



# Jersey Private Funds



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# Jersey Private Fund Guide

## Introduction

Following the popularity and widespread use of the pre-existing ‘very private’, private placement and Control of Borrowing (Jersey) Order 1958 (COBO) only fund products, the Jersey Financial Services Commission (JFSC) has revealed its new, consolidated, Jersey Private Fund (JPF) regime.

The JPF regime will provide a new streamlined fast-track regulatory authorisation process for the establishment of private investment funds as well as providing certainty in respect of the eligibility conditions through the introduction of a new JPF Guide (the Guide).

A JPF is suitable for funds making offers to 50 or fewer Professional Investors or Eligible Investors (see below) where a cost-effective and nonintrusive regulatory environment is sought.

## Key Features of a JPF

- A JPF may only be offered to Professional or Eligible Investors (see below).
- The JFSC’s published timescale for authorising a JPF is 48 hours from receipt by the JFSC of a complete application.
- Fund interests may be offered to not more than 50 potential investors in Jersey or elsewhere. Please see below for a summary of the test for the number of offers/investors.
- A JPF can be established using any of the common forms of investment vehicle, including a non-Jersey vehicle, and no investment or borrowing restrictions are set by the JFSC.
- A JPF can be closed or open ended provided that the test for the 50 or fewer offers/investors is met.
- A JPF must not be listed (including a technical listing).
- A JPF which is a company is not required to have any Jersey resident directors.
- A JPF which is a unit trust or partnership is not required to have a Jersey resident trustee or general partner.
- A JPF is not required to have an offer document (but see immediately below).
- A JPF which will be marketed into the EEA must comply with the applicable sections of the AIF Codes and may require an offer document.
- Unless required by its constitutional documents, there is no need to produce audited accounts of a JPF.
- A JPF must appoint a Jersey-based, “full substance” designated service provider (DSP) (ie usually its administrator), whose principal obligations as DSP will be to apply for JFSC consent and update the JFSC in respect of information supplied (see below) and support the JPF with its anti-money laundering obligations.
- Where there are more than 15 offers made in respect of a JPF, the appointed DSP must be registered by the JFSC to carry on one or more of class V (Administrator), class U (Manager), class X (Investment Manager) or class ZG (Trustee) of Fund Services Business (FSB).
- Where there are 15 or fewer offers made in respect of a JPF, the appointed DSP may be registered for any class of Fund Services Business (FSB), Trust Company Business and/or Investment Business.
- The activity of the JPF is subject to the JFSC’s Sound Business Practice Policy which oversees investment by Jersey vehicles in certain ‘high-risk’ areas (including arms and unlicensed pharmaceutical goods).
- The promoter of a JPF does not need the prior approval of the JFSC.
- It is not intended that ‘non-fund’ entities, such as holding entities and joint ventures, will fall within the definition of a JPF, and they may be established by simple application to the Jersey registry.



## Investors in a JPF

A JPF may only be offered to:

-Professional Investors:

(The Jersey Private Fund Guide published by the JFSC (the Guide) has introduced a new definition of Professional Investor, which is set out in full in the Guide), Includes: people who invest (as principal and agent) by way of business; individuals with a net worth (or joint net worth with their partner) of greater than US\$1M, excluding their principal place of residence;

Investment structures with assets valued at US\$1M or greater; an entity which carries on Fund Services Business, Trust Company Business or Investment Business in relation to the JPF, and senior employees, directors, partners, shareholders, consultants or shareholders of such an entity; and any related carried interest scheme; and

-Eligible Investors:

The definition of Eligible Investor is set out in full in the Guide but includes: an investor who makes an initial investment or investment commitment of £250,000 (or currency equivalent) in the JPF, whether through the initial offering or subsequent acquisition; holders of founder, nominal or management interests in the JPF which have been created to facilitate the formation of the JPF, the exercise of voting or management rights or to give entitlement to performance related fees as part of remuneration arrangements; and investment managers acquiring interests for or on behalf of non-professional or non-eligible investors.

Each of the investors must have received and acknowledged an investment warning substantially in the form set out in the Guide which will typically be contained in the subscription agreement for the JPF.

## Test for Number of Offers

When determining whether there are 50 or fewer offers and Eligible and/or Professional Investors the key points to note are:

- the JFSC applies a “look through” approach to feeder funds into a JPF;
- transfers of units/a split of units to Eligible and/or Professional Investors are permitted as long as there are 50 or fewer investors in the JPF at any given time;
- a top-up investment by a pre-existing investor will be deemed to be part of the original offer to that investor;
- management shareholders (with no economic interest) and carried interest vehicles will generally not count as an investor for the purposes of the test;
- general partners that do not commit co-investment capital to JPFs structured as limited partnerships will not count as an investor for the purposes of the test;

- a professional investor, who is a discretionary investment manager for a wider group of retail stakeholders, can be counted as one investor; and
- the circulation of pre-marketing materials (i.e. red herring documents) is not counted as an offer in applying the 50 or fewer offers analysis.

If a proposed offer or investor does not fully satisfy the above eligibility conditions, a request may be made to the JFSC for derogations to be granted on such terms as the JFSC may determine, but this will impact on application timings.

## Authorisation Process for a JPF

In order to establish a JPF, an application must be made to the JFSC by the DSP containing the

following:

- Details of the JPF including: its name, registered address, minimum investment amounts (if applicable), the “relevant consent” being applied for, its investment policy, the name and function of each Jersey based service provider, any regulatory exemptions being relied on by Jersey based service providers (if applicable), and confirmation as to whether an auditor will be appointed.
- Confirmation that: all investors will be Professional Investors or Eligible Investors, that the number of offers and the number of investors shall not exceed 50 (applying the guidelines in the Guide), and that the Jersey designated service provider will complete all Client Due Diligence (CDD) checks before the launch of the JPF and will ensure compliance with all Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) requirements on an ongoing basis.

## Designated Service Provider

The DSP shall be responsible for:

- making reasonable enquires to ensure that the JPF meets the eligibility criteria, including assessing the status of Professional and Eligible Investors, on an ongoing basis;
- carrying out, and keeping readily accessible records of, due diligence on the promoter of the JPF and the JPF itself and ensuring that the promoter has put in place appropriate measures to determine whether any service providers to the JPF are fit and proper;
- ensuring that the JPF is complying with all AML/CFT requirements;
- completing the application form and notifying the JFSC of any material changes to the information supplied; and
- submitting an annual compliance return confirming certain matters in respect of the JPF.

## Exemption under the FS Law

The JPF's Jersey management entity (whether a general partner, managing trustee or manager) should, in most cases (subject to any requirements arising from the European Union's Alternative Investment Fund Manager's Directive (AIFMD) below), be exempt from registration under the Financial Services (Jersey) Law 1998 (FS Law), which will avoid the need for it to apply for regulatory licences or comply with Codes of Practice issued by the JFSC under the FS Law.

## Alternative Investment Funds (Jersey) Regulations 2012 (AIF Regulations) /AIFMD

A JPF that will be marketed in the European Economic Area (EEA) requires a certificate pursuant to the AIF Regulations and its manager may also need to register to conduct Alternative Investment Fund Services Business (AIFSB) under the FS Law unless it is "sub threshold", and the JFSC will require personal questionnaires to be submitted by any of the significant owners, directors and certain other officers of the manager not previously approved. In addition, the JPF must have an offer document and comply with the applicable sections of the Codes of Practice for Alternative Investment Funds and AIFSB issued by the JFSC. These sections mirror the Transparency and Asset Stripping provisions of Chapters IV and V of AIFMD.

## Transitional Provisions & Conversion

Any private funds which have already been established under the 'very private', private placement or COBO only fund regimes (an Existing Fund) will continue to be regulated under that relevant regime. An Existing Fund may make an application to the JFSC to convert into a JPF, subject to compliance with the eligibility criteria set out in the Guide.

## Statutory Fees

Subject to a statutory consultation period, a fee of £1,070 is proposed to be payable to the JFSC in respect of an application for a COBO consent for a JPF, with an annual fee of £500 also payable (pro-rated for the year in which the JPF is established). A separate fee of £1,070 is payable in respect of the manager's application to be registered for AIFSB, if applicable.

A copy of the Guide is available at

[www.jerseyfsc.org](http://www.jerseyfsc.org)

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**Frederick Deacon**  
Director

T +44 (0) 1534 886125 (Direct)  
M +44 (0) 7797 733174  
E [frederick@whitmill.com](mailto:frederick@whitmill.com)

**Trina Channing**  
Head of Funds and Corporate

T +44 (0) 1534 886118 (Direct)  
M +44 (0) 7700 704423  
E [trina@whitmill.com](mailto:trina@whitmill.com)

**Phill Evans**  
Group Head of Business Development

T +44 (0) 1534 886128 (Direct)  
M +44 (0) 7797 831731  
E [phillip@whitmill.com](mailto:phillip@whitmill.com)

