

FOCUS ON: Guernsey

With the arrival of the new year, *Mena FM* talks to several industry experts about Guernsey as a fund domicile and its growing relationship with the Mena region and the products based there



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Mena FM (MFM): What is unique about Guernsey as a domicile?

Lisa Haggarty (LH): Guernsey has done much over the past few years to rightly earn a reputation as a well regulated jurisdiction with high standards of corporate governance. While benefiting from a politically stable environment, Guernsey has also remained extremely competitive thanks to its tax neutrality and its commitment towards developing a highly trained, expertly qualified workforce. This is supported by a strong and well established infrastructure of service providers to sustain the funds industry.

The range, size and quality of custodians, administrators, lawyers and non-executive directors have positioned Guernsey well for funds business. The Channel Islands Stock Exchange (CISX), as an independent listing vehicle, is also a major benefit. Guernsey has also remained committed to innovation to support growth in the funds sector – for example, it

was a pioneer in the development of the protected cell company structure. Guernsey occupies a distinctive geographical position, integrated as it is into Europe and yet a British Crown Dependency, independent from the UK and outside of the EU. This makes it an interesting option for fund managers based in the Middle East and Africa.

“Guernsey’s fund industry has been established for more than 40 years”

- Mark Douglas

Mark Douglas (MD): What makes Guernsey stand out as a fund domicile is the sheer number of different advantages that it can offer, mak-

ing it attractive to a wide range of fund types, promoters and investors from all over the world. Apart from the obvious tax efficiency offered to funds, Guernsey also offers an attractive regulatory framework, which is universally recognised as being of the highest standard while also being flexible. The island also has modern pragmatic legislation and a reputation for being innovative when it comes to launching new products.

Guernsey’s fund industry has been established for more than 40 years, which means that local service providers are highly qualified and experienced. Being in a European time zone, Guernsey is not only easily accessible from London and other major European financial centres, but is also convenient for fund promoters and investors from a large geographic area, including the Middle East. Furthermore, the island boasts a stable government with no public deficit. Few other jurisdictions, if any, can claim to offer all of these advantages.

Gavin Farrell & Elliott Doucy (GF&ED): Guernsey is very unique in the sense that it is very well-established as an offshore jurisdiction, and fits nicely (by virtue of its regulatory and legal frameworks) between the more heavily regulated onshore jurisdictions and the more 'hands-off' jurisdictions found in the Caribbean. The unique position of Guernsey is that there is a complete infrastructure of service providers present on the island, whereas certain other jurisdictions may not always match this level of presence.

Fiona Le Poidevin (FLP): Guernsey's proposition is centered on the fact that several factors have come together to make the island a leading domicile for Mena fund managers. Guernsey's location between England and France provides connectivity to both London and continental European markets and being in the same time zone as the UK means that business can be conducted with the Mena region, as well as both the Far East and the Americas, in the same working day. This environment has, during the last 50 years, helped attract a growing number of fund providers to the island. Today, Guernsey plays host to a range of managers, administrators, custodians and support services such as lawyers, accountants and tax advisers who service the widest range of funds.

Frances Watson (FW): Guernsey has developed over the past five decades to become a leading international finance centre. The island is politically, economically and financially stable with robust, modern legislation and regulation, a well-developed court system and high-quality service providers. The Guernsey Financial Services Commission (GFSC), established in 1987, operates within statutory powers regulating the local finance industry. This approach has ensured that Guernsey remains one of the best pragmatically regulated jurisdictions in Europe.

The CISX, based in Guernsey, has seen considerable growth since its inception and provides wide recognition

for Guernsey-based investment funds and companies around the world. In the area of investment funds, Guernsey is regarded as a premier location to conduct fund business, with the net asset value of funds under management and administration currently standing at approximately £271bn.

Patricia White (PW): Guernsey has more than 50 years' proven experience in financial services, offering the full range of financial services providers and product ranges, which are versatile to suit the requirements of all fund promoters. The Guernsey Financial Services Commission has a reputation for its pragmatic and open-door approach, while ensuring that Guernsey continues to be recognised

“The island is politically, economically and financially stable”

- Frances Watson

as a leader in global regulation and co-operation. Guernsey's currency is the pound sterling and the island is politically stable and financially secure; being AAA rated. Given the current uncertainties regarding the future of the Eurozone and the single currency, sterling is perceived as a safe haven for investors' funds and Guernsey's position outside of the EU provides further security. The AIFMD creates uncertainties, however Guernsey's unique position – being outside of the EU but also confident it will meet the requirements of the AIFMD to qualify for equivalence – means it can take advantage of both opportunities that may present themselves in offering the more expensive and highly regulated AIFM equivalent products, as well as lower cost products which are not subject to the directive's legislation, having no EU connections.

MFM: What sorts of funds are attracted to Guernsey?

LH: Guernsey has succeeded in building a strong and broad funds industry

across the asset classes, with its total net asset value of funds under management and administration standing at £274.5bn at the end of June 2011. It has also gained recognition for its particular expertise in the establishment of alternative investment funds. The value of closed-ended funds under management or administration in Guernsey, including property funds, private equity funds and, more recently, more esoteric asset classes, has grown considerably. As of June 2011, for example, Guernsey's closed-ended funds sector was valued at £122.3bn – up 30.1% compared to 12 months earlier. Meanwhile, although the EU's AIFM Directive has caused much debate in the international funds arena, Guernsey has remained con-

fidant throughout that it will be able to comply fully with any equivalence criteria. In fact, it is envisaged that the Directive may encourage more funds to set up in Guernsey, particularly for those fund managers who are looking for an option outside of the EU yet within a European time zone.

MD: Over the past two decades, the fund industry in Guernsey has experienced a gradual shift from high-volume retail funds to institutional niche funds, and local service providers now have significant experience in dealing with asset classes such as property, private equity, commodities and funds of hedge funds, as well as more esoteric investments. Whereas traditional open-ended equity and bond funds once dominated, the balance has gradually shifted so that closed-ended funds now account for two-thirds of the value of Guernsey domiciled investment funds. The closed-ended sector encompasses a number of different investment classes but is dominated by private equity (41%) and property (18%).

GF&ED: Taking Guernsey's history into account, along with Jersey, Guernsey has well over three decades of experience as an offshore jurisdiction. In the beginning, despite offshore jurisdictions being more concerned with attracting business from well-established large institutions for the retail end of the market, Guernsey developed a high degree of experience and expertise in dealing with the smaller more alternative type of products, placing it in pole position 15 years ago to develop and offer what changed to "flavour of the decade" as alternative products grew in popularity. Currently, the Guernsey authorities, both political and regulatory – which are in constant discussion with the island's fund industry – has devised a very secure, yet flexible, legal and regulatory environment designed to attract all different types of products.

FLP: The value of the funds business in Guernsey reached £271bn (\$417bn) at the end of September 2011, which is up 11.5% year on year. Guernsey's funds sector has been bouncing back extremely well from the financial cri-

sis, which initially came to a head in 2008 but the lasting effects on the Eurozone cannot be ignored. That said, we continue to see growth in closed-ended funds and, in particular, alternative and niche asset classes and where there is demand to list. A survey of CFOs revealed that 61% chose Guernsey as their domicile of choice for private equity outsourcing and figures from the London Stock Exchange (LSE) show that there are more entities from the island listed on its markets than from any competitor jurisdiction.

FW: Guernsey has experience in dealing with a wide range of asset classes, such as private equity, funds of hedge funds, property and infrastructure. It often sees country or sector specific asset classes. The GFSC is willing to consider funds with esoteric asset classes but will require service providers to understand and mitigate the risks of any particular asset class. Guernsey has also gained a reputation as a jurisdiction of choice for LSE listed vehicles, including investment funds.

PW: Our experience in the Mena region includes the administration of limited partnerships and companies with Middle Eastern investors and investments in broad asset classes from Lebanese real estate to European property funds. We have long standing client relationships with NBAD and Arab Bank and they have both structured their open-ended global equity funds and fund of funds, through protected cell companies listed on the CISX. This structure has also been mirrored for our Shariah-compliant fund which attracts Middle East based investors. Guernsey is seeing growth in Shariah-compliant funds, and we are seeing a move or positioning of private equity funds to our jurisdiction in an endeavour to avoid any negative aspects in the final outcome of the legislation of the AIFMD.

MFM: What is Guernsey doing to attract Mena-based fund managers?

LH: Jurisdictionally, Guernsey has invested heavily in promoting itself in key international markets, both at a political and an industry level. Guernsey Finance organises promotional activities on a regular basis, through representation, for instance, at relevant major events such as Super-Return Middle East in Dubai. Political and industry-led delegations also visit the Middle East frequently to maintain visibility and develop strong relationships with intermediaries, gatekeepers, government officials and leading industry professionals in the region.

MD: The absence of income and withholding taxes mean that Guernsey funds can be particularly appropriate for Mena investors who do not tend to pay income taxes in their country of residence, as income is repatriated to investors in a tax efficient manner. Fund managers are also attracted by a streamlined approval process for registered funds and qualifying investor funds whereby regulatory approval may be obtained in three business days provided certain conditions are met, thus allowing promoters to bring their funds to market more quickly and with



greater certainty. Furthermore, fund managers and advisers can be located in their home jurisdiction and do not need to be licensed in Guernsey unless they provide services from the island. Although the above attractions have been on offer for a number of years, there has been a significant amount of promotional activity over the past couple of years as Guernsey looks to develop new markets and make Mena fund managers more aware of the advantages of using Guernsey as a domicile for their funds. Promotional trips to the Middle East, including exhibitions at fund conferences, have been organised by Guernsey Finance, accompanied by industry practitioners. Some Guernsey service providers, like us, make regular trips to the region to meet new and existing clients.

GF&ED: While Guernsey does not have any one specific geographic or asset type focus, we have a variety of groups and committees that are designated to each area (e.g. Mena, Russia, India, private equity etc) so any asset class that raises interest at a fund manager level is paid close attention through the formation of an industry sub-group. With specifically assigned practitioners in these groups, reports are often made back to the island's fund industry body in order to see what can be done to attract that asset class. Specifically regarding the Mena region, Guernsey has always been involved in the region of Mena type of products. In order to do so, there is not only a number of products and expertise to capitalise on but regular visits to the region and keeping a rapport allowing to develop an intricate understanding of what is happening in their industry or region.

FLP: Guernsey has been actively promoting its fund services to the Mena region for several years now. In recent years, Guernsey-based firms such as fund administrator Louvre Group and law firm Ogier have established offices in Dubai and Bahrain, respectively. This has helped build awareness of the island but we are continuing to

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- *Gavin Farrell & Elliott Doucy*

showcase our offering through regular attendance at conferences in the region and marketing through publications targeted at Mena fund managers. Indeed, Guernsey has become even more attractive since the recent extension of our tax exempt funds regime. In addition, the island's tax authorities are in discussions with a number of jurisdictions from the Mena region regarding entering into Double Taxation Agreements (DTAs).

FW: Although Guernsey is less well-known in the Middle East than certain other competing jurisdictions, it has a long history of funds investing into the Mena region with managers from New York and London and an increasing number based in the Middle East. In recent years, Guernsey service providers have placed significant focus on improving their understanding of the requirements of Mena clients and products to develop a growing body of expertise. In terms of fund structures, Guernsey law offers a modern and flexible approach ranging from companies, including cell companies, to unit trusts and limited partnerships, although companies remain the structure of choice for Mena funds. There is no restriction on foreign investment via Guernsey nor on foreign ownership of Guernsey companies and capital can move easily in and out of Guernsey companies subject to solvency.

PW: Guernsey Finance arranges exhibitions and attendance at seminars. Most recently, for example, they covered the 'SuperReturn Middle East' in Dubai as well as supporting BVCA and other events. We will shortly be attending the BVCA Mena event in London.

Legis has actively supported these events in recent years and this has

enabled us to continue to build relationships within the Mena region and gain an understanding of their service requirements. Our focus on providing excellent client service, as evidenced by industry awards and client references, further enhances our ability to attract new fund promoters.

MFM: To what extent is Guernsey equipped to deal with Shariah-compliant funds?

LH: Having been successful in developing strong relationships with fund managers in the Middle East, Guernsey has already attracted significant interest from the region and consequently has gained a great deal of experience in doing business within Mena. At Deutsche Bank in Guernsey we have considerable experience in this area and already provide custodian services to Shariah-compliant funds.

MD: Many service providers in Guernsey have experience of dealing with Mena investors and fund promoters, and they understand the requirements of Shariah-compliant structures and transactions. As noted above, Guernsey is well regulated yet has a flexible regulatory regime, thus allowing it to offer flexible structures that can incorporate Shariah-compliant requirements such as specific investment guidelines and restrictions.

GF&ED: In particular, we are seeing a lot of satisfaction and compliance with those who choose to use Guernsey for their funds, because of Guernsey's good regulatory environment, experience and flexibility. Specifically, Guernsey legal and regulatory framework allows Shariah-principles to sit well within the confines of Guernsey funds regulatory framework. The knowledge and continued under-

standing by third party service providers on the island is at the forefront of promoting Guernsey with regard to Shariah-compliant funds. At Mourant Ozannes, we have a number of Shariah-compliant funds and Mena based products which has allowed us to develop a wealth of experience. We also have lawyers who worked for Middle Eastern offices of international law firms dealing with Shariah and sukuk products.

FLP: Guernsey is widely recognised for its experience in establishing and providing ongoing services to Shariah-compliant funds. For example, Arab Bank has established Guernsey-domiciled Class B authorised open-ended investment schemes as PCCs with the cells, the AB Mena Feeder Fund, the IIAB Sukuk & Murabaha Mena Fund and the IIAB Mena Feeder Fund. The IIAB Sukuk & Murabaha Mena Fund and the IIAB Mena Feeder Fund have been established as adhering to Shariah principles and listed on the CISX. In addition, in 2010, the World Shariah Funds PCC Limited, a Guernsey-based suite of Islamic-compliant investments was launched and also listed on the CISX. These examples, among others, illustrate our expertise in this area but also the attraction of using the island as a route to accessing capital markets. Guernsey entities can be listed on stock exchanges in London, Amsterdam, Frankfurt and now Hong Kong, among others, as well as the CISX.

FW: Guernsey already has a history of successfully operating Shariah-compliant fund structures and vehicles investing into the Middle East. Current Guernsey law and regulation provides a number of structuring options, while the Guernsey funds' regime is sufficiently flexible to incorporate features such as investment guidelines and restrictions to enable compliance with Shariah law. However, Guernsey needs to make clients in the Middle East more aware of what is currently available.

PW: At Legis we have proven experience of working with promoters and Shariah advisers in the structuring of funds and fund of funds, which comply with the fundamental principles of Islamic finance, and we understand the values of maintaining the Shariah-compliant status of funds, the World Shariah Funds PCC Limited being an example. The opportunity to list these on an internationally recognised stock exchange, the CISX, further enhances Guernsey's service offering in this regard. At Legis our experience with Shariah-compliant funds identifies in particular the popularity of protected cell companies for global equity funds, which provides a flexible and low cost method of adding new funds to an existing portfolio.

“Continuing efforts in the Middle East present a real opportunity for Guernsey”

- Frances Watson

MFM: What do you expect to see in the Mena fund space in 2012?

MD: From Guernsey's perspective, we expect private equity and property funds to remain in vogue. From our experience with our Mena clients we would expect to see this mirrored in the Mena fund space, with property funds remaining particularly popular. Shariah-compliant funds have performed strongly in the last year due largely to their conservative investment approach in bear market conditions, and we expect their popularity to increase further in the current economic environment.

GF&ED: We are going to continue our efforts, in terms of using existing contacts and products and travelling to the Mena region and promot-

ing Guernsey as a suitable jurisdiction for these types of financing arrangements. A lot of this will be affected though by the political developments in the region - as to how this affects either the managers and investor base is just impossible to know. One of the areas that we have seen growth is the appetite for such products outside the region, and in particular London based investors who would only want this type of fund.

FLP: We expect that we will see more work from the Mena region coming through to our service providers as we move through 2012. This will be particularly the case as the details of the EU's AIFM Directive become clearer and if, as anticipated, Guernsey is able to offer fund regimes which are either compliant or outside the scope of the Directive. This means that we will be in a relatively unique position of being able to offer Mena fund managers a choice of regimes which best suit the profile of their investors.

FW: Events in the Mena region and upheaval in the international capital markets will undoubtedly continue to impact in 2012. However, looking beyond this, continuing efforts in the Middle East present a real opportunity for Guernsey and Guernsey continues to represent an attractive jurisdiction with which to do business for the Mena region. The challenge is for Guernsey to clearly make its case.

PW: The global economy continues to face challenges and the volatility and unrest in the Middle East may mean that investors based in the Mena region look for products and investments elsewhere. Given our long-standing experience in this region, together with the breadth and versatility of product types on offer, this may create further opportunities for Guernsey. Furthermore the uncertainties created by the AIFMD may continue to encourage fund managers to set up their operations and funds, particularly private equity vehicles, in jurisdictions such as Guernsey.