Jersey and innovations in global investment fund transactions

BY TIM MORGAN AND SIMON HOPWOOD

While Jersey has been a leading fund jurisdiction for many years, recent volatility in post-pandemic market conditions has led to increasingly innovative structuring. Much present activity derives from changes in investor bases where new investor groups may have differing liquidity, as well as regulatory or eligibility requirements.

This means that we are also seeing an increased combination of jurisdictions in transaction structuring, which more than ever requires an understanding of how Jersey can work alongside other financial centres.

HOW DOES JERSEY FIT IN?

Regulatory flexibility, tax neutrality, track-record, speed to market and cost efficiency are key drivers allowing transactions to be achieved efficiently. This applies of course to flagship funds.

However, in relation to coinvest and parallel funds, in our Jersey team we are seeing that more nuanced investor preferences will also drive location of the vehicle through which they invest. These can vary from levels of regulatory fee burden or

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reporting – often a driver for a Jersey parallel to an EU fund which would otherwise have full Alternative Investment Fund Managers Directive (AIFMD) obligations – as well as eligibility (which is often a driver for a Jersey parallel to a Caribbean or North American vehicle).

The Jersey Private Funds (JPF) regime provides a sophisticated and efficient approach to regulation, with regulatory approval being obtained quickly and efficiently. The JPF regime can apply to any legal structure, for example:

- Jersey limited partnerships were enhanced by partnership law changes in 2022.
- cell companies, have been used in a number of recent single managed account structures in relation to credit funds.
- There has been a return to the unit trust, which for real estate investment by global investors has regained momentum, particularly since the UK tax elections regime (introduced in 2019, which can be applied in such cases) became market standard.
- There has also been notable take up for Jersey vehicles as QAHC structures, introduced in the UK in 2022.
- Jersey separate limited partnerships have been used in a number of deal structures in the last year, where the clarity of having separate legal personality reduces inadvertent risks of look through in transactions in specialised asset classes such as insurance.

At the same time, many co-investment or alternative investment vehicle (AIV) structures may be able to be treated as investment holding or joint venture structures which do not require fund treatment.

Finally, a mix of financing facility types (e.g. subscription line, NAV or asset-based financings or hybrid combinations of these) are regularly seen in the Jersey market alongside other centres.

Jersey deal structures that have recently been popular, which have often included us working alongside our teams in Ireland, Luxembourg, Cayman Islands and London, as well as teams across our BVI, Dubai, Hong Kong and Singapore offices, include the following:

- **Continuation funds**
  Now being widely used by institutional investors across closed-ended funds as a tool to actively manage and strategically realign portfolios and investor bases. This surge has been accelerated by a shortage of reasonably priced, quality assets, incentivising managers to find ways to delay or reset exits for star portfolio assets. The ability to establish vehicles on a 'same-day' basis combined with a 48-hour regulatory turnaround for JPF approval can assist with this approach.

- **Annex funds**
  A further derivative is an annex fund being a newly formed vehicle (normally a partnership), often funded on an accelerated timeline, to inject new capital into investments held by the existing fund.

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- **Preferred equity**
  These deals involve a preferred equity provider contributing additional capital to a fund and, in return, being granted priority over the distributions from a defined asset (or group of assets) held by the fund, typically structured by transferring relevant asset(s) to a newly established special purpose vehicle, which then issues preferred shares.

- **Co-investment vehicle**
  Typically, a co-investment vehicle will not be subject to fund regulation in Jersey. Even if there is a need for EU marketing, a Jersey vehicle can take advantage of cost-effective and targeted marketing to select EU jurisdictions through relevant national private placement regimes.

- **Parallel funds and separate managed accounts**
  We have also seen an increase in parallel funds, allowing participation in the same investment opportunities as the main fund while offering flexibility to tailor the terms and conditions to meet specific requirements. There are overlaps with separate managed accounts (SMAs) which can include variations in fee structures, investment minimums, lock-up periods, or different levels of risk exposure.

CONCLUSION

Many of the aforementioned elements are often combined as part of an on-going trend in tailoring elements for different investor dynamics. Increasingly we see Jersey solutions sitting alongside elements from other jurisdictions, both European (Luxembourg and Ireland) as well as global (bringing to play expertise from North American and Middle East/Asian markets) to maximise effectiveness for global investors and sponsors, bringing Jersey structuring to a wider client base.

This requires high level, multijurisdictional expertise and 'transactability' as often broader corporate and transaction experience is required, from in-depth knowledge of different asset classes and jurisdictions to expertise in finance and restructuring deals.

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