

# GUIDE TO PRIVATE PLACEMENT FUNDS IN JERSEY

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## PREFACE

In 2012, the Jersey Financial Services Commission (**Commission**) introduced a new classification of lightly regulated collective investment fund known as the Private Placement Fund.

This Guide is supplemental to the Appleby Guide to Jersey Investment Funds and relates to funds which meet the criteria to qualify as Private Placement Funds as further set out in this Guide.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

### **Appleby**

Jersey

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## 1. PRIVATE PLACEMENT FUNDS

A Private Placement Fund is an investment fund established as a closed-ended fund in Jersey or established as a closed-ended fund in a country or territory outside Jersey but managed in Jersey.

A Private Placement Fund falls outside the regulatory control of the Collective Investment Funds (Jersey) Law 1988 and is lightly regulated by the Commission. To establish a Private Placement Fund requires consent of the Commission to issue securities in the fund pursuant to the Control of Borrowing (Jersey) Order 1958 (**COBO**) and there should be compliance with the requirements of the Jersey Private Placement Fund Guide issued by the Commission (**Private Placement Fund Guide**). A copy of the Private Placement Fund Guide may be found on the Commission's website at [www.jerseyfsc.org](http://www.jerseyfsc.org).

Interests in a Private Placement Fund should be offered to not more than 50 potential investors in Jersey or elsewhere, who must all be either a professional investor, a sophisticated investor or an investment manager.

## 2. INVESTORS

Only professional investors, sophisticated investors or investment managers (acquiring an interest directly or indirectly for or on behalf of non-professional or non-sophisticated investors) may invest in a Private Placement Fund.

The full definition of professional investor is set out in Schedule 1 to this Guide. A sophisticated investor should make a minimum initial investment or commitment of £250,000 or the equivalent in another currency.

Investors should have received an investment warning substantially in the form set out in the Private Placement Fund Guide (see Schedule 2 to this Guide for the full text of the investment warning). The investment warning should be included in the Private Placement Memorandum as well as the subscription or application form for interests in the Private Placement Fund and the subscriber or applicant, by signing the form, acknowledges the investment warning.

Where interests in the Private Placement Fund have been acquired by a Feeder Fund (as defined in the Private Placement Fund Guide) and the investors in the Feeder Fund are not professional investors or sophisticated investors then, without the consent of the Commission, the requirements of the Jersey Private Placement Fund Guide shall not be satisfied.

## 3. LEGAL FORMS AND FUND STRUCTURES

Private Placement Funds may take any legal form permitted under Jersey law: limited partnerships or unit trusts governed by Jersey law or par value/no par value limited companies under the Companies (Jersey) Law 1991. A Private Placement Fund established in a country or territory outside Jersey shall be in such equivalent form as is permitted under the laws of the country or territory of incorporation or constitution.

Private Placement Funds can be established as closed-ended vehicles only.

If the Private Placement Fund is established as a Jersey company, at least two Jersey resident directors with appropriate experience must be appointed to the board. If it is a company incorporated outside Jersey, it should appoint at least two Jersey resident directors with appropriate experience to its board or appoint a Jersey company as the manager of the fund, with such management company having at least two Jersey resident directors on its board.

If the Private Placement Fund is established as a limited partnership either within or outside Jersey, it must have at least one general partner, which is either a Jersey company with at least two Jersey

resident directors or a limited partnership, which has at least one general partner, which is a Jersey company with at least two Jersey resident directors.

If the Private Placement Fund is established as a Jersey unit trust or otherwise, each of the trustee and the manager (or the managing trustee) must be a Jersey company with at least two Jersey resident directors.

The board of directors of each of these entities is responsible for the management and control of the Private Placement Fund in accordance with the constitutive documents, the Private Placement Memorandum, the Private Placement Fund Guide and applicable law.

#### 4. **PROMOTER**

The promoter of the Private Placement Fund should be of good standing and be able to satisfy the following suitability requirements:

- not had any disciplinary sanctions imposed on it by any supervisory authority or professional body in the previous five years;
- not had any convictions for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty or be the parent, subsidiary or an associated company of any company which has such a conviction;
- not had any convictions for any offence under the anti-money laundering or combating financial terrorism legislation of any country or be the parent, subsidiary or an associated company of any company which has such a conviction;
- be able to pay its debts as they fall due; and
- be established in an OECD member state or any other state or jurisdiction with which the Commission has entered into a Memorandum of Understanding (or equivalent) on investment business and investment funds; and either (i) be regulated in that state or jurisdiction; or (ii) possess amongst its Principal Persons relevant experience in relation to promoting, managing or advising on institutional, professional or sophisticated investors' investments using similar strategies to those to be adopted by the Private Placement Fund.

In addition, no Principal Person of the Promoter shall:

- have had any regulatory or disciplinary sanctions imposed on him by any supervisory authority or professional body in the previous five years;
- have been convicted of any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty; or
- have been convicted for any offence under the anti-money laundering or combating financial terrorism legislation of any country or territory.

#### 5. **DESIGNATED SERVICES PROVIDER**

A Private Placement Fund must be administered by an administrator that is registered by the Commission to carry on Fund Services Business (as defined in the Financial Services (Jersey) Law 1998, as amended) (**Designated Services Provider**).

The Designated Service Provider must provide the registered office to a Private Placement Fund established as a Jersey company or a Jersey limited partnership. In the case of a Private Placement Fund established as a Jersey unit trust, the Designated Service Provider must provide the registered office either to the trustee or manager (or to the managing trustee).

Where the Private Placement Fund is established outside Jersey, the Designated Service Provider must provide the registered office of the relevant service provider (e.g. manager, general partner, investment manager, administrator, etc.) to the Private Placement Fund in Jersey.

The Designated Service Provider must also provide support to the Private Placement Fund in relation to its anti-money laundering obligations in accordance with the Jersey Private Placement Fund Guide.

## 6. **AUDIT REQUIREMENTS**

An auditor must be appointed for each Private Placement Fund. Annual auditor's reports and accounts will need to be prepared for the Private Placement Fund and sent to each investor. If the auditor's report is qualified, the Private Placement Fund must deliver to the Commission a copy of the accounts and details of the qualification should be brought to the attention of the Commission. If the Private Placement Fund fails to provide accounts and an auditor's report to its investors within the time period provided, the Designated Service Provider is required to notify the Commission of such failure.

## 7. **AUTHORISATION PROCEDURE FOR PRIVATE PLACEMENT FUNDS**

There is a streamlined approval process for Private Placement Funds and a Private Placement Fund can be established within three business days of the filing of the complete application and supporting documentation with the Commission.

The application and supporting document involves a self-certification procedure and the Commission must receive each of the following:

- a written statement from the promoter of the Private Placement Fund to the Commission confirming that it satisfies the suitability requirements referred to above. The statement should be countersigned by the Designated Services Provider confirming that it has undertaken its own due diligence and believes the accuracy of the promoter's statement;
- a written certificate of the Designated Service Provider certifying that it is their opinion that the Private Placement Memorandum for the Private Placement Fund complies with the requirements set out in the Jersey Private Placement Fund Guide;
- a draft copy of the proposed Private Placement Memorandum;
- details of all of the Principal Persons of the promoter, including those named in the Private Placement Memorandum; and
- a completed application form.

## 8. **CONTENT OF OFFERING DOCUMENTS**

A Private Placement Memorandum issued by a Private Placement Fund should contain all the information which investors and their professional advisers would reasonably require, and would reasonably expect to find and to have brought fairly to their attention in the Private Placement Memorandum for the purpose of making an informed judgement about the merits of purchasing interests in the Private Placement Fund; the nature and levels of the risks accepted by making such a purchase; and is within the knowledge of the persons responsible for issuing the Private Placement Memorandum or which would have been within the knowledge of such persons by the making of reasonable enquiries.

## 9. **ON-GOING REQUIREMENTS**

Any material changes to the information submitted to the Commission in connection should be notified to the Commission as soon as possible and, in any event, within 28 days of such changes taking place. Prior written consent of the Commission is required for any change that would not meet the criteria set out in the Private Placement Fund Guide.

The Designated Service Provider should provide a Money Laundering Reporting Officer and a Money Laundering Compliance Officer in accordance with the requirements of the Money Laundering (Jersey) Order 2008, as amended.

## 10. TAXATION OF PRIVATE PLACEMENT FUNDS

Collective investment funds established in Jersey are zero-rated for the purposes of Jersey income tax and are therefore not subject to Jersey income tax on non-Jersey source income or, save in certain limited exceptions, its Jersey source income (rental income or property development profits arising in respect of Jersey *situs* real property or land). Distributions paid out of a Jersey resident fund to either Jersey resident or non-Jersey resident investors are made on a gross basis without deductions in respect of Jersey tax.

Private Placement Funds qualify as International Service Entities (**ISEs**) with the Jersey Comptroller of Income Tax. On being listed as an ISE and payment of an annual fee, they are exempt from registration for the purposes of the Goods and Services Tax (Jersey) Law 2007. They would not therefore have to charge Goods and Services Tax (**GST**) on their supplies and would qualify for exemption from being charged GST. In order to retain ISE status an annual fee of £200 is payable.

There are no capital gains taxes nor value added taxes nor stamp duties in Jersey on securities transactions.

### EU Savings Tax

Jersey is not subject to the EU Savings Tax Directive but has introduced mandatory automatic exchange of information regarding payments to EU resident individuals with effect from 1<sup>st</sup> January 2015 in respect of payments of interest and other similar income which may include dividends and distributions out of funds to individual beneficial owners resident in an EU Member State paid by a paying agent situated in Jersey. This supports Jersey's commitment to international standards on transparency and is in accord with the signing of agreements for the automatic tax information exchange with the USA and the UK.

Based on the provision of the bilateral agreements negotiated between Jersey and each of the EU Member States, the implementing legislation in Jersey and guidance notes issued by the Chief Minister's Department of the States of Jersey, distributions by a Private Placement Fund should not constitute interest payments for the purposes of the automatic exchange of information and therefore neither the Private Placement Fund nor any paying agent appointed by it in Jersey should be obliged to provide information.

The above automatic exchange of information requirements do not apply to interest or other affected payments to bodies corporate or to non-EU resident individuals although Jersey has signed separate inter-governmental agreements with both the UK and the USA for automatic exchange of information.

### FATCA/UK FATCA

On 22 October 2013 the Chief Minister of Jersey signed an intergovernmental agreement with the United Kingdom (**UK-Jersey IGA**) under which certain disclosure requirements will be imposed in respect of certain investors in a Jersey entity who are resident in the United Kingdom. The UK-Jersey IGA also contains details of an Alternative Reporting Regime for UK resident non-domiciled individuals. Subsequently, the Chief Minister of Jersey also signed a similar intergovernmental agreement with the United States on 13 December 2013 (**US-Jersey IGA**). The UK-Jersey IGA and the US-Jersey IGA were ratified and implemented into Jersey domestic law by regulations brought into force on 18 June 2014. The States of Jersey have published draft guidance notes on these regulations. Under the US-Jersey IGA, an entity will not be required to report information to the IRS under an FFI Agreement; rather, such entity will be required to report information in respect of direct and certain direct U.S.

investors to the Comptroller of Taxes in Jersey. Failure to comply with the requirements of the regulations will result in financial penalties or other sanctions being imposed under Jersey law.

#### 11. **ALTERNATIVE INVESTMENT FUND DIRECTIVE**

With effect from 22 July 2013, the Alternative Investment Funds (Jersey) Regulations 2012 (**AIF Regulations**) apply to Alternative Investment Funds (**AIFs**) and Alternative Investment Fund Managers in Jersey marketing AIFs within the EU or other EEA States pursuant to the Alternative Investment Funds Directive.

Under the provisions of the AIF Regulations, the Private Placement Fund will be required to apply for an AIF certificate from the Commission and will be subject to Codes of Practice.

Where the assets under management are below €100m (or €500m, where the AIF is unleveraged, closed-ended and with a lock-in period of at least five years) the Codes of Practice will still apply but will have a limited application.

For more specific advice on eligible investor funds in Jersey, we invite you to contact one of the following:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).

## SCHEDULE 1

## WHO IS A PROFESSIONAL INVESTOR?

“Professional Investor” means:

- (a) a person whose ordinary activities involve the person acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of the person’s business or who it is reasonable to expect will acquire, hold, arrange or dispose of investments (as principal or agent) for the purposes of that business;
- (b) any person who carries on investment business within the meaning of the Financial Services (Jersey) Law 1998, as amended, in relation to the Private Placement Fund;
- (c) any Eligible Employee;
- (d) any company which is wholly owned by, or a limited partnership of which all of the limited partners of which are, or a trust established for the benefit only of, one or more persons referred to in paragraph (b) or (c);
- (e) a Service Provider in relation to the Private Placement Fund or an Associate of such a Service Provider including without limitation, an investment manager if acquiring an interest in a Private Placement Fund directly or indirectly for or on behalf of a non-professional or non- sophisticated investor;
- (f) a person who:
  - (i) is a senior employee, director, partner, member or shareholder of a Private Placement Fund or a senior employee, director, partner, member or shareholder of, or consultant to a Service Provider or Associate thereof, and
  - (ii) in making the relevant subscription, purchase, exchange or acquisition would acquire Units in the Private Placement Fund as remuneration, benefit or reward, either as such a senior employee, director, partner, member, shareholder or consultant or is a person who otherwise participates in a carried interest vehicle associated with the Private Placement Fund;
- (g) a company, partnership, limited partnership, separate limited partnership, incorporated limited partnership, limited liability partnership, trust, or unincorporated association, in relation to which one or both of the following requirements is met:
  - (i) its property (or its property and that of its Associates) has a total market value of not less than US\$10 million (or the equivalent of that amount in another currency);
  - (ii) every shareholder of the company, every partner of the partnership, limited partnership, separate limited partnership, incorporated limited partnership or limited liability partnership, every beneficiary of the trust or every member of the association (as the case requires) would, himself or herself, be a Professional Investor in relation to the Private Placement Fund or is a Sophisticated Investor;
- (h) a wholly-owned subsidiary of a company that satisfies the conditions set out in paragraph (g);
- (i) a trustee of a trust established by a Sophisticated Investor or a person who is specified in any of paragraphs (c), (e), (g) and (h) or is a senior employee, director, partner, member, shareholder or consultant specified in paragraph (f)(i);



- (j) a trustee of a trust established for the benefit of:
  - (i) a person who is a Sophisticated Investor or a person specified in paragraph (f)(i); or
  - (ii) any one or more persons in any of the following classes:
    - (A) the spouse or civil partner of a person specified in sub-paragraph (j)(i),
    - (B) the issue of such a person,
    - (C) the dependants of such a person,
  - (iii) a person specified in sub paragraph (j)(i) and any one or more persons in any one or more of the following classes:
    - (A) his or her spouse or civil partner;
    - (B) his or her issue;
    - (C) his or her dependants; or
- (k) a person who in making the subscription, purchase, exchange or acquisition is acting as or for a public sector body.

For the purposes of paragraph (f), a reference to a shareholder of a Service Provider or Associate specified in paragraph (e) is a reference to a shareholder in respect of whom the Service Provider or Associate (as the case requires) has signed a declaration that the investment is suitable for the shareholder and that the shareholder is able to bear the economic consequences of the investment, including the possibility of the loss of the entire investment.

**SCHEDULE 2****WARNING TO PROFESSIONAL INVESTORS OR SOPHISTICATED INVESTORS IN A PRIVATE PLACEMENT FUND**

The investment warning must be in, or substantially in, the following terms:

“The Fund has been established in Jersey as a Private Placement Fund. It is only suitable for those who fall within the definition of “Professional Investor” or “Sophisticated Investor” as such terms are defined in the Jersey Private Placement Fund Guide published by the Jersey Financial Services Commission. By acknowledging this statement you are expressly agreeing that you fall within the definition of a “Professional Investor” or “Sophisticated Investor” and accept the reduced requirements accordingly.

If you are an investment manager acquiring an interest in the Fund, directly or indirectly, for or on behalf of non-professional or non-sophisticated investors, the Commission expects you to be satisfied that the investment is suitable for the underlying investors and that the underlying investors are able to bear the economic consequences of investment in the Fund, including the possibility of loss of the entire investment.

You are wholly responsible for ensuring that all aspects of the Private Placement Fund are acceptable to you. Investment in a Private Placement Fund may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of this Private Placement Fund and the potential risks inherent in this Private Placement Fund you should not invest in this Private Placement Fund. The investor or his duly authorised agent must acknowledge in writing that he has received and accepted this investment warning. By signing the acknowledgement it is accepted that an investment in this Private Placement Fund may involve special risks that could lead to a loss of all such investment and that the Commission is protected by the Control of Borrowing (Jersey) Law 1947, as amended, against liability arising from the discharge of its functions under that Law.”