

Jersey: Listed Funds Regime

As a politically stable and tax neutral jurisdiction with over 40 years accumulated experience as an international finance centre, Jersey has a strong reputation as a prime location in which to establish collective investment funds.

In recent years Jersey has become increasingly attractive to specialist products, a process that accelerated with the introduction of the “Expert Fund” regime in 2004, and with the introduction of Jersey protected cell companies (PCCs) and incorporated cell companies (ICCs) in 2006.

On 8 January 2007, the Jersey Financial Services Commission (the “Commission”) introduced a 72-hour fast track authorisation process for all funds qualifying as Listed Funds under the Commission’s Jersey Listed Fund Guide (the “Guide”). The Guide provides certainty and guidance to those wishing to establish such funds in a quick and cost-effective manner, and is a response to an increased market demand for listed funds. The Guide does not place any restrictions or qualification criteria on who can invest in a Listed Fund.

LISTED FUNDS

Approval Process

Listed Funds are established on certification by the fund administrator that the fund complies with the criteria set out in the Guide. The Commission issues the relevant permits on receipt of the certification.

As a result, a Listed Fund can be established in Jersey within 72 hours.

What is a Listed Fund?

A Listed Fund is a fund meeting the following criteria:-

1. The fund must be listed on an exchange recognised by the Commission. The list of recognised exchanges is numerous and global in scope, and includes all exchanges upon which listings are ordinarily sought.
2. The investment manager must be of good standing, established and regulated (if appropriate) in an OECD member state or a jurisdiction with which the Commission has a memorandum of understanding.



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The Commission understands that some investment managers may not be regulated because the type of activity they undertake is not regulated in their home jurisdiction: real property investment management being one example. In such cases, provided the investment manager is (i) the subsidiary of a regulated entity, (ii) an entity or the subsidiary of an entity with a market capitalization of above \$500m or (iii) a manager with a trading record of at least 5 years or whose principal persons can demonstrate relevant experience or qualifications, it will remain eligible for the fast-track authorisation process.

If an investment manager does not meet these requirements, it may approach the Commission on a case by case basis. Of course, if permission is granted then, absent any material change, the investment manager will not need specific approval to establish further Listed Funds.

3. A small number of key structural requirements are imposed on such funds:
 - The fund must be closed-ended (meaning that it is not normally open for subscriptions and redemptions at the option of investors).

- The fund's offering document must carry a clear investment warning and contain all information necessary for potential investors to make an informed decision;
- A licensed Jersey administrator or manager must be appointed;
- Adequate custody arrangements must be in place (though there is no requirement for a Jersey custodian);
- A majority of the directors of the board of the fund company (including the Chairman) must be independent. Independence will generally be a matter for the board itself to determine, often using the requirements of any relevant listing authority for guidance;
- Two Jersey resident directors must be appointed to the board of the fund company.



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Flexibility

There are no investment or borrowing restrictions imposed on Listed Funds.

There is no limit on the number or type of investors in such funds.

Initially the Guide only applies to funds structured as companies. It is anticipated that the fast-track authorisation process will be extended to limited partnerships and unit trusts in the first quarter of 2007.

Derogations

The Guide aims to provide a “safe harbour” available to the majority of Listed Funds. However, in addition, as well as bringing certainty to the process of establishing funds that fall within this safe harbour, the Listed Fund policy aims to free up Commission time so that derogations from the Guide may also be considered on an expedited case by case basis.

It is important to note that a fund which fails to satisfy any of the Guide’s criteria will only need to satisfy the Commission on the points it fails to meet and will not be required to submit a full application for review.

Future Developments

The introduction of the Guide is part of the continuing project to overhaul funds legislation in Jersey. This work is expected to accelerate during the first half of 2007, further enhancing Jersey’s reputation as a place in which to conduct business.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. This briefing is not intended as legal advice and should not be relied on as such.

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