First-time fund manager? Here are three key considerations to bear in mind

By Sam Whittaker

Establishing a fund can be a challenging exercise for an investment manager with a strong track record. Here are three key considerations to help you navigate the legal and regulatory complexities of establishing your first fund.

1. Choosing the right jurisdiction

Delaware, the Cayman Islands, the UK, Jersey, Guernsey, Luxembourg and Hong Kong: these are just some of the choices you will be faced with when identifying the jurisdiction in which to establish your fund.

There is not always an obvious choice. Choosing the right jurisdiction for your fund will, ultimately, turn on a number of factors, including where you plan to establish your fund management business, in which jurisdictions you plan to raise capital and in which jurisdictions you plan to invest.

For instance, if you plan to manage your fund from New York, raise capital from investors in the US and invest in, say, cryptocurrency, it is likely that the jurisdiction of choice for your fund would be Delaware or the Cayman Islands.

On the other hand, if you plan to manage your fund from London, raise capital from investors in the UK and continental Europe and invest in tech startups in Europe and the US, it is likely that the jurisdiction of choice for your fund would be Guernsey or the UK.

Making the right choice, however, is crucial. It is difficult enough for first-time managers to raise capital as it is, without the added difficulty of having to explain to your investors (and their advisers) why your fund has been established in what they may perceive to be the "wrong" jurisdiction.

2. Choosing the right regulatory approach

Since regulation has grown significantly since the global financial crisis – and is a trend which shows little sign of abating – first-time fund managers have increasingly sought an alternative to obtaining authorization from financial regulatory bodies such as the SEC in the US, the FCA in the UK and the CSSF in Luxembourg.

This has led to the emergence of hosting platforms. These platforms provide umbrella regulatory services under which a first-time fund manager can operate without the need to obtain authorisation itself.

This solution enables you to bring your fund to market more quickly than through the traditional route of obtaining authorization and offers value-add services in areas such as administration, compliance and corporate governance.

Hosting platforms, however, come at a cost to your business and while you may consider an application for authorization to a financial regulatory body to be a daunting prospect which will give rise to unwanted costs (such as legal fees and working capital requirements), it is worth bearing in mind that over the life of a typical fund of, say, 12 years, it is likely to save you a significant amount of money.

3. Choosing the right marketing document

While a fund manager is required to communicate its offering to the market in accordance with certain regulations, there is no prescribed form for doing so.

Of course, some fund managers favor a traditional information memorandum which can often be in excess of 100 pages. Preparing such a document, however, can be costly and time consuming for the fund manager (and its legal counsel), and it is not necessarily the case that having it will help you raise more capital than would have benn raised by adopting an alternative approach.

Many first-time fund managers therefore prefer to use a slide deck or investor presentation, which is much shorter and less costly and quick to prepare.

The approach which is right for your fund will depend on you and your investors, so be flexible and consider your options carefully before making this significant financial and time commitment.