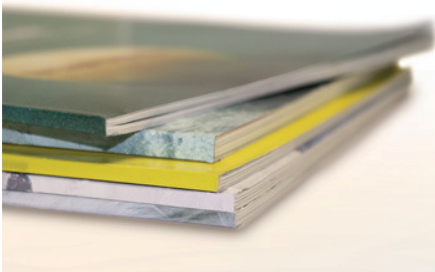


Private Equity: Guernsey Market Snapshot

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Given the tightening in global banking markets, private equity has been forced to question its successful highly leveraged acquisition model. However, private equity has proven particularly adept at identifying opportunities notwithstanding the economic environment.

Over the last twelve months, in spite of the difficult fund raising environment, there have been impressive numbers of private equity and venture capital funds launched. The focus of new private equity funds is increasingly on emerging markets, mid-cap buyouts, distressed strategies and venture capital. By way of example, NB Distressed Debt Investment Fund Limited and HarbourVest Senior Loans Europe Limited recently launched using Guernsey companies listed on the Specialist Funds Market (“SFM”) of the London Stock Exchange.

For those private equity managers with the specialist skills and available capital to execute distressed debt, restructuring and turnaround strategies, there is the

promise of lucrative returns. We may be some way from the dizzy heights of the last decade but the level of activity is promising.

So what about Guernsey?

With decades of experience in investment funds, Guernsey is home to an array of fund managers and service providers. Guernsey is a key European centre for private equity and the roll call of managers with funds and a physical management presence in Guernsey is impressive. Terra Firma and Jon Moulton’s Better Capital have recently joined the likes of Permira, Partners Group, Apax Partners and BC Partners in establishing local offices.

Guernsey is one of the dominant jurisdictions for listed closed ended investment funds. In 2008, there were more Guernsey domiciled investment funds listed on the main market and AIM of the London Stock Exchange than from any other jurisdiction. A Guernsey fund was also the first listed on the SFM, and Guernsey vehicles now dominate listings on the SFM. At the end of March 2010, the net asset value

of funds administered by Guernsey providers was in excess of US\$303 billion.

Selecting the Right Vehicle?

The overwhelming majority of funds launched by private equity managers in Guernsey in the last 20 years have used Guernsey limited partnerships as the fund vehicle, and a Guernsey limited liability company as the general partner. This is unlikely to change as both the Guernsey limited partnership and incorporated limited partnership offer the flexibility and benefits investors and private equity managers require.

In recent years, particularly with the secondary market proving increasingly active, a number of the largest private equity managers sought to provide liquidity to investors by listing a Guernsey domiciled “*permanent capital*” vehicle. In addition to providing liquidity to investors, listed vehicles can have broader appeal, for example, most pension funds have strict investment restrictions on the level of exposure within their portfolio to unlisted “*alternative investments*”. In reality, however, the trading levels of these vehicles have been disappointing and they have often traded at a discount to net asset value. However, private equity investment is a long game and many expect these structures to prove to be a lasting entrant to Guernsey’s fund offering.

Keeping Guernsey Relevant

Guernsey has remained mindful of what fund managers need and want in order to keep Guernsey structures relevant and attractive. The two main considerations being:

1. The status of the Guernsey vehicle – i.e. can the fund manager promote a Guernsey vehicle in its key markets? Is it recognised and accepted by its target investor base? And;

2. Is Guernsey able to provide a fund manager and fund with the administration, regulatory and compliance standards required at an acceptable cost?

Enough serious private equity players have launched, and continue to launch, funds in Guernsey for there to be little doubt as to the answers. Guernsey’s fast track fund approval regime means that a Guernsey fund is even more attractive than it used to be. In times when investors are more likely to be seeking a regulated environment as a safety blanket, fund managers approach Guernsey with confidence knowing that the jurisdiction is respected and experienced, and is vigilant to ensure the industry remains efficient and effective.

The Alternative Investment Fund Managers Directive (“AIFMD”)

No article on investment funds can be complete without mentioning the AIFMD. In summary, negotiations continue under the Belgian presidency and we are told to expect an outcome towards the end of September. We understand there is renewed promise of a third country passport regime and, although we may be moving away from such an outcome, Guernsey and Jersey are both well placed to satisfy equivalence requirements if that is what is required to retain access to this important market. In the meantime, Guernsey funds are structuring around

some of the expected issues (to the extent possible)
and providing risk warnings in the prospectus.

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