

WALKERS GUIDE | JERSEY

# Setting up a Jersey Manager - The Options and Opportunities

## KEY TAKEAWAYS

- A Jersey manager is typically required to hold a "fund services business" licence, which can be obtained within weeks.
- There are broadly two types of licence: a "managed entity" licence and a "full codes" licence, each with different application requirements and ongoing obligations.
- A Jersey manager can access capital from UK and EU investors by using the respective EU and UK national private placement regimes.

## Introduction and background

1. The purpose of this note is to provide you with information in relation to the legal and regulatory requirements applicable when setting up a new Jersey manager.
2. A new Jersey manager would be carrying on "fund services business" under the Financial Services (Jersey) Law 1998 (as amended) ("**FSJL**") and so would be required to hold a "fund services business" licence (or "**FSB Licence**") issued by the Jersey Financial Services Commission ("**JFSC**") unless the manager can rely on certain regulatory exemptions (for example, if the manager was providing services to an investment vehicle or a Jersey Private Fund structured as a "professional investor regulated scheme", in which case the manager would not be required to hold an FSB Licence). If the manager will hold an FSB Licence, it will also be required to comply with the 'Fund Services Business Code of Practice' (the "**FSB Code**") and, where it will act as an alternative investment fund manager (or an "**AIFM**") under the AIFMD, it will also need to comply with applicable sections of the Alternative Investment Funds Code of Practice (the "**AIF Code**").
3. There are broadly two types of FSB Licence:



- a) **an FSB Licence as a "managed entity"** – if this type of application is made then a licensed Jersey corporate services provider (or "**CSP**") provides support to the Jersey manager (eg provision of directors, policies and procedures, provision of anti-money laundering compliance support (including MLRO / MLCO) and other administrative services). This allows the Jersey manager to benefit from the CSP's compliance infrastructure and skilled workforce, and means that the JFSC does not require the Jersey manager to comply with the FSB Code in full. Instead, the Jersey manager only has to comply with the 'core principles' of the FSB Code which achieves a lighter regulatory burden (and cost). If this type of licence is applied for then there is no obligation to maintain premises in Jersey which are separate to the CSP's offices, or to employ any staff.
  - b) **a 'full codes' FSB Licence** – for this type of application the Jersey manager will not rely on the support of a CSP and will have to comply with the FSB Code in full. This means that the Jersey manager will need to employ staff and, in order to satisfy certain regulatory requirements, some of these individuals will need to be physically located and/or resident in Jersey. In order to employ staff in Jersey the Investment Manager will be required to hold a separate business licence (a "**Business Licence**") under the Control of Housing and Work (Jersey) Law 2012 (the "**CHWL**"). Further information about this is included below.
4. It is possible to transition from the first type of licence to the full codes FSB Licence at a later date; it is simply a question of making an application to 'upgrade' the 'managed entity' FSB Licence into a 'full codes' FSB Licence.
  5. It is important to note that a 'managed entity' FSB Licence is only available if the funds to which the Jersey manager will be appointed to manage are "Qualifying Funds" for Jersey purposes. Otherwise, a new manager will be required to apply for a 'full codes' FSB Licence. We can provide you with additional information, but requirements include that the funds should not be aimed at retail investors and have a minimum investment amount of USD 100,000.

## Key points in relation to an application for fund services business licence and business licence

1. **Personal Questionnaires** – As part of the application for a fund services business licence under the FSJL, certain key and principal persons will be required to submit a personal questionnaire ("**PQ**") to the JFSC. This requirement applies to 10%+ shareholders/ultimate beneficial owners, directors, the money laundering compliance officer and the money laundering reporting officer. The purpose of this process is to ensure that these persons are 'fit and proper' and the JFSC will perform certain police and background checks on these individuals as part of the PQ process. This process can take up to six to eight weeks' and so needs to be commenced at an early stage.
2. **FSB Code requirements** – key requirements under the FSB Code include:
  - a) at least two directors must be resident in Jersey – these can be provided by the CSP, or can be Jersey resident non-executive directors who are not affiliated with the CSP;
  - b) minimum number of three senior individuals (usually directors but in rare circumstances senior managers may be approved) to form the regulatory span of control where the manager is controlling fund assets;



- c) a suite of policies and procedures, and compliance systems to be put in place. Records to be kept in Jersey (or to be readily retrievable in Jersey);
  - d) compliance officer to be appropriately qualified and have sufficient experience, and to be based in Jersey;
  - e) for a 'managed entity' FSB Licence: the manager must have and maintain financial resources which are, in the opinion of its directors, sufficient to meet its commitments. It must also maintain adequate insurance cover to meet the requirements under the FSB Code;
  - f) for a 'full codes' FSB Licence: the manager must have paid up share capital and non-distributable reserves and a minimum net assets position of at least £25,000 and meet certain Adjusted Net Liquid Assets over Expenditure (or "**ANLA**") requirements. It must also maintain adequate insurance cover to meet the requirements under the FSB Code;
  - g) the JFSC must be notified of certain events or changes and, in some cases prior consent must be sought. In particular, if a Jersey manager is appointed to act in relation to a non-Jersey domiciled fund then certain requirements must be met (but these are not particularly onerous).
3. **Regulatory business plan** – In addition to the prescribed application form, the JFSC will expect to receive a regulatory business plan outlining the proposed business activities to be undertaken by the Jersey manager, details of the fund/s it will manage or advise, the manager's financial resources, fees and projections, expenses, any outsourcing and governance arrangements. As part of the business plan, a copy of the manager's business risk assessment and confirmation of the AML/CFT policies and procedures should also be included. Once submitted, applications take 10 working days (for a 'managed entity' FSB Licence) or 30 working days (for a 'full codes' FSB Licence) to be processed, but some additional time should be allowed to answer any queries raised by the JFSC.
4. **Acting as AIFM** – If a Jersey manager wishes to act as an AIFM for the purposes of the AIFMD then it can apply for the appropriate regulatory permissions as part of its FSB Licence application. It does not have to make a separate application but it needs to notify the JFSC of its intention to market to investors in the UK and/or EU. Once the FSB Licence has been obtained and the JFSC has been notified as necessary, the Jersey manager will be able to access capital from UK and European investors. Whilst Jersey does not form part of the EU, Jersey based managers are permitted to access EU and UK investors via the respective EU and UK national private placement regimes ("**NPPR**"). Each jurisdiction in the EU and UK has specific requirements which have to be met under the NPPR, and some jurisdictions are more complicated and onerous than others. Specialist advice should be sought from the local counsel in the relevant jurisdiction in this regard.
5. **Business Licence** – Where a Business Licence application is required this will require a business plan to be submitted to a government department detailing the number of employees the Jersey manager will seek to employ in Jersey, details of their roles/skills, proposed salaries/bonuses and other relevant information. Applications are normally processed within 15 working days of submission. Our employment team would be able to assist with such application.
6. **Economic Substance** – A Jersey manager (including the manager without an FSB licence) will need to comply with Jersey's economic substance legislation, which is similar to that in place in other offshore jurisdictions. In particular, a Jersey manager will need to ensure that all of its "core income-generating activities" ("**CIGAs**") are carried out in Jersey (or if it outsources CIGA to another entity in Jersey, that it monitors and controls this CIGA). It is expected that an adequate number of board meetings will be held in Jersey with a quorum of directors being physically present so that the Jersey



manager can show that CIGA decisions are made locally. Board minutes and company records must be maintained in Jersey. In addition, the Jersey manager will need to demonstrate that it has adequate employees, expenditure and physical premises in Jersey (although these can be provided by the CSP, if required).

7. **Registration under Jersey's AML legislation** – A Jersey manager will need to file a notification under Jersey's AML legislation to ensure that it complies with the requirements under this legislation. This is not an onerous process, especially where the manager will be applying for an FSB Licence and is something that the CSP can assist with.
8. We have set out below the different steps involved in setting up a new Jersey manager.



## Outline steps plan

1.	Identify a CSP
2.	Incorporation of a Jersey private limited company to act as a manager – this includes: <ol style="list-style-type: none"><li>1. completing an incorporation form;</li><li>a) preparing the memorandum and articles of association</li><li>b) submitting the above to the Jersey Registrar of Companies and answering any queries.</li></ol>
3.	Submission of PQ's – see above for further information.
4.	Preparation of FSB Licence application – this includes submitting the following documents to the JFSC: <ol style="list-style-type: none"><li>1. FSB application form</li><li>a) Regulatory business plan</li><li>b) Structure charts detailing beneficial ownership, organisational structure</li><li>c) Business risk assessment</li><li>d) three year financial projections</li><li>e) (for a 'full codes' FSB Licence application – ANLA projection)</li></ol>
5.	Preparation of Business Licence application (if required) – this includes submission of the following documents to the government: <ol style="list-style-type: none"><li>1. Business Licence application form</li><li>a) Business plan</li></ol>
6.	Liaising with the JFSC and the government in relation to the above application(s) to deal with any queries.
7.	Whilst the application(s) are being processed, we can assist with the preparation or review of any additional documents or service agreements (for example, the investment management agreement or the CSP's services agreement).
8.	FSB Licence (and Business Licence, if required) is granted.
9.	Preparation of corporate approvals for manager (board minutes/resolutions ratifying the above FSB Licence and Business Licence applications)
10.	The manager commences business in Jersey.

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## Further information

For more information, please get in touch with your usual contact at Walkers or any of the individuals in your region listed below.

### **Dilmun Leach**

Partner, Walkers (CI) LP

Jersey

+44 (0) 1534 700 783

[dilmun.leach@walkersglobal.com](mailto:dilmun.leach@walkersglobal.com)

### **Kirsten Faichnie**

Senior Counsel

Jersey

+44 (0) 1534 700 733

[kirsten.faichnie@walkersglobal.com](mailto:kirsten.faichnie@walkersglobal.com)

### **Sarah Townsend**

Senior Counsel

Jersey

+44(0) 1534 700 736

[sarah.townsend@walkersglobal.com](mailto:sarah.townsend@walkersglobal.com)

### **Tatiana Collins**

Partner

Jersey

+44 (0) 1534 700 757

[tatiana.collins@walkersglobal.com](mailto:tatiana.collins@walkersglobal.com)

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