JERSEY UNREGULATED INVESTMENT SCHEMES

Jersey Financial Services Commission (JFSC) has agreed to support a proposal to exempt from regulation certain types of investment arrangements, which would otherwise be regulated under the Collective Investment Funds Law regime.

What are the drivers for a new unregulated approach to fund structuring and what is the basis on which the new unregulated arrangements will operate alongside Jersey's existing range of regulated investment funds?

The new approach

The alternative investment funds market has recently seen a number of trends, including:

- An increased hybridisation of fund structures, evident in the growing use of capital market and structured finance techniques in investment fund offerings;
- Increased structural innovation, from multiple vehicle structures such as master feeder structures and parallel funds with customised feeder arrangements for specific investors, to an increased use of cell structures;
- A blurring of conventional classifications of alternative fund assets as well as a crossover of techniques from the alternative fund industry in the long only fund industry and vice versa; and
- A move towards tailored investment structures driven by the needs of sophisticated investors, arising out of a focused approach to risk exposure and involving increased due diligence by investors on investment opportunities.

Jersey's self-certification regimes in the form of the 2004 expert fund regime and the 2007 listed fund regime have succeeded in capturing certain types of alternative asset structures, and a large part of Jersey's continued growth in funds under administration to more than £200bn is based on the use of these regimes.

Both the expert fund and the listed fund regimes comprise a light level of regulation and are based on promoters providing sufficient disclosure of risk and relevant information so that proper advice can be obtained by both institutions and individuals who have sufficient wealth or investment experience.

These regimes have shifted some of the responsibility for the supervision of funds from the JFSC to fund administrators, in a clear move away from product-based to service-provider regulation.

However, at the institutional end of the industry - where structuring is typically designed for sophisticated investors who do not require the same levels of regulatory protection but rely instead on a greater amount of due diligence carried out with the fund manager directly - there has been a growing demand for a fully flexible framework without even the light regulation of expert and listed funds.

Unregulated fund regimes

In line with this demand, the new unregulated fund exemptions are expected to provide an attractive platform for fund managers who wish to establish funds, which are not restricted by any Jersey regulatory constraints.

These will be categorised as either Jersey Unregulated Eligible Investor Funds or Jersey Unregulated Exchange Traded Funds. In either case these structures will not be categorised as collective investment funds and must include prominent warnings on their unregulated status.

To qualify, exemption will be sought by notifying the Jersey Companies Registry that the scheme satisfies the requirements of the term sheet. The key features of each type of unregulated fund are expected to be along the following lines.

Unregulated eligible investor funds

- Only 'eligible investors' who satisfy certain criteria (a minimum initial investment or commitment of US$1million may invest.
- An unregulated eligible investment fund may take any form recognised under Jersey law and may be open or closed-ended.
- Interests will be transferable provided the transferee is an eligible investor.
- Unregulated eligible investment funds may be listed on an exchange, provided: no market makers have been or will be appointed; the relevant stock exchange permits restrictions on transfer of interests (to ensure only eligible investors participate in the fund); and each new investor confirms in writing that he has received and accepts an investment warning.

Unregulated exchange traded funds

- Must be closed-ended Jersey arrangements.
- Must have a listing on a stock exchange or market or have applied for a listing.
- May take any recognised legal form, ie limited partnership, company, unit trust.
- If corporate, an offering document must comply with Jersey Companies Law.
- Scope for unregulated exchange traded funds will be subject to the requirements only of the listing authority of the relevant exchange - while recognising that this will not be appropriate for all exchanges, some of which rely on an appropriate level of home jurisdiction regulation to lighten their listing procedures.

Expected application

The unregulated funds will sit alongside the existing range of regulated structures in Jersey and will complement the existing regimes of recognised funds, unclassified funds, expert funds, listed funds, control of borrowing order (COBO)-only funds as well as 'very private' investor structures such as co-investment vehicles and joint venture vehicles.

Each of these existing regimes has continued to find uses in the funds market and it is expected that the additional aspects offered by the new unregulated exemption will provide useful additional alternatives in the offshore world. It is useful to compare the way that these will work with the existing less regulated end of Jersey's fund offerings.

In comparison with COBO-only funds and listed funds, unregulated funds will not require investment managers to pass a promoter test which, although exercised on a relatively 'light touch' basis for institutional investors, can lead to uncertainty in timing and planning for the structuring of funds.

In comparison with expert funds and listed funds, unregulated funds will not need to provide confirmations to the JFSC in respect of the track record of the investment manager and will not need to have Jersey-resident directors. Furthermore, it will not be necessary for unregulated funds to have Jersey functionaries for regulatory purposes, although registered office facilities will still be required for Jersey companies and limited partnerships.

Although it is envisaged that unregulated funds will typically have key functionaries - including the administrator situated in Jersey in order to facilitate management and control issues in this jurisdiction - this will not be a regulatory requirement, and therefore funds established under the new exemptions will be able to select functionary services on a global basis.

Unregulated funds will continue to require a Jersey company either as the fund vehicle, as a general partner of a limited partnership or as the trustee or manager of a unit trust, which will give the island's authorities sanction under the Companies (Jersey) Law, under statutes of general application and under the criminal law over structures which have failed.

Unregulated funds are, generally, likely to be of considerable interest to European-based alternative asset managers and will add a further dynamic within Jersey's fund industry. However, it will remain to be seen what specific uses are made of the unregulated structures.

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This information sheet provides a brief outline only and is not comprehensive as such and should you require further specific advice, please contact Adrian Moll:

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