

Are there Cross-Border Merger Opportunities for Funds?

Ashley Le Feuvre, Senior Manager of Volaw's Funds and SPV Group, reviews the benefits of relocating funds business to Jersey.

As reported in our Spring 2011 edition of *Jersey Brief*, the States of Jersey adopted the Companies (Amendment No. 5) (Jersey) Regulations 2011 (the "Regulations") in February 2011. The Regulations extended the existing provisions for mergers of Jersey-incorporated companies, to enable cross-border mergers of foreign bodies corporate with Jersey companies.

Before the Regulations came into force, it was only possible to directly merge a Jersey company with another Jersey company and although a foreign company could indirectly merge with a Jersey company, the procedure would likely be very cumbersome, time consuming and more costly than a direct merger process.

As the volume of business being conducted across national borders continues to increase, Jersey has seen growing demand for foreign companies to be able to merge directly with Jersey companies. Such mergers would enable foreign companies to benefit from the tax neutrality of Jersey and the flexibility of its companies law and potentially also, the flexibility of its collective investment funds regime.

Global regulation of the funds industry continues to increase and there remains a great deal of nervousness among investors and in the financial markets generally, with serious concerns over growth and the possibility of sovereign and corporate debt defaults. This ongoing air of uncertainty means that many investors have expanded the scope of the due diligence they carry out on potential investments and for the promoters of funds, the process of securing new investment is taking considerably longer than before the credit crunch.

Jersey can assist a promoter in marketing their offering by providing a stable political environment, a high quality technical infrastructure and access to a wide choice of quality functionaries and service providers. These factors, when combined with the Island's highly developed and robust legislative and regulatory framework, which has been subject to positive scrutiny by IOSCO and the IMF among others, serve to demonstrate to fund investors that there exists a framework of exceptional corporate governance to safeguard their interests.

Jersey maintains close historic links with the United Kingdom and benefits also from a convenient geographic proximity to both the UK and mainland Europe. There is a growing confidence among practitioners in Jersey that the Island's industry is well positioned to provide a flexible response to the European Alternative Fund Managers Directive ("AIFMD"). Jersey will retain its current flexibility to serve as a location of choice for those promoters whose funds usually seek investment from outside of Europe, while also seeking to establish a fully AIFMD-compliant regime which would operate in parallel.

Therefore, the opportunity exists for the promoters of funds not only to consider Jersey as an advantageous jurisdiction in which to base their new products but also, they may wish to consider the benefits that could be achieved for them and their investors by seeking to relocate existing operations to Jersey. This is true for fund vehicles and also for asset management companies themselves which continue to relocate to Jersey.

In order for any company to achieve a cross-border merger it will be necessary to secure the approval of its Directors and shareholders, to publish relevant Notices to Creditors and to secure the agreement of the Jersey Financial Services Commission, which will consider the interests of the shareholders, any creditors, the public and the reputation of Jersey. If the

entity is regulated in its home jurisdiction it is also very likely that a merger would require regulatory consent in that country also, so relevant professional advice should be sought at any early stage, including consideration of the tax implications, for the promoter and investors alike.

For further information on operating investment funds in Jersey and on our administration services, please contact either Ashley Le Feuvre (alefeuvre@volaw.com) or Trevor Norman (tnorman@volaw.com) of Volaw's Funds and SPV Group.