Raising funds in Europe: Private placement still works

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What does the future hold for the raising of funds in Europe? Wayne Atkinson of Collas Crill, on behalf of the Guernsey Investment Fund Association, takes a closer look.

With the arrival of the Alternative Investment Fund Managers Directive (AIFMD), many were quick to bemoan what they saw as the inevitable loss of their favoured route to market; the use of national private placement regimes in the key European markets to raise capital for a Guernsey fund vehicle. With the passing of a few more years, a Brexit referendum and more than a little regulatory delay, it is becoming increasingly clear that not only does this route still work, it is becoming increasingly advantageous when compared to the alternatives.

At the time of its introduction, Guernsey's dual AIFM regime was expected to provide great flexibility for fund promoters working from the island; those Guernsey managers marketing into Europe would ultimately enjoy the benefits of the EU-wide passport through the equivalence regime, those marketing entirely outside of Europe would have the flexibility to operate under Guernsey's existing rules without the need to comply unnecessarily with the AIFMD regime.

Whilst Guernsey's regime has been approved as having deemed equivalence the passport has not yet been extended to third countries due at least in part to the effects of the Brexit referendum. With negotiations now underway in light of the UK triggering the Article 50 process, the failure to extend the passport to third countries has meant that the use of the applicable national private placement regimes for third country funds must continue. From a Guernsey perspective, this cloud has turned out to have a definitively silver lining.

Nicholas Hofgren, director of Guernsey-based manager GFG Limited, notes that for him the issue of jurisdictional choice remains unchanged by recent events saying: “GFG analysed five EU jurisdictions and the Channel Islands when AIFMD was initiated. We considered Guernsey the optimal home state for cost, security and transparency. If we had to make the choice today, we would still choose Guernsey.”

Whilst political delay is always frustrating to those looking to move forward, this delay in itself has created an additional flexibility for managers seeking options around marketing into Europe. Managing using an EU entity allows, and indeed ordinarily requires one to use, the AIFMD passport. Managing from Guernsey by contrast still allows managers to use the existing and familiar private placement regime.

Martin Scott, Director of IAG Private Equity Limited, commented: “Whilst the Brexit vote has undoubtedly created uncertainty in the investment fund sector, the likely continuation of the popular and straightforward national private placement regimes provides an opportunity for fundraising by reducing the marketing costs and easing the reporting burden for GPs until an agreement on financial services is in place between the UK and the EU."

The key markets in the EU… or 'every' market?

For many managers, the passport has brought with it the realisation that in reality they have never needed to market EU-wide and never will. Most managers are focussed on a few major economies and the benefits of the passport in allowing marketing beyond their targeted investor base are an irrelevance at best. Diverting marketing spend beyond familiar targets like London, Frankfurt and Amsterdam is likely an unwelcome distraction at best.

Additionally, there are several logistical issues around the passport arising out of the way in which the directive has been implemented into the various national laws. Several Member States for example impose additional host fees and charges on AIFMD-authorised fund managers not based in their country. Others have gold-plated or mis-transposed the AIFMD wording resulting in additional documentary requirements or processes. So much for that universal 'passport'.

The cost of doing business…?

Going beyond the efficiency or otherwise of the passport, the increased regulation arising out of the AIFMD regime has led to an increased costs base and many EU-domiciled funds are finding their service provider and transaction costs significantly exceed those of their Guernsey counterparts. It may go without saying but for a fund manager seeking to achieve growth in a fund's value of a quantum significant enough to trigger a performance fee, spending on service providers or regulatory requirements will be unwelcome if a cheaper and equally viable (yet retaining regulatory substance) alternative is on offer.

Guernsey represents that alternative for many managers. For those seeking to target limited jurisdictions, and particularly those in the private equity space for whom the AIFMD regime is particularly ill-suited, the Guernsey regime is likely cheaper and quicker than launching through a European domicile.

A well-trodden path

Additionally, using a Guernsey vehicle and the private placement regimes allows the continued use of a structure the funds marketplace is familiar with and has always liked. Guernsey's in-depth service providers, infrastructure, quality boards and simple pragmatic regulation continue to be attractive for the same reasons they always were attractive. Having access to capital through a simpler, more cost-effective route is simply a bonus.

Peter Miller, an Executive Director at Ernst & Young LLP, notes: "We continue to see a positive attitude from asset managers towards Guernsey as a jurisdiction, with the key drivers for jurisdictional selection being the strength of the regulatory environment, competitive structural running costs and the quality of the offering from local service providers. These factors still appear to outweigh any perceived uncertainty Brexit may bring to the investment sector in Guernsey."

Arbitraging the Guernsey regime and the use of private placement into Europe against that offered by European domiciles and the passport will always be a case of 'horses for courses'. The exact requirements and workability of private placement are dependent entirely on a fund's target marketplace(s). Private placement of Guernsey vehicles has been successfully used however to raise funds in amongst others:

- The UK
- Netherlands
- Germany
- Finland
- Norway
- Sweden
- Belgium
- Denmark
- Ireland
- Luxembourg

With any major decision, it is always worth running a cost-benefit analysis, the costs of launching in Europe and using the AIFMD passport are becoming increasingly clear, the benefits for those operating in the traditional fundraising arenas are perhaps less obvious. Meanwhile Guernsey continues to offer exactly what is has always offered; a cheap, effective, respected route to market.

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