JERSEY VERY PRIVATE FUNDS

OCORIAN BRIEFING

October 2015

A popular choice with those fund promoters looking for a flexible vehicle with a light-touch regulatory regime is the Jersey 'Very Private Fund' ("VPF"). The key criteria for establishing a fund as a VPF is that it must not be offered to more than 15 potential investors, or have more than 15 investors at any one time. This note sets out a brief summary of the various advantages of using a Jersey VPF.

Versatility

VPFs can be established in any form permissible under Jersey law (including as a company, limited partnership or unit trust), can be open-ended or closed-ended and are not subject to any restrictions in terms of investment strategy or borrowing limits. They may be AIFMD-compliant or fall completely outside of the AIFMD (see below). VPFs are used for a broad range of activities, including for the purposes of real estate and private equity investments, as joint-venture vehicles, to form 'club' arrangements or as co-investment, carried interest, employee or feeder vehicles.

Speed and ease of establishment

A straightforward application is made to the Jersey Financial Services Commission ("JFSC") for a consent under the Control of Borrowing (Jersey) Order 1958 ("COBO consent"), which is typically received within 5 business days.

Low cost

There is an application fee of £300 but no ongoing regulatory fees, other than the basic statutory fees applicable to certain types of vehicle (for example, a company annual return fee of £150).

Light touch regulation

A VPF is required to obtain only a COBO consent from the JFSC and is otherwise treated as very similar in status to a private investment vehicle.

Exemptions

Service providers to a VPF (including Jersey-based service providers) can be exempt from any requirement for a regulatory license in connection with their appointment to a VPF, although it is common for a regulated Jersey administrator to provide services to the VPF, which brings a degree of regulatory protection to investors.

Offering document

It is not essential for a VPF to produce an offering document. If an offering document is used, limited disclosure requirements apply. The circulation of a preliminary, 'red herring', document containing the customary disclaimers should not amount to an offer for the purposes of the restriction on the number of offers referred to above.

Ease of conversion

If, in time, the VPF wishes to exceed the limit of 15 investors, it is able to seek conversion to another regulatory category in Jersey which can be marketed more widely, such as a Jersey Private Placement Fund or a Jersey Expert Fund.

CONTINUED ON FOLLOWING

Fundraising

The use of a VPF can dovetail efficiently with legal and regulatory regimes outside Jersey in respect of financial promotion and marketing, including under the AIFMD (as to which, see below).

VPFs outside the AIFMD

A VPF that does not have an EU-based manager (AIFM) will fall completely outside the AIFMD if it is not marketed to investors in the EU. For example, a VPF established as a self-managed Jersey company which is advised by a UK investment adviser, and which is not marketed in the EU, could be outside the scope of the AIFMD. Even if a VPF does have an EU-based manager (AIFM), that manager may be able, in many cases, to benefit from one of the exemptions under the AIFMD, so that there should be minimal regulatory impact.

Reverse solicitation and VPFs

Depending on the facts, VPFs may still be able to accept investment from EU investors under "reverse solicitation" rules, provided that this is permitted and consistent with any guidance issued by the relevant EU member state.

Marketing VPFs in Europe

If a VPF does wish to actively market to EU investors, beyond the limitations of reverse solicitation, it may be able to do so under individual member states' national private placement regimes with a minimum of additional regulation, as follows:

– An 'alternative investment fund' certificate for the VPF must be obtained from the JFSC. This involves a straightforward application and a fee of £1,000.
– If the VPF is not self-managed (e.g. another Jersey entity is appointed as the manager of the VPF) and the external Jersey manager is not already licensed for fund services business, an 'AIFSB' licence must be obtained from the JFSC for the manager. Again, this involves a straightforward application and a fee of £1,000. However, if the manager's aggregate AUM are sub-threshold (less than €100m, or €500m unleveraged), JFSC approval (rather than licensing) is required and there is no application fee.
– The VPF and its Jersey manager (if any) must comply with the applicable sections of the JFSC's Codes of Practice for Alternative Investment Funds and AIF Services Business, which include certain disclosure and reporting requirements. The Jersey administrator will ordinarily provide the necessary support in order to ensure compliance with the Codes as part of its services.
– Marketing the VPF in the EU must be conducted in accordance with each member state's national private placement regime. Marketing in this way should be available for VPFs until at least 2018.

VPFs and Europe

In summary, a VPF managed in Jersey can provide easy access to European investors. The most that could be required of a VPF managed in Jersey, where there is active marketing in the EU, is compliance with the national private placement regimes (which involves adherence to certain transparency, disclosure and reporting requirements), and straightforward regulatory applications in Jersey, as described above. This provides a structuring option that is considerably less onerous than full compliance with the AIFMD (which involves depositary, risk & liquidity management and remuneration policy requirements) and which would apply in the case of funds which have an EU AIFM.

KEY CONTACTS

JERSEY

RICHARD HANSFORD
Associate Director
T +44 (0)1534 507242
E richard.hansford@ocorian.com