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FACILITATING FINANCE IN AN INTERCONNECTED WORLD

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Editor's Note

Brexit, Blacklists and the Power To Anticipate

Brexit, substance and transparency requirements, which have resulted in increased regulatory and reporting burden, and also increased cost and uncertainty, have put different jurisdictions to test in different ways over the past years. At the same time, we have seen jurisdictions blacklisted and gray-listed and more political uncertainty in general.

Sadly, blacklisting ends up having consequences, particularly when EU investors are involved. All managers will try to avoid utilizing a jurisdiction where there could be surprises, like a blacklisting or a change of regulation from an unpredictable government. When evaluating jurisdictions, a manager should understand if the jurisdiction has the ability to absorb these waves without disruption to their structures (page 6, 8,18).

Rather than being reactive to the onslaughts of global regulations, Jersey, as a leading financial hub and fund jurisdiction, has adapted and strengthened its proactive positioning: *"Are you positioned well enough to anticipate what's coming?"* is a question the top service providers and agents of change are asked and able to address, given the deep and diversified talent pool and industry infrastructure (page 11).

The Future

Jersey took the lead and established itself as a crypto-friendly jurisdiction when Jersey's regulator approved the launch of the world's first regulated Bitcoin investment fund in 2014 and the world's first listing on The International Stock Exchange of the Global Bitcoin Fund in 2016, as well as a number of initial coin offerings (page 19).

Right now, Jersey is – again, pro-actively – positioning itself as the leading ESG hub. This Roundtable explains Jersey's approach and what this new paradigm really means for investors, managers and corporations (page 15 -18).

On the structuring side, Jersey is making significant progress with introducing its Limited Liabilities Companies Law (LLC), which is designed and modeled on Delaware, as an additional product on offer that US lawyers and managers are familiar with. This is another expression of Jersey's focus on 'plug and play': the ability to set up a vehicle and either plug it into your existing structures or add it with a minimum of work (page 11, 21).

At the moment, roughly 19% of outward bound investment from the US goes to Africa. The Jersey Government views Africa as an engine for future growth globally and has been building treaty networks across the continent (page 20), to position Jersey as a central hub for US / Africa finance links.

All in all, Jersey presents a very strong proposition and a credible option, particularly for US and also Asian fund and investment managers, who are considering setting up a manager with a full presence, through a 'managed entity' solution, or a hybrid of both. It is globally recognized as a suitable jurisdiction with appropriate regulation and a good choice of fast-track innovative fund products, for example, the Jersey private fund with a 48-hour authorization procedure. The onus is put on the regulated service provider, who deals with the fund and manager compliance aspects, so this doesn't impact on the managers too much, leaving them free to focus on the investments (page 21).

Managers wishing to set up a full presence on the island will find themselves in good company as dozens of hedge and private equity fund managers have recently relocated to Jersey, enjoying an extraordinary quality of life, and – not exactly trivial these days – the world's second fastest broadband speeds (page 4, 11-14).

Enjoy!
Matthias Knab
Knab@Opalesque.com

Introduction

Elliot Refson
Jersey Finance

I head up the Funds area at Jersey Finance from the perspective of strategy and execution, and I'm also a committee member of the Jersey Funds Association and the BVCA Channel Islands Working Group. My background is in managing macro strategy hedge funds, and I also spent 10 years designing Bloomberg.

Philip Pirecki
Jersey Finance

I'm the Business Development Lead for Jersey Finance in the Americas. We opened our New York office in October of 2019. My background is in asset management and investment banking and, prior to that, in consulting.

Simon Hopwood
Maples and Calder

I'm the Head of the Funds and Investment Management team in the Maples Group's Jersey office, working on fund and investment structure formations and setting up new managers, mainly in the private equity, venture capital, real estate and credit space, as well as downstream work.

I have been in Jersey since 2003. Prior to that, I worked in London for SJ Berwin, a pre-eminent private equity focused law firm at the time. I then moved in-house for a period working with Barings Private Equity Partners.

Wouter Plantenga
JTC Group

I'm Head of Group Client Services at JTC Group which stands for Jersey Trust Company. I joined the firm in 2018 to build a strategic platform for JTC in the Americas. I was previously based in New York for about 15 years in the international corporate and fund services space and was Head of North America at Intertrust before I joined JTC. Prior to that, I worked for TMF, formerly Equity Trust.

All in all I have built my career in the corporate and fund services industry and 19 years of my time in the US has primarily been focused on fund management and related aspects such as fund distribution, administration and global expansion.

Richard Perris
Independent Consultant

Until the end of 2020, I was General Counsel at CVC, a large global private equity firm, where I worked for about 15 years. I was based in the US for the last five of those years, having been in London for the previous 10. My time at CVC was split between the core private equity business and CVC's credit investment platform, CVC Credit Partners. I first built and led the legal and compliance team for the private equity business, and then later did the same for the credit business following my move to the US.

Before CVC, I was an associate at Clifford Chance in London, specializing in private equity M&A. I'm currently working as an independent consultant in New York.

Stephen Culhane
Arnold & Porter

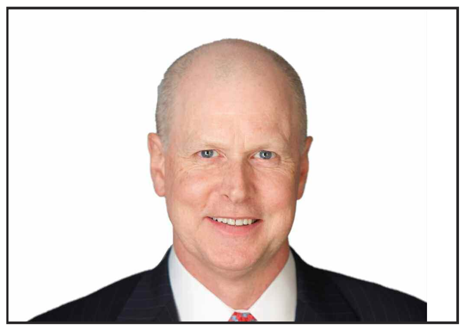
I'm the Co-Head of the Investment Management practice at Arnold & Porter. My work consists primarily of fund formation and advising registered and unregistered investment advisors in connection with the launch and operation of their products. I also represent institutional investors seeking to invest in private funds.

I spent substantially my entire career in New York, and work closely with my colleagues in London. Earlier in my career, I was in-house at Goldman, Sachs & Co., where I was the lawyer responsible for covering the Investment Management Division's private equity group and direct hedge funds. And, before I went to law school, I actually worked as an analyst in Baring Brothers' mergers & acquisitions group in the pre-Nick Leeson days. I greatly enjoyed working for Baring and it was sad to see that institution's demise.

Participant Profiles








(LEFT TO RIGHT):

Elliot Refson, Philip Pirecki, Richard Perris

Simon Hopwood, Stephen Culhane, Wouter Plantenga

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Matthias Knab Thank you for your introductions, especially to Stephen and Simon who unwittingly brought up a theme I also wanted to bring up in our discussion, which is **stability...**

Despite the current challenges facing the financial services industry globally, the Jersey funds industry remains on a growth path with a positive future outlook, presenting fund managers with an alternative jurisdiction to establish an investment manager, or to domicile a fund. The value of regulated funds business serviced in the jurisdiction grew by 9% in 2020 to reach a new record level.

In particular, the alternative asset classes, which now represent 89% of total funds business in Jersey, continued to prove the engine room of growth, with private equity and venture capital up by 21% year-on-year. Additionally, the number of registered Jersey Private Funds, which are not included in the headline figures, grew by almost 100 over the year to reach a total of 403. And, lastly, corporate activity has been very strong in parallel, both in terms of company incorporations and the total number of live companies on the register.

So, Jersey has been able to maintain its growth path as a fund jurisdiction and financial center. I wonder, how much momentum has **Brexit** added to your growth?

Elliot Refson: We commissioned a survey in 2020 where we found that **substance and transparency were the key aspects driving fund domiciliation decisions.** But over and above that, the number one takeaway from the report is that investors, who are the group that primarily determine domiciliation, want a stable jurisdiction with a minimal change outlook (read the research at www.jerseyfinance.je/our-work/the-future-of-international-fund-domiciliation/).

You're right that Brexit, substance and transparency requirements, which have resulted in increased regulatory and reporting burden, and also increased cost and uncertainty, have put different jurisdictions to test in different ways over the past years.

At the same time, we have seen jurisdictions blacklisted and gray-listed and more political uncertainty in general. And so I think that any jurisdiction that can offer expertise, and political and fiscal stability, with a minimal change outlook from a regulatory or economical perspective, has a very clear edge, and that's what Jersey brings to the table.

Richard Perris: Stability has become very important, as fund managers have to invest so much more in whichever offshore jurisdiction(s) they utilize, in order to comply with ever more rigorous substance and reporting requirements. All managers will try to avoid utilizing a jurisdiction where you're going to have surprises like a blacklisting or a change of regulation from an unpredictable government.

But this kind of stability risk can be a challenge to quantify. I am sure anyone I call working in financial services in Jersey will tell me it's a very stable jurisdiction, which is probably true. But of course, anyone I call in Cayman or Bermuda would tell me exactly the same thing. So, in the absence of a detailed comparative legal/social study, I need to find other ways of getting an impression of the place to assess its stability - what is there, who is there? What institutional relationships do we have? And so on. Jersey has always been relatively easy to get comfortable with from that angle.

In an ideal world, offshore costs would just represent a shift of services offshore. If you can employ offshore administrators who will do a high-quality job and remove the need for the same service onshore, that would be far more attractive than working in a jurisdiction where you still have to mirror everything onshore, and all the offshore "substance" costs are incremental. Jurisdictions where that kind of service infrastructure is available are always going to have an edge, and Jersey certainly has that.

Stephen Culhane: You're right, Richard. From my perspective, I would absolutely emphasize the question of expenses, which is both a function of incremental costs, including regulatory costs but also industry infrastructure and ease of doing business. Having a solid legal, accounting and - broadly - administrative infrastructure is very important and makes a very big difference.

Deep industry infrastructure allows for more of that 'plug and play' that Richard is alluding to - the ability to set up a vehicle and either plug it into your existing structures or add it with a minimum of work is often a critical consideration.

Philip Pirecki: I describe Jersey as a 'mini-London' in many ways. It has private wealth, funds, capital markets and investment banking, so it has a deep pool of expertise on the island.

And as a consequence of that, what you end up having are these self-supporting specialties, with a lot of crossings between the firms. Thus, the depth of talent is significantly enhanced. It is very rare to find such a deep and broad expertise in an offshore jurisdiction.

Simon Hopwood: Focusing on legal expertise on the island, many lawyers have trained or gained their experience in the City or with well-known national UK law firms and fully understand the transaction pressures faced by the onshore firms, which explains the high quality expertise and service levels, as well as the value of quick response times.

As we know, corporate governance and substance is becoming increasingly important, and taking into account Jersey's well-established finance industry since the 1960s, there is real strength and depth in terms of high quality service providers, who can assist with governance and provide experienced directors, combined with a large pool of **experienced second or third-generation non-executive directors** (NEDs), to choose from, particularly in the private equity, real estate, credit and hedge fund sectors. Just by way of an example, I was recently able to find an experienced Jersey resident NED with investment management expertise in the CLO asset class, for a manager.

With waves of regulatory and tax changes in recent years, including AIFMD, MiFID, AML, BEPS, FATCA/CRS and GDPR to name but a few, the funds and investment management sector has been impacted globally, but particularly in Europe. Consequently, investment managers are looking for stable jurisdictions where the impact of any future changes will have a limited or minimal effect. For instance, we acted for a manager last year, who migrated a fund managed by them to Jersey from another jurisdiction for this reason.

As Jersey is outside the EU, we do not feel the full impact of the EU directives, which is an important consideration for investment managers looking for a well-regulated jurisdiction, without the regulation being overly onerous or excessive.

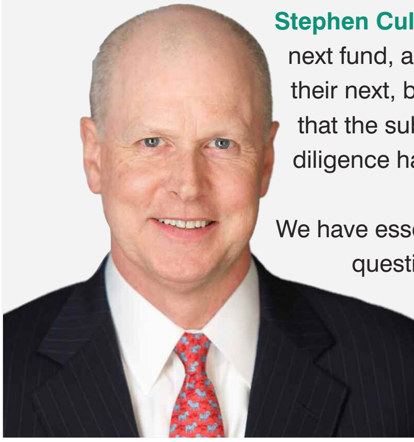
As Richard referred to, as investment managers and also investors, and as Elliott said earlier, you don't want surprises, and this was the main reason for wishing to move, so we migrated the fund to Jersey purely because the manager wanted more stability. While Jersey has gone through some regulatory changes and introduced substance, the impact has been minimal, because of its good corporate governance regime and that entities were actually managed in Jersey anyway. So that's just one example of a client wanting to move for stability reasons.

Institutions have become extremely sensitive to blacklisting now. We had to set up a lot of Jersey feeder funds, for example, just to accommodate European investors.

Philip Pirecki: *The impact from blacklisting and graylisting of jurisdictions isn't binary nor immediate, but it's on the horizon. What I mean by that is other jurisdictions are likely to require enhanced due diligence on the investors and entities using structures established in the impacted IFCs. Perhaps enhanced due diligence is sort of a throwaway, meaningless phrase on the surface, but what that really turns into at a practical level, information that will be demanded from investors is likely to be outside of the norm. That is going to have a direct impact on the quality of experience that your investors are going to have to manage. So, I do think, we haven't seen it yet, but it's coming.*

To Richard's earlier point about disruptions, clearly, you don't want to find yourself in a position where each year you have one problem after another related to the stability of the jurisdiction. I think that underscores the value of a "no change" outlook or a predictable place to do business.

Simon mentioned some of the regulatory waves we have been through, in Europe and globally, and you can clearly see how the amount and the pace of regulation has been increasing. Together, this is a double whammy. You have more to digest, and at the same time, the speed at which new regulatory initiatives are being introduced is increasing. When evaluating jurisdictions, a manager should understand if the jurisdiction has the ability to absorb these waves without disruption to their structures. Resiliency, stability and substance are moving up to the top of the jurisdictional selection criteria.



Stephen Culhane: I spoke with one of my clients earlier today; they are beginning to gear up for their next fund, and just closed a co-investment fund two weeks ago. The first thing they mentioned is that in their next, bigger, fund they want to simplify the subscription agreements. The challenge of course is that the subscription agreements keep getting more and more complicated, and required investor diligence has been getting progressively more detailed. And the documents get longer and longer.

We have essentially adopted a practice of having our standard form and then letting the jurisdiction in question add a supplement to address local law requirements. But that supplement can be very difficult to complete, and certainly very time consuming. This increased level of diligence is our new world, unless somebody here can convince me otherwise.

> *"You want to offer the investor the smoothest experience possible."*

Richard Perris: I agree, and in this new world, we can be pretty sure that more surprises are coming. No-one can really know how governments in the EU and US are going to manage their relationships with offshore jurisdictions in the future, and their decisions will inevitably be driven by their own domestic agendas. So, you have to be realistic and accept you can't really have absolute 'stability' in any given jurisdiction.

But what you can look for is that sort of expertise within the jurisdiction that can adapt to change, that can help you comply with the regulations in a way that works for your business objectives. To take your example, Stephen, finding ways to streamline a subscription agreement, and help navigate investors through that process, can be very valuable and differentiate you as a manager. You want to offer the investor the smoothest experience possible, no matter which jurisdiction it is they are investing through, and the people and the expertise you can access on the ground are a huge part of that.

Elliot Refson: Well, Richard, you could certainly see it that way, but looking at the economic substance laws in our case here in Jersey, the law was simply codification of what was already best practice. We do something in Jersey, with Jersey Finance actually in the middle of it, which very few jurisdictions do in the sense that we have a very joined up approach between our government, our regulators, and our industry, where they actually talk to each other. Meanwhile, we all know that in some of the larger jurisdictions, you only talk to the regulator when it comes after you with a big stick. I remember going around with some US managers and we actually met Stephen with our regulator, and they were shocked that you're walking around with the regulator.

In Jersey, we work together to collaborate, whether that's something innovative like the world's first Bitcoin fund which was a Jersey Fund, the Jersey Private Fund or JPF where the regulatory onus was placed on a local intermediary and can be launched in 48 hours, or whether it's addressing something like COVID. It's very joined up approach we have here. This doesn't mean to say that it's an easy approach, as we all strive for the best and balanced outcome, but global regulators absolutely respect it. So not only do we work pragmatically to maintain our global reputation, we are also early adopters. And being early adopters, and let me come back here to the substance principles, for example, does mitigate a lot of the inherent risk, without the need for a major shift in regulation, because in this case we genuinely have the necessary substance.

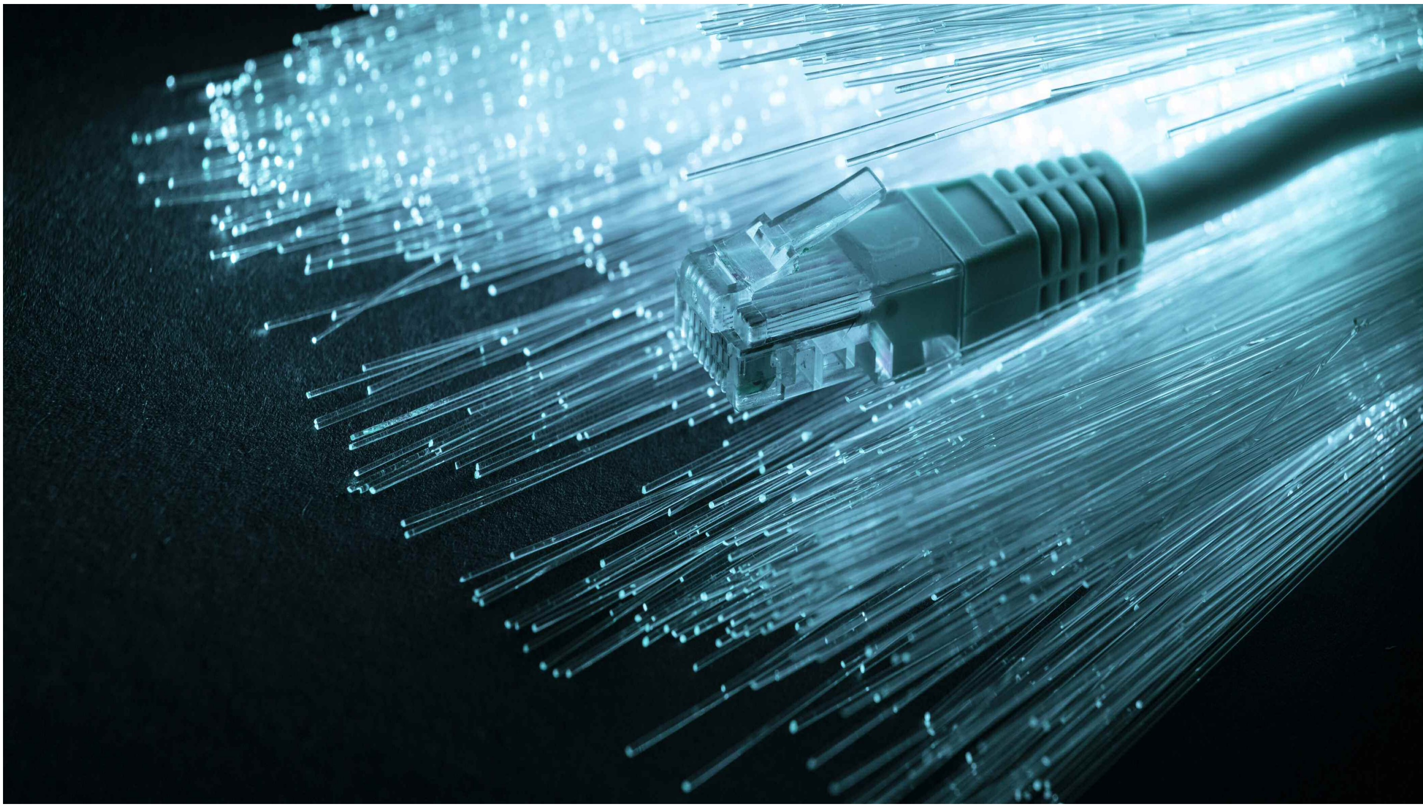
Wouter Plantenga: I agree, and if we look back 15 years or more, focus was on the jurisdictions competing with one another, whereas **today it's probably about being more proactive than being reactive,** and you see that split occurring a little bit.

We often get questions from clients and managers, and even investors who ask, *"Are you positioned well enough to anticipate what's coming?"* So the ability of a jurisdiction to be proactive in terms of what is on the horizon regarding regulation is a clear differentiator, if you ask me. With the ever changing regulatory and compliance landscape, it's really more about what we can anticipate as a jurisdiction and what that means for our clients. This applies from an administrative standpoint as well. In a traditional environment, administrators have been very reactive for decades, pretty much following just what they were told.

However, now that we are seeing more and more regulation being introduced, we need to anticipate, be proactive and nimble enough to instantly digest information into the onboarding process and think about what the jurisdictional impact is rather than being reactive and just responding. So, regardless of whether we are referring to a jurisdiction, fund administrator or any other industry or sector, there will be some that are complacent and some that are proactive, and I believe, the more proactive will fare better in the current environment.

Philip Pirecki: That's a great point, Wouter, and I think it's more than a decision or more than just saying, "We're forward looking, we're turned on commercially," if you will. I think it is deeper than that and it comes down to human infrastructure in the jurisdiction. Even if you have made the decision to say "yes, we're definitely going to pay attention to what's coming and we'll try to react", you can't get away from the human infrastructure, which means do you have enough people who really understand the issues? Do you have the depth of professional expertise?

For example, **Jersey is making significant progress with introducing its LLC law** and it has gone through an evaluation and feedback from industry and all of the potentially impacted sectors. Thus, on the other side of the commercial consultation, you're getting something that actually has been thought through in a way that many other jurisdictions simply wouldn't have had the ability to do, or not at this pace. So, it's not just the depth and the technical expertise, it's also the pace which allows Jersey to handle these oncoming regulatory initiatives. I think professional expertise makes the difference.



Elliot Refson: From a Jersey point of view, 22% of our working population, which is more than 13,000 people, is working in the industry - I wouldn't argue with that, but would add that **physical infrastructure plays a part too. Jersey has the second fastest broadband speeds in the world.** We have got some fantastic new offices in the International Finance Center, so for me, to be really able to lead is a question of infrastructure across the board, in addition to the human infrastructure.

But I agree, Philip, in that we do not promote this aspect enough: that we have such a deep pool of talents here, some of it driven by the lifestyle choice of moving to Jersey. But you know, that's people with deep and diverse real world expertise. These people are here.

Philip Pirecki: Practically speaking, when we are talking about offshore jurisdictions, by and large we're talking about islands. A fixed geographic footprint with local pressure to limit immigration and not expand the population. There's only so much that you can do in the short term to change the reality of what substance you can offer in that context, unless you get agreement to increase the population materially.

As a result, I think it's very difficult to add substance if you haven't already created a location full of substance. Not that it's impossible, but it takes time.

Also, a key piece to all of this is **cost.** While in the past, jurisdictions displayed a clear delta between their cost basis, that cost differential has shrunk and shrunk to where you're at now at par or nearly there. I think this is a point Richard and Stephen made earlier, which jurisdictions are adding on incremental costs, but without benefit. Well, this means that the cost piece is coming off the table, right? And that also means you might as well be looking for the place that has all the things that you need right out of the gate.

> *..attracting quality people for the funds and investment management, legal and administration sectors has been really easy for Jersey.*

Richard Perris: Substance is a difficult concept, isn't it? Different structures may need substance in different places, whether for tax purposes or for regulatory reasons, and the risk can be very different depending on the context. A US-only fund, with US investors at the top and US assets at the bottom is a very different animal to a fund that is looking to incorporate European investors and assets. And the 'substance' that a regulator might require in order to maintain an EU AIFM might well differ from what you might need to obtain relief under a double taxation treaty. And requirements change and evolve over time.

The one thing we do know is that substance requirements of all types are only going one way – 'more'. It seems unlikely we will reverse direction and require less substance everywhere! You need the ability to build out substance where you need it, and that is clearly going to be easier in some jurisdictions than others.

Simon Hopwood: Jersey sits in the Bay of St Malo - just 14 miles (22 km) from the French coast and 85 miles (137 km) south of the English coast. This means that Jersey, being conveniently located, has an immediate advantage over other offshore jurisdictions and allows easy access for directors to fly in for board meetings or, in cases where a manager establishes a presence in Jersey, for their key personnel to relocate from the UK or Europe. Many well-known fund managers have established a full presence in Jersey, including private equity managers, CVC and Nordic Capital, and hedge fund manager, Brevan Howard. Most fund managers team up with a service provider that also provides a 'managed entity' solution.

For those considering relocation, Jersey is a beautiful place to live and offers a great quality of life. Moving here is a lifestyle choice, where you can achieve a work-life balance and be involved in high quality work, as well as benefitting from a simple tax system. So, attracting quality people for the funds and investment management, legal and administration sectors has been really easy for Jersey, which is why it has a strong infrastructure with substance.

Elliot Refson: Just to add some color about the level of activity - I fell into this role because back in 2012 Jersey was looking to attract hedge fund managers to the island.

Last year, in 2020, I was involved in 11 relocations, not just hedge, but private equity as well. There were clearly more. We see a lot of managers physically moving themselves to Jersey, which is an interesting point.

Richard Perris: Yes, for a manager to go “all-in” and build a full presence then they really do need to be very confident about the jurisdiction they go into, because the investment is going to be so large. You need to know that the people are there, the resources are there, the infrastructure is there; all the things we have spoken about.

Stephen Culhane: Elliot, with all of those relocations, where were people moving from and what are the factors driving those moves?

Elliot Refson: Historically, they have moved from the UK and from Switzerland.

We have seen some recently from Hong Kong this year and the factors are the robust pragmatic regulation that we have as a jurisdiction. We are outside the UK, we are outside the EU, we have got very strong links to both of them, as well as high regulatory standards and an expert workforce – these factors have made us very attractive. In addition to Simon’s point on lifestyle, which is the reason why I came here myself.

Philip Pirecki: It’s a 35-minute flight to Jersey from London and there are up to 13 flights a day on this route.

Wouter Plantenga: How does it work with the immigration laws when people want to move to Jersey? How does it compare to other jurisdictions?

Simon Hopwood: If a manager is to relocate or establish a full presence here, it will need a business license to carry on its business and to employ staff, which usually requires employment of a certain number of local staff. For essential personnel relocating, you can obtain a 5-year 'residence and work' license that may be extended for a further term until qualifying for automatic residency after 10 years. So, depending on the size of the business and the number of employees involved in it, you can apply for a number of licenses for your essential personnel.

I advised a leading asset manager setting up an investment manager in Jersey, which manages a credit fund. In the process, one of the founders relocated with his family to Jersey from the UK. Locate Jersey, a government organisation promoting Jersey, helpfully advised our client concerning the practical aspects of the relocation. For example, advising in relation to the residency application process and finding a home and a school. A high net worth individual may apply for residency under the 2(1)(e) category, which was formerly the 1(1)(k) category, that is considered on the basis of the financial and social attributes that the individual could bring to Jersey.

> “*...momentum in ESG is only continuing, and it calls for leadership in the provision of practical solutions.*”

Philip Pirecki: *Simon, with the pandemic, we are just past the year mark, where all of us have stopped traveling and turned to video conferencing and other forms of digital communication.*

I was wondering, do you think this has now proven that we can communicate with investors remotely, and proven that we can handle subscriptions and redemptions, let alone a new issuance of a new fund et cetera, that we can do all of that remotely?

And from a manager's perspective, do you think that makes the case that businesses can operate effectively remotely, that it encourages more businesses to move for all of the advantages? I'm asking this because the number one concern typically used to be something like, "well, I need to be in London or I need to be in Zurich because that's where my investors come through...", but with this collective COVID-19 experience, and all the shifts it has created, do you think that might accelerate the move?

Simon Hopwood: I think it can accelerate such moves away from the traditional financial centres. As you mentioned, we all had to adjust as a consequence of the pandemic. Although video calls have worked, if you ask investors or fundraisers, I think most of them would say that they still want to meet people face-to-face, eyeball to eyeball as it were.

At the moment, we have all adjusted to working from home doing video calls and that has worked, but I also think that when travel comes back, people will still want to travel. However that does not take away from the case that you can be based in Jersey or outside of the traditional large financial hubs.

If you rewind back to the initial lockdown in March 2020, none of us expected to be still in the same position -- third lockdown or whatever -- a year later. I think most managers who were setting up funds and then looking to fundraise, thought, "It will ride out and will only last three months," until everyone realized we all had to adjust and try to raise capital through new digital formats and that we actually don't have to take quite as many flights across the world to get things done.

Matthias Knab If you think about it, regardless of whether you are based in London, in New York, Singapore or Hong Kong – we are all in the same position. That is, unable to travel. Remember when Singapore and Hong Kong were trying to open up a travel corridor, or New Zealand and Australia, and then they needed to drop it again? So, even if you launched a fund in any of those places, you also had to do everything online....

I recall that Carlyle raised $18 billion over the first nine months of 2020, exceeding the prior year's $16 billion total in part due to the effectiveness and efficiency of virtual client meetings, according to their CEO. So, Philip, you could argue that the location argument is to a large extent blown out by the COVID-19 pandemic.

Elliot, you mentioned a couple of things where Jersey was first, like setting up the first Bitcoin fund. Let's look at other innovations, what are you currently working on or have recently launched as a leading fund jurisdiction?

Elliot Refson: I think it was late last year, we made it easier to migrate Limited Partnerships from other jurisdictions to Jersey. Currently we are working on the LLC regime, which Philip mentioned earlier.

In terms of further innovation and ESG, we recently launched a product that I worked on called **'Jersey for Wilder World'**, that enables our service providers to centrally pool a percentage of their fees with the Durrell Wildlife Foundation, which is a globally respected environmental organization, and for them then to deploy these funds through their 'rewilding programs' globally. This is just an element of what Jersey is doing.

Our regulator currently has a consultation out in respect of **ESG** -- it's their second consultation, actually. And we at Jersey Finance as the representative body of Jersey's finance industry, recently announced our long-term strategy in this area, along with a high-ambition collective vision for our industry. I think the 'G', Governance, aspect is the part we covered earlier with the people we have there. So, again the government, together with the regulator and the industry, are jointly working on a plan for the future of ESG in Jersey.

Simon Hopwood: The EU introduced the Sustainable Finance Disclosure Regulation with effect from 10 March 2021, which imposes mandatory ESG disclosure obligations for asset managers and other financial markets participants. Although Jersey is outside the EU and the Regulation does not directly apply, a Jersey manager and fund must still comply where it is marketed into the EU, or where it has an EU-based manager or a manager with an affiliate in the EU.

We analysed many funds formed for clients and spoke to a number of Jersey fund administrators, to ascertain the extent to which the Regulation affected Jersey funds and managers. We found that many of the funds were not actually marketed into the EU, or did not have EU-based manager or an EU-based affiliate, so were not impacted by that Regulation.

As Elliott mentioned, Jersey's regulator has issued a consultation paper on ESG, which considers funds and firms, which will have sustainable investments as part of their investment strategy, and matters such as protecting against 'greenwashing', disclosure requirements and changes in policies and procedures, as well as looking at corporate governance aspects.

As the UK is now a third country following Brexit, it is also going through a similar consultation in relation to ESG. The EU's ESG framework is very wide and broad. So, it's going to be interesting to see the extent to which Jersey and the UK will align with the EU's position on ESG when Jersey and the UK implement our own ESG measures.

Care needs to be taken though and it will be important to maintain some consistency between the ESG measures across the EU, the UK and Jersey. If there is any material inconsistency or diverse measures, it will make it difficult for a fund looking to invest across the UK and Europe to comply with the differing requirements, which could place an unnecessary regulatory burden and also have cost implications.

Elliot Refson: I mentioned our 2020 fund domiciliation research project but we have conducted some further research recently in partnership with IFI Global. The report on this has just been launched and it does touch on ESG. It's certainly the case that the US is significantly behind Europe from a management perspective when it comes to addressing these issues.

But, you know, it's becoming a key focus because investors are demanding it, and managers are responding. It's happening more in Asia and Europe than in the US, but clearly ESG is an increasingly important factor in decision-making and considerations going forward (read our most recent research at https://www.jerseyfinance.je/our-work/the-future-of-international-fund-domiciliation-2021/).

Matthias Knab

As Simon said, there needs to be some consistency, at least in principle, within the different regulations in respect to ESG. I am pretty sure investors would reject any form of regulatory arbitrage when it comes to ESG at a time when the industry is already confronting halfhearted approaches or greenwashing.

The EU has been pioneering, I believe globally, in addressing the lack of standardization in ESG definitions with their taxonomy and other initiatives. As often, when you are the first one, you may not be perfect, but I do think everyone is committed to doing a good job. I was wondering if you see the UK now splitting off and doing something completely separate, or will there be a bridge between the two?

Elliot Refson: I think that it's going to be a VHS, Betamax story, if anyone can remember that. One of them is going to win out over the other, and that's what will be adopted globally. I think there will be a period of possible arbitrage, if managers want to go down that route. But I think that this is a very serious movement which has gained a huge amount of traction during the COVID period. It's being driven by investors, and, as you have mentioned, I don't think those investors want lip service paid to it. I think they want to see this done properly, and I think that will shape what will happen moving forward.

Our recent research suggested that this issue has not yet filtered down to a jurisdictional level, but I think that it clearly will. What we're doing with the government, with the industry, with the regulators, with our Sustainable Vision and our new 'Jersey for a Wilder World' program will show our credentials and allow us to start this conversation.

Historically, we have seen asset classes congregate in jurisdictions - for example in the hedge fund world, the congregation of funds in Bermuda back in the day - I think that is what we will see happening again. Because of that, **we are positioning ourselves to be in a good, if not the leading spot in the ESG space.** When you look at the statistics in terms of what's happening in the private equity space for 2020 in Jersey and worldwide, given the accelerating growth over the past five to ten years, this momentum in ESG is only continuing, and it calls for leadership in the provision of practical solutions.

Richard Perris: *ESG is a very broad umbrella, with a huge variety of topics sitting beneath it. For example, combatting climate change is a very different challenge from increasing diversity on boards of directors, or reducing tax evasion, and so on. Any given investor, regulator or government might have very different priorities and attitudes to each of those topics.*

Everyone agrees that ESG is here to stay, and that must be a good thing, but as governments and investors start to focus on this so much more, and dig beneath the surface, I think a lot of very different views will have to be reconciled. If you want to facilitate ESG in the private markets, it almost seems better to stay flexible and reactive, rather than go out there with a set agenda, which not everyone may agree with, in the detail at least. So, I'm really interested to know, how does Jersey see its role here? Is it a leader or is it as a reactive facilitator?

Elliot Refson: If you look on the Jersey Finance website at the Sustainability Vision that we recently launched, I think it's very clear that we are looking to lead in the space, rather than follow - acting as a catalyst for action, aligning our ambition with the wider ESG standards emerging on the world stage. With a track record of leading on global best practice, we can build on the lessons learned by early movers to match and outperform our competitors.

Where I absolutely agree with you is that this is a very broad field. I think that in these early days, we're all taking about ESG, but I think eventually that that will split out to be the 'E', the 'S' and the 'G'.

Richard Perris: When we think about climate change, which I guess encompasses much of the "E" bit, that's perhaps the easiest part to deal with, and that's somewhere you can be a leader. But moving on to the social and governance aspects, as an offshore jurisdiction trying to lead there, this is probably more difficult territory.

> ***"I am a firm believer that ESG is everyone's responsibility."***

Philip Pirecki: If you think of ESG being like an umbrella, like you discussed in Elliot's point, if we fast forward this, these things stop being ESG and become their own discrete elements onto themselves.

To your point, Matthias, about the taxonomy that Europe introduced, that's already being adopted. Analogous to this are green bonds. **The European taxonomy is the reference point.** So, even in the United States, it's the reference point. It doesn't matter where the TopCo is, you're still thinking about that European taxonomy because that's effectively already become the global standard. Everyone now knows what to look for, that's the metric.

So, I don't know if we are in an arbitrage situation. In this case, I think we're just in a nascent phase, where this new paradigm is emerging globally. And, as these values become more inculcated culturally into the next generation, who view the world through different lenses, these discrete issues start being addressed in more comprehensive ways.

Wouter Plantenga: Just to add perspective from a corporate angle - JTC is a public company headquartered in Jersey. ESG is very much part of our culture, driven by our unique shared ownership model implemented over 22 years ago.

However, if you asked me four or five years ago, ESG – or impact investing – was not even on the table as a conversational piece at most companies, whereas now from a corporate standpoint that has changed substantially. As an example, JTC is fully committed to ESG and we have a lot of discussions and initiatives about how we actually implement these principles, not only for the benefit of our internal and external stakeholders, but also as a solution for clients.

I believe it is really the underlying behavior that is changing, which will ultimately drive the outcome for jurisdictions to decide the direction they want to take, and that particularly the corporate sector will need to be more proactive than reactive. I think that today companies are challenged to proactively find their position and their stance, maybe even independent from what a jurisdiction or even investors and clients are doing.

I am a firm believer that ESG is everyone's responsibility, and that Jersey is doing a great job. I have seen similar processes at other Jersey based firms, which are emerging from within the organization.

> ***Investors start looking at jurisdictions not necessarily because there might be a binary tax consequence or a binary cost issue, it's now become a value issue.***

Philip Pirecki: We have to reflect what these individual terms mean, and thank you Wouter for pointing out the behavioral aspect here. This brings me back to an earlier theme, which is the decision to invest via a jurisdiction that's on a blacklist, or should you be investing via jurisdictions on a gray list? The lenses that investors use to evaluate an investment decision have different filters on them now, they have different values. Investors start looking at jurisdictions not necessarily because there might be a binary tax consequence or a binary cost issue, it's now become a value issue.

Should we be going via a jurisdiction that's on those lists? And again, we're in nascent part of this, but I think that becomes another part of the conversation. Is the jurisdiction able, is it ready, does it meet the current set of standards that we require for jurisdictions?

Matthias Knab Apart from ESG and sustainable finance, another area with a lot of potential for finance and jurisdictions is digital assets. Just think about the tussle about launching a Bitcoin ETF in the US, for example. Do you want to share what's happening in Jersey regarding digital assets?

Simon Hopwood: Jersey took the lead and established itself as a crypto-friendly jurisdiction when Jersey's regulator approved the launch of the world's first regulated Bitcoin investment fund in 2014, and the world's first listing on The International Stock Exchange of the Global Bitcoin Fund in 2016, as well as a number of initial coin offerings.

Due to the nature of the crypto investments and the fact that many exchanges are unregulated, which raises issues from an anti-money laundering (AML) perspective, Jersey's regulator will need to be satisfied as to the sources of bitcoin, the custody arrangements for it and appropriate AML policies and procedures in place. The regulator will require the fund to have a reputable custodian regulated in its home jurisdiction.

So, there are few hoops to jump through to satisfy the Jersey regulator if you're setting up a digital asset fund for example. If there is a reputable and experienced manager involved, the fund will have a reputable and regulated custodian and AML concerns are addressed, then yes, the Jersey regulator will consider the fund.

Philip Pirecki: I think this illustrates how pragmatic the Jersey regulator is. For example, there's a US team that established a Jersey structure for a global fintech solution. And to give you a sense of how the Jersey regulator works with firms doing innovative and out of the box things, rather than saying, "Okay, this is something uncommon and we don't want to know about it", the process was more a questioning, along the lines of "Well, tell us more, how do you solve these problems?"

What you can see here is the regulator's willingness to work with people to find the solution. I'm not saying it's easy if you are on the leading edge, but if you can demonstrate that you can accomplish what you need to accomplish, then the regulator will work with you.

Stephen Culhane: We've talked about the re-domiciling of managers. How is the ongoing Brexit drama playing out at this point? Is it old history? Is it continuing to shape the decisions that people are making?

Elliot Refson: I think you will find that many of the larger players have already made those decisions and acted. *But indeed there are number of mid and smaller managers who have not yet moved or adapted, and we are seeing ongoing conversations with those managers.* As I mentioned earlier, we are outside the UK, we're outside the EU, and so by moving to Jersey, you can interact with both of them.

The situation is of course different for US managers who want to market into Europe. Their choice is to then come to Jersey offshore, or try to go to the onshore locations which bring them under the AIFM directive.

We spoke earlier on innovation in Jersey, and another area where we innovated very early on was to have an **opt in opt out approach to AIFMD.** If you have a Jersey fund facing the rest of the world outside of Europe, it's outside the scope of AIFMD. And so, to your choice as a US manager who wants to raise capital in Europe, if he goes onshore he is fully on the hook for AIFMD, which includes renumeration disclosures, or his alternative is he can come to Jersey and have a lighter form of AIFMD via the National Private Placement Regime, as opposed to the passport. The kicker to this is that by *the EU's own statistics, managers looking to raise money in Europe do not market into more than three European locations, which raises the question why would anyone want to be on the hook fully for AIFMD given the fact that they are only raising money in three markets and private placement is available? And obviously, because it's a slightly lower barrier to entry, it's more cost effective, it's more efficient and it's faster to market.*

Philip Pirecki: Jersey has its links with the United Kingdom as well, so prior to Brexit, the United Kingdom was the largest allocator to alternatives in Europe.

Now they are obviously outside of the EU, and Jersey maintains its links with the UK but has, as Elliott pointed out, this opt-in, opt-out solution which allows you to reach into Europe as well as into the rest of the world.

Jersey is a crossroads giving managers the stable platform for fund domiciliation but global marketing flexibility, which is a really unique selling point, particularly in the US context. Just over the past year, we have seen the number of US backed funds grow almost 40% in Jersey and the number of managers using Jersey has grown 17% over the last year. So, these are significant growth numbers over the past 12 months.

Elliot Refson: What's interesting about our message around Brexit is that from Jersey's perspective, there was simply no change. No change before Brexit, and no change after.

Philip Pirecki: There is another angle that US managers might be excited to hear about, which is the **LLC Law** that's in the pipeline. This was designed and modeled on Delaware and, based on the success Cayman had with a similar product. It's not that managers couldn't accomplish the same things with other vehicles in Jersey, they can, but now we have one additional product on offer that US lawyers and managers are familiar with. It becomes an easier way for them to do their structuring. This is a key development that we're making significant progress with.

Simon Hopwood: When comparing with the UK post-Brexit, the key benefit that Jersey can offer is tax neutrality for a manager based here. If a manager sets up in the UK, it will be subject to tax there. If the manager sets up in Luxembourg or Dublin, it will be subject to the full EU regulatory requirements as well.

Jersey really presents a very strong proposition and a credible option for US fund and investment managers, who are considering setting up a manager with a full presence, through a 'managed entity' solution or a hybrid of both. As mentioned earlier stability is key, and Jersey offers governmental, economic and fiscal stability, combined with substance and tax neutrality.

While providing a 'lighter touch' regulatory environment, investor protection is not compromised. Being outside the EU, it is not subject to its directives, which helps maintain regulatory compliance costs at a reasonable level. As Elliott mentioned earlier, Jersey allows access for managers to market funds to EU/EEA investors, but without being subject to full AIFMD requirements. Conveniently located, travel to and from the UK and Europe is both quick and easy.

We have really promoted Jersey in recent years for these reasons. Increasingly now, some of the fund managers are finding that due to their investor profile and their investment focus, the manager or the fund do not actually need to be based within the highly-regulated onshore environment. And Jersey offers a suitable jurisdiction with appropriate regulation and a good choice of fast-track innovative fund products, for example, the Jersey private fund with its 48-hour authorization procedure. The onus is now on the regulated service provider, who will deal with the fund and manager compliance aspects, so that this doesn't impact on the managers too much, leaving them free to focus on the investments.

Philip Pirecki: This isn't necessarily an innovation, but a trend we have seen particularly in the latter half of last year is the amount of inquiries about investments going into Africa. That route would have traditionally gone through Mauritius. Investors are looking for alternatives to access Africa, and Jersey is stepping into that role. Jersey's government has understood Africa as an engine for future growth globally and has been building treaty networks across the continent. If I'm right around the numbers, roughly 19% of outward bound investment from the US goes to Africa. Jersey is positioning itself to be a central hub for **US** / **Africa finance links.**

And that brings in a point that we haven't discussed yet, which is the courts and the judiciary in Jersey. The Jersey courts are steeped in the subject matter, not just legally but also commercially. So, if something goes wrong, managers do have to find remedies and Simon can speak on this in much greater detail that I can, but that depth and competency in the court system is another unique selling point for Jersey.

> “*What's interesting about our message around Brexit is that from Jersey's perspective, there was simply no change.*”

Richard Perris: There is the chance for some change on the horizon, I think, in terms of market access to Europe for Jersey. Jersey was the first 'Third Country' to offer AIFMs a fully compliant AIFMD option, meaning that Jersey has an 'opt-in regime' for managers wishing to comply fully with AIFMD requirements when marketing to investors in the EU/EEA. And, already in 2015, the European Securities and Markets Authority (ESMA) recommended to the European Parliament, Council and Commission, that Jersey should be amongst those 'third countries' granted a passport under the Alternative Investment Fund Managers Directive. Is there any news on that front?

Elliot Refson: Jersey is in the first round to get the third-country passports, but if you look at what the market wants via the KPMG pre-AIFMD II reports, **the market very clearly wants private placements to stay.** They say it's a very efficient way to market.

So, we have the private placement route, and from my understanding, private placement will remain in place until three years after the passport is granted. And our future proofing comes from being in the first round to get the passports anyway.

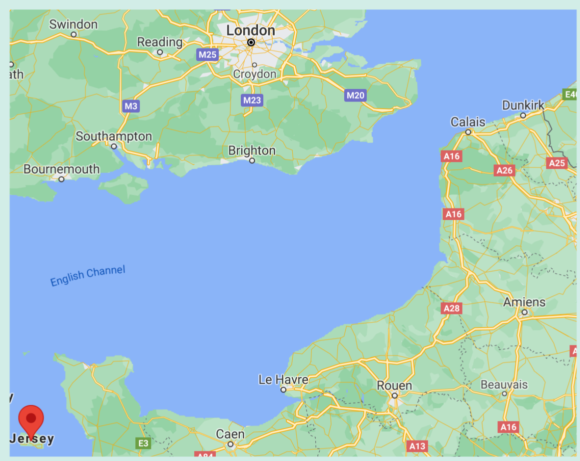
Jersey Funds Industry Remains on a Growth Path

As a 'mini-London', with a highly diversified finance sector, 22% of Jersey's working population - a headcount of more than 13,000 - is dedicated to finance.

Despite the current challenges facing the financial services industry globally, the Jersey funds sector remains on a growth path with a positive future outlook, presenting fund managers with an alternative jurisdiction to establish an investment manager, or to domicile a fund. The value of regulated funds business serviced in the jurisdiction grew by 9% in 2020 to reach a new record level.

In particular, the alternative asset classes, which now represent 89% of total funds business in Jersey, continued to prove the engine room of growth, with private equity and venture capital up by 21% year-on-year. Additionally, the number of registered Jersey Private Funds, which are not included in the headline figures, grew by almost 100 over the year to reach a total of 403.

With its opt in opt out approach to AIFMD, Jersey is a crossroads giving managers the stable platform for fund domiciliation but global marketing flexibility.



About Jersey Finance

Jersey Finance is a future-focussed organisation established in 2001 to represent and promote the island of Jersey, an award-winning international finance centre. In 2019, Jersey Finance launched an office in New York and it also has offices in Jersey, Dubai and Hong Kong, representation in London, and virtual offices in Shanghai and Mumbai. If you would like to learn to more about using Jersey, please email jersey@jerseyfinance.je to arrange a meeting.