MOORE STEPHENS

FUND SERVICES

Tel: +44 (0)1534 880088
www.ms-fundservices.com

Which Jersey Fund?

PRECISE. PROVEN. PERFORMANCE

A brief synopsis of options for fund promoters looking at Jersey

The Jersey regulatory environment provides a number of choices for promoters of collective investment schemes with varying levels of oversight and regulation.

There are a number of criteria and questions that a fund promoter needs to ask before they decide on the type of fund they require.

How many investors will be targeted?

If there are only going to be a maximum of 15 investors targeted then the promoter can set up a Very Private Fund (VPF) which, whilst requiring consent from the Jersey Financial Services Commission (JFSC) under the Control of Borrowing Order (COBO), has lighter controls on the offer documents and the promoters.

If the intention is to circulate formal offers to a maximum of 50 investors then the JFSC provides two options. There are COBO only funds that have been available for some time for collective investment schemes making offers to more than 15, but less than 50 investors, for which the JFSC operate a stronger promoter policy requiring a proven track record and qualifications.

In addition to this, the JFSC have recently introduced the Private Placement Fund (PPF) regime for promoters targeting sophisticated investors.

The PPF regime does not have such stringent promoter policies and it also has the added bonus of allowing fast-track formation with the JFSC, guaranteeing a response to an application within 3 working days.

This lighter touch regulatory regime for a PPF places a great deal of onus on the Jersey administrator in terms of the certification of the individuals involved in the fund and the offer documentation that is to be issued. The lighter touch regulations mean that it is expected to largely replace the COBO only fund offering.

Once you start to target greater than 50 potential investors, the fund will fall under one of the regimes that require greater scrutiny and regulatory control by the JFSC.

What is the profile of the prospective investors?

The essence of the approach here is that institutional, professional and high net-worth investors need less protection than the general retail investor.

Retail funds and those generally made available to what could be termed 'the man in the street' are subject to much more stringent regulatory controls which, obviously, have cost implications but are necessary to protect less sophisticated investors.

Therefore, there are many situations where a promoter will want to look for a regime which has a less costly regulatory burden. In light of this the regulations define other types of investors:

Sophisticated investors – investing at least $250,000 or with suitable investing experience.

Expert investors - investing at least $100,000, having a net worth of over $1,000,000 or with suitable investing qualifications.

Eligible investors - investing at least $1,000,000, having a net worth of over $10,000,000 or with suitable investing qualifications.

As stated earlier, a sophisticated investor can be targeted for a PPF which has the lightest touch regulation of the formal funds regulated as collective investments.

If the target investors are deemed Expert Investors then it is possible to set up an Expert Fund (EF), which has reduced regulatory requirements and to which no promoter policy applies.

If the fund is aiming to target Eligible Investors there is an additional option known as an Unregulated Eligible Investor Fund (UEIF). As part of the process to set up an UEIF, notice needs to be filed with the JFSC, giving details of the basic features of the fund and it must be made clear in the offer documentation that the fund is unregulated. An UEIF falls outside the gambit of the CIFL and the regulatory remit of the JFSC, but the Jersey service providers will be regulated by the JFSC in their role as functionaries to the fund.

As could be expected, these options have corresponding cost and efficiency benefits at both the set-up stage and during the life of the fund.

If more than 50 non-expert investors will be targeted, the options are the higher levels of regulation of an unclassified Collective Investment Fund or having the fund listed, which leads to our next question.

Will the fund be listed?

A fund can be listed if it is a CIF, an EF or an unregulated fund (Unregulated Exchange Traded Fund (UETF)), although there are restrictions on the exchange that can be used where there are specific requirements in terms of investor profile such as with an EF or UETF as it is necessary for the exchange to be able to control the transfer of ownership to investors within that profile.

There is also the option of establishing a Listed Fund (LF) from the outset, which must trade on a recognised exchange, but it has reduced regulatory requirements, no investor restrictions and the promoter policy does not apply. There are, however, restrictions on the investment manager in terms of suitable qualification and regulation in a recognised jurisdiction.

The Channel Islands Stock Exchange (CISX) is a recognised exchange for these purposes and it is not uncommon for funds to obtain a technical listing on the CISX to obtain LF or UETF status. Although these funds will be listed and could be marketed to retail investors, they are rarely actively traded.

A LF, can only be a closed ended Jersey company which in turn leads us to the next question.

What form can the fund take?

A LF is restricted as above and, except for an UETF that must be closed-ended, all other funds can be open or closed ended and can take any form recognised under Jersey law, be that ordinary limited liability companies, cell companies, unit trusts or limited partnerships. The only slight caveat to this is that unregulated funds are restricted to Jersey companies, unit trusts or limited partnerships.

Simply put, the decision is really down to what suits the promoter's needs in terms of structuring to suit their asset class, investor profile and proposed operation.

What is the effect of taxation in Jersey?

Jersey is generally a tax neutral jurisdiction, and the choice of fund type will not affect this as the tax regime is designed to ensure that investors are not subject to an extra level of taxation beyond that charged in the country of investment and that applicable in their own jurisdiction.

Conclusion

In conclusion, the various Jersey funds regimes provide a broad spectrum of options to meet all the likely demands of a fund promoter.

All situations need to be assessed on their own merits to identify which fund type and structure is most applicable.

If you are looking to investigate these options further, Moore Stephens would be happy to help with information and advice.

Moore Stephens Fund Services is wholly owned by Moore Stephens Jersey, which is an independent member firm of Moore Stephens International Limited, one of the world's leading accounting and consulting networks, with more than 600 offices located in over 95 countries around the world.

For further information please contact:

Nick Solt, Managing Director
nicholas.solt@moorestephens-jersey.com

Robert Lütkehaus, Manager
robert.luetkehaus@moorestephens-jersey.com

Telephone: +44 (0)1534 880088

Website: www.ms-fundservices.com