

ADVISORY | INDUSTRY INFORMATION

Bermuda emerging as jurisdiction of choice for European investors in CRE CLOs

Since the Cayman Islands were added to the EU AML list in February 2022, Walkers has moved multiple CLO deals to Bermuda, with the first such deal closing in late March that same year. Of late, the Bermuda team has seen an uptick in the number of commercial real estate (or “CRE”) CLO issuers being incorporated in the jurisdiction, and the indications are that Bermuda has emerged as the jurisdiction of choice for US CLO managers seeking to market CRE CLO deals to EU investors.

Market participants will be aware that a CRE CLO differs from a “traditional” CLO in a number of respects:

- The collateral comprises real estate loans backed by mortgages over the underlying real estate assets.
- The issuer SPV remains on balance sheet, with its ordinary shares being held by a fund managed by, or a holding entity affiliated with, the collateral manager, rather than a share trustee.
- The issuer directors are typically a mix of independent directors provided by the administrator and individuals associated with the manager.
- The deals are not warehoused, with the assets being purchased by the issuer at closing.

The advantages to managers and investors of incorporating the issuer in Bermuda are numerous. As well as the usual factors traditionally associated with the jurisdiction (tax neutrality, stability, compliance with international standards including FATCA/CRS, anti-money laundering and anti-terrorist financing and beneficial ownership), Bermuda is well placed to meet the requirements of the CRE CLO market:

- CLO issuers are not subject to Bermuda’s AML/ATF regime.
- CLO issuers are not subject to economic substance requirements in Bermuda, meaning that there are no barriers to appointing manager-affiliated individuals who are not resident in Bermuda to the issuer’s board of directors.
- Bermuda companies (including CLO issuers) need not prepare financial statements if the directors and shareholders agree to waive their preparation.
- A Bermuda issuer is not dependent on REIT status (which can be lost upon the occurrence of certain events) to be excluded from US taxes.
- The Bermuda Monetary Authority and Registrar of Companies are well versed with CLO structures, both on and off balance sheet, and have demonstrated a commitment to swift incorporation times.

Walkers CLO practice

Walkers is a recognised market leader in the provision of best in class legal, tax, listing and professional services to CLO issuers incorporated in the Bermuda, Cayman Islands, Ireland and Jersey.

Walkers, through its integrated network of offices across the world, offers a client centric one-stop shop solution for CLO Arrangers and CLO Managers involved in US and / or Euro CLOs.

Further information

For more information, please get in touch with your usual contact at Walkers or any of the contacts in your region listed below:

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