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Things to shout about

By Andrew Walters, Partner, Ozannes

The impact of the global economic downturn has grabbed headlines and, according to much of the media, caused investors the world over to tighten their purse strings, however, Ozannes' Partner Andrew Walters believes Guernsey has a number of things to shout about.

It would appear that Guernsey is weathering the current storm reasonably well and most local financial services providers seem to have their plates full as a result of promoters seizing the opportunity to consolidate and restructure their existing product ranges.

Nonetheless, most service providers will admit to having seen a downturn in the number of new funds being established and enquiry-to-completion conversion rates are undoubtedly lower than those achieved in previous years. Deals are fewer and farther between and Guernsey therefore has to put clear blue water between itself and the competition in order to maintain and grow its market share. Fortunately, it has a number of things to shout about.

The introduction of the Companies Law in 2008 saw a reboot of the corporate system and the introduction of a new and improved statutory regime for company vehicles. The new law is considerably more sophisticated than its predecessor and provides a degree of flexibility that was not previously available. As part of this statutory overhaul, the Guernsey Registry was established, thereby replacing an outdated and manual system of record filing, retention and retrieval. The new system has also seen an end to the old Advocate-only incorporation system, thus permitting the incorporation of companies by a range of licensed service providers. Furthermore, such companies can, subject to certain basic requirements, be established within record timeframes of as little as 15 minutes. Few other jurisdictions can boast this kind of flexible and user-friendly company regime.

Significant weight has been attached to the White List published on 2 April 2009 by the OECD. This represents a progress report on jurisdictions surveyed by the OECD Global Forum in implementing internationally agreed tax standards. Guernsey's inclusion on the "White List" shows that the Island has clearly met the standards set by the OECD. This has already had a positive impact on the market's perception of our island and most local lawyers will confirm an increase in the number of enquiries relating to migrations of existing overseas funds into Guernsey. The relative ease and simplicity of the migration process under Guernsey's new company law, coupled with the jurisdiction's international reputation for proper regulation, represents a strong marketing tool for those seeking to attract existing business from other jurisdictions.

Guernsey has long been regarded as a well-regulated financial centre and has sought to achieve a sensible balance between investor protection and business efficacy. By applying sensible regulatory principles, the Guernsey regulator has been comfortable welcoming a variety of mainstream, alternative and niche funds to the Island. Despite the losses recently suffered by many funds - including those that have recently landed Bernie Madoff in the slammer until 2159 - and the consequential knee-jerk reactions of many states, legitimate financial products offering investors an opportunity to spread risk and diversify portfolios are still welcomed by the Guernsey Financial Services Commission.

The Island's regulator has adopted a pragmatic and flexible approach to funds, rather than pursuing the more dogmatic and rigid approach sometimes found elsewhere. The Commission is usually willing to meet new promoters contemplating the establishment of a new fund in Guernsey. This allows for full and frank dialogue prior to commencement of the fund launch and usually provides promoters with a clear expectation of what will be expected of them. This is not something that is available in all jurisdictions.

Where previously the jurisdiction may have been criticised for not providing alternative expedited regulatory approval processes, the regulator can now only be applauded for its introduction of "registered" and so-called "qualifying investor" funds. These funds have further streamlined the approval process for both open and closed-ended funds in that they offer the opportunity to "fast-track" the approval process and to obtain GFSC registration within three working days of receipt of the requisite documents. The onus here falls on the Guernsey fund administrator to conduct due diligence on the fund's promoter and proposed structure and to certify to the GFSC that these satisfy registration criteria.

Having said all this, Guernsey will have to continue working hard to promote its reputation as it faces tough new challenges from the international community. Only months after having satisfied the OECD that it should be placed on the White List, Guernsey now faces another international challenge in the form of the recently published European Directive on Alternative Investment Fund Managers.

Once again, Guernsey's representatives have been quick to act and the Finance Sector Group of the Commerce and Employment Department is considering the technical content along with a number of industry representatives in Guernsey and the UK with a view to commenting on the proposals. The Guernsey International Fund Association has also established a technical sub-committee to consider the impact of the Directive.

Under the Directive's current draft form, Guernsey will need to obtain equivalent third country status from the EU regulators if it is to avoid suffering negative consequences as a result of the Directive's introduction. Guernsey has an established track record of meeting internationally recognised regulatory standards and it is expected that all necessary action will be taken to ensure that this status is achieved. Guernsey already has in place a number of the features necessary to achieve equivalence under the draft Directive, including Tax Information Exchange Agreements with a range of EU member states and information exchange on regulatory matters.

At present, there is a great deal of uncertainty as to what form the Directive will eventually take and when it will be finalised. Much lobbying is currently being undertaken by a range of bodies and it is apparent that the Directive is likely to be debated in some detail. Until the Directive is finalised it is not possible to comment with any accuracy on its effect and the legislative and regulatory steps that may need to be taken in Guernsey to secure equivalent status.

Overall, Guernsey's progressive programme of legislative innovations, proximity to European financial centres and reputation for stability, strong corporate governance standards and flexible regulation continue to promote it as a domicile of choice for the establishment of funds and other financial products. Guernsey's continued success is testament to the way in which its regulator and funds professionals have adapted to meet global international challenges. There is little doubt that the Island will find new and innovative ways of meeting current and future challenges as and when they arise.