Offshore v onshore for fund domiciliation

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Group Partner Dilmun Leach recently travelled to New York to speak at the IFI Global Autumn Seminar, which focused on critical issues that US investors and fund managers need to know about when looking overseas.

Dilmun shared his views on offshore and onshore opportunities for fund domiciliation, and why Jersey should be considered as a favourable offshore location.

As a funds, corporate and regulatory lawyer with experience in both onshore and offshore firms, Dilmun described the market and lifestyle opportunities found in Jersey; an international financial centre with over 170 fund managers marketing into Europe and good links to London and France.

Dilmun's speech is summarised below.

What is offshore?

In a US context, the Cayman Islands is a good example of offshore. European offshore locations would include Jersey and Guernsey, the two biggest Channel Islands.

In Jersey, there are almost 14,000 professionals who work in financial services, and 884 regulated collective investment funds.

What is onshore?

In this context, onshore means the United States, such as Delaware. European onshore locations would be the United Kingdom, Dublin and Luxembourg.

Why offshore instead of onshore?

Offshore jurisdictions are generally faster, cheaper and easier with less constrictive rules and regulations than onshore jurisdictions.

Onshore jurisdictions generally have higher tax rates and more onerous and costly regulatory regimes, compared with an offshore alternative.

A key question for fund managers to ask when considering where to domicile a fund is, how many EU member states will the fund be marketed to? And which member states? If the answer is that the fund is going to market to a large number of EU member states, then indeed an onshore EU jurisdiction may be most suitable, using an AIFMD marketing 'passport'.

However, EU statistics show that 97 per cent of fund managers market to three or fewer EU member states, largely negating the need for a costly marketing passport for the majority.

A recently commissioned report by KPMG, on behalf of the EU Commission, found that the passport does not in fact offer seamless marketing across the EU, referencing elements that 'hinder cross-border distribution'.

When the fund will only be marketed to a small number of EU member states, an offshore jurisdiction is likely to be more suitable, because of the lower costs, ease and speed of establishment.

Regulatory Fees

Regulatory fees in Jersey (offshore) can be as low as £2600 for a private fund that is approved to market into Europe, with annual fees of £1040.

Regulatory fees for a regulated expert fund are £2,235, plus £2,235 for each service provider, and annual fee £1,450 increasing with more pools of assets.

Onshore regulatory fees can be €10,000 for the AIFM and €3000 – €10,000 for the AIF, with annual regulatory fees of €25,000 for the AIFM and between €3,000 - €30,000.

Depositary and EU service provider fees also need to be considered.

Timing

A Jersey private fund AIF with a Jersey AIFM can be approved within five working days.

A fully regulated manager to a regulated expert fund can be approved within six weeks.

In contrast, the approval time for fund and managers in onshore jurisdictions can be in excess of six to nine months.

Tax and regulatory implications

Jersey companies are taxed at zero per cent corporation tax, and limited partnerships are tax transparent. Jersey is also outside of the scope of the AIFMD when it is marketing to the US or another non-EU jurisdictions.

Onshore jurisdictions operate in a taxable environment, and therefore detailed tax advice and structuring arrangements will be required, resulting in additional costs and complexity to the fund structure.

A key concern for some US fund managers using an onshore EU location may be being subject to the EU Remuneration Rules, which can mean more disclosures around compensation, and delays as to when fund managers receive their compensation compared to what they are accustomed to in the US.

Summary

There are compelling reasons to use Jersey structures as opposed to those found in onshore EU jurisdictions; unless the fund is being marketed on a pan-European basis.

The additional costs and regulatory implications will likely be an unnecessary burden for the 97 per cent of managers who are marketing to three, or fewer, member states.

This view is evidenced by household name fund managers having launched in Jersey.

In summary, Jersey offers a complimentary funds jurisdiction to the onshore EU jurisdictions, where for example the 97 per cent of funds marketing to three or fewer members states do not require an EU marketing passport.