Q&A

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JTC senior director James Tracey discusses what managers want from a fund domicile and why Guernsey is ready for life post-Brexit.

Guernsey recently surpassed the milestone of £100bn net asset value of private equity funds under management and administration. What makes the jurisdiction such a popular one for private equity?

Guernsey has benefitted from being an early player in the private equity market and has created some real expertise and experience in the sector, honed over the course of more than two decades.

As a result of this deep private equity knowledge and its sound regulatory environment, today Guernsey has earned a fantastic reputation and is seen as a go-to jurisdiction for private equity fund domiciliation and structuring.

Specifically, what fund regimes does the island have in place and why are these attractive to investors and managers?

In terms of legal entities, limited partnerships are widely used and are internationally recognised for private equity fund structuring, thanks to their tax transparent status. Where there's a need for a listing, limited companies are sometimes used too. Usually, a private equity fund will be structured as a closed-ended limited partnership with another limited partnership or corporate entity appointed as its general partner. It's a requirement that the fund appoint a locally licensed administrator.

The funds regulatory regime in Guernsey is particularly suited to private equity fund structuring and is kept regularly under review so that it evolves in line with market needs.

We've seen some strong products come to market as a result over recent years – the Manager Led Product launched a couple of years ago is a perfect example of how the Island can be nimble and effective in rolling out innovative platforms geared towards the needs of private equity managers. It was designed in light of the Alternative Investment Fund Managers Directive to place the regulatory burden on the manager and not the fund. Similarly, the Private Investment Fund launched in late 2016 has provided further choice for managers looking for a quick-to-market platform for a limited number of sophisticated limited partners.

What does Brexit mean for the long-term future of Guernsey as a domicile for private equity funds and how will the Island access investors in Europe when Brexit comes into force?

Guernsey's stability and security means it is well-placed to help fund managers overcome Brexit uncertainty over the next couple of years, both in terms of fund structuring and fund management.

Uncertainty around costs, people, models and market access will be top of the list of concerns amongst UK private equity managers, and Guernsey can respond positively on all those.

The island's position outside of the EU means it already has vast experience of accessing EU private equity capital through national private placement regimes (NPPR), and this flexible, cost-effective approach is proving popular amongst UK managers who are putting into place Brexit mitigation plans. In the lead up to and post-Brexit, we see this trend continuing, and we see Guernsey playing a really positive, supportive role enabling managers to continue to access important EU capital.

From a JTC perspective, we also see a significant opportunity in supporting managers seeking to establish a management entity in Guernsey – outside of the EU but with tried and tested EU access. Our ManCo solution in Guernsey offers private equity managers a means of establishing a presence in Guernsey in a flexible way that also guarantees genuine substance. We feel this model will become more and more important in a Brexit context.

Has Guernsey applied for an AIFMD/3rd country passport? How has this process progressed?

ESMA several years ago made it clear that there were no obstacles to Guernsey being granted an AIFMD passport, but Brexit has meant that this has become a political rather than a regulatory issue.

It's arguable that this is not necessarily a bad thing, and that the AIFMD passport has not really proven to be the silver bullet it was intended to be.

Unless there is a particular need to be in the EU, the private placement route through Guernsey is in many cases a much better option – it's quicker, more nimble and more cost-effective than a passport, whilst also offering high levels of governance, and we see this trend continuing.

What does the future hold in the in the long-term for private placement?

Based on the growth Guernsey and Jersey have seen over the past couple of years in numbers of funds and managers drawing on the private placement option, we anticipate a strong future for this approach.

It's one of the drivers behind the success of our Guernsey ManCo, with managers able to establish a management entity of real substance here and benefit from a private placement route to market that is proven to work well and cost-effectively, ultimately generating better returns for limited partners.

How does Guernsey's offer compare to that of "on-shore" jurisdictions like Luxembourg?

In some instances limited partners need a fund that is based onshore, and that is perfectly reasonable. For instance, a fund might be blanket marketed across the EU, and the onshore passport is the best way to achieve that. One such example is our Luxembourg AIFM management company (ManCo), which was launched in 2016 and is the perfect solution for EU and non-EU managers of alternative investment funds looking to distribute to EU professional limited partners.

However, it is recognised that often there is no real need for this to be the case, and in fact figures published by the EU earlier this year indicated that 97% of European funds were being marketed to three or fewer EU member states. In such scenarios, a private placement option like that offered through Guernsey that can target specific markets perfectly well is a sensible one – it's often quicker, more cost-effective and just as sound from a regulatory perspective.

It's also the case that Guernsey funds, being outside of the EU, are able to be distributed easily to global limited partners. That's not so easy to achieve onshore, within the rules required under AIFMD.

So there are differences, and we continue to see the Channel Islands providing a really credible and attractive alternative.

Finally, how is Guernsey preparing for BEPS?

Guernsey's tax transparent model means that actually Guernsey is in a strong position in terms of the action points outlined by BEPS.

Guernsey funds are look-through from a tax perspective, which puts the island in a better situation in light of BEPS than funds based in countries that rely on networks of tax treaties.

The island also has a firm commitment to housing private equity management operations of substance, and that is something we are able to facilitate through our ManCo platform in Guernsey. ●