Jersey investment funds – autumn 2024 update

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Legal jurisdiction / Jersey

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Jersey Financial Services Commission - Recent changes to the Jersey Private Fund Guide

On 2 July 2024, following a collaboration with the Jersey funds industry, the Jersey Financial Services Commission ("**JFSC**") published an updated version of the Jersey Private Fund Guide ("**JPF Guide**") with the goal of improving the Jersey Private Fund ("**JPF**") regime (see here).

With the JPF regime having proven an immense success since its introduction in April 2017, including over 700 funds having benefitting from a cost-effective service, swift authorisation, flexibility and light-touch regulation, the updates made to the JPF Guide mainly clarify and simplify the understanding of the JPF regime to ensure that the JPF Guide remains up to date. The main updates include:

- **carry and/or co-investment vehicles**: recognition that certain co-investments can form part of a fund's carry/ incentive arrangements;
- **governing body**: clarification that there should be at least one Jersey resident director appointed to the board or governing body of the JPF;
- **transfers**: for any involuntary interest, such as on a bankruptcy or death, stating there is no requirement for the transferee to qualify through the same criteria as the transferor, however the transferee still needs to meet the investor eligibility requirements as defined in the JPF Guide; and
- **"50 or fewer test"**: clarification that; a) a co-investment vehicle (whose sole purpose is the sharing of the profits of the JPF) will not be counted as an investor for the purposes of the test; b) where a professional investor acquires an interest in a JPF on behalf of a retail investor/s, only the professional investor will be counted towards the test provided; and c) a feeder fund will not be counted towards the test, but each of its investors will be.

Other changes to the Guide include:

- alterations to broaden the definitions of eligible employee and relative for the purposes of the employment and family connection exemptions;
- amendments to the professional investor eligibility; and
- updated references to the Money Laundering (Jersey) Order 2008 and the JFCS's Outsourcing Policy.

For further information on the JPF regime, please see our quick and user-friendly introduction here.

If you need any advice relating to any aspect of the updates to the JPF Guide, or the JPF regime more generally, please get in touch with your usual Carey Olsen contact.

Jersey Financial Services Commission – New guidance on asset tokenisation and initial coin/ token offerings

The JFSC has published two sets of guidance notes (see here) aimed at Jersey issuers to promote Jersey's competitiveness as an international finance centre in the digital assets space.

The guidance notes aim to standardise the applicable regulatory requirements in light of Jersey's growing number of token and coin issuances and clarify the process for issuing a digital representation of a real-world asset on a blockchain by a Jersey issuer.

The first guidance note, entitled '*The application process for issuers of initial coin and token offerings (IC/TOs)*', is an update and refresh of the JFSC's existing guidance relating to issuers of virtual assets such as cryptographic tokens and coins.

The existing categorisation of tokens and coins as security tokens/coins and non-security tokens/coins (the latter category being further sub-divided into utility tokens/coins and cryptocurrency tokens/coins) continues to apply, as do many of the other substantive requirements applicable to Jersey issuers. However, the terminology used in the updated guidance note reflects that many token and coin issuances will not involve fundraising in the manner of a typical initial coin offering so should not be described as an 'ICO'.

Under the new guidance, any regulated asset managers or authorised participants selling virtual assets on behalf of the issuer will now be obliged to bring certain risk warnings to the attention of their customers, and the guidance note also refers to the recent requirement for certain entities to make a Jersey AML/CFT registration as a "virtual asset service provider".

The second guidance note, entitled '*Tokenisation of real world assets ("RWAs")*', deals with the requirements applicable to Jersey issuers which will issue a digital representation of a RWA, such as units in a fund, other securities, commodities, real estate or fine art, on a blockchain.

Stablecoins (i.e. tokens whose value is tied to a fiat currency such as one US dollar or one Euro) will now be treated as a tokenisation of a fiat currency, as opposed to being viewed as a cryptocurrency, for Jersey regulatory purposes.

The JFSC will expect bespoke risk warnings reflecting the nature of the tokenisation and the underlying RWA to be provided to investors together with full disclosures regarding any differences to the rights attaching to the tokens vis a vis direct holdings in the underlying assets (for example, voting rights and distributions).

There are also detailed requirements regarding matters such as the safekeeping and verification of the underlying RWAs and the auditing of smart contracts.

For more information on this guidance please see here or get in touch with your usual Carey Olsen contact.

MONEYVAL assessment findings

On 24 July 2024, the MONEYVAL committee (a permanent body of the Council of Europe set up to assess compliance with international standards to counter money laundering and the financing of terrorism) released its Evaluation Report for Jersey ("**MONEYVAL Report**" – see here).

The MONEYVAL Report revealed that Jersey's approach to preventing financial crime is one of the most effective in all the jurisdictions evaluated across the globe, which acknowledgement shows that Jersey's financial regulator, the Jersey Financial Services Commission ("**JFSC**"), which significantly contributed to the evaluations, has made successful efforts in establishing the key structures and powers needed to prevent and combat financial crime.

The main conclusions from the MONEYVAL Report include:

- Jersey reaches a level of effectiveness only seen in three other jurisdictions worldwide in respect of risk understanding and national co-operation and co-ordination;
- Jersey is praised for the accuracy and transparency of beneficial ownership information for legal persons and arrangements, recognising the range of mitigating measures in place to reduce risk which occur in few other countries;
- Jersey is recognised for its important and effective role in providing mutual legal assistance and other international co-operation, demonstrating its commitment to being a responsible international partner; and
- No "fundamental improvements" are required to the Jersey regime.

The JFSC has announced that it has put in place a high-level action plan to address the key recommended actions arising from the MONEYVAL Report, including improvements in the areas of supervision, preventative measures, financial intelligence and investigation and prosecution. This plan is expected to be expanded upon further in the coming months, along with a programme of industry engagement, in order to continue to aid in Jersey's efforts against financial crime and build on Jersey's long-term economic success.

Pillar Two tax reforms (and the impact on Jersey)

As part of its commitment to adhering to international standards, Jersey has updated its position on the implementation of the Organisation for Economic Co-operation and Development's ("**OECD**") Pillar Two international tax reforms.

The key aim of the Pillar Two reforms is to ensure that large multinational groups pay a minimum effective tax rate of at least 15% on profits in every jurisdiction in which they operate.

In May 2024, the Government of Jersey released a statement in respect of its intended implementation of Pillar Two reforms, which included the proposed introduction of an Income Inclusion Rule ("**IIR**") and a new Multinational Corporate Income Tax ("**MCIT**").

These proposed rules will only apply to multinational groups of enterprises ("**MNE**") with more than €750 million annual global revenue, although there are some excluded entities, including certain investment funds and real estate investment trusts.

Under the MCIT, the Jersey tax-resident companies and branches of in-scope MNEs will be subject to an effective tax rate of 15% of their taxable profits. The Government of Jersey has claimed that these changes will support Jersey's diverse geographical investment base and, by standing independently to Jersey's existing tax regime, it will be administratively simple for in-scope MNEs to comply.

Draft legislation in respect of both the application of the IIR and the MCIT is being considered by the States Assembly in Jersey with a view to each being effective for fiscal years beginning on or after 1 January 2025.

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For more information on Jersey's implementation of the OECD Pillar Two reforms, please see here or get in touch with your usual Carey Olsen contact.

Institutional Limited Partners Association guidance on NAV facilities for PE funds

In July 2024, the Institutional Limited Partners Association ("**ILPA**") published new guidance ("**NAV Guidance**" – see here) on the use of net asset value ("**NAV**") facilities in a private equity funds context (and not, for example in other contexts, such as secondaries, private credit or real estate). Against a backdrop of the increased usage of NAV facilities in private equity structures, and the need to promote a standardisation in fund documents, the NAV Guidance aims to address concerns that limited partners have over the use of NAV facilities by general partners and managers, such as:

- lack of oversight into when NAV facilities are used;
- lack of clear language in limited partnership agreements ("**LPAs**") regarding use of NAV facilities;
- inconsistent interpretation of borrowing limit provisions in LPAs; and
- potential misuse of NAV facilities to artificially enhance fund performance.

To address such concerns, the NAV Guidance makes several recommendations, notably the use of precedent wording in LPAs to explicitly approve the use of NAV facilities by general partners and managers, and the specific requirement for limited partner consent when NAV facilities are being obtained.

In this respect, the ILPA notes that many older LPAs do not specifically reference NAV facilities, which has led to inconsistency in interpretation among fund managers. In particular, some fund managers do not take into account SPV-level NAV indebtedness when determining compliance with LPA borrowing limits. ILPA's view is that a NAV facility entered into by an SPV below the fund should be counted for such purposes.

The NAV Guidance also recommends that limited partners should ask general partners if they view a lack of explicit drafting as permission to use NAV facilities, and that new LPAs be drafted to clearly define the amount of leverage that a general partner can incur through NAV facilities, whether at the fund level or through an SPV (although it should be noted that the ILPA does not recommend a specific threshold to limit the amount of NAV facility exposure, suggesting this should be determined by the proposed partners during LPA negotiations).

To what extent such guidance will be adopted in practice remains to be seen but for more information please get in touch with your usual Carey Olsen contact.

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