PRIVATE EQUITY FUNDS IN JERSEY

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Private equity funds are typically established as limited partnerships and this overview therefore focuses upon the principal features, formation, regulation and taxation of limited partnerships for such purposes

Many such limited partnerships are established under the laws of offshore jurisdictions, in particular, Jersey and Guernsey. It is, however, possible for the limited partnership to be established under the laws of an "onshore" jurisdiction (such as, Scotland, England or Delaware) but to have a general partner established in Jersey. In such cases, the "fund" is treated as being regulated in Jersey through its general partner, even though the place of registration of the limited partnership is in the relevant onshore jurisdiction. This type of hybrid structure can be of interest to limited partners not wishing to invest in a wholly "offshore" fund.

The remainder of this note will concentrate on Jersey limited partnerships and Jersey general partners. In addition to Jersey limited partnerships established under the Limited Partnerships (Jersey) Law 1994 (the "LP Law") - referred to as "Traditional LPs" in this note - it is now also possible to establish separate limited partnerships ("SLPs") and incorporated limited partnerships ("ILPs") under statutes which came into force in 2011, namely the Separate Limited Partnerships (Jersey) Law 2011 (the "SLP Law") and the Incorporated Limited Partnerships (Jersey) Law 2011 (the "ILP Law"). Accordingly, all three limited partnership options are available under Jersey Law as alternative legal structures for funds. The decision as to which option to follow may primarily be tax driven.

Principal features

The table below summarises the similarities and differences between Traditional LPs, SLPs and ILPs.

Feature	Traditional LPs	SLPs	ILPs
Separate legal personality	No	Yes	Yes
Body corporate	No	No	Yes
Unlimited capacity as a legal person	No	Yes	Yes
Dissolution formalities	Delivery of a statement of dissolution to the registrar	Delivery of a statement of dissolution to the registrar	Must follow the procedure set out in the regulations to be adopted
May hold property in its own name	No	Yes	Yes

CONTINUED ON FOLLOWING

Relevant law expressly provides that the general partner is an agent of the partnership	No	No	Yes
Unlimited liability of the general partner	Yes	Yes	Yes, but only after the partnership itself defaults
Limited liability of the limited partners	Yes	Yes	Yes
Name requirements	Must end: "Limited Partnership" or "L.P." or "LP"	Must end: "Separate Limited Partnership" or "S.L.P." or "SLP"	Must end: "Incorporated Limited Partnership" or "I.L.P." or "ILP" or "Inc. L.P." or "Inc LP"
Perpetual succession	No	No	Yes
Must have at least one limited partner and one general partner	Yes	Yes	Yes
Can limited partners assign their interest in the partnership?	Yes, with the consent of the general partner and the other limited partners or as provided in the partnership agreement	Yes, with the consent of the general partner and the other limited partners or as provided in the partnership agreement	Yes (subject to the terms of the limited partnership agreement)

Formation

Jersey limited partnerships can be established for "any lawful purpose"are governed by a written partnership agreement. A declaration by the general partner must be filed with the Jersey Registrar of Limited Partnerships in accordance with the provisions of the relevant limited partnership law in order for the partnership to be established or, in the case of an ILP, incorporated.

There is no requirement to file details of the names of the limited partners or their capital contributions in the partnership declaration. The partnership agreement is not open to public inspection. Similarly, the nature of the activities and purpose of the limited partnership do not need to be disclosed in the declaration. There is no minimum capital requirement imposed on limited partners nor any restriction on withdrawing capital.
A Jersey limited partnership is required to set up a number of statutory records which should be maintained at its registered office. These records are private and may only be inspected and copied by partners.

Partnership accounting records must be maintained, although there is no requirement for partnership accounts to be audited unless this is required by the partnership agreement or the Jersey Financial Services Commission ("JFSC"). Partnership accounts may be drawn up in any currency.

Regulatory considerations

Distinction between "public" and "private" funds

A distinction is made between public and private funds in Jersey. A private fund is one where, in summary, an "offer" for subscription or sale of units (for example, limited partnership interests) is made to an identifiable category of persons not exceeding fifty. This is typically known as a "private placement" fund. A fund which cannot meet the private placement criteria is, therefore, a public fund.

Private placement funds ("PPFs")

PPFs are established in accordance with the Jersey Private Placement Fund Guide ("PPF Guide") and require the consent of the JFSC under the Control of Borrowing (Jersey) Order 1958, as amended ("COBO"), for the creation of limited partnership interests. PPFs must be closed-ended and may be offered to up to 50 "professional investors" or "sophisticated investors", as defined in the PPF Guide. A limited partnership structured as a PPF must have at least one corporate general partner (or corporate general partner of a GP LP) which is a Jersey company with at least two Jersey resident directors. The promoter of the PPF must meet certain minimum suitability requirements, as set out in the PPF Guide. The PPF must appoint a Jersey administrator as its "designated service provider". This entity will carry out due diligence in relation to the promoter of the PPF, provide the registered office of the general partner and support the PPF in relation to its Jersey anti-money laundering obligations. PPFs are required to appoint an auditor.

The JFSC confines its review of documentation for a PPF to the private placement memorandum to be issued in connection with the fund. The PPF Guide contains certain prescribed disclosure requirements for the private placement memorandum of a PPF, including an investment warning.

A PPF will ordinarily fulfil the criteria for a "professional investor regulated scheme" ("PIRS"), such that its service providers (for example, its general partner) will benefit from a general exemption from regulation under the Financial Services (Jersey) Law 1998, as amended ("FSJ Law"), in relation to investment business and trust company business services provided to that fund. This exemption will also extend to Jersey service providers of private funds established outside of Jersey if a register of interests is to be kept in Jersey and consent under COBO has been granted for this purpose.

PPFs must comply with the conditions of their COBO consent and the ongoing obligations set out in the PPF Guide.

For further information on Jersey PPFs, please refer to our briefing "Jersey private placement funds".

Public funds

Public funds can be divided into two categories, namely, collective investment funds authorised under the Collective Investment Funds (Jersey) Law 1988, as amended (the "CIF Law") and unregulated funds which, notwithstanding that they are public funds, benefit from the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008, as amended ("Unregulated Funds Order"), which contains specific exemptions for those public funds which would otherwise be collective investment funds for Jersey regulatory purposes which are, nevertheless, eligible for classification as "Unregulated Funds".

– **Collective investment funds ("CIFs")**
  Funds which are offered to more than fifty potential investors require the following consents:
  – under the CIF Law;
  – under the FSJ Law, in respect of any relevant service provider of the fund operating from or incorporated in Jersey.

The principal requirement under the CIF Law is that the fund itself (where the fund is a company), or the general partner (where the fund is a limited partnership) or the trustee (where the fund is a unit trust) will require a fund certificate, issued by the JFSC and will be subject to the Codes of Practice for certified funds (the "Certified Funds Codes") which were introduced by the JFSC in April 2012. In determining whether to grant a fund certificate, the JFSC will have regard to the track record, relevant experience, reputation and financial resources of the promoting group wishing to establish the limited partnership and will usually attach conditions to the fund certificate (for example, that principal agreements may not be amended without the consent of the JFSC and accounts should be filed with the JFSC). The JFSC will also review any prospectus issued in relation to the CIF. Such funds are also required to appoint an auditor in Jersey.

– **Expert funds**
– There is, however, a sub-category of CIFs, which are established in accordance with the Jersey Expert Fund Guide ("Expert Funds"). The Jersey Expert Fund Guide provides for a minimum investment requirement and minimum net wealth declaration in order for investors to be classified as "Expert Investors". In the case of Expert Funds, the JFSC applies a lighter regulatory touch and does not need to review the constitutional and primary fund documents, as would be the case for a full CIF, although Expert Funds are required to comply with the Certified Funds Codes.

  Nevertheless, in the case of all CIFs, whether Expert Fund or not, each Jersey-based functionary of such a fund must be licensed to conduct the relevant category of fund services business pursuant to the FSJ Law. This is a separate licensing regime applicable to service providers. Licences issued pursuant to the FSJ Law attach conditions and registered persons under that law are required to comply with those conditions and, in addition, are required to comply with the Codes of Practice issued by the JFSC for fund services businesses ("FSB Codes").

– **Unregulated CIFs**
  As previously stated, unregulated funds are funds which, but for the specific exemption contained in the Unregulated Funds Order, would otherwise be CIFs for Jersey regulatory purposes ("Unregulated Funds").

  There are two categories of Unregulated Funds, namely:
– unregulated eligible investor funds (where each investor must qualify under one of the eligibility criteria contained in the Unregulated Funds Order ("Unregulated Eligible Investor Funds")); and
– unregulated exchange-traded funds (where the fund must be admitted to listing on one of the recognised stock exchanges or markets listed in the Unregulated Funds Order within 90 days of

notification of the establishment of the fund being given to the Registrar of Companies in Jersey).

Unregulated Funds do not require certification under the CIF Law and are not subject to the Certified Funds Codes. The JFSC will not review any of the primary fund documents or the prospectus issued in relation to such funds. An Unregulated Fund which is a limited partnership must have a Jersey-based general partner. However, by virtue of statutory exemption, the general partner of an Unregulated Fund does not need to obtain a licence pursuant to the FSJ Law to conduct fund services business. However, other entities in Jersey providing services to the Unregulated Fund (such as an administrator or, where appropriate, a custodian) must be licensed to provide the relevant category of fund services business and will be required to comply with the conditions set out in that licence as well as the FSB Codes. The JFSC will not register an entity for fund services business pursuant to the FSJ Law where its only activity is to act for Unregulated Funds.

The table below shows a summary of Jersey investment fund regulatory classifications.

Feature	Private Placement Funds	Collective Investment Funds	Expert Funds	Unregulated Funds (Unregulated Eligible Investor Funds)
Applicable laws and regulations	COBO; FSJ Law exemption orders; Jersey Private Placement Fund Guide	CIF Law; FSJ Law	CIF Law; FSJ Law; Jersey Expert Fund Guide	Unregulated Funds Order; FSJ Law exemption orders
Number of investors	Up to 50 total offers made for subscription	Unlimited	Unlimited	Unlimited
Minimum investment	None for "Professional Investors"; £250,000 for "Sophisticated Investors"	None	US$100,000 unless investor qualifies under other "expert investor" criteria	US$1,000,000 unless investor qualifies under other "eligible investor" criteria
Investor type	"Professional Investor" or "Sophisticated Investor"	Unrestricted	"Expert Investor"	"Eligible Investor"
Requirement to sign an investor declaration	Investor must acknowledge receipt of investment warning and sign a declaration	None	Investor must acknowledge receipt of investment warning and sign a declaration	Investor must acknowledge receipt of investment warning and sign a declaration
Separate licensing of Jersey service providers	Jersey service providers will normally be exempt from registration under the FSJ Law	Jersey service providers must have a licence to conduct fund services business under the FSJ Law (including the GP, administrator and investment adviser)	Jersey service providers must have a licence to conduct fund services business under the FSJ Law	Jersey service providers (if any) must have a licence to conduct fund services business under the FSJ Law (except the GP)
Requirements for Jersey service providers	GP requires 2 Jersey resident directors	GP requires a paid-up share capital of £25,000 and 2 Jersey resident directors plus maintenance of D&O and PII insurance cover	GP requires a paid-up share capital of £25,000 and 2 Jersey resident directors plus maintenance of D&O and PII insurance cover	N/A for GP; Other Jersey service providers as for Expert Funds

Ongoing supervision	Conditions on COBO consent	Certified Funds Codes and any bespoke conditions on CIF certificate. Jersey service providers subject to conditions on FSJ Law licence and FSB Codes	Certified Funds Codes and any bespoke conditions on CIF certificate. Jersey service providers subject to conditions on FSJ Law licence and FSB Codes	None for the Fund. Regulated service providers subject to conditions on FSJ Law licence and FSB Codes
Review of offering documents by JFSC	Yes	Yes	Yes	No
Audited accounts	Yes	Yes	Yes	No, unless fund is structured as a Jersey public company
Timing for regulatory consents	72 hours	4 - 6 weeks	72 hours provided that all Jersey service providers are licensed for fund services business under the FSJ Law and the JFSC raises no material concerns with the application	N/A

Offering documents

Prescribed disclosure requirements relating to the contents of a prospectus or private placement memorandum to be issued in relation to a limited partnership apply in the case of Expert Funds and PPFs.

The JFSC will, save in the case of an Unregulated Fund, review any such prospectus or private placement memorandum prior to granting the relevant regulatory consent and will expect to see a disclosure of the principal persons and entities which will provide services to the limited partnership, as well as a clear statement of the investment policy and investment and borrowing restrictions to be followed, details of all fees and charges to be borne by the fund, and a disclosure of any material risks or other material considerations.

An investment warning in a prescribed form must be included in any prospectus or private placement memorandum issued in relation to a PPF, an Expert Fund or an Unregulated Fund and investors in such funds are required to acknowledge and sign a declaration in the prescribed form.

Tax treatment

For the purpose of Jersey tax laws, Traditional LPs, SLPs and ILPs are not assessable to Jersey income tax. As a result of investing in a Traditional LP, an SLP or an ILP, non Jersey resident partners will not be liable to Jersey income tax other than in respect of certain Jersey source income (excluding interest on

Jersey bank deposits), which generally means that no Jersey tax will be payable by non Jersey resident limited partners. Whilst tax advice should always be sought, it is anticipated that Traditional LPs and SLPs will be treated as transparent for the purpose of UK income tax, capital gains tax, corporation tax and stamp duty land tax. UK tax counsel opinion issued in connection with the preparation of the ILP Law indicates that ILPs are likely to be treated as transparent for the purpose of UK income tax, corporation tax and stamp duty land tax but, in contrast to Traditional LPs and SLPs, opaque for the purpose of UK capital gains tax.

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