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FUND FINANCE FRIDAY

Fund Financing Trends in Offshore Jurisdictions: A Closer Look at Jersey

March 6, 2020 | Issue No. 67

By Nathan Parker
Partner | Fund Finance

This is the first in a series of articles that will look at fund financing trends and issues in key offshore jurisdictions. In this article, we speak with Julia Keppe and Simon Felton at Ogier (Jersey) about what they are seeing in the Channel Islands and, more specifically, Jersey.

Offshore jurisdictions are relevant to the majority of fund financing transactions and, through this series, we hope to highlight the trends and issues that you may encounter depending on which jurisdiction is relevant to your financing.

***FFF*: From your perspective, how has the fund financing market performed and developed in the Channel Islands over the last 12 months?**

Simon and Julia: We have seen a notable uplift in fund financing transactions structured in the Channel Islands or with a Jersey/Guernsey nexus during the past 12 months. In 2019, we advised in relation to upwards of 70 transactions across the two Channel Island jurisdictions, both lender and borrower side.

Our Channel Islands fund finance practice acts primarily on lender side mandates. Interestingly, during the last year we have advised over 20 different lenders, highlighting the increase in the number of market participants offering loans or other debt facilities to fund entities. Anecdotally, we understand that in the European market this in part reflects the popularity and growth of the product but also the degree of exposure concentration some of the leading market participants have, which has created the space for a diversification of the syndicate base.

***FFF*: What offshore trends are you seeing?**

Simon and Julia: The Jersey market is mainly led by the onshore market as loan origination is primarily based onshore (although some institutions do originate on island although this seems to be led by institutional needs following the UK retail bank ring fencing review). We have seen a continuing expansion of the market and a notable increase in the size and complexity of the facilities, as the product becomes a more mainstream feature of the European funds market and the sophistication of borrowers increase.

There has also been a rise in specialist (non-bank) lenders in this sphere, offering bespoke credit solutions outside of the traditional subscription line offering. While generally more expensive, such credit firms (usually funds themselves) are able to lend in situations where mainstream/traditional banks would be unwilling to lend.

There is also a greater range of products available, which has been well documented in the industry press. We have seen a diversification in funding lines and ancillary facilities, such as credit lines being made available to general partners or management, or financing aimed at funds in various stages of their investment cycle (with a continued rise in NAV and asset-backed lending to funds). While these are not necessarily trends that started over the last 12 months, they are part of the overall growth in the fund financing market and their more widespread use reflect the growing maturity of the European market.

One area where we have seen the Jersey market develop over the last 12 to 18 months is in respect of notification of security to investors. Unlike many other jurisdictions, following reforms to Jersey security law, it is not necessary to send a notice to a counterparty to perfect security. Despite this (and despite GP reluctance to deliver notices to investors), we have seen market practice evolve such that it is now relatively usual to send notices simultaneously with the grant of security (or very shortly thereafter). This is in part due to the increased focus on investor notices coming out of the Abraaj cases but also because the service of notice on investors is not just for the purposes of perfection but also puts an investor on notice of the financing and security, potentially reducing available defences should the security be enforced.

***FFF*: Have there been any recent changes in Jersey or Guernsey law of which borrowers and lenders should be aware?**

Simon and Julia: The most recent change of relevance is the introduction of economic substance rules for Jersey and Guernsey which apply to tax resident companies conducting, among other things, fund management business. They came into force in January 2019, requiring all relevant entities to include confirmations around compliance, with the rules to be included in their corporate tax return submitted from 2020. Discussing the detail and requirements of the substance rules is for another time, but it has led to both Jersey and Guernsey being placed on the EU’s "white list" of cooperative jurisdictions (having previously been on its "grey list").

Substance rules have had a limited impact on lenders to funds to date, as the compliance burden falls on the fund manager, and the general view in relation to documentation is that existing covenant packages cover borrower compliance. As the rules and guidance become more established, practice in relation to documentation may evolve – but the rules could also lead to changes in behaviour by managers of offshore funds as the funds they manage seek to demonstrate compliance with the rules, which documentation may need to reflect. Practice in this area is evolving and one which we are monitoring closely.

***FFF*: What do you see for the future?**

Simon and Julia: Growth. We think the overall expansion of the market onshore and offshore will continue, and there will be new entrants with a greater range of products available as borrowers and lenders alike seek more innovative and sophisticated credit solutions. Jersey and Guernsey legal structures are well suited to these developments, so we anticipate a continuation of the strong deal flow seen in 2019.