

Jersey: a home for private equity fund managers

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The potential uncertainties surrounding the tax treatment of carried interest in onshore jurisdictions, coupled with the need to demonstrate economic substance for fund managers, is driving private equity managers to establish a physical presence in Jersey.

Ogier partners Jonathan Hughes and Emily Haithwaite set out the issues and the solutions that Ogier's combined legal and fiduciary services platform can offer private equity fund managers.

An increasing number of private equity fund managers are establishing a physical presence in Jersey. In fact, a number of household name fund managers across all asset classes now call Jersey home, with others in advanced stages of planning to follow them into Jersey.

| The principal drivers for relocations

The drivers can be both economic and regulatory but re-domiciling to Jersey is often also a lifestyle choice for many senior fund management professionals and their families. Jersey's sophisticated funds services offering means that the island can offer operational advantages for fund managers relocating to Jersey. Underscoring this has been a political desire on the island to diversify the economy, which has resulted in the introduction of tax regimes and policies which have had the effect of encouraging high value industries, such as the fund management industry and the digital sector, into the island.

As the UK represents the largest European centre for the management of private equity funds, possible UK tax changes are undoubtedly contributing to the growing interest amongst private equity fund managers to domicile outside the UK. Jersey residents are subject to personal income tax at a maximum rate of 20% on worldwide income. Certain high net worth individuals who become resident in Jersey may (subject to a number of conditions) have a significant proportion of their non-Jersey income taxed at a rate as low as 1%. Additionally, since the introduction of the "zero-ten" tax regime, the profits of a Jersey based regulated investment

manager may be taxed at a rate of 0%. This tax neutrality clearly makes Jersey an attractive proposition for private equity fund managers.

The ease of regulatory compliance in Jersey while at the same time adhering to the highest international regulatory standards (resulting in endorsements from the IMF, OECD, EU and MONEYVAL) is another big factor. For example, Jersey is one of the few jurisdictions with a central beneficial ownership register for companies, as recommended by the FATF.

In addition, the introduction, in response to the EU Code of Conduct Group's "fair taxation" requirements and the OECD's BEPS initiative, of economic substance rules for fund management companies which are tax resident in Jersey (in respect of which please see below), led to Jersey being assessed as a cooperative jurisdiction and very much played to the island's strengths because the governance model for fund managers in Jersey has always been to have substance on the ground. This proved particularly important during the COVID-19 lockdown and continues to be relevant whilst restrictions on travel persist, as the requirement to be "directed and managed" in Jersey (meaning that board meetings must be held in Jersey and the majority of the directors attending board meetings must be physically present in Jersey) could be met by the Jersey-resident directors.

Jersey also aspires to be recognised as a leading sustainable international finance centre and much thought has been put into the preparation and delivery of its sustainable finance strategy. Of interest to fund managers is the sustainable investment disclosure regime which was introduced in 2021 to combat the risk of greenwashing.

Finally, for fund managers wishing to access European investor capital, the fact that Jersey does not form part of the EU but that Jersey-based private equity fund managers are, nevertheless, permitted to access EU investors via national private placement regimes is enormously important. This enables a Jersey-based fund manager to benefit from a reduced AIFMD compliance burden, in particular enabling it to avoid being bound by the remuneration disclosure rules applicable to EU fund managers. Additionally, at the point at which the AIFMD passport becomes available to non-EU funds, the existing availability of fully AIFMD-compliant regulations for those funds 'opting-in' to the AIFMD, means that Jersey will be ideally placed to be able to benefit from this marketing passport, as and when it becomes available.

Jersey economic substance requirements for fund managers

A Jersey entity conducting "fund management business" will fall within the scope of the Taxation (Companies - Economic Substance) (Jersey) Law 2019 or the Taxation (Partnerships - Economic Substance) (Jersey) Law 2021 (together, the **Economic Substance Laws**), and such entity will be required to ensure that it is governed and operated in a way that complies with the economic

substance test set out in the respective law, namely that:

- all of its "core income-generating activities" (**CIGAs**) are carried out in Jersey (fund managers must conduct all of their CIGAs in Jersey and must be able to monitor and control any CIGA outsourced to another entity in Jersey)
- it is "directed and managed" in Jersey in relation to the relevant CIGA (it is expected that the majority of board meetings will be held in Jersey with a quorum of directors being physically present, the board must be the decision-making body, and all company records and board minutes must be retained in Jersey)
- and it has adequate employees, expenditure and physical premises in Jersey (these can be provided by an outsourced service provider in Jersey)

Fund vehicles themselves are outside the scope of the Economic Substance Laws, other than self-managed funds (ie corporate funds which do not appoint an external manager but which are managed internally by their board of directors).

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