

# Jersey: A Full Spectrum of Fund Regulation Briefing

Jersey has long enjoyed an excellent reputation as a jurisdiction in which to establish an investment fund. For Chinese fund promoters wanting to establish a fund in Jersey and for Chinese investors wanting to invest in a Jersey fund, Jersey offers many advantages.

## Why establish or invest in a Jersey investment fund?

Jersey funds are a familiar structure to European fund promoters and investors have alike, and been used for decades to raise money for investment in diverse asset classes including real estate, venture capital and hedge funds. In 2007, the net asset value of funds under administration in Jersey increased by 37% to £246 billion.

There are tax advantages: investments made by Jersey funds are not subject to capital gains tax or stamp duty in Jersey and a Jersey fund will pay no Jersey income tax in relation to investments made outside Jersey. A Jersey fund is not required to withhold amounts in respect of Jersey income tax paid to its non-Jersey investors. This maximises the return on investments made through a Jersey fund.

Jersey has a stable and sophisticated finance industry, with highly qualified professionals in law, accountancy, banking, investment and fund administration sharing many years of experience of establishing and servicing investment funds, many of whom (including Mourant) have offices in Hong Kong or China. Many of the world's largest global banks and accountancy firms have offices in Jersey as well as the major Chinese cities. Jersey is in a convenient time zone with a business day that begins before Shanghai closes and continues well into New York trading time. The Island's finance industry is strongly supported by local government.

For a Chinese fund promoter looking to raise money anywhere in the world, a Jersey fund will provide a tax efficient and stable vehicle which most sophisticated investors will recognise. And for a Chinese investor, whether sophisticated or not, seeking exposure to a broad range of asset classes in alternative economies (particularly European assets), investment in such assets through a Jersey fund should prove tax efficient and, due to the regulatory environment described below, appropriately secure. Jersey funds are being used increasingly as vehicles for investment in the fast-developing Chinese, Indian and Middle Eastern economies.

## Why Jersey? A full spectrum of fund regulation

Promoters of investment funds can choose between a number of offshore jurisdictions. But what distinguishes Jersey from its competitors, such as Cayman, BVI and Guernsey is that Jersey is alone in offering a full spectrum of fund regulation, from rigorous regulation of publicly offered funds targeting retail investors, to new regimes where a Jersey fund targeting highly sophisticated investors is "unregulated". There are other, lightly-regulated regimes in between. The applicable level of regulatory protection is generally determined by the number and nature of the targeted investors.

This range of regulation by the Jersey Financial Services Commission (JFSC) reflects the historic development of Jersey's fund industry and the JFSC's willingness to adapt regulation to reflect changing markets. As the industry grew in the 1980s, funds generally targeted retail investors, investing in assets such as equities, currencies and commercial real estate. The regulatory regime that was created (which still applies to "retail" funds today) involved close JFSC scrutiny of the fund's promoter, full JFSC review of fund documentation and statutory investment restrictions.

Subsequently, as investors and investment strategies in Jersey funds have become more sophisticated, the JFSC has introduced a number of "lighter touch" regimes and have re-focussed on regulation of the local providers of services to Jersey funds, rather than the funds themselves.

### (iv) Retail Funds

At the more highly regulated end of the spectrum, Jersey maintains a regime for funds targeting more than 50 "unsophisticated" investors, involving a full JFSC review of documentation, prospectus content requirements and statutory investment restrictions. Only experienced fund promoters will be permitted to launch such funds and the regulatory application process takes four to six weeks.

### (ii) "Very Private" and "COBO Only" Funds

For funds targeting a small number of investors who are relatively sophisticated (generally investing at least £250,000), there are regimes allowing promoters to launch lightly regulated funds to up to 15 investors (the "very private" fund regime) or, where the promoter has a suitable track record and more than one owner, up to 50 potential investors (the "COBO only" regime). These regimes under the Control of Borrowing (Jersey) Order

(hence the acronym "COBO") do not require a JFSC review of documentation and there are no prospectus content requirements or investment restrictions. The application process for a "COBO only" fund may also take a number of weeks, although a "very private" fund application sometimes takes no more than one working week.

(iii) Expert Funds and Listed Funds

Since 2004 Jersey has had an "expert fund" regime under which funds offered to up to or over 50 "expert investors" (including certain classes of sophisticated investors as well as investors subscribing for interests of US\$100,000 or more) may be approved by the JFSC within three working days. The regulated Jersey administrator of the fund is responsible for certifying the suitability of the fund and its investment manager/advisor. The JFSC requires specified contents to be included in the prospectus.

A similar fast track regime (the "listed funds" regime) also exists for closed ended Jersey funds listed on a stock exchange designated by the JFSC, including the Hong Kong Exchanges. Under this regime, the relevant fund may also be approved by the JFSC within three days. Again, the JFSC requires specified contents to be included in the prospectus.

(iv) Unregulated Funds

In 2008 Jersey introduced two "unregulated" fund categories, where either (a) only "eligible investors" (including certain classes of very highly sophisticated investors as well as investors subscribing for interests of US\$1,000,000 or more) may be targeted, or (b) interests in the fund (if it is closed ended) are to be listed on a JFSC-approved stock exchange (once again including the Hong Kong Exchanges). These unregulated regimes do not require any JFSC application.

In assessing under which regime a new fund may fit, it should be noted that fund promoters with little or no "track record" or which are unregulated in their "home" jurisdiction will generally only be able to establish an "unregulated" fund that targets highly sophisticated investors.

## Unique

This range of regulation makes Jersey unique and adds to its attractiveness as a leading offshore finance centre.

Chinese fund promoters and investors considering the offshore fund market will be met with enthusiasm from Jersey's highly experienced fund service providers.

This briefing can only provide a general review of this area. Legal advice should be taken with regard to individual circumstances.

If you have any queries regarding the information in this briefing or simply wish to discuss your specific needs please contact:

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