

FUND FORMATION

● Whether you're a first time sponsor, a new or even experienced manager, the legal, tax and accounting issues associated with forming funds are detailed and complex. From forming structures, raising capital, attracting investors, to tax efficiency, virtually every type of fund can raise similar critical issues.

Fund lawyers and formation experts can provide full coverage of the laws and regulations that govern fund formation and explain the features, advantages and disadvantages of the various types of fund that exist in their respective region or field. In the early stages of any fund these experts can prove to be invaluable.

Acquisition International spoke to a number of industry leaders to get their opinion on fund formation issues.

Donnacha O'Connor is a partner in the Irish law firm Dillon Eustace and he specialises in fund formation.

Forming a fund involves input from multiple parties including fund administrators, custodians, brokers, distributors, directors, regulators, investors as well as the client.

"Being able to marshal the various interests involved, having good commercial sensibility and knowing the market are key skills which fund formation requires outside of the skills normally expected of a lawyer," notes O'Connor. "Traditionally, fund formation involves many jurisdictions and associated cross border issues" he commented, "so being able to source for the client legal, regulatory and tax advice in a number of jurisdictions and knowing those markets well is also important". "Being flexible and sensible when it comes to charging structures, particularly for start-up managers has become far more important: the relationship with a client should be a long-term partnership and getting off on the right foot is important" he added.

Currently, the greatest challenge that O'Connor sees his clients facing is the capital raising environment, however, O'Connor remarked that the impact that regulatory change is having is also very significant.

"The domicile and structure of a fund is driven almost entirely by the target investor market— by investor type, sophistication, jurisdiction, tax, and other factors, but the manager's capital raising strategy, budget and size are also relevant. Some managers don't want a fund that will be all things to all people and some prefer unregulated products for speed to market, flexibility and cost reasons," he explained. "Time spent at the outset critically assessing the domicile and structure that will work will be time well spent."

According to O'Connor, the main considerations when designing a structure to meet a fund's investment goals are "balancing the needs of the investor market and the requirements of the various jurisdictions involved with the needs of the manager, particularly start-up managers".

He observed that the regulatory environment for non-UCITS funds in Europe is undergoing fundamental change with the implementation of the EU Directive on Alternative Investment Fund managers, and this is informing many managers' decisions as to where and how to structure their funds. *"We saw a general increase in the number of long only or long biased equity based funds being set up in Ireland towards the end of 2012 with debt and credit funds continuing to be popular. Traditionally most private equity and real estate funds for the international market may have been set up off-shore outside of the EU, but we*

see fund promoters re-examining this in light of this new Directive."

Looking ahead in 2013, O'Connor believes that the emphasis on transparency will increase and this will be driven by regulations affecting fund formation directly and by regulation affecting investors.

"We don't expect a major shift one way or the other when it comes to domiciles but the marketing passport for non-UCITS under the Directive on Alternative Investment Fund Managers should create some pull towards European domiciles particularly for the bigger managers," he concluded.



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