Jersey - A Credible Option for Fund Managers

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Introduction

Despite the current challenges facing the financial services industry, the Jersey funds industry remains resilient with a positive future outlook, presenting fund managers with an alternative jurisdiction to establish a manager or investment manager, or to domicile a fund.

Jersey's total funds business is up 13.8% year on year, with regulated fund's net assets standing at £301.7 billion.[1] Alternative investment funds ("AIF") represent over 81.3% of all Jersey funds, with hedge representing 18.3%.[2] The number of Jersey-based fund promoters has nearly doubled in the last five years.[3] There has also been a 14% annual increase in fund managers seeking authorisation in Jersey to market their funds within the EU.[4]

This article focuses on why Jersey remains attractive for fund managers, particularly hedge fund managers, by touching on some of the key factors that make Jersey a credible option.

Jersey as an IFC

Jersey is a highly-regarded international financial centre and known as a leading jurisdiction for AIFs. Jersey is politically and economically stable with its own government, but not part of the UK or the EU.

Having a modern and sophisticated legal system, Jersey is also internationally recognised as well-regulated jurisdiction, complying with international standards set by the IMF, OECD, IOSC, ESMA and FATF.

As a regulator, The Jersey Financial Services Commission ("JFSC") is both pragmatic and approachable, welcoming applications from new fund managers. There are a wide range of flexible entities and innovative fund products with fast-track authorisation procedures, suiting most promoters, without compromising investor protection.

With a simple tax system offering tax neutrality for funds and 0% corporate tax for fund managers, as well as low personal income tax rates and no capital or inheritance taxes, Jersey is fiscally attractive and offers economic substance.

Jersey has an extensive infrastructure to support its funds industry with high quality professionals providing tax, legal, accounting, administration and depositary services.

Conveniently located within the European time zone, Jersey has excellent travel connections to and from the UK and Europe and offers a good lifestyle and culture on a scenic island.

Jersey Manager

In recent years, the number of fund managers setting up a new manager or investment manager in Jersey ("manager") has greatly increased particularly for hedge fund managers and PE start-ups. The approach to presence and substance has varied.

Some fund managers set up a 'full presence' manager with substance, securing premises and staff, as well as key persons relocating to Jersey. Most partnered with a regulated administrator to act as a 'manager of a managed entity' ("MoME"), who manage the manager in Jersey, providing presence, substance and appropriately experienced directors. Others used a hybrid of these two approaches.

The key drivers depend on the fund manager, its strategy and the promoter's personal circumstances. Some examples include locating outside the EU; reducing costs of regulatory compliance; a lighter touch regulatory environment; delegating discretionary management from a third party AIF manager ("AIFM"); and tax neutrality suiting promoters who reside in different locations.

Regulation

Generally, a manager carrying on investment business (dealing in investments, discretionary investment management and giving investment advice) ("IB") or fund services business (acting as a manager, investment manager of or investment adviser to a public fund) ("FSB") in or from within Jersey, must be licensed under the Financial Services (Jersey) Law 1998 ("FS Law"), unless an exemption applies.

If a fund (Jersey or non-Jersey domiciled) is established as a Jersey private fund ("JPF"), which complies with the Jersey Private Fund Guide ("JPF Guide"), its manager will be exempt from the IB and FSB licensing requirements.

Where a manager is FSB licensed, it will be exempt from the IB licensing requirements. License applications are made to the JFSC, with timescales ranging from 30 working days for a 'full presence' manager to 14 working days for a MoME manager.

For Jersey's economic substance requirements, a manager must show it is managed, conducts core income generating activities and it has adequate staff, premises and expenditure for its business, in Jersey. A manager must maintain appropriate records and comply with filing requirements.

A 'full presence' manager must apply to the Populations Office of the States of Jersey for a business licence before starting its business in Jersey, normally processed within 10 working days. The license may be issued with conditions, particularly in relation to staff.

EU Market Access

While not subject to Alternative Investment Fund Managers EU Directive ("AIFMD"), Jersey implemented its own 'opt-in' AIFMD regime for funds and their managers wishing to be located outside the EU, with the ability to access the EU.

Jersey offers AIFMD compliant fund products, as well as an effective route for funds or their managers to access EU investors through the National Private Placement Regime ("NPPR"), without the additional costs and burden of full AIFMD compliance. Conversely, Jersey managers wishing to market to investors outside the EU, will not be subject to the requirements of AIFMD.

Since the introduction of the AIFMD regime, fund managers now have the following options: (1) market in the EU under the NPPR, (2) use their own AIF manager ("AIFM") outside the EU, (3) use a non-AIFM outside the EU, (4) use a third party EU AIFM or (5) use a third party non-EU AIFM.

Referring to those options, a Jersey-based FSB licenced manager may market a private or public fund in the EU under the NPPR. A Jersey-based manager, which is not FSB licensed, wishing to market a JPF in the EU under the NPPR, must be licensed for AIF services business under the FS Law.

Jersey is in a strong position providing a route for fund managers to market to investors outside the EU or selectively in the EU. This will continue to be the case post-Brexit.

Latest Products for Managers

Jersey, in recognition of it being a leading funds jurisdiction, is aware that in order to maintain this status it needs to be proactive and innovative by offering efficient solutions to attract and maintain fund managers based in Jersey.

Firstly, Jersey introduced the Qualifying Segregated Managed Account ("QSMA") regime aimed at hedge fund managers. A hedge fund manager, who is FSB licensed, can establish and manage QSMAs and will be exempt from the IB licensing requirements and, for an EU-based investor, outside the scope of AIFMD.

A QSMA investor must sign a prescribed form investment warning. In addition, the hedge fund manager can only implement hedge fund strategies used by one or more funds in respect of which it is appointed.

The introduction of the QSMA regime demonstrates Jersey's pro-activeness in light of the increased number of Jersey-based hedge fund managers, who now benefit from a simplified and favourable regulatory and tax environment, in order to attract more hedge fund managers.

Secondly, the JFSC launched the JPF in April 2017, with the release of the JPF Guide, detailing the JPF's eligibility criteria. The JPF has simplified Jersey's private funds space by replacing various historic fund classifications with one Jersey private fund product for 50 or fewer investors.

As a result, the JPF is a more streamlined and flexible regime, with a light regulatory touch for certain professional or eligible investors (including those investing at least £250,000 (or equivalent)), who acknowledge an investment warning.

A fast-track 48-hour authorisation process applies to JPFs, which now features an online application facility. A Jersey designated service provider must confirm in the application that the JPF meets, and on an annual basis that it continues to meet, the eligibility criteria.

The JPF is essentially an investment fund pooling capital raised by it and invests on the basis of risk spreading. It can be structured as open or closed-ended, Jersey or non-Jersey domiciled and using any type of vehicle. In addition, there is no need for the promoter to be approved by the JFSC nor an auditor appointed.

The high volume uptake of the JPF product is indicative of Jersey's innovative approach to supporting institutional and professional investors. With its speed, ease and versatility attractive to a range of funds, the success of this product is set to continue.

Finally to note, while most new managers are formed as Jersey companies, fund managers may now consider using the Jersey LLP, which has separate legal personality. This is an attractive and flexible option following the introduction of the new Limited Liability Partnership Law in August 2018.

Summary

In light of current challenges facing the financial services industry, Jersey has a bright outlook for managers. Its reputation as a stable IFC combined with seamless market access and its drive to be proactive, makes it a credible option for hedge fund managers.

Footnotes

1 Source: Based on statistics published by Jersey Finance Association as at 30 September 2018.
2 Source: Based on statistics published by Jersey Finance Association as at 30 September 2018.
3 Source: Monterey Insight Jersey Funds Reports and Jersey Finance Association.
4 Source: The Jersey Financial Services Commission and Jersey Finance Association.