

# A BRIGHT FUTURE

BY AVOIDING THE DEPTHS OF THE FINANCIAL CRISIS, PATRICIA WHITE OF LEGIS FUND SERVICES EXPLAINS HOW GUERNSEY IS WELL PLACED TO FUTURE-PROOF THE FUNDS SECTOR



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**W**ith summer on the way and having escaped the worst of the economic downturn, we do at least have some reason to be feeling upbeat in Guernsey. While most of us will have been affected by the recession in some way, due to the diversity of fund structures being administered in Guernsey, we have avoided the worst of the impact.

That said, we are not out of the woods just yet as the possibility of a double-dip recession remains, fundraising continues to be a challenge for fund promoters and we are still waiting for the final outcome of the Alternative Investment Fund Managers Directive (AIFMD).

At the end of March 2011, funds under administration in Guernsey reached a record high of £263bn, an increase of 34% year on year. This increase represents the seventh consecutive quarter of growth. These are very encouraging statistics and are in no small part due to the consistently high standards maintained by the island's finance sector.

Furthermore, Guernsey funds are now promoted or sponsored by leading institutions in more than 55 finance centres. With over 50 years of proven financial services experience, the secret of our success and growing international reputation is due to the combination of a number of factors.

Guernsey is now recognised as a leader in global regulation and co-operation following positive assessments by international bodies such as the International Monetary Fund (IMF) and the Organisation for Economic Co-operation and Development (OECD), which both published reports at the beginning of this year commending the island's high standards of regulation, Guernsey having being included in the OECD white list in 2009.

The G-7 judged Guernsey to be a Group 1 jurisdiction, the top tier of offshore jurisdictions, considering it to have appropriate legal infrastructures, supervisory practices and levels of resources devoted to supervision and co-operation relative to the size of our financial activities.

As a well regulated jurisdiction, the increasing focus on compliance and regulation means Guernsey is well po-

sitioned compared to those adopting a lighter touch approach. The Guernsey Financial Services Commission's reputation for its pragmatic and open-door approach puts our regulator well ahead of our competitors.

Guernsey's Registered Fund regime, available for open-ended and closed-ended funds, facilitates a three-day approval process, which is a popular choice for promoters who can demonstrate an established track record, combining both a speedy approval process with the security of regulatory oversight. Competing jurisdictions can only achieve this turnaround time through their unregulated fund regimes.

There is also an increasing demand for listed funds, the perception being that the listing authority provides an additional layer of regulation and oversight as well as potential liquidity. London Stock Exchange statistics show that

more Guernsey companies are listed on the main market, Alternative Investment Market (AIM) and the Specialist Fund Market (SFM) than any of its competitor finance centres, indeed a Guernsey fund was the first SFM listing. Furthermore, the latest five AIM listings for Indian entities were all Guernsey incorporated. Guernsey service providers are seeing increasing numbers of clients from the Far East so the recent announcement that Guernsey incorporated companies are now able to list on the Hong Kong Stock Exchange is further welcome news.

Consequently, playing host to the Channel Islands Stock Exchange, which is an internationally recognised Market Authority and FSA approved, further enhances our service offering. Its competitive pricing and responsive approach

makes it an attractive alternative to other exchanges.

However, we were reminded that the AIFMD continues its legislative progress with the announcements that the European Commission has extended the response date for advice from the European Securities and Markets Authority (ESMA) by two months to November 2011 and that Switzerland's Federal Council has suggested legislators and regulators begin preparing for the AIFMD.

Negotiations on the AIFMD concluded in November

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2010 and the content approved. The initial draft of the directive imposed significant constraints on the ability of offshore alternative fund managers to manage or market funds in the EU. Fortunately, however, the significantly modified final text preserved the ability of offshore managers based in well regulated and co-operative jurisdictions such as Guernsey to continue to operate, and national private placement regimes will remain in place until at least 2018.

The detailed Level 2 legislation is scheduled for completion in 2012. Guernsey is well positioned to take advantage of the opportunities for the continued use of alternative funds arising from the availability of EU marketing routes through national private placement regimes, passporting and passive marketing, which is not regulated by the AIFMD.

Opportunities should also present themselves for Guernsey in terms of providing an alternative form of regulatory regime for those products that have no EU connections, bearing in mind that the industry cost of implementing the requirements of the AIFMD should not be underestimated. Alternative asset managers and service providers should be mindful of the impact on their businesses and consider preparing for implementation as they plan for the next few years. The criteria for third country equivalence is scheduled for publication in June although there currently appears to be differing views in the way third countries should be assessed.

The initial framework of the AIFMD has certainly benefitted Guernsey while we await the detailed Level 2 legislation. Industry, government and the regulator are working very closely together to ensure we achieve a satisfactory outcome and, through the recently established Channel Islands Brussels Office, we are ensuring that Guernsey is represented appropriately within the international community and there is an understanding of our fund industry.

As a jurisdiction, we are seeing growth in fund of hedge

funds, private equity business and alternative asset classes generally, including infrastructure, Shariah-compliant and green funds.

We have a track record of working with promoters and Shariah advisers to structure funds that comply with the fundamental principles of Islamic finance, and recognise the importance of maintaining the Shariah-compliant status of the funds. Similarly, we understand the values that underpin green funds, whose investments are focused on sustainability and ‘clean’ technology or energy and which have evolved from the ethical funds that have been present in the investment market for some time.

The flexibility of our fund regime sees Guernsey gaining a reputation as a centre of excellence for more esoteric asset classes such as fine art, wine, timber, rare and classic cars.

Guernsey has also identified an increase in the number of enquiries for non-domiciled funds seeking the services of local fund administrators and is benefitting from the redomiciliation of fund administration from Dublin.

In addition, Guernsey has recently been expanding its reach as a base for fund management companies, attracting large multinational companies as well as independent boutiques, further complementing the fund administration industry. Operation of their investment funds facilitated in Guernsey ensures that they receive high-quality legal, accounting, valuation, registrar, company secretarial and audit services for the structuring, launch and administration of funds.

Guernsey is increasingly perceived as the gold standard in terms of offshore jurisdictions but we must not overlook the fact that above all it is a wonderful place to do business. With our continued focus on reputation, maintaining international standards and a robust but balanced level of regulation, and as a highly respected and sophisticated jurisdiction, Guernsey can look forward to a prosperous future in fund administration. ■