

GLOBAL PERSPECTIVES 2023

Key trends in investment funds

Our global investment funds teams work closely with the leading managers, instructing counsel and service providers around the world, giving us a unique perspective and insight into the trends and forces shaping financial services markets.

From across our international locations, this is our view of the key trends that will be impacting our jurisdictions and markets in 2023.

To discuss these insights in more detail, please get in touch with your usual Walkers contact or with one of the partners featured below.

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BERMUDA

Bermuda to remain attractive for digital fund formation

Asset managers continue to launch new vehicles devoted to digital assets and blockchain solutions, with more and more funds set up as crypto native funds.



WE ARE SEEKING SOLUTIONS TO TOKENISATION OF REGULATED FUND VEHICLES TO CONTINUE TO EVOLVE"

The impact of the bankruptcies of the crypto brokers at the end of Q4 highlights the importance for robust governance and controls. Given Bermuda's market position in the digital asset space, its longstanding funds history, its comprehensive regulatory framework and the reputation of the Bermuda Monetary Authority as an internationally well-respected regulator, we expect Bermuda to be a very attractive jurisdiction for fund formation in this space.

In addition, we are seeing solutions to tokenisation of regulated fund vehicles to continue to evolve, particularly as we are seeing an increasing number of digital assets exchanges, market makers and service providers looking to Bermuda. The number of fund administrators seeking to be licensed under the Digital Asset Business Act suggests that this trend will continue in 2023 and beyond. Insurance linked securities ("ILS") funds and the establishment of new ILS managers also continue to thrive in Bermuda.

Finally, we expect to see an increase in the registration of fund managers incorporated in Bermuda, following changes made to the Investment Business Act in 2022.

Find out more



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BRITISH VIRGIN ISLANDS

BVI will continue to attract private equity in 2023

We continue to see strong interest in the British Virgin Islands (“BVI”) private equity and other closed-ended fund strategies even though, historically, the BVI was better known as a hedge funds jurisdiction.



THE BVI NOW BENEFITS FROM BEST IN CLASS LIMITED PARTNERSHIP LEGISLATION AND WE EXPECT ITS USE TO INCREASE OVER TIME ESPECIALLY IN 2023”

The regulatory regime for closed-ended private investment funds introduced in 2020 has proven to be popular, in particular with small and medium sized managers. The reformed BVI Limited Partnership Act is another factor driving the popularity of BVI private investment funds. The BVI now benefits from best-in-class limited partnership legislation and we expect its use to increase over time, especially in 2023.

We also continue to see very strong demand for BVI approved investment managers, with the number of approved managers almost doubling in a 12-month period. In the current market environment this is a remarkable achievement, and we see no signs of this abating.

In the digital space, the BVI Government recently released much-anticipated draft BVI Virtual Asset Service Providers (“VASP”) legislation for consultation. The draft legislation is broadly similar to the existing Cayman VASP regime. We anticipate the new BVI VASP regime will come into force in early 2023 and is likely to generate quite a bit of activity in this space.

Find out more



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CAYMAN

2023 to provide a melting pot of opportunities

As markets took a beating in 2022, with inflation at 40-year highs and rate hikes increasing the risk of recession, much commentary in the Cayman Islands has been focussed on how managers will respond.



ON THE GOVERNANCE SIDE, WE EXPECT THE CAYMAN ISLANDS MONETARY AUTHORITY TO UPDATE THEIR GOVERNANCE RULES AND GUIDANCE FOR REGULATED FUNDS IN THE CAYMAN ISLANDS"

Recalibration of strategies, especially in the cryptocurrency sector and in the energy and commodity space, will occupy a number of in-trays in 2023. Redemption terms and other liquidity options will also be an area of focus.

We would add to this the growing call from investors for funds to integrate ESG into their platforms and DE&I (diversity, equity, & inclusion) into their processes and operating structures. It follows, therefore, that 2023 represents a mix of opportunities and challenges for managers and their service providers.

On the governance side, we expect the Cayman Islands Monetary Authority to update their governance rules and guidance for regulated funds in the Cayman Islands, to reflect recent trends in global best practices. Based on the drafts published in consultation, we anticipate these being a useful addition to the Cayman Islands' regulatory framework.

Find out more



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IRELAND

ESG, operational resilience, debt funds and the individual accountability framework point to a busy 2023

ESG will remain squarely on the radar again in 2023, with the CBI's thematic desk-based review on compliance with SFDR disclosure requirements due to be completed in early 2023 and ESG related disclosures required to be included in financial statements.



THIS IS CLEARLY A TIMELY TOPIC FOR CONSIDERATION GIVEN THE ECONOMIC CONDITIONS"

The general theme of operational resilience is also likely to be key throughout the year for regulated financial service providers ("RSFP") – the CBI's cross industry guidance note on this subject is just over a year old, which means that we are halfway into the entry period. RFSPs will need to ensure that they have a holistic approach to the management of operational resilience and related risks, and this is clearly a timely topic for consideration given the economic conditions.

In terms of workflow, I would expect to see continued interest in Ireland as a domicile for private market funds and use of the opaque and non-opaque structures such as the ICAV and the ILP, in particular, for debt, credit, private equity and infrastructure strategies, as well as part of wider fund structuring solutions.

The recent introduction of the Individual Accountability Framework will bring significant changes to the regulation and supervision of RSFPs and persons performing (pre-) controlled functions, through the introduction of the Senior Executive Accountability Regime (SEAR), business and conduct standards, and an enhanced fitness and probity regime. We expect this to be a key topic as RFSPs seek to prepare in advance of the implementation of the new framework to their businesses.

Find out more



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Guernsey

Hong Kong & Singapore

Ireland

Jersey

London





GUERNSEY

Capital distribution regime makes Guernsey popular in infrastructure space

We see a lot of work in the downstream private equity, infrastructure and VC space, partly because the capital distribution regime in Guernsey is easier to deal with than in many onshore jurisdictions, where you may have to satisfy strict requirements about distributable reserves and how distributions may be made.



GOVERNMENTS WILL LOOK TO INFRASTRUCTURE SPENDING AS A MEANS TO BUCK THE GENERALLY DOWNWARD ECONOMIC TREND"

My expectation would be that this trend will pick up pace in 2023, partly because governments will look to infrastructure spending as a means to buck the generally downward economic trend.

We continue to see instructions from first-time managers spinning out of established institutional firms, often using Guernsey PIFs for their first fund – the PIF's more light-touch regulatory framework for up to 50 qualified investors is a tool that works very well here, and can be ratcheted up to a regulated fund model.

One of the advantages that we have right now in Guernsey is that there has been a large sweep of reforms and updates to our legal and regulatory regime in the build-up to the Moneyval inspection, so our laws and regulations have been modernised and match current industry practice. We are expecting to see a busy start to 2023 and for that work to sustain right through the year.

Find out more



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HONG KONG & SINGAPORE

A sense of cautious optimism for Asian managers

Although macroeconomic factors coupled with geopolitical and policy uncertainties will mean fundraising will be materially more challenging for private funds in the region in 2023, larger and/or established managers will continue to successfully raise funds (more so than start-up managers that had, until recently, been a feature of the regional markets).



DRY POWDER ALLOCATED TO ASIA-PACIFIC-FOCUSED FUNDS REACHED A NEW HIGH, INCREASING MORE THAN 30% TO US\$654 BILLION"

The slowdown in fundraising is perhaps no surprise given the huge amount of funds raised over the previous few years (dry powder allocated to Asia-Pacific-focused funds reached a new high, increasing more than 30% to US\$654 billion at the end of 2021).

Given the tailwinds from a buoyant fundraising market over the past few years, there is a sense of cautious optimism and opportunities for Asian managers. Although investor sentiment towards North Asia (and specifically the PRC) will likely remain cautious, private markets and private market opportunities in South-East Asia will continue to be robust.

Find out more



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JERSEY

Growth in Jersey funds out of London and Asia

The last few months of 2022 saw a slowdown in corporate work, but a distinct pickup in investment funds work – with new fund instructions coming into our office via London and Asian counsel targeting VC, PE, real estate and cryptocurrency assets.



SOME OF THE WORK INVOLVES MANAGERS WHO ARE USING JERSEY FOR THE FIRST TIME, OTHERS ARE LONG-TIME CLIENTS"

Some of the work involves managers who are using Jersey for the first time, others are long-time clients.

We are still seeing significant interest from managers in Singapore, targeting cryptocurrency assets, to make use of a beneficial Double Taxation Agreement between Jersey and Singapore (there are similar agreements between Jersey and Hong Kong, and between Guernsey and both of Hong Kong and Singapore).

The reason for the increase in funds inquiries and instructions appears to be because of the lighter touch regulatory regime in the Island in relation to Jersey Private Funds – funds that are marketed to fewer than 50 qualified investors – which do not require the same levels of audit that funds marketed to retail investors need, and the Island's well respected AML and CDD frameworks, which have been given the highest level stamp of approval by international bodies. There is no reason to think that this trend will not continue through 2023.

Find out more



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LONDON

Growth in co-investment structures driven by market conditions

There are a number of top-quality managers now setting up co-investment platforms – either on their own or as a JV with an established firm – to target single positions or assets, and then offering the opportunities to their networks of investors.



“SEEING A FLIGHT TO QUALITY IN THE DIGITAL ASSETS WORLD”

Depending on the manager’s investor base, we are seeing multi-class corporates and segregated portfolio companies being used for these purposes, as well as multi-entity GP/LP structures. It is all driven by the prevailing economic climate and primarily seems to be funded by family offices and HNWs, although there is some institutional money in play too.

At the same time and despite the crypto winter, which seems like a long season at present, we are seeing a flight to quality in the digital assets world – the pedigree of new managers launching digital asset products has risen, and they only want to work with the best service providers in the field.

The final trend is that the economic climate appears to be adding pressure on fund costs and expenses; this means managers are reviewing their service provider relationships and they are making changes, where necessary, so they can demonstrate to their investors that they are obtaining value across all parts of their business.

Find out more



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Walkers provides legal and professional services to the world's leading financial institutions and companies. With a global presence spanning the Americas, Europe, the Middle East and Asia we provide accessible advice on the jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Ireland and Jersey.

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