Guernsey: the natural home for private capital

Kate Storey, of Walkers (Guernsey) LLP, explains why Guernsey is perfectly positioned to support the rise of private capital

The term 'private capital' can be used to refer to the nature of the investor, namely family offices, high-net-worth individuals, private banking clients and other non-institutional investors, and it can also refer to the nature of the investment, i.e. investment in private companies as opposed to publicly traded companies, although the term encompasses much more than just private equity these days. This article looks at trends in the global private capital industry, principally the coming together of private investors with private equity and other private asset investments that have traditionally been the mainstay of institutional investors, and how Guernsey is the natural home for the bespoke structuring required for private capital investments.

Recent research by Guernsey Finance, the marketing agency for the Guernsey financial services industry, showed two trends:

- The significant rise of private capital in private equity and other alternative investments; and
- Investment managers are being seen as a gateway to direct investment opportunities for private investors.

Kate Storey
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Kate Storey joined Walkers' Guernsey office in 2018, where she is a partner in the Investment Funds and Corporate Group. Storey specialises in investment fund structuring and finance, equity fundraising and listings, mergers and acquisitions and group reorganisations. She is also a prominent Guernsey insurance expert, having advised on the Guernsey legal aspects for most of the pension scheme longevity swaps which have executed in Guernsey, as well as major insurance linked securities transactions.

Guernsey, as a longstanding leader in the private wealth and alternative investment fund sectors, is facilitating and catering for these private capital transactions through its choice of bespoke investment structures and the quality of the on-island service providers supporting those structures.

A further trend being seen in the private capital world has led Preqin, the UK company which provides market data on the global private capital industry, to redefine its sector terminology earlier this year. Whereas it formerly used the term 'private equity' as the generic term for all private asset classes, that has now been confined to the core asset class centred on the buyout and venture capital industry, together with other closely related strategies.

'Private capital' is the generic term it now uses to refer to the range of private closed-ended funds, including private equity, private debt, private real estate, infrastructure and natural resources – reflecting the wide choice of private capital funds, of which private equity is the most established sub-sector, but these days not necessarily the fastest growing.

At Walkers in Guernsey we are seeing a particular uptick this year in LSE-listed Guernsey private debt funds and technology funds, which is testament to Guernsey's leading position in the listed private capital funds space, having more LSE-listed entities than any other jurisdiction, other than the UK itself.

Some commentators also foresee a blurring of boundaries between private debt and private equity funds, resulting in a new hybrid asset class giving investors exposure to both asset classes in a single [listed] fund. Guernsey already caters for diverse asset classes within a single umbrella vehicle with its protected cell company (PCC) structure, which it pioneered in 1997.

Different asset classes can be held in separate 'protected cells' within the PCC structure, such that the assets and liabilities attributable to each cell are legally segregated from those of the other cells and the 'core' of the PCC, but with central management of the overall umbrella structure, which is a single legal entity.

The trends identified by the Guernsey Finance research

1. Reasons for the rise in private capital and how Guernsey facilitates private capital investments:
Since the global financial crisis, private wealth has doubled in nominal terms. According to the Boston Consulting Group, *Global Wealth Report 2018*, global personal financial wealth grew by 12% in 2017 to break through the $200trn barrier. These high-net-worth private investors are increasingly looking for portfolio diversification away from the volatile equity and bond markets towards private equity, real estate and debt investments, which have often offered better capital preservation and returns than public securities in the past decade. At the same time, there are more private equity opportunities available, as many companies are staying private for longer, rather than rushing to a stock market flotation.

According to the research by Guernsey Finance, private capital can now amount to as much as 75% to 100% of assets under management, particularly for smaller/first-time managers. Guernsey has always been a perfect incubator for first-time managers, being outside of AIFMD until third country passporting is introduced, but offering the option to be fully AIFMD compliant from set up and to avail of Guernsey's Manager-Led Product – a fast track regime for establishment of investment funds under which regulatory rules are only applied against the manager, not the individual funds. Guernsey also offers managed fund platforms, whereby a new promoter can utilise a cell in a managed protected cell company structure to pursue its own investment fund and investment strategy through that cell, whilst benefiting from the track record of the Guernsey manager.

Guernsey is the natural home for the bespoke structuring required for private capital investments

Complementing its thriving private wealth sector, Guernsey has unrivalled experience and expertise as a home for private equity and other alternative investment funds of all asset classes, as well as LSE-listed private funds. For private wealth managers, Guernsey offers the perfect fund structure for bringing together clients for investment in private assets – Guernsey's Private Investment Fund (Pif) is a product that is regulated by the Guernsey Financial Services Commission (GFSC), but subject to lighter touch regulation than other Guernsey funds on the basis that the manager makes a declaration to the GFSC as to the ability of the investors to sustain the loss of their investment (at the time of subscription); however, there are no prescribed requirements on the type of investor, their net worth or minimum subscription. The Pif is a fast track product which will be registered by the GFSC within 1 business day of receipt of the application. It can be marketed into the UK/EU under the national private placement regimes. Like all Guernsey funds, the Pif offers a tax neutral investment vehicle and reduced costs compared to the likes of Luxembourg due to not being subject to full AIFMD compliance.

2. Trend for direct investment by private capital investors:
The Guernsey Finance research showed that investment managers are being seen as a gateway to direct investment opportunities for private investors. This is backed up by a recent *Financial Times* article – *Why the wealthy are investing directly in private companies; Special Report FT Wealth: June 2019* – which reported wealthy individuals are increasing their allocation to private equity through means other than standard funds, including via co-investment deals with fund managers and asset by asset deals (e.g. club deals). Reasons given for this trend include:

- Some private investors are themselves entrepreneurs or private equity or hedge fund professionals and understand the risks and challenges involved in the early stages of growth
- Private companies value the access to the expertise and connections of the investor base
- As a direct investor an individual can get involved in the business and help shape its strategy
- Investors not wanting to pay the management fees of private equity funds

Guernsey offers a choice of investment structures for the bespoke structuring requirements of these private capital investments, whether it be the traditional private equity structure of the general partner/limited partnership; a unit trust for tax transparent real estate investment; or a PCC for deal-by-deal investments, for example. For that increasing number of private investors who want to be involved in the management of their investments, Guernsey's limited liability partnership, a tax transparent structure which facilitates ownership and management, may be appropriate. All of these Guernsey structuring solutions can be rapidly established and are serviced by GFSC regulated service providers. HFM