JULY 2015

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Contacts:
Ben Robins
Partner, Jersey
Daniel Birtwistle
Partner, Jersey
Edward Devenport
Partner, Jersey
Felicia de Laat
Partner, Jersey
Gareth Rigby
Partner, Jersey
Jacqueline Richomme
Partner, Jersey
Joel Hernandez
Partner, Jersey
Mark Chambers
Partner, Jersey

For contact details, please see the end of this briefing.

Jersey Private Placement Funds

Introduction
In January 2013, a new streamlined regulatory authorization process for the establishment of privately placed funds known as the Private Placement Fund (PPF) regime was introduced in Jersey. The PPF regime adds welcome speed and certainty to the regulation of closed-ended funds established or managed in Jersey and provides a cost-effective and non-intrusive regulatory environment for funds making offers to 50 or fewer professional or sophisticated investors worldwide. It is of particular appeal to promoters of real estate, private equity, venture capital, mezzanine and infrastructure funds, as well as other alternative asset classes employing a closed-ended model. In order to take advantage of the fast-track regulatory procedure, the fund must satisfy the criteria for a PPF set out in the PPF Guide.

Following the implementation of the AIFMD in July 2013, new regulations and codes apply in Jersey to AIFMs actively marketing funds in the EEA.

Please refer to the Glossary at the end of this briefing for the definitions of various capitalized terms.

Key Features of a PPF
- A PPF may only be offered to Professional or Sophisticated investors (see below) and units must be offered to not more than 50 potential investors in Jersey or elsewhere.
- A PPF which will be marketed in the EEA must comply with the applicable sections of the AIF Codes.
- It must be either established in Jersey as a closed-ended fund or established outside Jersey but managed in Jersey as a closed-ended fund.
- The promoter must be able to satisfy suitability requirements set out in the PPF Guide. In summary, the promoter must be of good standing and solvent and its Principal Persons must not recently have been subject to relevant disciplinary sanctions or convictions. The promoter must be established in an OECD member state or another jurisdiction with which the JFSC has a relevant regulatory memorandum of understanding and must either be (i) regulated in such state or jurisdiction, or (ii) possess amongst its Principal Persons relevant experience in relation to promoting, managing or advising institutional, professional or sophisticated investors’ investments using similar strategies to the PPF.
- A PPF must appoint a Designated Service Provider whose principal functions will be to provide a registered office, carry out promoter due diligence and make the required certifications in the JFSC application (see below) and support the PPF with its anti-money laundering obligations.
- A PPF which is a unit trust or limited partnership must have a Jersey trustee/general partner.
- The fund company, general partner or trustee must have at least two Jersey-resident directors.
- A PPF can be established using any of the common forms of investment vehicle and no investment or borrowing restrictions are set by the JFSC.
- The accounts of a PPF need to be audited but need only be filed with the JFSC if they are qualified.

Investors in a PPF
A PPF may only be offered to the following:
- Professional Investors: the complete definition is contained in the PPF Guide.
but includes persons who habitually invest (as principal or agent) by way of business; investment structures with assets valued at over USD10M; certain eligible employees of the PPF’s investment manager or advisor who carry on investment business in relation to the PPF, and senior employees, directors, partners, shareholders or consultants of the PPF or its investment management or advisory team, who receive their interests by way of remuneration or carried interest;

• Sophisticated Investors: an investor who makes an initial investment or investment commitment of £250,000 (or currency equivalent) in the PPF, whether through the initial offering or subsequent acquisition; or

• investment managers acquiring an interest in a PPF for or on behalf of non-professional or non-sophisticated investors.

Each of them must have received and acknowledged an investment warning substantially in the form set out in the PPF Guide which will be contained in the offer document and the subscription agreement for the PPF.

Authorisation Process for a PPF

In order to establish a PPF, an application must be made to the JFSC containing the following:

• a written statement from the promoter to the JFSC confirming that it satisfies the promoter requirements set out in the PPF Guide, countersigned by the Designated Service Provider of the PPF certifying that it has carried out its own due diligence in relation to the promoter and has no reason to believe that the promoter’s statement is incorrect;

• a written certificate of the PPF’s Designated Service Provider certifying that the PPM complies with the content requirements of the PPF Guide;

• a draft of the PPM; and

• details (full name, date of birth and residential address) of all the promoter’s Principal Persons including those named in the PPM.

Following the issue of the requisite COBO consent, the JFSC will carry out its own regulatory checks in relation to the promoter and its Principal Persons and, should such checks give rise to a concern, the JFSC may take remedial action.

Exemption under the FS Law

It is anticipated that the PPF’s Jersey management entity (whether a general partner, trustee, manager or managing trustee) will, in most cases, be able to avail itself of an exemption under the FS Law which will avoid the need for it to make a licence application or comply with Codes of Practice under the FS Law.

AIF Regulations

A PPF that will be marketed in the EEA requires a certificate pursuant to the AIF Regulations and its manager may need to register to conduct AIFSB. The JFSC will require personal questionnaires to be submitted by any of the directors and certain other officers of the manager not previously approved.

In addition, the PPF must comply with the applicable sections of the AIF Codes. These sections mirror the Transparency and Asset Stripping provisions of Chapters IV and V of the AIFMD.

Timescale for Authorisation

The JFSC’s published timescale for authorising a PPF is three working days from receipt by the JFSC of a complete application.

Statutory Fees

A fee of £1,000 is payable in respect of an application for a COBO consent for a PPF. A separate fee of £1,000 is payable in respect of the manager’s application to be registered for AIFSB, if applicable. There are no annual fees in relation to a PPF.

Offer Document

The PPF Guide prescribes basic information which must be contained in a PPF’s offer document. This includes all the information that investors would reasonably require for the purposes of making an informed judgement about whether to participate in the PPF.

The requirements are not unduly burdensome and also benefit PPF promoters in providing clear guidance as to the requirements for offer documents. In addition, if the PPF will be marketed in the EEA, it must comply with the disclosure requirements of the AIF Codes.

As mentioned above, offer documents for
PPFs need to include an investment warning in the approved form, and each investor must acknowledge in writing that he has received and accepted this warning.

**What if a fund does not fully satisfy the eligibility criteria?**

If a proposed fund does not fully satisfy the eligibility conditions, a request may be made to the JFSC for derogations to be granted on such terms as the JFSC may determine.

A copy of the PPF Guide is available at www.jerseyfsc.org.

**Glossary**

- **AIF**: an alternative investment fund as defined in the AIF Regulations
- **AIF Codes**: the Codes of Practice for Alternative Investment Funds and AIFSB issued by the JFSC
- **AIF Regulations**: Alternative Investment Funds (Jersey) Regulations 2012
- **AIFM**: a manager of one or more AIFs
- **AIFMD**: the European Union’s Alternative Investment Fund Managers Directive
- **AIFSB**: a person carries on AIF services business if its regular business is managing one or more AIFs
- **COBO**: Control of Borrowing (Jersey) Order 1958
- **EEA**: European Economic Area
- **FS Law**: Financial Services (Jersey) Law 1998
- **JFSC**: the Jersey Financial Services Commission
- **Principal Persons**: as defined in the Collective Investment Funds (Jersey) Law 1988
- **PPF Guide**: the Jersey Private Placement Fund Guide published by the JFSC

**Contacts:**

- Ben Robins, Partner, Jersey
  +44 1534 676 475
  ben.robins@mourantozannes.com
- Daniel Birtwistle, Partner, Jersey
  +44 1534 676 211
  daniel.birtwistle@mourantozannes.com
- Edward Devenport, Partner, Jersey
  +44 1534 676 366
  edward.devenport@mourantozannes.com
- Felicia de Laat, Partner, Jersey
  +44 1534 676 137
  felicia.de laat@mourantozannes.com
- Gareth Rigby, Partner, Jersey
  +44 1534 676 613
  gareth.rigby@mourantozannes.com
- Jacqueline Richomme, Partner, Jersey
  +44 1534 676 341
  jacqueline.richomme@mourantozannes.com
- Joel Hernandez, Partner, Jersey
  +44 1534 676 753
  joel.hernandez@mourantozannes.com
- Mark Chambers, Partner, Jersey
  +44 1534 676 080
  mark.chambers@mourantozannes.com