

The Advertising Order and the Overseas Persons Exemption

Introduction

Overseas financial services businesses providing their services in Jersey need to comply with the Financial Services (Jersey) Law 1998 (the “**FSJ Law**”). The Financial Services (Advertising) (Jersey) Order 2008 (the “**Advertising Order**”) provides a recently added exemption available to overseas persons from the requirement to be registered for investment business under the FSJ Law.

This briefing considers how compliance with the Advertising Order can provide an exemption from registration under the FSJ Law and which marketing activities undertaken in Jersey by overseas businesses fall outside the scope of the Advertising Order.

Overseas Persons Exemption

Anyone carrying out financial services business in or from within Jersey needs to be registered under the FSJ Law. However, an overseas investment business (not being incorporated in Jersey and having no place of business in Jersey) does not need to be registered under the FSJ Law for investment business if (1) the approach was made by or on behalf of the person in Jersey and (a) was not solicited by the overseas person or (b) was solicited by the overseas person through an investment business advertisement that complied with the Advertising Order or (2) the approach was made by the overseas person through an investment business advertisement that complied with the Advertising Order. A similar exemption exists for overseas distributors of certain type of funds.

How to comply with the Advertising Order?

When marketing financial services business to persons in Jersey, overseas persons need to be aware that, subject to certain exemptions, the Advertising Order could apply to their marketing material, whether written, broadcast or delivered personally. Meeting the requirements is straightforward, the material should (a) identify the person who issued it (or caused it to be issued), (b) identify the person who provides the financial service (if different from the issuer), (c) disclose the details of the physical or electronic address of the provider/issuer, (d) state it is a “financial service advertisement”, (e) be clear, fair and not misleading and (f) name the authority that authorised the provider to transact the financial service for which it is advertising. Copies of the financial service advertisements must be kept for 10 years (as opposed to 6 years in the UK) together with details of the issuance

and internal approval procedures of the issuer. Unsolicited advertising (sent to persons that have indicated they do not wish to receive advertisements) is prohibited under the Advertising Order.

The Advertising Order does not apply to all financial service advertisements

Excluded are (a) advertisements for money service business, (b) advertisements for financial services business that are only communications of the name of business or brief references to a business or a sponsored event, (c) advertisements by way of face to face meetings or telephone conversations, (d) prospectuses and (e) certain marketing activities by overseas persons.

Direct marketing by overseas persons

Marketing material sent by an overseas person upon request by a person in Jersey does not need to comply with the material articles of the Advertising Order (contents and record keeping).

The same applies to marketing material issued personally by the overseas person (either in person, by post or otherwise) in Jersey to a client of the overseas person, provided that marketing material relates to financial services previously provided to this client before the Advertising Order came into force or is a response to an unsolicited approach made by the client after 13 June 2008 and relates to matters the client reasonably expects to be contacted on.

The Prospectus Exemption - recent developments

A prospectus (a) for which consent from the Jersey Financial Services Commission (“**JFSC**”) has been obtained or (b) that complies with the Schedule to the Collective Investment Funds (Unclassified Fund) (Prospectuses)(Jersey) Order 1995 (the “**Prospectus Order**”) is excluded from the Advertising Order. A prospectus for a Jersey unregulated fund and a non-Jersey fund would not fall into this category, however, as a matter of policy, the JFSC is in the process of issuing a guidance note indicating that any prospectus will be excluded from the Advertising Order.

With regard to overseas funds, under the Control of Borrowing (Jersey) Order 1958 (“**Cobo**”) no consent needs to be sought for offer documents of a non Jersey

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unit trust or company with no relevant connection to Jersey and the offer is not made to the public in Jersey or there is like offer being made in the UK or Guernsey. Cobo consent is required for the circulation in Jersey of prospectuses of non-Jersey limited partnerships.

Conclusion

The exemption from registration under the FSJ Law is available to overseas investment businesses and certain overseas distributors provided the unsolicited approach and the solicited approach requirements are met. A prospectus of a Jersey or non-Jersey fund is no longer considered by the JFSC to be a financial services advertisement, however, in relation to certain funds Cobo consent needs to be sought for the circulation of offer documentation. Lastly, provided certain requirements are met, the Advertising Order does not apply to marketing material sent by overseas persons to persons in Jersey upon request and marketing material sent by overseas persons to existing clients.

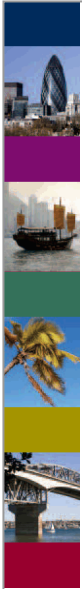
We would be delighted to assist you with any questions you may have on the overseas persons exemptions and compliance with the Advertising Order when marketing in Jersey.

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