Jersey Finance

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Jersey for Alternative Lenders:

A Bright Future

Foreword

by Geoff Cook, CEO Jersey Finance

As traditional lending becomes harder to obtain, the growth in alternative debt funds is expected to continue – and it's clear that Jersey is ready to support this growth.

In 2017 private debt funds raised a nine-year high of more than US$57 billion, with the recent explosion of fund launches in the European market contributing significantly to the total.

This report – Jersey for Alternative Lenders: A Bright Future – looks at why an increasing number of borrowers are choosing alternative lenders, even if the banks or traditional lenders can offer them cheaper solutions. The primary reason for this shift in attitude is flexibility – alternative lenders can tailor their solutions to meet a borrower's needs, making debt funds a more attractive proposition for many corporates.

As well as exploring the advantages of alternative debt funds over traditional lending, the report also sets out the reasons why Jersey is often the jurisdiction chosen by alternative lenders to domicile or administer debt funds.

One of Jersey's key strengths is its established support network of specialist lawyers, accountants and administrators who are ready to provide vital expertise in alternative asset funds across private debt, private equity, hedge and infrastructure. Having this expertise on hand is invaluable to debt fund managers as they navigate the complexities of tailored lending.

Another key consideration when you're establishing new funds is the regulatory environment. If you want to launch a fund successfully, time is of the essence – and so is cost. As a forward-thinking international finance centre, Jersey aims to make life as easy as possible for fund managers, with an approach to regulation that removes some of the barriers to doing business found in other jurisdictions.

In addition to its support network and regulatory environment, Jersey has a lot more to offer alternative lenders – innovative fund vehicles, easy access to Europe, tax neutrality. Even the time zone is a positive.

For alternative lenders who are looking to capitalise on the growth of the global debt fund market, there's no doubt that a bright future awaits them here in Jersey.

Private debt funds globally raised US$57.7 billion in 2017

the highest figure since 2008

Deloitte Deal Tracker, summer 2018

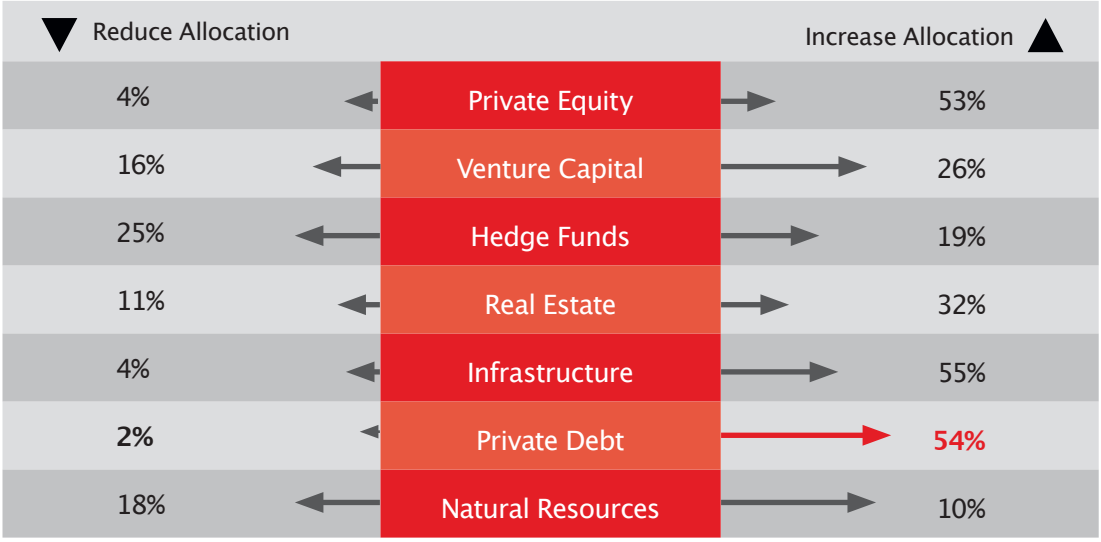
A Bright Future for Alternative Lenders

It is well publicised that following the financial crisis traditional lenders have cut their appetite for lending to corporates. The size and number of alternative lenders has expanded significantly in this period to service this market.

Alternative lenders have been able to branch out from their historic niche of providing mezzanine finance as part of buy-out deals led by private equity houses to successfully competing with banks in the direct lending space.

Private debt funds globally raised US$57.7 billion in 2017 – the highest figure since 2008 and, based on investor sentiment, this expansion looks set to continue.

Institutional investors' plans for the longer term



Source: Preqin Investor Interviews, December 2017

Borrowers looking to fund growth through investment in their business will sometimes choose an alternative lender, even when the bank or traditional lender solution may be cheaper. Why? The flexibility of many alternative lenders to provide a structured financing solution across the capital structure which is tailored to the borrower's needs is very attractive.

This flexible financing can be provided through combinations across senior debt, mezzanine debt through to equity (and a plethora of new types of lending in between) tailored to suit the borrower's needs.

How does the direct lending investment strategy compare to other strategies?

There are clear benefits of roll up/payment in kind interest and equity funding for businesses with cash flow constraints, where working capital is reinvested in expanding/developing the business.

Once the growth programme is successfully completed then the borrower will take stock and often look to refinance.

	Direct Senior Lending	Speciality lending/ credit opportunities	Mezzanine	Distressed
Description	Invest directly into corporate credit at senior levels of the capital structure	Opportunistic investments across the capital structure and/or in complex situations Typically focussed on senior levels of the capital structure	Primarily invest in mezzanine loans and other subordinated debt instruments	Invest in distressed, stressed and undervalued securities Includes distressed debt-for-control
Target Return (Gross IRR)	5-10%	12-20%	12-18%	15-25%
Investment Period	1-3 years	3-5 years	5 years	3-5 years
Fund Term	5-7 years (plus 1-2 optional one year exten-sions)	8-10 years (plus 2-3 optional one year extensions)	10 years (plus 2-3 optional one year extensions)	7-10 years (plus 2-3 optional one year extensions)
Management Fee	Typically around 1% on invested capital	Typically 1.25 - 1.50% on invested capital or less than 1% on commitments	1.50 - 1.75% on commitments during investment period, on a reduced basis on invested capital thereafter	Various pending target return and strategy: 1.50 - 1.75% on commitments or 1.50% on invested capital
Preferred Return	5-6%	6-8%	8%	8%
Carried Interest	10%	15-20%	20%	20%

Source: Deloitte Alternative Lender Deal Tracker, summer 2018

When to use alternative debt?

Situations	Advantages
Private Equity acquisitions	Reduce equity contribution and enable more flexible structures
Corporates making transformational/ bolt-on acquisitions	Enable growth of private companies with less/no cash equity
Growth capital	Enable growth opportunities
Consolidation of shareholder base	Enable buy out of (minority) shareholders
Special dividend to shareholders	Enable a liquidity event
To refinance bank lenders in highly-levered structures	Enable an exit of bank lenders
Raising junior HoldCo debt	Increase leverage for acquisitions/ dividends

Source: Deloitte Alternative Lender Deal Tracker, summer 2018

Charting the Growth of the European Private Debt Market

No longer is it the role of alternative lenders to provide solutions to corporates that cannot access lending through traditional banking sources. They are now competing with the banks for the same deals. In fact, deleveraging has seen bank appetite for lending to small and medium enterprises (SMEs) diminish in light of Basel III capital requirements and banks have reduced the size of their lending teams, many of whom have gone on to start boutique alternative lending managers themselves.

The implementation of the IFRS 9 accounting standard in early 2018 is also likely to force banks to recognise higher levels of provisions and non-performing loans (NPL). According to surveys by Deloitte, four fifths of banks expect their retail and corporate impairment to rise, and one in six banks expects a rise of 50% or more. Higher levels of provisioning put further pressure on the capital required to be held in respect of lending.

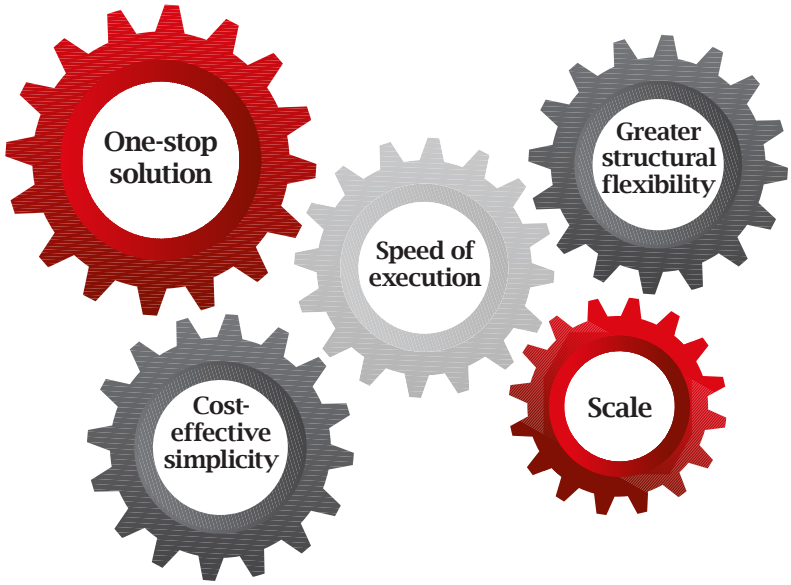
Deleveraging by the banks in this market began after the financial crisis but remains an active strategy and in fact is growing in pace. In Europe in 2017, after a slow start in the first half of the year, deleveraging accelerated. The Deloitte Global Deleveraging Report 2017–2018 advises that, while just over €40 billion worth of deals had been concluded by mid-2017, the full year total reached €144 billion, exceeding the record total deal-making in 2015 and 2016.

As we look to the future, we expect continued deleveraging activity from European financial institutions spurred by continuing regulatory and supervisory pressure and the adoption of IFRS 9, which is expected to lead to more proactive balance sheet management on an ongoing basis. In addition, markets that have dealt with most of their NPLs have started tackling their non-core assets and are expected to sell more performing loan books.

Debt managers can cover a wide range of investment strategies, including direct lending, mezzanine, opportunity, and distressed debt, with some sitting across this space and others looking to occupy particular niches. Fund structures are often common to those used in the private equity industry and therefore familiar to the investor base, which tends to be institutional investors such as insurance companies, pension funds, banks or sovereign wealth funds. The track record developed by debt managers over the last ten years or so has helped such investors become increasingly comfortable and familiar with investing in such structures.

Institutional investors now see debt as a key part of their investment strategy

Key advantages of alternative lenders



How can debt funds benefit borrowers?

- Access to non-amortising, bullet structures
- Ability to provide more structural flexibility such as covenants, headroom, cash sweep, dividends, portability
- Access to debt across the capital structure via senior, second lien, unitranche, mezzanine and quasi equity
- Increased speed of execution, short credit processes and access to decision makers
- Potentially larger hold sizes for leveraged loans (€30m up to €300m)
- Deal teams of funds will continue to monitor the asset over the life of the loan

However

- As opposed to banks, funds are not able to provide clearing facilities and ancillary services
- Funds will target a higher yield for the increased flexibility provided

Institutional investors, like pension funds, insurance companies and sovereign wealth funds, now see debt as a key part of their investment strategy. Initial forays may have been prompted by a desire for yield in a low interest rate environment, but debt is now an important way for investors to diversify their portfolios and generate stable returns.

The US private debt market is longer established and traditionally more sophisticated than its European counterpart, but in recent years there has been an explosion of fund launches with funds targeting wholly or with a significant focus on European debt assets.

Jersey – the Clear Choice for Debt Funds

Expertise

Jersey has one of the largest number of finance industry professionals of any IFC, giving it a vast pool of expertise

Reputable

Jersey adheres to, and is often an early adopter of, global standards set by the UK, EU, US and the OECD

Central

Jersey has a central time zone, making it easy to do business around the globe

Choice

In over five decades, Jersey has developed a breadth and depth of competitive products and services

Substance

A modern business environment with more than 13,300 professionals supported by a politically stable government

Connected

Jersey has strong links and is in close proximity to the City of London and the EU, giving businesses and individuals easy access to both markets

Leading debt fund managers, including Intermediate Capital Group (ICG), Blackstone GSO, CVC Credit Partners, Bain Capital and Triton, choose to domicile some of their funds in Jersey. Even where Jersey is not used as the domicile for a fund structure, Jersey is often used for the provision of the key professional services for the structures.

Ready to provide vital support

Jersey has a deep pool of skilled professionals providing a range of expertise necessary for the establishment and servicing of funds and corporate structures, with more than 13,300 finance professionals, including 55% (7,580 employees) in trust and company administration, fund management and legal services. Market participants consider Jersey to have a depth and range of skills unavailable elsewhere.

The Jersey landscape features 44 fund administrators, 15 custodians, 23 banking groups, 26 transfer agents, 10 accountancy and auditing firms, 10 legal firms dealing specifically with fund matters, and a wealth of non-executive directors with expertise across a variety of asset classes. There are very few other jurisdictions which can compete with that sort of depth and breadth of alternative fund experience and capability.

Jersey has unrivalled depth and range of skills:

A deep pool of skilled professionals with more than **13,300** finance professionals

55%+ (7,580 employees) in trust and company administration, fund management and legal services.

Working with the industry's elite

While a typical debt fund structure may seem similar to a private equity one, the asset can behave quite differently. Challenges can arise from the increased volume and complexity of cash flows from partial repayments/drawing of facilities, interest accumulations, arrangement fees and early prepayment penalties. There can also be complexities arising from embedded derivative features within the debt contracts (e.g. interest rate caps/floors, performance fees, warrants, prepayment penalties) as well as withholding tax considerations and discounted cash flow modelling for valuations to get to grips with. The loan agreements themselves reflect the ability of debt managers to tailor borrowing to the needs of the borrower – they can be bespoke and complex with a potential minefield of features requiring careful consideration of the legal and accounting impact.

In Jersey, clients have access to vital legal support from experienced law firms and a broad range of professional practitioners that can advise and facilitate Jersey legal structures that will best suit investment strategies and meet appropriate regulatory approvals. Lawyers work closely with counterparts in all of the world's major centres including the UK, China, India, the US and the Gulf region, to deliver structured products and specialist vehicles that meet a whole range of financial and investment objectives.

A combination of deep expertise with debt structures in Jersey, along with the global expansion of service providers headquartered in Jersey over the last 10 years means that professionals on the Island will often service funds domiciled in other jurisdictions. These include Cayman, Luxembourg, Ireland, US, Hong Kong, Singapore, where Jersey provides the accounting and administration expertise needed to support clients.

This means that a debt fund manager who has multiple fund and marketing strategies can deal with one service provider to deliver what they need.

Jersey: A forward-thinking approach

Future-focussed regulation

Another big attraction for debt managers to use Jersey is its stable, proportionate and flexible regulatory environment.

Industry participants hold that Jersey fund laws are among the best for converting a fund promoter's ambitions into an actual fund vehicle. For example, Jersey places considerable weight on a self-certification model, with the burden of certifying the compliance of a fund with various criteria placed on the industry (e.g. lawyers and administrators) rather than the regulator. This means that the establishment of a new vehicle can be extremely quick compared to a process varying from weeks or months in other jurisdictions.

Jersey's proportionate and responsive approach to regulation can reduce costs to investors compared to onshore jurisdictions. It also enables greater innovation, supports new products, and increases the ease of doing business. The regulatory approach is tailored to the different types of funds and investors, with expert investors such as institutions benefitting from lighter-touch regulation.

The 2018 TMF Group Financial Complexity Index, which assesses the world's nations by complexity of financial compliance, ranks Jersey as the third least complex jurisdiction globally and the least complex jurisdiction in the EMEA region. The report highlights Jersey's long-standing reputation as an easy place to do business and the stability of Jersey Company and Trust law, which allows for consistent application of accounting standards.

The appeal of flexible solutions

In more than five decades, Jersey has developed a breadth and depth of competitive products and services.

Jersey has a range of fund and investment vehicles providing significant flexibility for investor needs. For example, Jersey Limited Partnership vehicles have long been a familiar vehicle for asset managers and investors alike, providing a flexible pooling solution for key stakeholders.

However, Jersey also continues to make enhancements to its laws and regulations in order to provide choice for investors and remain a leader in fund services.

For example, the new Jersey Private Fund regime helps to make the use of limited partnerships even easier to use and future proof, while the Limited Liability Company (LLC) product, currently in the pipeline, is expected to appeal to various global investors, particularly from the US, who will be familiar with this type of offering.

Jersey ranked
3rd least complex
jurisdiction globally

The 2018 TMF Group Financial Complexity Index

Jersey Infrastructure, credit and
debt funds
up almost £10bn
since January 2018

Source: JFSC, as at 30 June 2018

LLC – an innovative product with global appeal

As part of a continuous effort to evolve its offering, in 2017, Jersey launched a consultation on the creation in Jersey of limited liability companies (LLCs), which would innovatively bring together various features of Jersey limited companies and statutory partnerships. This successful consultation has since led to the Government of Jersey approving the introduction of a Jersey LLC.

An LLC is a business structure that's very popular globally, especially in the US, where it currently accounts for more than two-thirds of all new transparent business structures formed in the country each year. An LLC combines the flexibility and privacy of a partnership with the protective limited liability of a company. As a result, it has a wide variety of uses worldwide – from SMEs and holding companies to fund structuring.

Historically, entities introduced into Jersey law tended to mirror equivalent UK structures, essentially to meet the needs of the UK or European market. In the US, LLCs are often a structure of choice for alternative investment funds. US advisers and managers are familiar with LLC structures and these can benefit from tax transparency for US tax purposes. Introducing the LLC into Jersey law should only strengthen the Island's position as a leading international finance centre and attract more business from US-based institutions and funds by providing a familiar vehicle.

These are examples of additions to Jersey's existing suite of fund structuring options which can be successfully used in the formation of various types of debt funds that target investments in a broad range of debt instruments, ranging from collaterised loan obligations (CLOs) and primary subordinated debt, to floating and fixed rate loans.

An attractive proposition

- Jersey offers a no change, and tried and tested solution as part of AIFMD, BEPS and Brexit
- Jersey has easy access into the UK and this will continue post-Brexit
- Similarly, Jersey will continue to navigate NPPRs in the EU unimpeded by Brexit
- Jersey offers out-of-the Alternative Investment Fund Managers Directive (AIFMD) scope solutions for rest-of-world structures, again not impacted by Brexit

Jersey Private Fund – a positive step towards greater simplicity

The Jersey Private Fund regime is an example of how the Island's forward-thinking approach to regulation enables valuable innovation and reduces costs.

In 2017 Jersey introduced a welcomed simplification of its legal regime relating to funds by providing for a single Jersey private fund product, called the Jersey Private Fund (JPF).

The JPF replaced the three previously existing fund products which defined private funds in Jersey, namely COBO only funds, private placement funds and very private funds.

A JPF is granted using a quick and simple consent process under the Control of Borrowing (Jersey) Order (COBO), which enables it to make up to 50 offers to investors who qualify as professional investors.

The COBO consent is issued to qualifying funds within 48 working hours of the application being received.

The JPF offers:

Light-touch regulation, which meets international standards, on the basis that the Jersey-based designated service provider (DSP) carries out appropriate due diligence

Easy access to European investors through national private placement regimes (NPPRs), if marketing into the European Economic Area (EEA) is desired

Consolidation and simplification of the private funds regimes, replacing COBO only funds, private placement funds and very private funds

Speed and ease of establishment - a 48-hour regulatory turnaround

Versatility - open or closed-ended, and any type of investment vehicle

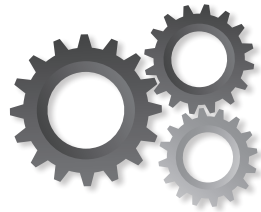
JPF key features:

- For fewer than 50 offers and fewer than 50 investors in Jersey or elsewhere
- Can be structured as a partnership (including limited partnerships, limited liability partnerships and incorporated limited partnerships), company (including cell companies) or a Jersey unit trust
- May be open or closed-ended
- No requirement to appoint an auditor
- Every JPF must appoint a regulated full substance designated service provider (DSP) in Jersey – regulation is focussed on the DSP rather than on the JPF itself
- Quick to set up – if all the criteria is met, a JPF may be authorised by the JFSC within 48 working hours

The new regime has seen great success with more than 160 Jersey Private Funds authorised (as of September 2018) 18 months since its launch.

167

JPFs 18 months since its launch



As at 24 September 2018

Enabling Vital Access to Europe

The Alternative Investment Fund Managers Directive (AIFMD) is a major consideration when marketing funds within the EU.

AIFMD

Jersey has a legal, tax and regulatory framework which facilitates the continued functioning of the Jersey fund management and services industry under the Alternative Investment Fund Managers Directive (AIFMD). Jersey was the first 'third country' to offer a fully functional opt-in regime under the AIFMD and a Jersey manager can establish different Jersey funds to access:

- The EU through National Private Placement Regimes (NPPR)
- The 'rest of the world' through business as usual

Currently, non-EU alternative investment fund managers (AIFM) and alternative investment funds (AIFs) must comply with each EU country's national regime when they market funds in that country. The European Securities and Marketing Authority's (ESMA) advice relates to the possible extension of the passport, which is presently only available to EU AIFMs managing EU AIFs. ESMA has advised twice (most recently in July 2016) that 'there are no significant obstacles impeding the application of the AIFMD passport' for Jersey.

This means Jersey is well positioned for when the EU finalises how the third country passporting regime will work.

Jersey currently has a well-established route for marketing funds into the EU through NPPRs, which allow marketing into 27 EU Member States.

A growing number of Jersey-registered fund managers are opting to future-proof their strategies and market into Europe through NPPRs under the AIFMD, according to the latest figures from Jersey's regulator the Jersey Financial Services Commission (JFSC).

As at June 2018, 161 AIFMs had been authorised in Jersey to market into Europe through NPPRs, up 23% compared to June 2017, clearly highlighting that the use of this route continues to work well as a means of marketing funds into EU Member States.

Over the same period, the total number of Jersey AIFs being marketed into Europe through NPPRs also increased significantly to stand at 306, representing a 11% year-on-year increase.

This route is proving extremely attractive by providing managers with a cost-effective solution that circumvents the need for the full AIFMD compliance required of EU-based managers and funds.

161

Jersey AIFMs - up 23% in one year

JFSC, as at 30 June 2018

306

AIFs marketed into Europe through NPPRs - up 11% in one year

JFSC, as at 30 June 2018

Marketing channels and requirements

There are clear benefits of private placement for offshore funds/managers over the EU passport option in terms of compliance with the Capital/Depositary/Operational requirements of the AIFMD.

For fund managers who don't need to market into the EU, Jersey is attractive given the fund and the manager can both be outside the scope of AIFMD.

In terms of access to the UK, Jersey has always enjoyed easy access into the UK market and will continue to do so post-Brexit.

Making it Easy to do Business Together

The ease of doing business in Jersey is a key attraction for funds, their promoters and the investors in those funds. This stems from factors such as: Jersey's common law legislative structure; its proximity to the City of London, giving access to funds from the UK and the rest of the world; and its straightforward tax and regulatory environment.

Jersey's geographic location also gives it a time-zone benefit, meaning that it's easy for the Island to work with investors around the globe giving a good crossover with the working day in US, Middle Eastern and Asian markets.

Jersey also has strong travel links to both London and EU hubs, with more than eight flights to and from London each day, which enables the Island to work closely with clients and partners in the UK capital.

The ease of doing business is further enhanced by the network and clustering effects present in Jersey that enable efficient coordination of the multiple servicing parties and drive information flows, which increase the development, innovation and competitiveness of the industry.

The Positives of Tax Neutrality

Among other factors that draw investors to Jersey, tax neutrality is a vital one because it prevents introducing an additional layer of taxation for investors at the fund level. For tax-exempt institutional investors, tax neutrality is often cited as one of the fundamental considerations when it comes to making investment decisions.

Tax neutrality means that investors don't incur additional tax costs compared to investing directly, which in turn feeds into the returns for the beneficiaries. Tax neutrality allows tax-exempt institutional investors to consider a broader range of funds, assets and geographic locations compared to what would otherwise be possible if the investor remained with onshore funds. The ability to diversify their investment portfolios can be crucial to pension funds, which seek to maximise returns for a given quantum of risk, for the ultimate benefit of their members. International diversification of portfolios can be very attractive in a volatile stock market or when fixed income investments offer low interest.

Jersey can offer the benefits of tax neutrality as a result of its straightforward domestic tax regime. This compares very favourably to some other international finance centres where domestic taxes may apply and tax neutrality might only be obtained through complex structuring or by meeting potentially onerous conditions in order to benefit from a specific tax regime applied to fund vehicles. These conditions could, for example, require the fund to take a particular legal form, limit the type of investments held, require there to be an external manager or depository, require all income to be distributed annually, possibly with associated withholding tax administration requirements, or restrict the type of eligible investor.

Conversely, Jersey's domestic tax regime is tax neutral, which means no specific tax rules are required for funds whether treated as transparent or opaque in Jersey.

This simplicity creates flexibility and cost efficiencies that few other jurisdictions can match.

Jersey fund vehicles can be tax efficient for investors, not only due to their tax neutral status at the fund level, but also given no stamp duty will arise in Jersey on the purchase or sale of interests in the fund. There are also no Jersey withholding taxes (WHT) on the repatriation of profits from the fund, and no capital gains taxes in Jersey on the disposal of interests in the fund.

A global reputation for early adoption

Jersey adheres to and is often an early adopter of global standards set by the UK, EU, US and the OECD.

In the current climate, jurisdictional reputation from a tax perspective cannot be ignored in terms of being a factor in determining investor preference around fund jurisdictions.

Jersey has, for example, become one of the earliest adopters of an international measure designed to stop multinationals from shifting profits between countries to avoid paying tax.

This practice, known as base erosion and profit shifting (BEPS), has been targeted for action by the G20 and developed by the OECD over the last few years.

The Island became the third jurisdiction in the world, alongside Austria and the Isle of Man, to have completed its domestic ratification of the OECD's Multilateral Instrument (MLI), which is the process by which jurisdictions will be able to implement the OECD's BEPS tax treaty measures.

December 2017 saw confirmation that the EU Code of Conduct Group on Business Taxation (the Code Group) has determined Jersey to be a cooperative tax jurisdiction, and the Island will work with the Code Group going forward to ensure this position is maintained.

In 2017 Jersey was also assessed by the Peer Review Group of the OECD Global Forum on transparency and exchange of information for tax purposes. The final assessment rated Jersey fully compliant in all ten of the areas reviewed.

These examples underline Jersey's strong commitment to international standards for the prevention of tax avoidance and financial crime.

Creating Certainty Amid Legislative Change

The global tax environment has seen fundamental change at a rapid pace over recent years.

These changes, however, have not altered Jersey's position as a leading, forward-thinking centre for the domiciliation, management and servicing of funds.

In particular, while the OECD's BEPS programme has resulted in the introduction of new international tax treaties and legislative change in some jurisdictions, Jersey has remained focussed on supporting managers and investors by providing a clear, stable and certain environment.

Jersey is a BEPS associate which means it has committed to adopting all of the BEPS minimum standards, which includes the prevention of treaty abuse.

While fund structures were not the target of the BEPS programme, BEPS remains relevant to funds.

Jersey is well placed to adapt to these new rules, having also managed to adapt to substantial regulatory changes over the years.

BEPS and debt funds

A debt fund's primary source of investment return will be in the form of interest. WHT on interest can be a key consideration in achieving an attractive overall return for investors and in attracting borrowers (given the withholding obligation would usually fall upon them) in an increasingly competitive market. The imposition of interest WHT will generally depend on:

- The source of the interest. It should be noted that many EU/EEA jurisdictions do not impose domestic WHT on interest, for example Austria, France, Germany, Hungary, Luxembourg, the Netherlands, and the Nordic countries.
- The availability of domestic reliefs. The effective rate of WHT could in practice be considerably lower when taking into account domestic interest WHT exemptions that may apply. For example, non-yearly interest in the case of the UK. US tax legislation provides for a WHT exemption on portfolio interest, which CLO debt funds in particular could benefit from.
- Regional laws, such as the EU interest/royalties directive.
- The application of treaty relief.

Treaty relief

The ability to claim relief under a relevant double tax agreement (DTA) will depend on a number of factors. For example, some debt funds will seek to establish an intermediate holding vehicle and it may be the eligibility of this entity which will need to be considered.

One of the main features of the OECD's MLI are provisions to prevent treaty benefits being claimed in inappropriate circumstances. This could take the form of a principal purpose test (PPT) or a limitation on benefit test (LOB). The PPT will deny treaty relief where obtaining relief was one of the principal purposes of an arrangement or transaction. The LOB is a more objective test intended to prevent residents of third countries from obtaining benefits under a treaty that was not intended to apply to them. The vast majority of jurisdictions signing up to the MLI have opted for the PPT.

The commentary to the OECD Model Tax Convention contains examples of when funds, or special purpose vehicles they establish, may be able to meet the PPT test so as to gain access to treaty benefits.

We continue to see the establishment of a wide range of debt funds in Jersey, despite the fact that other jurisdictions, and in particular international finance centres within the EU, have more extensive double tax treaty networks.

Given the amount of business Jersey conducts with the UK, it is worth noting the signing of the new UK/Jersey DTA in July 2018, which may come into force as early as 2019. The new DTA has, for the first time, a specific article on interest, which may provide for full relief from UK WHT on interest income in a number of situations. The new DTA together with the UK's Double Tax Treaty Passport Scheme, which has in recent years been significantly broadened in scope, may enable some Jersey debt funds to lend directly into the UK in the future without suffering any UK interest WHT. This could be achieved through a straightforward administrative procedure.

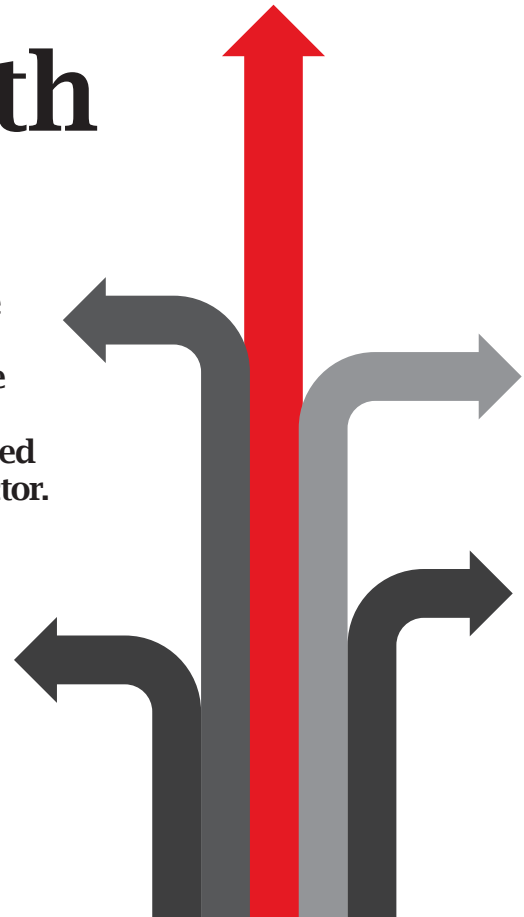
BEPS and the fund manager/adviser

If a corporate fund manager or adviser were to establish themselves in Jersey, they would typically be taxable at 0% in Jersey.

However, there are a number of tax provisions in other countries, which may result in these other jurisdictions seeking to tax some of the profits – for example, due to having functions in the other jurisdictions, which would need to be considered.

A Positive Path to Success

As borrowers continue to look to alternative lenders, Jersey's substantial debt funds capabilities and proven track record provide significant opportunities as well as strength in depth for further co-location, and continued growth of the Island's burgeoning funds sector.



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