

JERSEY PRIVATE PLACEMENT FUNDS

OCORIAN BRIEFING

January 2012

A new private placement fund regime has been introduced in Jersey, with the issue of the Jersey Private Placement Fund Guide (the "Guide") by the Jersey Financial Services Commission ("JFSC") on 26 January 2012. The Guide sets out new criteria for the regulatory approval of closed-ended privately placed funds ("PPFs") with up to 50 professional or sophisticated investors, and is set to revolutionise the Jersey funds industry. The Guide can apply to Jersey funds, as well as to funds which are established in other jurisdictions but which are managed in Jersey.

The Guide brings a number of advantages – it relaxes the JFSC's traditional "promoter test" (which sets out detailed criteria against which the JFSC vets new promoters of funds), making it much simpler for new and existing promoters to establish funds in Jersey; it offers a streamlined 72-hour authorisation process for the approval of funds which meet the criteria of a PPF; and it provides certainty in relation to offering document ("PPM") content requirements.

The launch of the Guide is timely, given the focus of the investment funds community on the Alternative Investment Fund Managers ("AIFM") Directive. The AIFM Directive, which must be implemented in EU Member States from 2013, preserves the ability for Jersey (and other 'third country') private placement funds to be offered to professional investors in the EU, subject to national private placement regimes, until at least 2018.

It is anticipated that the new PPF regime will be of particular interest to promoters of specialised and alternative investment funds aimed at sophisticated and professional investors, including private equity, mezzanine, infrastructure and property funds.

PPFs – the qualifying criteria

The PPF regime is available to funds which satisfy the requirements set out in the Guide, which are summarised below.

Structure

A PPF must be closed-ended (i.e. investors in the fund must not be entitled to have their units repurchased or redeemed) and can be structured as a company (including a protected cell company or an incorporated cell company or any cell of such companies), a unit trust, or one or more partnerships (including a limited partnership, a limited liability partnership, a separate limited partnership and an incorporated limited partnership). A PPF may be a fund established in Jersey or in a jurisdiction outside Jersey. In the case of a fund established outside Jersey, the fund must be managed in Jersey.

A PPF which is a Jersey fund must, if it is a company, have at least two Jersey residents on the board of directors of the fund; if it is a unit trust, it must have at least two Jersey residents on the board of directors of the trustee, manager or managing trustee of the fund; if it is a partnership, the general partner (or the general partner of a GP LP) must be a

Jersey company with at least two Jersey resident directors. The Jersey resident directors must have appropriate experience. In the case of PPFs established outside Jersey, those funds must either comply with the composition of the boards referred to above in relation to Jersey funds or, alternatively, must appoint a Jersey based manager with at least two appropriately experienced Jersey residents on its board of directors.

In most cases, it should be possible to structure the PPF in such a way as to ensure that the general partner, trustee or manager of a PPF falls outside the licensing regime for fund services businesses pursuant to the Financial Services (Jersey) Law 1998, as amended (the "FSJ Law").

Promoter

As noted above, the PPF has removed the traditional "promoter test" that the JFSC applies to promoters of other funds (which, among other things, includes requirements to have significant capital resources). This should make it easier for new promoters to establish Jersey funds. However, promoters must still meet certain suitability requirements, as follows:

- neither the promoter nor any of its principal persons must have had any disciplinary sanctions imposed, or any convictions for offences relating to the conduct of financial services business, money laundering, financial terrorism, fraud or dishonesty;
- the promoter must be able to pay its debts as they fall due;
- the promoter must be established in an OECD member state or a jurisdiction with which the JFSC has entered into a memorandum of understanding; and
- the promoter must either be regulated in such member state or jurisdiction or have, among its principal persons, relevant experience in promoting, managing or advising on institutional, professional or sophisticated investors' investments using similar strategies to those to be adopted by the PPF.

Designated Service Provider

Every PPF must appoint a "Designated Service Provider" (that is, a Jersey administrator licensed to conduct fund services business pursuant to the FSJ Law). The duties of the Designated Service Provider are:

- to take reasonable steps in carrying out the requisite due diligence in relation to the promoter of the PPF to satisfy itself that the criteria set out

- in the Guide in relation to the stature of the promoter are satisfied;
- in the case of a PPF which is a Jersey company or limited partnership or in the case of a trustee, manager or managing trustee of a Jersey unit trust, to provide the registered office of such entity or, in the case of a non-Jersey company, to provide the registered office of its manager; and
- to provide one or more individuals to act as the Money Laundering Reporting Officer and Money Laundering Compliance Officer of the PPF and to provide support to the PPF in relation to its anti-money laundering obligations under Jersey law.

Investors and marketing restrictions

PPFs can be offered to up to 50 potential investors anywhere in the world. Investors must be "Professional Investors", "Sophisticated Investors" or investment managers acquiring an interest in the PPF on behalf of non-professional or non-sophisticated investors. Each such investor, or investment manager, is required to receive and acknowledge an investment warning in the form prescribed in the Guide and which must be contained in the PPM, confirming that they are a professional or sophisticated investor or are acquiring units in the PPF on behalf of a non-professional or non-sophisticated investor, as the case may be.

"Professional Investors" include, in summary:

- persons whose ordinary activities involve the acquisition, holding, managing or disposal of investments (as principal or agent) for the purposes of that person's business;
- persons (or directors, partners or employees of persons) who carry on investment business within the meaning of the FSJ Law in relation to the PPF (e.g. the investment manager or investment adviser to the PPF) or who acquire units in the PPF by way of remuneration or reward (e.g. carried interest);
- structures (or subsidiaries thereof) whose property has a total market value in excess of US\$ 10 million; and
- trustees of trusts established for the benefit of Sophisticated Investors, or Professional Investors falling under (ii) above, or their families.

"Sophisticated Investors" are investors who make a minimum investment or commitment of £250,000 (or currency equivalent) in the PPF, whether through the initial offering or subsequent acquisition.

PPM content requirements

The overriding principle is that a PPM issued by a PPF must contain all material information which is in the knowledge of the persons responsible for issuing the PPM and which investors, and their professional advisers, would reasonably require for the purpose of making an informed judgement about the merits of investing in the PPF, and the nature and extent of the risks accepted by making such an investment. The specific disclosure requirements include:

- a description of the structure of the PPF and its registered office;
- a description of the investment strategy and objective of the PPF, types and maximum levels of leverage which may be employed and associated risks;
- the terms applicable to the subscription of units in the PPF;
- the valuation methodology adopted by the PPF;
- particulars of the share capital of the PPF;
- a description of the manner in which meetings of investors and voting are to be conducted;
- a description of the fees, charges and expenses to be borne by the PPF;
- details of the material contracts entered into by the PPF (e.g. the investment advisory agreement, administration agreement);
- disclosure of any conflicts of interest;
- the names and addresses of the directors of the PPF, its general partner, trustee and/or manager, as the case may be;
- details of any advisers, including legal advisers and the auditors of the PPF;
- details of the PPF's custody arrangements; and
- a prescribed investment warning and disclosure statements.

Investment and leverage parameters

Full details of the PPF's investment strategy and objectives, the investment techniques it may employ, applicable investment restrictions, the circumstances in which it may use leverage, the types and sources of leverage permitted, the maximum level of leverage and associated risks must all be set out in the PPM. There are, however, no mandatory investment or leverage restrictions applicable to PPFs under the Guide.

Accounts and audit

A PPF must prepare accounts in accordance with generally accepted accounting principles, and such accounts must be audited. There is no requirement to file the PPF's accounts with the JFSC unless the auditor's report on the accounts is qualified.

Regulatory treatment of PPF's and ongoing requirements

PPFs are regulated pursuant to the Control of Borrowing (Jersey) Order 1958, as amended. The JFSC has undertaken to issue its consent to the issue of units in the PPF under that Order ("COBO Consent"), within 72 hours of receipt of a complete application from the Designated Service Provider. A complete application will include:

- a written statement from the promoter of the PPF confirming that it satisfies the promoter criteria under the Guide, countersigned by the Designated Service Provider;
- a written certificate of the Designated Service Provider, certifying that the PPM complies with the content requirements set out in the Guide;
- a draft of the PPM; and
- details of all principal persons of the promoter.

Once the COBO Consent has been issued the PPF is authorised and ready for launch. On an ongoing basis the PPF must notify the JFSC of any material changes to information previously submitted in relation to the PPF. The JFSC itself will carry out its own regulatory checks in relation to the promoter and its principal persons and, should such checks give rise to concern, the JFSC may request further information in relation to such persons or take any such other steps as may be appropriate in the circumstances.

KEY CONTACTS

JERSEY



RICHARD HANSFORD
Associate Director

T +44 (0)1534 507242

E richard.hansford@ocorian.com

DISCLAIMER AND REGULATORY

The content of this document (including any opinion expressed) is intended for general information purposes only and it does not constitute and should not be interpreted as an offer, an invitation to contract or legal or any other form of professional advice and nor should it be used or relied upon as such. Unless expressly stated otherwise, information is not intended to be comprehensive and is only current at the time of initial publication or, if this document is dated, as at that date and Ocorian gives no warranty as to the adequacy, accuracy or completeness of any information. Should you require legal or other professional advice, it is recommended that you contact a suitably-qualified lawyer or other relevant professional. Neither Ocorian Limited nor any of its subsidiaries or affiliates from time to time accepts any liability or responsibility whatsoever for any loss that may arise from the use by any person of this document or its content.

Ocorian Limited is regulated by the Jersey Financial Services Commission. Ocorian Fund Services (Jersey) Limited is regulated by the Jersey Financial Services Commission. Ocorian (Luxembourg) S.à r.l is authorised to conduct business by the Ministère des Classes moyennes. Ocorian (UK) Limited is authorised and regulated by the Financial Conduct Authority of the United Kingdom. Ocorian (Mauritius) Limited is regulated by the Financial Services Commission Mauritius. Singapore Trust Company Pte Ltd is regulated by the Monetary Authority of Singapore. Ocorian (Guernsey) Limited (registered Guernsey 45342) is licensed and registered by the Guernsey Financial Services Commission under the Regulation of Fiduciaries, Administration Business and Company Directors, etc. (Bailiwick of Guernsey) Law 2000. Ocorian (Ireland) Limited is an authorised trust or company service provider in accordance with Section 89(6) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 of Ireland.