Why Guernsey and Jersey Offer a Valuable Alternative to Luxembourg For Private Funds

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Introduction

The bare statistics would tell you that Luxembourg is the epicentre of the European investment funds industry, with assets valued at an estimated 5.3 trillion euros held in fund vehicles (as at April 2021). The Grand Duchy of Luxembourg – a tiny, landlocked country of less than 1,000 square miles bordered by France, Germany and Belgium – has trodden a careful path as a financial services centre within the European Union (and indeed as the home of the EU's highest judicial authority) while avoiding the political and media hyperbole that attaches itself to other jurisdictions focused on the same industry.

The success that has made Luxembourg the largest investment funds centre in Europe is down to several things, but it is in the structuring and management of public funds – highly-regulated structures open to retail investors – where the bulk of that 5.3 trillion euros rests. In the growing area of private funds – funds open only to qualified, sophisticated investors with a lighter-touch regulatory model – the Channel Islands of Guernsey and Jersey are providing a valuable alternative.

Starting with Guernsey: despite the headwinds of a global pandemic, the Island's regulator (the Guernsey Financial Services Commission) reported a 23.7% annual increase in the NAV of Guernsey funds in Q4/2021, to £303.6 billion (a new record high). Most of that rise, and most of the total amount, is in the closed-ended schemes in which the Island specialises, which grew by 26.8% to £249.1 billion.

On to Jersey: impressive figures were also recorded in Jersey, where the NAV of alternative investment funds reached £450.2 billion in Q4 2021 – stats recorded also that private equity and venture capital asset classes grew by 27% over the previous 12 months. That rise is in part down to the success of the private fund model – 531 Jersey Private Funds have now been registered since the introduction of the regime in 2017.

You can see why the growth of private funds – Jersey Private Funds (JPFs) in Jersey, and Private Investment Funds (PIFs) in Guernsey) – has fuelled this performance, and how the Islands are posing a strong alternative to the traditional route via Luxembourg.

Five of the key drivers for choosing either Channel Island as a funds jurisdiction are:

Access to Europe - European Commission statistics show that 97% of passportable funds raised money from three or fewer jurisdictions in the EU, which means in practical terms that the National Private Placement Regime route that Guernsey and Jersey funds follow to market into member states is a valid alternative to the full, and more complex AIFMD path via Luxembourg. Also relevant to this point is that 62% of European investors into private equity funds come from the UK, Switzerland or the Netherlands. It won't have escaped anyone's attention that two of those countries are not in the EU and have (or will have) their own rules for the distribution of fund products within their territories.

Regulation – NPPR offers a tried and tested route that will almost certainly be quicker and cheaper than an onshore full-AIFMD model. The Guernsey and Jersey regimes are built around the AIF code of practice which incorporates some of the key AIFMD provisions but which does not require wholesale compliance with it. Anecdotally, we understand from administrators who work on both Luxembourg and Channel Islands funds that the cost of a Luxembourg private fund can be up to three times more than the Guernsey/Jersey model, with a similar uplift on legal fees. Guernsey and Jersey have also been forward-thinking in the area of confidentiality – beneficial ownership information is recorded and can be shared by the local registry with other international regulators, tax authorities and law enforcement, but is not publicly available.

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A Well-Trodden Path – In the past few years, managers including Softbank, CVC, Triton, Nordic Capital and Hipgnosis have established Guernsey or Jersey funds, and the islands remain the jurisdiction of choice for a number of big-name private equity houses. Increasingly, US managers are looking to the islands for new fund launches. The presence of such established brands underlines the quality of the offering and the suitability of the Channel Islands jurisdictions – in the early days of the Islands' financial services industries in the 1980s and 1990s the bulk of the work may have been based around trusts and banking, but the funds sector is now a sophisticated and competitive one that is capable of attracting the biggest names in the industry.

Proximity to Major Hubs – It may be a quirk of geography, but being 45 minutes away from the City of London does not hurt the funds offering of Guernsey or Jersey (even in the post pandemic days of ubiquitous Microsoft Teams calls). Time-zone adjacency, shared language and work attitude, not to mention company laws based on the English model that onshore counsel are familiar with, are all positive factors – especially when the requirements of economic substance legislation being the need for genuine and substantial presence in the Islands, including the provision of board meetings on-Island, are taken into account.

Anglo Service Culture – One of the key selling points for Guernsey and Jersey is a strong professional services infrastructure. This includes a highly skilled and qualified financial services workforce – accountants, lawyers, fund administrators, bankers, as well as a pool of directors in the independent sector and at trust companies who provide real value to boards through experience from technical backgrounds in accounting, real estate, private equity and other areas. The attitude extends to the corridors of the regulator - practitioners in Guernsey and Jersey have direct access to government and regulatory bodies, and with it a genuine ability to shape laws and regulations, in particular with a view to making pragmatic, commercial fund products that are useful to clients not looking to over-regulate in a space where investors are sophisticated enough to manage their own levels of risk.

On the basis of the most recent figures, Guernsey and Jersey would have to grow the size of their funds industries almost ten times over to reach the level of Luxembourg – but that is not the intention or aim of the industries, nor should it be. Instead, the focus has rightly been on developing a sophisticated, well-respected and appropriately-regulated offering targeting the private funds sector. Managers, investors and advisers may find that their interests are better-served by exploring the options in Guernsey and Jersey as an alternative to Luxembourg.

About Walkers Private Investment Funds teams

Walkers has dedicated private investment fund teams in Guernsey and Jersey who work with a broad range of clients on a diverse range of products. Our teams can provide a complete package of Guernsey and Jersey regulatory, corporate, partnership, tax and economic substance advice in relationship to fund formation and ongoing advice throughout the investment fund life cycle. Our Guernsey and Jersey teams work closely with our investment funds experts across our global network to ensure that each client obtains the appropriate multi-jurisdictional advice.

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