

ESTABLISHING A FUND MANAGEMENT COMPANY IN JERSEY



Ordnance House
31 Pier Road
St Helier
Jersey JE4 8PW

INTRODUCTION

Where a business wishes to establish a fund management company in Jersey the following initial factors need to be considered.

- If the fund management company is going to provide services to regulated and/or unregulated public collective investment funds which are established in Jersey or other finance centres, then the Jersey fund management company will need to be registered to conduct Fund Services Business under the Financial Services (Jersey) Law 1998. Many such Jersey fund management companies start life as “Managed Entities” with no real presence in Jersey and with their business being supported by a Jersey based fund administration business. Further information on these matters are set out in section A below.
- If the fund management company is going to provide services only in connection with private funds a Fund Services Business registration under the Financial Services (Jersey) Law 1998 is not required but professional advice should be taken to ensure that the private funds which the fund management company provides services to are structured so that the fund management company will be exempt from other registration requirements under the Financial Services (Jersey) Law 1998 which may otherwise apply. Fund management companies acting for private funds are often established as Managed Entities in Jersey.
- Business undertakings licences from the government in Jersey are required if a fund management company wishes to create a permanent establishment in Jersey and engage employees in the island. However most new fund management companies will commence their operations on a serviced basis, as Managed Entities, with an existing trust company or fund administration business in Jersey administering the fund management company and loaning out the services of one or more of their staff members to act as officers of the fund management company. Where a fund management company operates as a Managed Entity without any real presence in Jersey then no business undertakings licence is required. Further information on these matters is set out in section B below.

This memorandum provides only a brief outline of the current approach to regulation and licensing of fund management companies in Jersey, Channel Islands.

For further more detailed information and specific legal advice on the establishment of fund managers in Jersey please contact Simon Howard at Ordnance House, 31 Pier Road, St Helier, Jersey JE4 8PW, Channel Islands Tel: ++44 1534 826376 or email simon.howard@howard.je

This document is a brief guide to the subject matter covered and is not intended to be a detailed or comprehensive treatment of the topic. It should not be treated as investment, legal or taxation advice. You are recommended to take professional investment, legal, taxation or other appropriate advice before pursuing any particular course of action.

Section A

Regulation of Jersey-based Fund Manager

Where it is proposed to establish a new fund management company in Jersey which will provide services to regulated or unregulated public collective investment funds set up in Jersey or elsewhere, the fund management company will need to register as a Fund Services Business with the Jersey Financial Services Commission under the Financial Services (Jersey) Law 1998. A long form application (Form FSJ/FSB) needs to be completed and a business plan submitted to the Commission together with background information on the parent group which will own the fund management company in Jersey. Personal questionnaire forms must also be completed for each of the directors and controlling shareholders of the new fund management company and the beneficial owners of the parent group for submission to the Commission. The Commission also needs to be advised of the proposed arrangements for administering and managing the new fund management company in Jersey which will often involve an existing fund administration business agreeing to host the new fund management company in its office premises in Jersey as a Managed Entity and provide a range of services to support the operating requirements of the new fund management company. These services may include for example, provision of directors and registered office address for the new fund management company; provision of accounting and bookkeeping services; provision of compliance officer and compliance monitoring services (“Managed Entity Services”).

In considering the application for registration as a Fund Services Business from the new fund management company the Commission will review carefully the fit and proper person status of the parent group of the new Jersey company and its controlling shareholders and officers. The Commission will also pay particular attention to the corporate governance arrangements and roles and experience of the individuals who will act as directors of the Jersey fund management company. The Commission will insist on there being a minimum of two or three persons based in Jersey on the board of the fund management company (a minimum of three persons is required if the fund management company will handle client monies) and they will review the background and business experience of those individuals to assess whether they have appropriate experience and expertise to run a fund management business of the type which is proposed.

Management companies which successfully apply to be registered as Fund Services Businesses in Jersey must comply with the Fund Services Business Codes of Practice issued by the Jersey Financial Services Commission. These Codes of Practice set out high level conduct of business principles and capitalisation, solvency and insurance requirements. Where a Managed Entity will act only in respect of Jersey Expert Funds or materially equivalent foreign funds promoted in either case by the Managed Entity or its corporate group then the fund management company need only comply with the core principles of the Codes of Conduct. Where the Managed Entity acts for other categories of fund or the management company itself wishes to establish a real presence

in Jersey then the management company must comply with the full provisions of the Codes of Practice. The requirements of the Codes of Practice are summarised in Appendix I of this briefing document.

Reference should also be made to the Guidance Note for a Manager of a Managed Entity issued in April 2009 by the Jersey Financial Services Commission which set out the Commission's policy in connection with Managed Entity applications.

If the fund management company will only be used to provide services to private funds then no regulatory consents are required from the Commission to permit the fund management business to start business once incorporation formalities in Jersey have been completed. However the operation of the fund management company and the private funds which it services need to be structured so that certain exemptions from other registration requirements under the Financial Services (Jersey) Law 1998 are satisfied. Specific professional advice should be taken on the steps that need to be taken to achieve this exemption.

Section B

Employing Staff in Jersey and Establishing a Real Presence

Every new business start up in Jersey which wishes to create a permanent establishment in the island and hire staff and occupy office space must obtain a government licence under the Regulation of Undertaking and Development (Jersey) Law 1973. This licence is separate from any financial services registrations which are required from the Jersey Financial Services Commission.

If the new business is going to operate as a Managed Entity with no employees of its own in Jersey and will be hosted by an existing fund administrator or other business which is already established in Jersey, then no licence under the 1973 Law is required.

If the new fund management business wishes to employ one or more persons in Jersey or wishes to bring personnel to Jersey to act as managers and officers of the business this will require a detailed application for a licence under the 1973 Law. In particular the authorities will examine closely the residential status of the proposed employees against applicable housing legislation in Jersey and the likely economic return to Jersey from employment salaries which the fund management company will pay. If the management company is seeking permission to bring one or more staff members to Jersey specially to work for the new fund management company then a more detailed case needs to be made to support the granting of a staffing licence to engage employees from outside the island. Detailed information on business plans, projected fee income and salaries will need to be provided to the authorities. This is only a brief summary of the process. Further more detailed advice and information should be sought in appropriate cases.

Section C

Taxation in Jersey of New Fund Management Company

Under the taxation regime for companies in Jersey a general taxation rate of 0% is applied to resident companies subject to the profits of a relatively small proportion of “specified financial services companies” being subject to a 10% tax rate. Fund management companies are categorised so that they fall outside the scope of the “specified financial services companies” and are therefore subject to the 0% corporate income tax rate.

Separate specialist taxation advice should be taken in connection with the “zero/ten” regime as it may apply to a fund management company in Jersey and also in connection with the exemption for International Services Entities for the purposes of Goods and Services Tax (“GST”) in Jersey.

Appendix I

The board of directors of the fund management company in Jersey must organise the affairs of the company in order to meet the requirements set out in the provisions of the Codes of Practice for Fund Services Businesses issued by the Jersey Financial Services Commission. The following is an extract of the high level principles only drawn from the Codes of Practice:

- 1. A registered business must conduct its business with integrity.**
[This principle requires the Jersey fund management company to acknowledge and adhere to the regulatory responsibilities which apply to it under the Codes of Practice and not to seek to avoid its responsibilities.]
- 2. A registered person must have due regard to the interests of the fund to which it provides services.**
[This principle enshrines a fair dealing requirement towards the fund and its investors and requires the fund management company, amongst other things, to operate conflict of interest procedures and deal with investors on an open-handed basis.]
- 3. A registered person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems.**
[This principle requires the fund management company to implement good corporate governance standards, to assess and manage risk issues to which the business is exposed, to have robust management and compliance systems and qualified and trained staff. This principle also entails the need for the fund management company to appoint a compliance officer and money laundering reporting and compliance officers.]
- 4. A registered person must be transparent in its business arrangements with the fund.**
[The fund management company must operate a “no-surprises” policy. In particular fee arrangements and performance fees must be clearly disclosed to investors in the fund.]
- 5. A registered person must maintain and be able to demonstrate the existence of both adequate financial resources and adequate insurance.**
[The fund management company must have a paid up capital of at least £25,000 and if it provides services to funds which are not exclusively Expert Funds or materially equivalent funds it must also maintain a solvency margin so that it has a surplus of Adjusted Net Liquid Assets over Expenditure Requirements of at least 110%.]
- 6. A registered person must deal with the Commission and other authorities in Jersey in an open and co-operative manner.**
[This principle is self-explanatory.]

7. **A registered person must not make statements that are misleading, false or deceptive.**
[This principle is self-explanatory.]