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Brexit, domicile, fees and passporting – hot topics for Jersey's funds sector

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The IBA Funds Conference and Jersey Finance's Annual Funds Conference are two of the biggest set-piece events for Jersey funds specialists – Ogier Counsel Sophie Reguengo attended both events, and reviews the five key talking points and hot topics from the Jersey perspective...

Will Jersey's offer/position as fund domicile for alternative asset managers change at all post-Brexit? Why?

It's business as usual in Jersey and our offering has never been better. We are a third country for EU purposes and a British crown dependency and these things won't change. The UK government has also confirmed that there is no intention to change the constitutional relationship between the UK and Jersey and this is Jersey's position too. We are a leading funds jurisdiction with a robust legal and regulatory framework; English speaking and in the best time zone. In fact, the number of Jersey-based promoters has almost doubled in five years, and the new Jersey Private Funds regime has been incredibly popular with over 100 JPFs having been established in less than a year since the product was launched. Generally speaking we are very optimistic – in the final quarter of last year, the total NAV of regulated funds being serviced through Jersey rose by 10% over the quarter and by 12% year-on-year to stand at £291.1 billion (as at 31 December 2017), the highest value ever recorded. As a jurisdiction for funds and fund administration and with asset managers expected to substantially increase their allocation in alternatives over the coming years, we are extremely confident in the future of our industry in Jersey.

What makes the Jersey private placement regime attractive to managers/investors and why do they chose it over other options, such as Luxembourg?

Quite simply because NPPRs work well and full AIFMD compliance is very costly. Using NPPRs means that the AIFMD will apply but only to a limited degree (and even less if the AIFM is sub-threshold). In 2017, 291 Jersey AIFs were marketed into Europe through NPPRs, representing a 15% year-on-year increase. The path is particular well-trod in key alternative funds markets such as the UK, Netherlands, Ireland and the Nordic countries. What we are also seeing – and this is backed up by the experience of colleagues in our Luxembourg team – is a growing demand for parallel structuring including a Luxembourg element, and this has been a feature particularly for Asian clients.

How important is third-country passporting for Jersey and are there any signs that ESMA is finally ready to issue third country passports in the short to medium term?

It will be important to Jersey, when the third country passport actually becomes available, but we have no concerns here. Jersey is well positioned to be one of the first jurisdictions to be granted the passport, having been positively assessed by ESMA. However, there are no signs that the European Commission will be legislating any time soon and we suspect that Brexit has stalled the issue of the third country passport. ESMA has, so far, conducted the review of just 12 non-EU countries and has concluded that there are no significant obstacles impeding the application of the passport to only 5 of those countries (Canada, Guernsey, Japan, Jersey and Switzerland). With the issue of the passport, the NPPRs will be closed down. That would be very detrimental to the EU bloc as it will prevent EU investors from investing in non-EU funds, save for the few jurisdictions with the benefit of the passport. We think the issue of the passport will not be clarified until the arrival of AIFMD II.

How have expectations of a fund domicile jurisdiction changed and how has Jersey anticipated/reacted to any shifts?

I think there is a much better understanding of the need to domicile funds in jurisdictions with a regulatory framework that not only provides the best protection for investors, but also high levels of corporate governance to demonstrate substance, which is very important to demonstrate from a Beps perspective . There has certainly been a shift in the approach of the regulator in Jersey. The JFSC is more focused on regulating and supervising local service providers, rather than the fund or fund manager, which is reflected by the new Jersey Private Fund regime. A JPF is self-certified by its local fund administrator, so it can be approved by the JFSC within 48 hours – all for a nominal £1,000 regulatory fee. It is the fund administrator's job to ensure that all CDD/KYC checks are undertaken and that the fund complies with the JPF

Guide. So it's easy for managers, provided the services provider does the good job it should be doing. In our experience, the regime is working very well and fund administrators have adapted quickly to ensure they are able to on-board new fund managers in the most efficient manner.

Is pressure on manager fees still the reality? What impact is that having?

Fundamentally, there's a split here – people are prepared to pay the higher fees for the higher return, so the alpha managers are getting what they want, but everywhere else, there is a squeeze. The sentiment here is that investors "will pay for alpha but not for beta" –We are still seeing the same fee structures in place, but there is certainly more negotiation on fund expenses in terms of what's in and what's out (particularly when it comes to things such as travel expenses). All in all, the fee position is becoming more competitive and commercial – we see "early bird" fee deals for cornerstone investors for example – but the feedback from one NED was that the picture is different across sectors, so that fee structures for hedge funds are under pressure, whereas they are not for infrastructure. I think that's to be expected because allocations to hedge are on the decline, whereas for infrastructure, everything is on the up. The benefit from Jersey's point of view is that if your structure permits you to set-up offshore in Jersey, as opposed to London, your costs will likely be lower. As soon as you're in the UK, the operational costs increase. Additional service providers, such as depositaries, will be required and the overheads are naturally higher – all of that works in our favour.

About Ogier

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