

JERSEY LISTED FUNDS

OCORIAN BRIEFING

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This briefing explains a new regulatory classification for listed investment funds established in Jersey, which was introduced by the Jersey Financial Services Commission (the "JFSC") with effect from 9 January 2007.

The listed fund classification has been designed to provide a "fast track" procedure for the establishment of closed-ended collective investment funds that are to be listed on certain well-regulated stock exchanges or markets. These funds should now be capable of being established in a matter of days as a result of a new, streamlined, authorisation process.

Listed funds benefit from a lighter regulatory touch during the authorisation process and, unlike expert funds, investment in the fund is not restricted to "expert" investors.

Key features

Whilst detailed provisions of the new listed funds classification are set out below, the key features are as follows:

- **Listed:** a listed fund must be listed on one of the stock exchanges or markets recognised by the JFSC.
- **Jersey-based:** a listed fund must be a Jersey company. In the future, depending on demand, the rules may be adopted to allow other structures such as unit trusts or limited partnerships.
- **Closed-ended:** a listed fund cannot permit redemptions at the option of investors.
- **"Fast track" authorisation process:** listed funds can "self-certify" compliance with the JFSC's policy requirements (rather than being subjected to detailed scrutiny) and it is anticipated that a listed

- fund can therefore be established within three working days from receipt by the JFSC of a duly completed application.
- **Investors:** there are no criteria for qualification as an investor in a listed fund, beyond any required by the relevant stock exchange or market.
- **Investment manager:** the investment manager of the listed fund has to be of good standing, established in an OECD member state or in a jurisdiction with which the JFSC has a memorandum of understanding, and must be regulated in that state or jurisdiction. Special provision is made where the investment manager's activity is not a regulated activity in its home jurisdiction.
- **Risk warning notice:** all listed funds must contain an investment warning in a prominent position in the offering document/prospectus in substantially the form set out by the JFSC.
- **Codes of practice:** new codes of practice for certified funds (the "Certified Funds Codes") were introduced by the JFSC in April 2012 and apply to all unclassified funds (that is, all funds which have been issued with a certificate ("CIF Certificate") pursuant to the Collective Investment Funds (Jersey) Law 1988 (the "CIF Law"), including listed funds. Codes of practice governing the provision of fund services business in Jersey (the "FSB Codes") which apply to Jersey based service providers of listed funds to varying degrees have also been in existence for some time.

- **Limited need for Jersey-based functionaries:** the minimum requirements are for a Jersey-based manager/administrator with two Jersey resident directors.
- **Jersey-based monitoring functionary:** to conduct due diligence on the investment manager and monitor its actions on a continuing basis.
- **Board of directors of the listed fund:** the listed fund must have at least two Jersey resident directors and a majority of the board (including the chairman) must be independent.

Background

Recent years have seen the success in Jersey of expert funds, whereby funds sold only to "expert" investors are able to be established in Jersey on a "fast track" basis. Ongoing discussions between the JFSC and the investment funds industry regarding the future regulation of funds in Jersey has resulted in requests for and the subsequent granting of this more streamlined authorisation process in relation to closed-ended funds listed on certain well-regulated exchanges and markets.

The view taken is that the continuing obligations and market disciplines provided by listing rules and requirements (of an appropriate exchange or market) provide an additional level of investor protection that can offer a full or partial substitute for regulation by the JFSC of closed-ended investment vehicles, meaning the JFSC can reduce its own regulatory requirements.

As listed funds must presently be Jersey incorporated companies, they must also comply with Jersey companies legislation, which imposes conditions and regulations on the listed fund itself that serve to protect the interests of shareholders.

The fund

Qualifying as a listed fund

In order for a collective investment fund company incorporated in Jersey to qualify as a listed fund, it must be:

- listed on a recognised stock exchange or market; and
- closed-ended i.e. is not open for redemptions at the option of holders of securities.

Legal structure and control

A listed fund is a collective investment fund and is incorporated as a company in Jersey. It is subject to the Companies (Jersey) Law, 1991, as amended, and the CIF Law.

As stated above, at least two Jersey resident directors with appropriate experience must be appointed to the board of the listed fund. A majority of the directors of the board of a listed fund (including the chairman) must be independent as defined in the rules of the relevant listing authority and is a matter for the board to determine. Even if permitted by the relevant listing authority, an independent director cannot be a past (within the last five years) or present employee of the manager or investment manager of the listed fund (or any of their associates).

Codes of practice

All listed funds are required to comply with the Certified Funds Codes as well as any bespoke conditions attaching to their CIF Certificate.

The name of the fund

The name of the listed fund must not be undesirable or misleading. If the name of the listed fund indicates a particular objective, geographic region or market, this should be reflected in its investment policy and in the manner in which the listed fund maintains the majority of its non-cash assets.

Borrowing/gearing

There are no restrictions imposed by the JFSC as to levels of borrowing or gearing which may be adopted by a listed fund but the fund's approach to borrowing and gearing must be explained in the offering document/prospectus. In addition, if the permitted borrowing is to be above 200% of net assets, details of strategy and risks must be fully disclosed to the JFSC on the application form for the listed fund.

Audit

Audited annual accounts of a listed fund must be prepared and filed with the JFSC within seven months of its financial year end.

The functionaries

The investment manager

The investment manager must meet certain criteria. It should:

- be of good standing;
- have had no disciplinary sanctions imposed on it by any supervisory authority or professional body in the previous five years;
- have no convictions for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty or be the parent, subsidiary or an

associated company of any company which has such a conviction;

- be able to pay its debts as they fall due;
- be established in an OECD state or jurisdiction or any other state or jurisdiction with which the JFSC has entered into a memorandum of understanding (or equivalent) on investment business and collective investment funds;
- be regulated in that state or jurisdiction in relation to managing or advising on funds or where it is proposed that the investment manager should act in relation to a property fund, or other type of fund in relation to which the activity of the investment manager is not a regulated activity in its home state or jurisdiction, be either: (1) a subsidiary of a company that is regulated in relation to managing or advising on investors' funds in its home state or jurisdiction or (2) a listed company with a minimum market capitalisation of at least US\$500 million (or its currency equivalent) or a subsidiary of a company with such capitalisation or (3) a company or partnership with a trading record of at least five years, or whose principal persons, who form its span of control, can demonstrate relevant business experience for this period or possess relevant professional qualifications or (4) in any other case, be granted approval to act in relation to the listed fund by the JFSC;
- possess relevant experience in relation to managing or advising on investors' funds using similar strategies to those to be adopted by the listed fund; and
- satisfy the JFSC's general principles of corporate governance in relation to the span of control over its investment management business.

Investment managers who do not meet all of these criteria may approach the JFSC on a case by case basis for prior clearance to act as investment manager, with the JFSC taking an approach commensurate with offering adequate protection to the listed fund's investors and the Island's reputation.

Distributors (where applicable)

Where a listed fund has a distributor which is the driving force behind the listed fund such that either the fund would not go ahead without the distributor and/or a majority of investors are introduced to the fund by that distributor, then that distributor must meet the same criteria as the investment manager (save for relevant experience of investment management).

Jersey-based service providers

Any Jersey entity acting as a service provider to a listed fund is subject to the FSB Codes to varying degrees: "real presence" entities are subject to the full FSB Codes whereas managed entities are subject only to the core principles of the FSB Codes (unless they elect to follow the FSB Codes in full).

Management/administration

Every listed fund must appoint an appropriately experienced manager and/or administrator, which has at least two Jersey resident directors together with staff and a physical presence in Jersey and is run subject to and in accordance with the FSB Codes.

The Jersey-based manager/administrator must also have in place procedures to ensure that the investment manager manages the fund in accordance with its offering document/prospectus document. These must include taking reasonable steps to ensure that the investment and borrowing restrictions of the listed fund (if any) are adhered to and ensuring that any concerns relating to the running of the fund are brought promptly to the attention of the board of directors of the listed fund, so that appropriate action can be taken.

The Jersey-based functionary must also ensure that it holds full records relating to the fund and its management in Jersey or is able to obtain such records on demand from the investment manager.

Custody arrangements

Listed funds must have adequate arrangements for the safe custody of the fund assets and such arrangements should be fully disclosed in the offering document/ prospectus document.

The offering document

An overriding principle of the listed funds regime is that any prospectus or other offering document sets out clearly and fully all material information that a prospective investor would reasonably require or expect to be brought to their attention in respect of the fund for the purposes of making an informed judgement about the merits of participating in the fund and the risks accepted by virtue of such participation.

For example, information should be provided on:

- the structure of the fund and details of the functionaries;
- the directors including the identities of the independent directors;
- the investment objectives and investment management strategies, and any investment or borrowing restrictions;
- risks associated with the fund including any conflicts of interests and the ability to make changes to the fund;
- details of the dealing basis and the method for the calculation of the value of the fund;
- details of fees and charges; and
- details of safe custody arrangements.

A statement in which the directors accept responsibility for the content of the offering document/prospectus must also be included in the offering document/prospectus.

In addition, the offering document/prospectus must contain a prominent investment warning in a prescribed form explaining that the fund is only suitable for professional or experienced investors or those who have taken appropriate professional advice and who understand and accept the nature of the fund and the risks associated with investing in the fund.

The authorisation process: self-certification

In order to establish a listed fund, an application form, completed by the Jersey-based functionary and countersigned by the directors of the fund, must be lodged with the JFSC. The latest draft of the offering document/prospectus and other specified documentation must also accompany the application. Provided the application form confirms that the fund meets the JFSC's published guidelines for listed funds (or alternatively confirms that any derogation from the guidelines has been previously agreed with the JFSC), all necessary consents and permits will be issued on an expedited basis in reliance upon the application form.

Thus, the Jersey-based functionary will itself certify that the fund qualifies as a listed fund, and the JFSC will not take time scrutinising any of the fund documentation prior to approving the fund. Accordingly, the authorisation process is anticipated to be completed within three business days rather than two to three weeks as previously.

KEY CONTACTS

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