Alternative Investment Fund Managers Directive ("AIFMD") will be relevant to the Jersey fund.

Jersey fund structures

Jersey funds will often take the form of a Jersey incorporated company, a Jersey law unit trust, or a Jersey registered limited partnership (or a combination of these structures). Corporate vehicles are incorporated either as private or (more usually) public companies under the provisions of the Companies (Jersey) Law 1991 (the "Companies Law"). Par value and no par value companies can be incorporated, as well as protected cell companies and incorporated cell companies. Jersey law unit trusts are established against the statutory background of the Trusts (Jersey) Law 1984, although a large proportion of the administration and affairs of the unit trust will be governed by detailed provisions set out in the trust instrument of the fund. Jersey limited partnerships are governed by the provisions of the Limited Partnerships (Jersey) Law 1994, or the laws on separate or incorporated limited partnerships; in each case the administration and operation of the limited partnership will be primarily regulated by the limited partnership agreement.

Fund vehicles can be either "open-ended" (where shares, units or limited partnership interests ("securities") are continuously issued and redeemed to meet demand from investors) or "closed-ended" (where securities are usually offered on a single occasion (or a limited number of occasions) with investors being "locked in" for the duration of the life of the fund, unless a secondary market exists in the securities in question).

Legal and regulatory framework

The principal legislation governing the funds sector is: for public funds, the Collective Investment Funds (Jersey) Law 1988 (the "CIF Law") and, for private funds, the Control of Borrowing (Jersey) Order 1958 (the "COBO Order"). Funds which are marketed into Europe are also subject to the Alternative

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Investment Funds (Jersey) Regulations 2012 (the "AIF Regulations").

Public funds are subject to regulatory codes of practice which govern their ongoing operation, in the form of the codes of practice for certified funds (the "Certified Funds Codes"). Funds which are marketed in the EU are subject to the codes of practice for alternative investment funds (the "AIF Codes"). In addition, all funds are subject to the requirements of Jersey's anti-money laundering regime, which applies anti-money laundering rules to all financial services businesses in Jersey.

Jersey-based service providers to funds are generally subject to regulation, unless an exemption applies. Providers of 'fund services business' must be registered and regulated pursuant to the Financial Services (Jersey) Law 1998 (the "FS Law").

Categories of funds

The various categories of Jersey funds, including the criteria for categorisation, are summarised below

Any additional criteria that may apply where the fund is marketed in the EU are also set out. In summary, those funds which are marketed within the EU and (i) are within scope of the AIFMD, (ii) do not fall into certain exemptions, and (iii) do not benefit from transitional provisions, are subject to additional regulatory requirements tailored to the AIFMD regime. Funds which are not actively marketed in the EU are not subject to these requirements.

The authorisation procedure and timetable for the various categories of Jersey funds are also set out below. Different regulatory consents may be required for a company, trust or limited partnership, but each involves an application or notification to the JFSC.

Private funds

From March 2017 a single regulatory regime has applied to all private funds in Jersey: the Jersey private funds regime.

Jersey private funds

Regulatory classification

The Jersey private funds regime is a simplified regime which applies to all funds which are marketed to no more than 50 investors, where those investors qualify as professional investors or meet other eligibility criteria (such as making an investment of at least £250,000).

The Jersey private funds regime can accommodate vehicles formed for a small number of co-investors (including "club" arrangements) as well as funds marketed to a wider group (typically by private placement).

There is considerable flexibility in the way in which such funds can be structured and operated. Jersey private funds can be established as any type of vehicle (companies, partnerships, unit trusts), as Jersey or non- Jersey vehicles (for example, as an English limited partnership for which a Jersey company acts as general partner) and can be closed- or open-ended. No offering document is required (unless the fund is marketed in the EU), but an investment warning must be provided to and acknowledged by investors (typically in subscription documentation). There are no restrictions on investment or borrowing, a Jersey-based governing body is not required, and audited accounts are not required. However, a Jersey private fund cannot be listed.

Jersey private funds must appoint a "designated service provider" in Jersey, typically the fund administrator. This entity will carry out due diligence in relation to the fund's promoter, and must make an annual compliance return to the JFSC in respect of the fund. Other providers of services to Jersey private funds (for example, the fund manager, general partner, investment adviser, etc.) are often eligible to benefit from statutory exemptions contained in the FS Law, thereby negating the need for them to be registered pursuant to the FS Law in respect of the services provided to the fund.

It is also worth noting that the scope of the regime is such that certain investment vehicles do not fall within the scope of funds regulation at all, allowing them to be established as non-fund investment vehicles, including proprietary or holding vehicles, joint ventures, and securitisation vehicles.

Jersey private funds marketed in the EU:

Jersey private funds which are to be marketed to investors in the EU and to which the AIFMD regime applies must, in addition to the usual regulatory consent under the COBO Order, apply for an AIF Certificate under the AIF Regulations and comply with the relevant sections of the AIF Codes. Jersey-based alternative investment fund managers ("AIFMs") to Jersey private funds which are marketed in the EU and to which the AIFMD regime applies are required to register as a "Manager of an AIF" under the FS Law and to comply with the relevant sections of the AIF Codes. Whilst there is no requirement to appoint a depositary to such funds, if it is decided to appoint a Jersey-based depositary to the fund the prior approval of the JFSC must be obtained prior to the appointment.

Authorisation process and timing

The process for establishing a Jersey private fund involves the submission of a standard application form, including a declaration of compliance with the criteria of the Jersey private fund regime from the designated service provider. Assuming the application is complete, the JFSC will issue the requisite consent under the COBO Order within 48 hours. Where the AIFMD regime applies a consent under the AIF Regulations will be issued to the fund within 5 working days (although, where a Jersey AIFM or depositary is to be appointed which is not already registered in respect of AIF services business under the FS Law the necessary approval for that element may take up to 10 working days).

Public funds

The regulatory regime for public funds is sub-dividend into various regulatory classifications, ranging from those which are unregulated to those which are highly regulated, as described below.

Unregulated funds

Regulatory classification

Unregulated funds are funds that would fall to be categorised and regulated as public funds, but fall entirely outside the regulatory regime applicable to public funds under the (including the Certified Funds Codes) by virtue of statutory exemption contained in the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 (the "Unregulated Funds Order"). The Unregulated Funds Order provides for two types of unregulated fund: "Unregulated Eligible Investor Funds" and "Unregulated Exchange-Traded Funds".

Unregulated Eligible Investor Funds are suitable only for "eligible investors" which, among other things, include those who agree to contribute not less than

US$1 million, or its currency equivalent, for securities in the fund. Such funds may be open- or closed-ended and may be structured as a Jersey company, a Jersey registered limited partnership or a unit trust.

Unregulated Exchange-Traded Funds have no investor qualification criteria but must be listed on a "recognised exchange" listed in the Unregulated Funds Order, within 90 days of notification of the establishment of the fund being submitted to the JFSC. Such funds may only be closed-ended and may be structured as a Jersey company, a Jersey registered limited partnership or a unit trust.

Common features of both types of unregulated funds are that there are no requirements for such funds to appoint a Jersey-based manager or administrator, or Jersey-resident directors. Except in the case of general partners of Jersey limited partnerships or trustees of Jersey unit trusts, any Jersey-resident services provider to the fund must be registered under the FS Law to conduct fund services business in relation to the fund. The JFSC will not register an entity for fund services business pursuant to the FS Law where its only activity is to act for unregulated funds. There is no requirement to appoint a custodian in relation to the assets of an unregulated fund. The offering document relating to the fund must contain a warning to investors that the fund is not regulated, but no other disclosure requirements are required. The Unregulated Funds Order does not prescribe any specific investment or borrowing restrictions.

As this type of fund is unregulated, the offering of securities in the fund may commence immediately upon the execution of the fund documents. The timing for the launch of the fund is, therefore, entirely in the hands of the fund's sponsor.

As unregulated funds are not 'AIFMD-compliant', unregulated funds cannot be marketed to investors in the EU.

Authorisation process and timing

No regulatory approvals are required in relation to unregulated funds. A notice is filed with the JFSC giving certain basic information in relation to the fund and confirming that the fund qualifies as an unregulated fund.

Expert funds

Regulatory classification

An "expert fund" is one which complies with the requirements of the Jersey Expert Fund Guide issued by the JFSC and is marketed only to "expert investors" (as defined in the Jersey Expert Fund Guide); among other things, this includes any person committing to invest at least US$100,000 (or its currency equivalent) in the fund. Expert funds fall within the definition of a "collective investment fund" under the CIF Law, and as such are required to comply with the Certified Funds Codes, but are subject to fewer constraints than unclassified collective investment funds (see below).

Expert funds can take advantage of limited disclosure requirements in their offering documents and are subject to "self-certification" by a Jersey-based manager or administrator (the "monitoring service provider") that the fund qualifies as an expert fund. The monitoring service provider will be responsible for monitoring the fund's compliance with the requirements of the Jersey Expert Fund Guide and the fund's investment and borrowing restrictions. Expert funds must appoint an investment manager or adviser which is regulated in an OECD member state or a country which has entered into a memorandum of understanding with the JFSC, or is otherwise approved by the JFSC.

Expert funds marketed in the EU:

Expert funds which are marketed to investors in the EU and to which the AIFMD regime applies are exempt from the requirements of the AIF Regulations on the basis that they are already regulated under the CIF Law and subject to the Certified Funds Codes. Jersey AIFMs and depositaries of expert funds are also exempt from AIF services business registration as they are regulated in respect of fund services business under the FS Law. However, the Jersey AIFMs and depositaries to such funds are required to comply with the relevant sections of the AIF Codes.

Authorisation process and timing

The expert fund classification provides a "fast track" procedure for the establishment of investment funds in Jersey aimed at more experienced and high net worth investors.

In the case of both expert and listed funds, there is a "fast track" regulatory authorisation process. An expert or listed fund application form is submitted to the JFSC, along with the latest draft of the prospectus or other offering document. Provided that the applicant confirms that the fund meets the JFSC's published guidelines for expert or listed funds, as appropriate (or, alternatively, confirms that any derogation from the guidelines has been previously agreed with the JFSC), the fund should be authorised within 72 hours of the application being made.

Where existing Jersey service providers are to provide services to the fund, they will already hold a fund services business licence under the FS Law. If new or special purposes entities are to be established to provide services to the fund, applications will have to be submitted for the relevant licence under the FS Law. Such licence applications may take up to six weeks to process in the event that the directors and major shareholders of the service provider are not known to the JFSC. This additional timing would, therefore, need to be taken into account in the relevant circumstances when preparing the fund's launch timetable.

For further information on Jersey expert funds, please refer to our briefing "Jersey expert funds".

Jersey eligible investor funds

Regulatory classification

A "Jersey eligible investor fund" is one which complies with the requirements of the Jersey Eligible Investor Fund Guide issued by the JFSC and is marketed only to "eligible investors" (as defined in the Jersey Eligible Investor Fund Guide); among other things, this includes any person committing to invest at least US$1 million (or its currency equivalent) in the fund. Jersey eligible investor funds fall within the definition of a "collective investment fund" under the CIF Law, and as such are required to comply with the Certified Funds Codes, but are subject to fewer constraints than unclassified collective investment funds or expert funds (see below).

Jersey eligible investor funds can take advantage of limited disclosure requirements in their offering documents and are subject to "self-certification" by a Jersey-based manager or administrator (the "monitoring service provider") that the fund qualifies as a Jersey eligible investor fund. The monitoring service provider will be responsible for monitoring the fund's compliance with the requirements of the Jersey Eligible Investor Fund Guide and the fund's investment and borrowing restrictions. Jersey eligible investor funds must appoint an investment manager or adviser which is regulated in an OECD member state or a country which has entered into a memorandum of understanding with the JFSC, or is otherwise approved by the JFSC.

Jersey eligible investor funds marketed in the EU:

Jersey eligible investor funds which are marketed to investors in the EU and to which the AIFMD regime applies are exempt from the requirements of the AIF Regulations on the basis that they are already regulated under the CIF Law and are subject to the Certified Fund Codes. Jersey AIFMs and depositaries of Jersey eligible investor funds are also exempt from AIF services business registration as they are regulated in respect of fund services business under the FS Law. However, the Jersey AIFMs and depositaries to such funds are required to comply with the relevant sections of the AIF Codes.

Authorisation process and timing
The Jersey eligible investor fund classification offers a "fast track" procedure for the establishment of investment funds in Jersey aimed at the most sophisticated, institutional and ultra high net worth investors.

The approval process involves the submission of an application form to the JFSC, along with the latest draft of the prospectus or other offering document. Provided that the applicant confirms that the fund meets the JFSC's published guidelines for Jersey eligible investor funds, the fund should be authorised within 72 hours of the application being made.

Any Jersey-based service provider, which is to provide services to the fund and is not already licensed to conduct the relevant class of fund services business pursuant to the FS Law, is required to submit an application for a licence. However, due to the sophistication of "eligible investors" in the fund to which the services will be provided, such licence applications should take only 10 working days to process.

Listed funds

Regulatory classification
A "listed fund" is one which complies with the requirements of the Jersey Listed Fund Guide issued by the JFSC. The fund must be a closed-ended corporate fund, listed on one of the recognised stock exchanges or markets set out in the Jersey Listed Fund Guide. Unlike expert funds, there are no minimum investment criteria attached to listed funds, but they are otherwise identical in terms of structural requirements to expert funds. Listed funds also fall within the definition of a "collective investment fund" under the CIF Law, and as such are required to comply with the Certified Funds Codes, but are subject to fewer constraints than unclassified collective investment funds (see below).

Listed funds marketed in the EU:

Listed funds which are marketed to investors in the EU and to which the AIFMD regime applies are exempt from the requirements of the AIF Regulations on the basis that they are already regulated under the CIF Law and subject to the Certified Funds Codes. Jersey AIFMs and depositaries of listed funds are also exempt from AIF services business registration as they are regulated in respect of fund services business under the FS Law. However, the Jersey AIFMs and depositaries to such funds are required to comply with the relevant sections of the AIF Codes.

Authorisation process and timing
The authorisation process and timing is the same as that for expert funds, as described above.

Unclassified collective investment funds

Regulatory classification
If a "public offer" to participate in a fund will be made (which will be the case if the fund is offered to more than fifty potential investors) or the fund is to be listed, then, unless the fund qualifies as an

unregulated fund, Jersey eligible investor fund, expert or listed fund, the fund will fall within the statutory definition of a "collective investment fund" for the purposes of the CIF Law and will be subject to standard supervision by the JFSC under the CIF Law

In this case, each of the fund's Jersey service providers will be required to be licensed under the FS Law (in respect of the category of fund services business it will be providing to the fund) and to comply with any conditions contained in its licence and with the codes of practice for fund services business issued by the JFSC pursuant to the FS Law. The fund itself (in the case of a corporate fund) or the general partner (in the case of a limited partnership) or the trustee (in the case of a unit trust) will be required to obtain a certificate in relation to the fund from the JFSC under the CIF Law and must comply with the Certified Funds Codes as well as any bespoke conditions set out in its CIF Certificate. Both the fund and the fund service providers will be subject to ongoing supervision by the JFSC.

There are no detailed legislative requirements governing the constitution of such funds, their mode of operation or the investment restrictions they must follow, although certain well-established prudential standards form the basic benchmarks against which the JFSC evaluates these funds and there are prescribed disclosure requirements for such funds' offering documents. There is flexibility with regard to how unclassified collective investment funds may be structured and operated.

Unclassified collective investment funds marketed in the EU:

Unclassified collective investment funds which are marketed to investors in the EU and to which the AIFMD regime applies are exempt from the requirements of the AIF Regulations on the basis that they are already regulated under the CIF Law and subject to the Certified Funds Codes. Jersey AIFMs and depositaries of such funds are also exempt from AIF services business registration as they are regulated in respect of fund services business under the FS Law. However, the Jersey AIFMs and depositaries to such funds are required to comply with the relevant sections of the AIF Codes.

Authorisation process and timing

The process for establishing an unclassified collective investment fund involves two stages. The first stage is an initial review stage during which the proposal as a whole is reviewed, the identity and standing of the promoter are considered and an "in principle" consent is obtained. It usually takes approximately 10 working days to obtain in principle consent in relation to an unclassified collective investment fund, although this may take longer where the promoter is not known to the JFSC.

Once the JFSC has indicated in principle that the application may proceed, one proceeds to the second stage, the "documentary review" stage, at which the draft fund offering document, the draft constitutional documents for the fund and any material contracts (such as the management agreement, administration agreement and investment management agreement) must be submitted, together with the application for a certificate in relation to the fund under the CIF Law. The JFSC will usually indicate whether the documentation is satisfactory within 15 working days of submission and the fund certificate will normally be issued within a matter of a few business days thereafter.

Where existing Jersey service providers are to provide services to the fund, they will already hold a fund services business licence under the FS Law. If new or special purposes entities are to be established to provide services to the fund, applications will have to be submitted for the relevant licence under the FS Law. Such licence applications may take up to six weeks to process in the event that the directors and major shareholders of the service provider are not known to the JFSC. This additional timing would, therefore, need to be taken into account in the relevant circumstances when preparing the fund's launch timetable.

Recognized funds

Regulatory classification

This regulatory category is for funds which wish to take advantage of Jersey's Designated Territory status under the United Kingdom Financial Services and Markets Act 2000 ("FSMA") such that they may be marketed freely to the public in the United

Kingdom under FSMA, subject to compliance with United Kingdom regulatory marketing requirements. The requirements for the constitutional documents of such funds, their mode of operation, the categories of investments and assets they can acquire and the investment restrictions which they must follow are prescriptively set out in the Collective Investment Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988 and the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 1988 and the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003 (together the "Recognized Funds Legislation"). Funds within this category are the most highly regulated under Jersey law and are subject to a statutory compensation scheme for the protection of investors. In terms of structure, recognized funds can only be open-ended corporate funds or unit trusts.

Following the implementation of the AIFMD, the UK government has said that it will continue to permit funds established in a designated territory to be marketed to UK retail investors provided that the designated territory has sufficiently implemented the AIFMD requirements. Accordingly, from the implementation date of the AIFMD, in addition to the Recognized Funds Legislation recognised funds (and their Jersey AIFM and depositary, if any), must comply with the relevant sections of the AIF Codes.

Authorisation process and timing

In common with unclassified collective investment funds, recognized funds are subject to a two-stage regulatory approval process, comprising the "in principle" consent stage as described above, followed by the document review stage. The main differences in the approval process for recognized funds lies in the document review stage. The JFSC will take between four and six weeks to review the fund documents, provide any comments and issue the recognized fund certificate in respect of the fund. During this period, it is also necessary for the Financial Conduct Authority in the United Kingdom to approve the fund and this approval normally takes approximately three weeks. Finally, each Jersey functionary to a recognized fund must apply for a permit under the CIF Law, to act in the relevant capacity in relation to the fund. Permit applications can take up to six weeks to process in the case of functionaries who are not already the holders of a permit in relation to a recognized fund.

Taxation of funds in Jersey

All types of investment funds established in Jersey can benefit from the absence of any Jersey income tax on non-Jersey source investment income and profits.

Jersey has a general zero rate for corporate tax (subject to certain limited exceptions). As a result, funds established as companies will pay no Jersey income tax and there is no requirement to withhold tax on interest or dividends payable by such corporate funds.

In relation to unit trusts established in Jersey, no assessment to Jersey income tax is raised in respect of investment income or profits arising from non-Jersey sources or from bank deposits held by such unit trusts in Jersey.

Limited partnerships, separate limited partnerships and incorporated limited partnerships are tax transparent vehicles and are not, therefore, subject to Jersey income tax in their own names. Non-Jersey resident investors in a Jersey limited partnership, separate limited partnership or incorporated limited partnership do not pay any Jersey tax in respect of non-Jersey source investment income or profits, or in respect of interest on bank deposits held by the partnership in Jersey.

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