

Jersey's Position in the Global Funds Market

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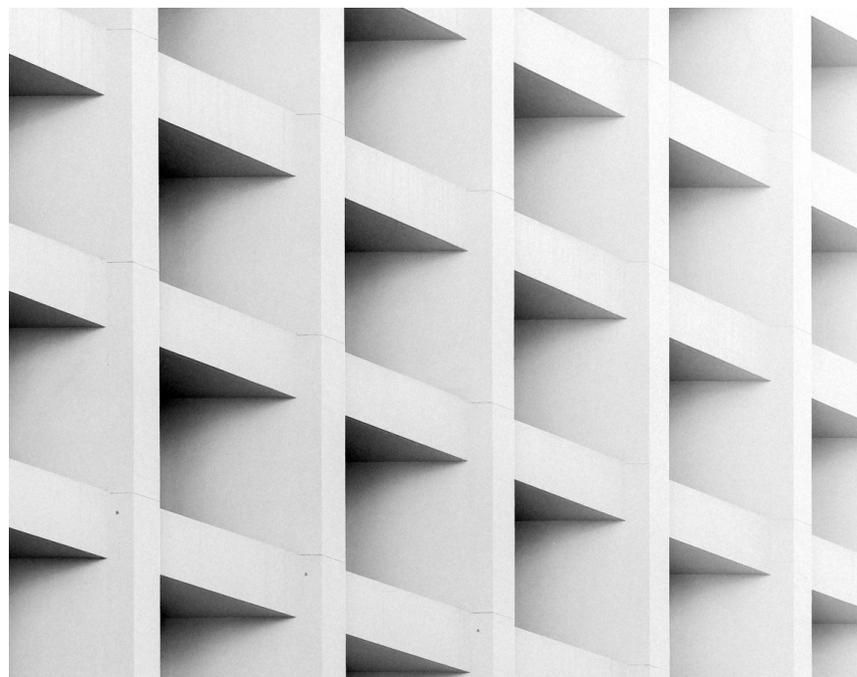


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Jersey's global positioning in context



Cayman: New Private Funds regime – levelling the playing field with Jersey?

- Requires registration and regulation for Cayman private (closed ended) fund vehicles; previously unregulated
- Includes single asset holding vehicles (AIVs) with multiple investors
- Existing funds were required to register by 7 August 2020
- New requirements include:
 - Audited financial statements (*signed-off "on Island"*) to be prepared and submitted to CIMA
 - Valuations – *regular asset valuations to be carried out at an appropriate frequency; performed by an appropriately qualified independent third party or independent arm of the fund manager*
 - Custody – *a custodian to have custody of assets and ensure asset segregation; verification of title to assets;*
 - Cash monitoring – *fund must appoint a person to monitor fund cash flows; ensure cash has been booked in fund cash accounts and ensure all payments made by investors in respect of investment interests have been received*
 - CIMA fees
- Estimated about 50% of approximately 25k Cayman private funds registered by 7th August
- **Result** – Cayman taken off the EU's blacklist of non-co-operative jurisdictions for tax purposes on 6th October
- **BUT** now has a regulated closed ended funds industry, levelling the playing field with Jersey

Cayman cont.

FATF Grey-listing?

Possibility Cayman may be added to FATF AML-CFT "grey-list" this month - mixed 2019 FATF report found that major deficiencies identified in Cayman's 2015 NRA may have inhibited the jurisdiction's ability to analyse and understand its AML risks

Potential Jersey opportunities:

- Jersey **Unregulated Funds** opportunities for non-EU investor structures - lower cost
- Jersey **single asset holding vehicles** – lower cost (NB not regulated as funds unless EU marketed AIFs)
- Cayman **reputational issues** for some UK/EU investors (eg on-going FATF/AML issues)
- Jersey **LP Law amendments permit migrations** in of existing Cayman LPs; JFSC pre-clearance may be needed...
- Cayman (and BVI) LPs already subject to **economic substance** requirements, unlike CI LPs
- **Costs now balancing out** as between Caribbean and CI structures?

BVI - New Private Funds regime and Substance Challenges

BVI also introduced a regulatory regime for the recognition of (closed ended) private investment funds for the first time in July 2020

- *have to be regulated by application (with fee payable) to the BVI FSC (by July 2020 for existing funds)*
- *need an authorised representative in the BVI and at least two directors*
- *must at all times have an appointed person or persons responsible for (a) management of fund property, (b) valuation of fund property and (c) safekeeping of fund property, including the segregation of assets*
- *offers or invitation to purchase or subscribe for fund interests must be made within an offering document or a term sheet*
- *required to prepare financial statements complying with IFRS*
- *required to provide a copy of its audited financial statements to the BVI FSC within six months after its financial year end*

Creates similar level playing field opportunities for Jersey to those arising as a result of Cayman changes

Economic substance - proving a challenge where clients require relevant BVI companies to be BVI tax resident; possible cause of inward migrations to Jersey?

European Funds (AIFMD II proposals)

ESMA's recommendations for AIFMD II in 18 August 2020 letter to European Commission

A collection of views ESMA has gathered from the EU national regulators

- includes **recommendations for changes in 19 areas** including harmonising the AIFMD and UCITS regimes; delegation and substance; liquidity management tools; leverage; the AIFMD reporting regime and data use; and the harmonisation of supervision of cross-border entities
- **main area of interest = proposed delegation changes:** *ESMA suggesting limits on extent to which services can be delegated by AIFMs and requiring certain services to be always performed by the AIFM itself*
- **Proposed delegation limitations of principal concern to:**
 - *EU "host AIFMs" which currently delegate elements of investment management to external (eg UK) investment managers; and*
 - *UK managers using host EU AIFM structures following the end of the Brexit transitional arrangements*

Main ESMA concern: avoiding lots of letter box entities in the EU with work flowing back to London or other third countries

European Funds (AIFMD II proposals, cont.)

InvestEurope view, having since met European Commission, is that Commission's plans are not as far-reaching as ESMA's own proposals

BUT ESMA's letter will feed into the broader Commission review in relation to the future application of the AIFMD

Next steps:

- *Anticipated Commission will shortly issue detailed consultation paper outlining specific changes under consideration*
- *Draft amending legislation anticipated to be issued next year*

Luxembourg issues

- **Covid-19 impact** – many commuting workers from Belgium, France and Germany; making decisions for Luxembourg funds from other countries may run into regulatory and tax problems
- **Host AIFMs bringing their own views to bear** on issues such as post-Covid fund valuation, given their access to a broad range of market valuation information across a number of client strategies – creating challenges for some promoters
- **Servicing issues**; increasing evidence of managers regretting domicile choice and of administration transfers between service providers
- Jersey administrators servicing Luxembourg work?
- OECD Pillar 1 and 2 impact on DTA jurisdictions/arrangements: TBC...

Ireland – ILP law progression

September 2020 - the Irish government published the draft new Investment Limited Partnerships (Amendment) Bill 2020

Irish investment limited partnerships (**ILPs**) = form of common law partnership structure specifically designed for use as a collective investment fund

Will offer limited investor liability and tax neutrality as per a Jersey LP

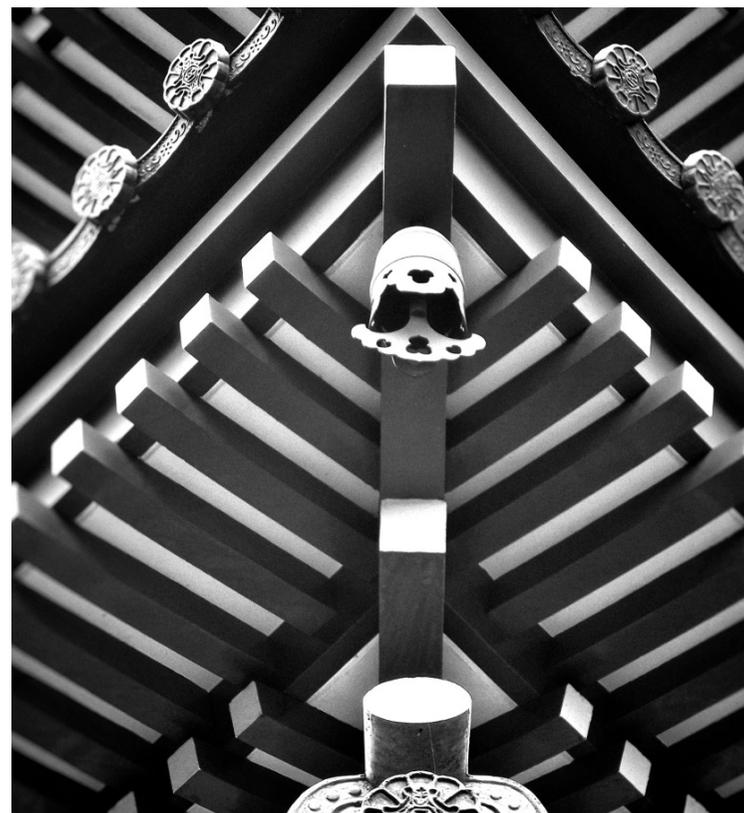
Will include the possibility of "**cellular LPs**" - managing separate portfolios of assets under a single ILP umbrella - ability to create sub-categories of limited partners exposed to particular ILP assets

ILP Bill now subject to various stages of review and approval by the Irish parliament, but it is hoped that the **legislation will be approved in the coming months**

Ireland – LP law progression cont.

Challenges for Irish ILP model?

- *must be AIFMD-compliant* - Irish Central Bank will consult on changes to its AIF rulebook, focussing on private equity, credit and other private fund strategies
- *relative lack of Irish servicing experience* of closed ended LP structures and PE/VC/credit assets relative to the CIs against the backdrop of possible ESMA/EU delegation constraints
- *Luxembourg's head-start*
- *limited PE/VC/credit director capacity/experience?* CBI's ICAV register shows director capacity is already a problem in Ireland; reform of Ireland's two-director residency rule may be needed before the new LP law comes in.



UK developments – Professional Investor Fund

Update on the UK's proposed new **Professional Investor Fund (UK PIF)** product

- *To be in the form of an unauthorised closed ended or hybrid tax transparent entity; based on existing UK Authorised Contractual Scheme (ACS) model (to help gain support from the UK government)*
- *Designed as an efficient UK-domiciled alternative to Lux, Irish and offshore alternative funds in the RE and PE space*
- *Main selling points: quick and cheap to establish relative to existing UK models – like a UK LP structure, but no prior FCA authorisations*
- **Being pushed hard in the RE sector by AREF; will gain traction from UK intermediaries** – offers UK fiscal benefits; addresses reputational concerns with offshore structures (eg some UK local authority investors); permits retention of oversight and management onshore; avoids offshore structuring costs; creates post-Brexit opportunities for UK service providers (legal, accounting, administrative)

UK developments - Professional Investor Fund cont.

- Potential challenges for UK PIF:
 - *Brexit uncertainties around regulatory model and EEA access (see below)*
 - *will non-UK investors embrace an onshore UK vehicle?*
 - *custodian/depositary requirement and (initially) AIFMD-compliant regulation*
 - *reasonably high £1m minimum investment limit*
 - *regulatory notifications will need to be made where there are material changes, (potentially including changes to the investor base as per UK LP model)*
 - *need to align UK tax regulations to ensure transparency and to enable investors can transfer interests without UK tax consequences (eg SDLT), to match the easy secondary liquidity currently offered by offshore structures = complex*
- **Timing:** unclear but UK Government in midst of review of UK investment funds regime (initially announced in Spring Budget 2020); HM Treasury is in listening mode
Unlikely new product will be announced before next year (Q. possible Covid and Brexit-related bandwidth constraints for UK Government and HM Treasury?)

UK developments - Asset Holding Companies

HM Treasury also consulting on UK Asset Holding Company (AHC) proposals

- *Linked to UK PIF proposal and supported by INREV, AREF, etc.*
- *Aim: create a UK corporate vehicle to act as tax efficient intermediate holding entity within fund structures*
- *Could pose a competition risk to JPUT usage for RE transactions and usage of UK tax resident Jersey holdcos for UK PE transactions*

UK developments cont. – tax challenges

AHC and UK fund regime tax challenges – overcoming complexity of UK tax system

- **Interest withholding tax exemption** - *needed for AHCs and UK funds - could be complicated to apply in practice when compared to easier and more certain exemptions available in other popular fund jurisdictions.*
- **Substantial Shareholding Exemption (SSE) rules** - *require simplification to resemble participation exemption regimes available outside UK*
- **Hybrid mismatch rules** - *are under separate consultation – need to work out how they will align with AHC proposals and ATAD II rules; and the "acting together" rules need widening so investors are not treated as acting together by virtue of being in partnership*
- **UK VAT** – *need a review to ensure VAT treatment of onshore AHCs and relevant fund vehicles is competitive to the VAT position of offshore vehicles*
- **Loss of EU DTA benefits post-Brexit** - *loss of access to the Parent-Subsidiary Directive and the Interest and Royalties Directive*

UK developments cont.

Brexit uncertainties and MoUs

- What will happen at the end of the Brexit implementation period?
- Strong likelihood, from a financial service perspective, UK will not be able to passport financial services through the European Economic Area (EEA)
- ESMA and the European securities regulators agreed on Memoranda of Understanding (MoUs) with the UK FCA should the UK leave the EU without a withdrawal agreement
- The MoUs cover cooperation and exchange of information provisions, and include:
 - *an MoU between ESMA and the FCA on exchange of information related to the supervision of Credit Rating Agencies and Trade Repositories*
 - *a multilateral MoU with the EU and EEA National Competent Authorities (NCAs) covering supervisory cooperation, enforcement and information exchange, which will allow information sharing in the area of market surveillance, investment services and asset management activities*
 - *those MoUs cover the regulatory cooperation agreements needed to permit delegation to the UK under UCITS and AIFMD, and outsourcing under MiFID. Multilateral MoU will allow fund manager outsourcing and delegation to continue to be carried out by UK based entities on behalf of counterparties based in EEA (Query impact of ESMA letter of 18 August 2020)!*
- On 17 July 2020, ESMA and the FCA announced that the MoUs remain valid and will take effect at the end of the transition period expiring on 31 December 2020. They confirmed these MoUs remain relevant and appropriate to ensure continued good cooperation and to avoid disruptions in the sectors of investment management, Credit Rating Agencies and Trade Repositories

Mauritius – EU AML/CFT black-listing pressure



Mauritius = successful (DTA) route for FDI into Africa

- Currently on the FATF "grey list"
- On the basis of recent FATF findings, EU has included Mauritius on its proposed revised AML-CFT "black-list" list (of high-risk countries allegedly having strategic deficiencies in their anti-money laundering and counter terrorist financing frameworks)
- Updated EU blacklist has not yet been confirmed but, despite Mauritius' best efforts, it looks likely to happen in October

Could open up opportunities for other jurisdictions (eg Singapore) to replace it as a DTA gateway for FDI into Africa

Singapore

3 key developments to make the jurisdiction more appealing as a funds domicile:

- **Introduction of Variable Capital Company (VCC regime)** in 2019; a new Singaporean fund vehicle to encourage establishment of domestic Singaporean funds
- **VCC Grant scheme** - helps defray costs involved in establishing a VCC; Singapore co-funding up to 70% of eligible expenses paid to Singapore-based service providers (capped at S\$150,000 for each application, with a maximum of three VCCs per fund manager)
- **VC Managers regime** – a simplified and fast-track regulatory regime for managers of venture capital funds (VC Managers) where:
 - *investing (only) in recently formed unlisted business ventures;*
 - *managing closed ended funds;*
 - *only targeting accredited and/or institutional investors)*

Relaxation of 5 year fund management experience requirement and not subjected to capital requirements and business conduct rules that apply to other fund managers

Guernsey



- *Private fund regime* – not proving as popular as JPF regime so far – but GFSC consulting over the summer on modifications
- *Green fund badge* for ESG appeal
- *Interest in the inter-action of funds and private client structures;* over-reliance on PE/VC and listed structures?
- Guernsey feeling *relative lack of UK RE work*
- *Covid-19 approach:* safety over connectivity; broadband limitations
- *Relative governance (diversity) limitations?*

Positioning for Jersey in light of the above

- Work to retain high FATF rating (ie managing NRA messaging and reacting to NRA deficiencies) for market access and reputation (cf Cayman and Mauritius)
- Ensure regulator, financial crime unit and Taxes Office are adequately staffed to police the industry effectively and satisfy external examiners
- Maintain positive engagement with OECD, EU and others to maintain simple tax neutrality for fund structures
- Continue to leverage JPF success for new business
- Leverage the appeal of Jersey for single asset (non-fund) structures
- Urgently amend our LP Law to add cellular LP optionality to help keep pace with Luxembourg and Irish partnership models
- Leverage opportunities to administer non-Jersey structures in Jersey (expertise and service quality)
- Leverage quality of governance (substance compliance) and foster more diversity on fund boards

Q&A

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Thank you