Financial services regulation in Jersey

Jersey's reputation as a leading international finance centre has been assisted by being a well-regulated jurisdiction which applies global standards upon which clients and investors alike can rely. Jersey has been independently assessed by a number of supranational bodies, including the IMF, which concluded that Jersey's financial sector regulation and supervision are of a high standard and comply well with international standards. Other assessments have placed Jersey in the "top division" of finance centres, and on the international "white list" of jurisdictions maintained by the OECD.

Jersey's reputation is reflected in the number of 'top 500' banks and other financial services firms with a presence in the Island – including some 200 regulated trust and company administrators and over 100 investment managers, stockbrokers, advisers, custodians and fund administrators.

This briefing is intended to give an overview of financial services regulation in Jersey.

The Regulator

The Jersey Financial Services Commission (the "JFSC") is responsible for the licensing, regulation and ongoing supervision of the financial services industry in Jersey. The JFSC has stated that its key purpose is to maintain Jersey's position as an international finance centre with high regulatory standards by:

- protecting and enhancing the reputation and integrity of Jersey in commercial and financial matters;
- countering financial crime both in Jersey and elsewhere;
- reducing risk to the public of financial loss due to dishonesty, incompetence, malpractice or the financial unsoundness of financial service providers; and
- safeguarding the best economic interests of Jersey.

The JFSC is empowered by various sector-specific and some more general laws with the responsibility for overseeing Jersey's financial services sector and ensuring that proper standards are maintained. Codes of practice are in place across the whole financial services industry and provide the JFSC with an additional tool for overseeing registered persons.

Banking Business

Any person carrying on deposit-taking business in or from within Jersey must be registered under the Banking Business (Jersey) Law 1991, as amended (the "Banking Law"). There are various exemptions but, in short, any person receiving deposits for the purpose of making loans or financing other activities may require registration. The requirement for registration applies equally to banks wishing to establish a presence in Jersey (including a presence through a local branch or subsidiary) and to "managed banks"; that is, banks that have no premises or staff of their own in Jersey but are represented by another bank. A Jersey company or Jersey limited liability partnership carrying on deposit-taking business outside Jersey must also be registered under the Banking Law.

In determining whether to grant or refuse registration, the JFSC must satisfy itself that the applicant is fit and proper (the "Fit and Proper Test"), having regard to the following requirements set out in the Banking Law:

- integrity, competence, financial standing, structure and organisation of the applicant;
The Fit and Proper Test is a core test for financial services licensing in Jersey and forms the basis of the licensing criteria applied by the JFSC in its assessment of various applications.

As with all the JFSC's licensing policies, the licensing policy in respect of deposit-taking business expands on the criteria set out in the first part of the Fit and Proper Test and provides a pivotal point of reference in the JFSC's assessment of whether an applicant is fit and proper.

Among the detailed criteria used to determine whether an applicant for registration for deposit-taking business is fit and proper are that:

- the applicant is a financial institution of international stature and reputation within the global "top 500" banking groups, or financial conglomerates of equivalent size;
- the applicant belongs to banking groups which are considered by the JFSC to be of systemic importance in their home jurisdictions such that, in a crisis, the home jurisdiction would look to actively support the group and the home jurisdiction is capable of so doing; and
- the applicant is able to demonstrate its ability to adhere in full to the Codes of Practice for deposit-taking business (the "Banking Codes") issued by the JFSC.

Certain conditions apply to all registered banks whilst others apply to specific classes of activity only. The following conditions apply to all registered banks:

- a registered bank must not commence any new activity in Jersey which may have a significant effect on its business or profitability without the prior consent of the JFSC;
- the JFSC can require the removal of any director, controller or manager of a registered bank if it considers that person not to be a fit and proper person; and
- a registered bank must comply promptly with any notice issued by the JFSC under the Banking Law requiring the production of documents and information.

All of these conditions go to the JFSC's ongoing supervision of financial services and help bolster the Island's high regulatory standards. Oversight and high regulatory standards are underpinned by the full applicability of the Banking Codes, which are arranged around seven high level principles (including minimum requirements) in the areas of integrity, conduct, risk management, transparency, capital resources, advertising and a registered person's relationship with the JFSC.

Insurance Business

Persons wishing to carry on an insurance business in or from within Jersey must apply to the JFSC for a permit under the Insurance Business (Jersey) Law 1996, as amended (the "Insurance Law").

There are two categories of permit:

- category 'A' permits apply to insurance businesses that are already authorised and supervised in a jurisdiction outside Jersey; and
- category 'B' permits apply in every other case.

Once granted, permits specify which classes of long term business or general business (as set out in Schedule 1 of the Insurance Law) the permit holder is authorised to perform. As a matter of definition category 'A' permit holders are authorised to carry on the same class of business in Jersey as they are authorised to carry on in their home jurisdiction.

Category 'A' permit holders are subject to the regulatory regime prescribed in their home jurisdiction, but the JFSC can impose certain conditions on category 'A' permits.

Category 'B' permits carry the standard conditions set out in the Insurance Business (General Provisions) (Jersey) Order 1996, as amended, including that there should not be any change in ownership nor any change in director of the permit holder without the prior consent of the JFSC. Permit holders may not write risks or introduce new products, other than as envisaged in the permit application, without the prior consent of the JFSC.

Category 'B' permit holders are subject to the requirements of the Codes of Practice for Insurance Business (the "Insurance Codes") published by the JFSC. The Insurance Codes are arranged under seven fundamental principles for the proper conduct of insurance
business. For example, the Insurance Codes provide that permit holders must deal with the JFSC in an open and co-operative manner and promptly notify the JFSC of any matter that might reasonably be expected to affect their authorisation to carry on business in Jersey or might affect the interests of their policyholders.

With regard to the stature of applicants the Insurance Law requires the JFSC to be satisfied that the applicant is a fit and proper person to be licensed. Accordingly, through its application of the licensing policy in respect of those activities that require a permit under the Insurance Law, the JFSC applies the Fit and Proper Test to applicants for category 'B' permits.

Investment Funds and Fund Services Business

Investment Funds

The establishment and operation of investment funds in Jersey is governed principally by the Control of Borrowing (Jersey) Order 1958, as amended ("COBO"), the Collective Investment Funds (Jersey) Law, 1988, as amended ("CIF Law") and the Alternative Investment Funds (Jersey) Regulations 2012 ("AIF Regulations"). The applicable legislation and degree of regulation largely depends on the number of offers made, the level of sophistication of investors and how and where the fund is marketed.

Where a fund is offered to fewer than 50 potential investors and will not be listed, it is categorised as a private fund and primarily regulated under COBO.

"sophisticated" investors. As with all private funds, PPFs are regulated under COBO and are subject to the conditions attached to their COBO Consent. In addition, PPFs must comply with and be operated in accordance with the Jersey Private Placement Fund Guide (the "PPF Guide"). The PPF Guide sets out the criteria for the regulatory approval of PPFs, including certain content requirements for the fund’s offer document.

On an ongoing basis the PPF must notify the JFSC of any material changes to information previously submitted in relation to the PPF. The JFSC itself will carry out its own regulatory checks in relation to the promoter and its principal persons and, should such checks give rise to concern, the JFSC may request further information in relation to such persons or take any such other steps as may be appropriate in the circumstances.

Where COBO-only funds are marketed within the EU the AIF Regulations apply. These set out various requirements in respect of such funds and their managers designed to ensure that regulatory standards prescribed by the EU Alternative Investment Fund Managers Directive are met. Under the AIF Regulations the JFSC is given powers in respect of the ongoing regulatory supervision of such funds and their managers and codes of practice apply to the conduct of business by such persons in a similar way as applies in the case of CIFs (as to which, see below).

Collective investment funds or "CIFs" are regulated under the CIF Law. A CIF is defined in the CIF Law as a scheme or arrangement which has as its object, or one of its objects, the collective investment of capital acquired by means of an offer to the public of units for subscription, sale or exchange - and any of the following circumstances apply:

- units are or have been or will be issued continuously (or in blocks at short intervals);
- units are or are to be bought back or redeemed continuously (or in blocks at short intervals) upon the request of the holder and out of the assets of the fund; or
- the fund operates on the principle of risk spreading.

CIFs may be offered to an unlimited number of potential investors. An offer to the public is defined in the CIF Law as an offer which is not addressed exclusively to a restricted circle of persons. There are various indicators of what constitutes a restricted circle of persons, for example, where subscriptions in the fund are...
being offered to fewer than 50 persons. There are four types of CIFs regulated under the CIF regime: expert funds, listed funds, unclassified funds and recognised funds. Recognized funds, which may be marketed freely to the public in the United Kingdom under the United Kingdom Financial Services and Markets Act 2000, are subject to compliance with United Kingdom regulatory financial promotion requirements. Recognized funds are the most highly regulated fund product under Jersey law and are beyond the scope of this briefing.

Expert and listed funds are issued with a certificate (the “CIF Certificate”) under the CIF Law and must comply with the conditions set out in (i) the fund’s CIF certificate, (ii) the Open-Ended Collective Investments Fund Guide, the Expert Fund or Listed Fund Guides (the “Guides”) (as applicable) (the Guides govern such matters as the type of investor the fund may be offered to and the qualifications of service providers), and (iii) the CIF Codes (as described below). JFSC approval must be sought for any changes that require derogation from the Guides and the fund’s CIF Certificate, including any changes to the fund’s directors and service providers.

The Codes of Practice for Certified Funds (the "CIF Codes") apply to all unclassified collective investment funds issued with a CIF Certificate under the CIF Law. Certain parts of the CIF Codes replace conditions formerly imposed on funds by means of certificate conditions.

The CIF Codes are arranged under eight fundamental principles for the proper conduct of fund services business. With regard to implementation, the CIF Codes state that it is the responsibility of the fund operating through the certificate holder to comply with the principles and to implement such additional practices as it considers necessary for the proper management and control of its business. As stated in the CIF Codes and as a further check and balance in the regulatory system, CIFs must be audited.

Fund Services Business
Persons providing such services as manager, investment manager and administrator to CIFs and PPFs are regulated by the Financial Services (Jersey) Law 1998, as amended (the "FSJ Law") and require a licence (an "FSB Licence") under the FSJ Law.

The FSJ Law regulates five classes of financial services business altogether, namely investment business, trust company business, general insurance mediation business, money service business and fund services business.

In connection with fund services business, an FSB Licence is required where a service provider (i) is intending to operate in or from within Jersey or (ii) is a Jersey incorporated company operating outside Jersey. Accordingly, a Jersey service provider to a non-Jersey collective investment fund may still require to be licensed under the FSJ Law. Persons holding an FSB Licence must comply with the Codes of Practice for Fund Services Business (the "FSB Codes") issued by the JFSC.

The FSB Codes apply to all entities registered to carry out fund services business under the FSJ Law and are designed to establish sound principles for the conduct of such business. As with the other codes of practice, the FSB Codes state that it is the responsibility of the registered person not only to comply with the principles of the FSB Codes but also to implement such additional practices as it considers necessary for the proper management and control of its business thereby giving additional responsibilities to the registered person and maintaining the Island’s high standards.

Investment Business
Any person who carries on investment business in or from within Jersey, or holds himself out as doing so, is required to be registered under the FSJ Law. Further, a Jersey company that carries on investment business anywhere in the world, or holds itself out as doing so, is required to be registered under the FSJ Law.

The FSJ Law provides that a person carries on investment business if he:
– deals in investments, that is, he buys, sells, subscribes for or underwrites investments, whether as principal or agent;
– undertakes discretionary investment management, that is, he decides as agent to buy sell, subscribe for or underwrite investments on behalf of a principal; or
– gives investment advice, that is, he gives to persons in their capacity as investors or potential investors advice on the merits of the purchase, sale, subscription for underwriting of a particular investment or the exercise of equivalent rights conferred by a particular investment.

In considering whether to register an applicant, the JFSC will have regard to the
grounds for refusal set out in the FSJ Law which include the failure of the applicant to satisfy the JFSC that it is fit and proper.

Investment businesses are subject to the Codes of Practice for Investment Business (the "Investment Codes") published by the JFSC. Similar to the other codes of practice, the Investment Codes set out a range of practices that have to be adopted by investment businesses, designed to ensure that best practice is adopted across the industry. Amongst other things, the Investment Codes prescribe requirements for financial resources and insurance, appointing appropriately qualified staff and ensuring their continued professional development and dealings with the JFSC and with other authorities in Jersey.

**Trust Company Business**

Any person who carries on trust business in or from within Jersey, or holds himself out as doing so, is required to be registered under the FSJ Law and is subject to ongoing regulatory oversight. An applicant must satisfy the JFSC that it is fit and proper to be registered.

Pursuant to the FSJ Law, a person carries on trust company business if the person carries on a business that involves:

- the provision of company administration services;
- the provision of trustee or fiduciary services; or
- the provision of services to foundations, and in the course of providing those services, the person provides any of the following services:
  - acting as a company formation agent, a partnership formation agent or a foundation formation agent;
  - acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company;
  - acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a partner of a partnership;
  - acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a member of the council of a foundation;
  - acting as or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company;
  - providing a registered office or business address for a company, a partnership or a foundation;
  - providing an accommodation, correspondence or administrative address for a company, a partnership or a foundation or for any other person;
  - acting as or fulfilling or arranging for another person to act as or fulfil the function of trustee of an express trust;
  - acting as or fulfilling or arranging for another person to act as shareholder or unitholder as a nominee for another person.

By analogy with investment business, persons registered for trust company business must comply with the Codes of Practice for Trust Company Business (the "Trust Company Codes") as a means of ensuring best practice across the industry. The Trust Company Codes have been prepared and issued to establish sound principles for the conduct of trust company business and are arranged around seven high level principles in the area of integrity, regard for client interest, risk management, transparency, financial resources and adequate insurance, relationship with the JFSC and advertising. The registered person should, in addition to the seven principles, implement additional practices as it considers necessary.

The JFSC's licensing policy in respect of those activities that require registration under the FSJ applies equally to fund services business, investment business and trust company business and aims to assess applicants' fitness and propriety in relation to their integrity, competence, financial standing, structure and organisation.

**Anti-Money Laundering**

Jersey maintains internationally approved standards in the fight against money laundering. Through the Island's membership of the Offshore Group of Banking Supervisors, Jersey works alongside the Basle Committee on Banking Supervision and the Financial Action Task Force on Money Laundering ("FATF") and, as part of the UN Global Programme against Money Laundering, Proceeds of Crime and the Financing of Terrorism, Jersey has committed itself to international standards on regulation and anti-money laundering measures. Independent endorsements of Jersey's anti-money laundering standards include FATF's conclusion in June 2000 that Jersey should be regarded as co-operative in the fight against money laundering and a similar conclusion by the IMF in November 2003, which remarked that Jersey demonstrates a high level of compliance with the FATF "Forty plus eight"
recommendations. In November 2011 Jersey was deemed to be “demonstrating sufficiently strong adherence” to the relevant international standards by the Financial Stability Board.

The JFSC is tasked with the responsibility of overseeing anti-money laundering compliance by persons carrying on financial services. Reporting obligations are imposed on persons carrying on financial services business through the Drug Trafficking Offences (Jersey) Law 1988, as amended, the Proceeds of Crime (Jersey) Law 1999, as amended (the “Proceeds of Crime Law”) and the Terrorism (Jersey) Law 2002, as amended. More general and extensive requirements to prevent and detect money laundering and terrorist financing are imposed by the Money Laundering (Jersey) Order 2008, as amended (the “Money Laundering Order”), which sets out specific core requirements which are then supplemented by the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (the “Handbook”), issued by the JFSC. The Handbook sets out the detailed requirements of Jersey’s anti-money laundering regime, provides a practical interpretation of the Money Laundering Order and gives examples of current best practice.

In addition to the positive obligations placed on financial services businesses and the oversight function of the JFSC, the Island’s effort to combat money laundering also relies on work of (i) the Joint Financial Crimes Unit (the “JFCU”), which is a joint unit of police and customs officers, the role of which is to receive, analyse and disseminate reports of money laundering made by financial services businesses, and (ii) the Law Officers’ Department, which, together with the JFCU is responsible for investigations into money laundering and terrorist financing. The Attorney General, as head of the Law Officers’ Department, is responsible for the prosecution of money laundering, terrorist financing, and serious or complex fraud.

Conclusion
In the areas of financial services regulation and anti-money laundering prevention, Jersey has an effective, robust and internationally recognised regime. The regime reflects international standards which means it will continue to evolve along with those standards, helping to uphold the Island’s reputation as a highly regulated offshore financial services centre.
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