

## Fund finance: Guernsey perspective and updates

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Ogier are fund finance specialists with a highly experienced team across key offshore jurisdictions. Our experts have been advising banks, financial institutions, funds and sponsors since the inception of the funds industry.

The fund finance team in Guernsey, recognised as a top tier law firm by the Legal 500 and IFLR1000, has assisted on numerous high profile matters. It regularly acts for banks, financial institutions, funds and sponsors on a wide range of fund finance transactions. The diverse nature of the practice provides a valuable insight and understanding of the funds market and the legal and commercial issues relevant to borrowers and lenders alike.

We pride ourselves in providing responsive and practical advice, whilst our "hands-on" partner led team ensures a consistent approach.

In this article, our team offers its thoughts and insights on the recent developments in Guernsey's fund finance market which, like the global fund finance market, has shown much resilience over the last 18 months.

### Security

A typical capital call facility security package in Guernsey consists of security over (i) the uncalled capital commitments of investors in the fund including the right to make capital calls on investors in respect of their uncalled capital commitments, together with rights to enforce payments of them, and the right to receive the proceeds of such capital calls, and (ii) the account(s) into which investors are required to deposit their capital contributions. We have also recently advised on fund finance transactions where alternative security packages have been structured, which are, in some instances, novel in Guernsey. Some examples include:

1. security over distribution rights arising under the fund's limited partnership documents, coupled with a contractual ability for the lending institution to be registered as a limited partner of the fund should it so require; and

2. cascading capital call security granted by each entity in a fund structure to secure the capital contribution that that entity has committed to its underlying fund, with the ultimate beneficiary of such security (and borrower) then assigning all security interests to the financial institution as security for the loan monies.

## **Investor notices**

Until 2018, the Abraaj Group was the largest private equity investment house in the Middle East. This changed when the holding company and central investment manager entities of the group were placed into provisional liquidation following an independent audit into the alleged mismanagement of a \$1 billion healthcare fund. The Dubai Financial Services Authority fined two Abraaj Group companies a combined \$315 million for deceiving investors and misappropriating funds.

A significant issue in the Abraaj case highlighted a potential loophole in the typical security package of a fund finance transaction. When a financial institution agrees to provide a capital call facility, it generally requires a security interest over the fund's right to call capital from its investors. This enables the financial institution to approach investors directly for payment of their uncalled capital commitment in the event of a default by the fund. In order to effectively create this security interest, general partners are required to notify investors that a security interest has been created. Prior to Abraaj, it was acceptable for general partners to serve these notices in their quarterly update, potentially leaving the financial institution unsecured for a three-month window.

Consequently, post Abraaj lenders are more likely to require general partners to issue a notice of security at the time the security is entered into and are also more concerned to see investors notified individually of the creation of capital call security. Where a corporate administrator has been appointed under a fund's limited partnership agreement to legally accept notices on behalf of investors, lenders also require notices to be served on each investor individually. One of a number of different approaches we have seen is for a notice to be delivered to the corporate administrator acting for and on behalf of each investor, and for the general partner of the fund to upload the investor notice to the fund's investor portal, following which it is required to provide the lender with evidence or confirmation that this has been completed.

## **GP commitment/NAV facilities**

The majority of facilities we advise on are subscription line facilities where the recourse of the lender is to the uncalled commitments of the fund, although we are increasingly advising upon co-investment facilities to support the co-investment commitment of general partners or fund executives, and NAV and asset backed facilities secured by a number of underlying assets of the fund which sit with underlying portfolio companies.

## **About Ogier**

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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