COLLAS CRILL

What is the state of the funds industry?

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It has certainly been an interesting and unpredictable 2022 so far. Nowhere has been immune from the impact of global geo-political issues such as the war in Ukraine, Russian sanctions, the gradual compounding effect of Brexit to supply chains, travel disruption, UK political upheaval, the long tail of Covid-19 impact (including the great resignation) and a resultant inflationary environment not seen since the 1980s.

The Channel Islands and its fund industry has also not been able to escape the impact of these seismic events but how has it been faring?

In Jersey, there is an ongoing upward trajectory in terms of numbers of Jersey private funds (now over 550, representing almost a 30% jump in the last year up to the end of March 2022). The net asset value of regulated funds under administration increased by £9.1bn from £450.2bn to £459.3bn during Q1 2022.

In Guernsey, it's a similar story; the total net asset value of funds increased during the first quarter of 2022 by £6.0 billion (2.0%) to £309.6 billion, reflective of an upward trajectory over the past year, with total net asset values having increased by £45.9 billon. Of that, the number of registered closed-ended funds (of which the Guernsey Private Investment Funds form part) increased by 12%.

Generally, there has been a gravitation towards the more private fund types, rather than the more public and heavily regulated funds, as managers are seeking a way of mitigating costs whilst maintaining a proportionate level of regulation in a stable jurisdiction.

The regulatory environment of the funds world never stands still. Jersey and Guernsey are preparing for their respective MONEYVAL visits which, in both jurisdictions, has led to a variety of fund, regulatory and financial crime legislation, policy updates and refinements, changes to handbooks, expansion of the application of civil penalties regimes, as well as consultations (and arguably opportunities) in relation to issues such as electronic ID.

The EU agenda also continues to evolve and potentially alter the landscape for third countries such as Jersey and Guernsey in relation to international transaction structuring. The upcoming changes to the double taxation treaty between the UK and Luxembourg may well have an impact on the attractiveness for using Luxembourg vehicles to invest in UK real estate.

Likewise the proposed 'ATAD III' from the European Commission (an anti-tax-avoidance directive intended to neutralise the misuse of shell entities for tax purposes) is aimed at EU resident entities which claim benefits

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under double tax treaties and other EU directives, but which lack a minimum level of economic substance. The proposal is intended to be transposed into domestic law by EU Member States by 30 June 2023, and to come into effect from 1 January 2024.

Already clients are considering the proposed impact and this may also have quite a large impact on the use of certain EU based entities (particularly Luxembourg).

Importantly, Jersey and Guernsey's ability to utilise private placement regimes to market funds under AIFMD continues essentially unchanged, notwithstanding the continued evolution in this space under the proposed AIFMD II, the EU Cross Border Distribution Fund Directive and the tightening of rules around areas such as pre-marketing of funds to EU investors and reverse solicitation.

Jersey and Guernsey have continued to be appealing to many managers who are being increasingly surgical about where they market to investors, rather than being based in the EU and paying more for a wider ability to passport.

With the placing of Cayman on the EU's AML 'blacklist' earlier this year, the industry will be watching keenly to see if Cayman can get itself off that list shortly or if that may be a more longstanding position that may affect international fund structuring.

Excitingly, later this year Jersey will fully introduce its new LLC option, offering those familiar with US structuring a vehicle with features they are familiar with. Guernsey is taking a similar approach, with the proposals for the introduction of LLC legislation having been approved by Guernsey's Committee for Economic Development back in 2021 (though no formal date for the passing of the relevant legislation has yet been finalised).

The only constant would appear to be change. Let's see what the rest of 2022 brings...

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