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Broader horizons

Marc Farror considers the needs or emerging-market clients

The global recession has been with us since 2008, and law firms, accountancy firms, trustees, banks and investment houses have all been affected. There have been failures in virtually all these professions, with long-established businesses shutting shop or being forced to merge and/or reduce head count.

New business is highly sought- after, with professional private client intermediaries competing fiercely on price and service levels. There is talk among professional service providers of pricing being 50 per cent of 2008 levels, suggesting that some intermediaries are now so keen for business that they are prepared to take on new clients at the thinnest of margins, or even unprofitably.

Some firms have been looking further afield to the emerging markets. These organisations regard the Commonwealth of Independent States, the Gulf Cooperation Council, Asia, Latin America and Africa as key centres for growth opportunities. Clients from these regions often require old-school wealth-management solutions, with tax being a lower priority for many families compared to asset protection, privacy and succession planning. However, many private clients are also driven by commercial realities and are seeking to grow their businesses or undertake capital market activity with the West. For these clients, intermediaries need to be versed in a wide variety of skills to maximise opportunities.

Taking on commercial projects

Emerging-market clients seem to be inextricably linked to the operating companies that they have usually derived their wealth from. It is becoming rare for an emerging-market private client to look like or have the requirements of a classic private client. Instead, many private clients wish sophisticated corporate or funds work to be undertaken for them.

Taking on capital-market projects of this nature now requires private- client practitioners to have skills beyond tax planning, structuring and wealth management. Many teams are combining their personnel into hybrid teams to meet the needs of these emerging- market clients.

Take, for example, two different collective investment scheme clients who need help to prepare for an AIM listing. One company is owned by a single shareholder and the other has three principals behind it. While the short- term work is entirely listings-oriented, the real value to the clients behind these companies is in the preparation of their personal structuring using trusts and foundations, and of course in implementing the proper tax advice around this liquidity event. The skills required for this entire scope of work are hybrid in nature and much of the success of managing this situation depends on balancing the team and discussing the client needs pragmatically at the outset of the relationship. And, of course, as the clients’ requirements evolve, the team must evolve too, to best meet their clients’ needs.

In addition, many clients from emerging markets are seeking to diversify their risk and asset base across other emerging-market jurisdictions. It is common knowledge that the Chinese are interested in acquiring mineral, natural resources and commodities from areas such as Africa. To facilitate such acquisitions, structures need to be established that take advantage of double-tax treaties and allow for the easy inward investment of capital. Mauritius currently has 37 double-tax treaties. These cover numerous African states, but also include other countries, such as China, the UK and France, which facilitates capital investment into these types of projects.

There are increasing trends for investment into Africa, and the typical structure uses Mauritius as a double-tax treaty jurisdiction, alongside a Jersey trust or foundation that offers asset- protection benefits.

Jersey's track record for listings

Jersey has a strong track record for listed companies on worldwide stock exchanges. At the time of writing, 92 Jersey companies have been listed on various exchanges, with a market capitalisation of approximately GBP135 billion. Leading examples of the listings include Glencore (the world's largest commodities trader), China New Energy Ltd (an alternative fuel company) and Yatra Capital Ltd (real estate investments in India), among many others.

The advantages of a Jersey company include 0 per cent corporation tax; free withholding tax on dividends, interest and royalties; and no stamp duty.

For an individual or small number of individuals who own a Jersey company that is preparing for listing, these are considerable advantages. Particularly when the initial ownership of the listed vehicle is through a Jersey trust, which is an excellent way to protect any money received into trust following the completion of the listing process.

Jersey's private fund regime

The use of funds is becoming increasingly important for private clients. Families often find that a fund is an effective way of controlling multiple investors from the same family.

In Jersey, the private funds regime offers several close-ended funds that are unregulated, simple and easy to run, and offer privacy for families. Perhaps the most popular is the very private fund (VPF) which can be established using a company, trust or limited partnership arrangement. As it is a close-ended fund, the maximum number of investors is restricted to 15. However, for a family, this would be sufficient to cover either family units or individual family members. As a result, the VPF is not regulated, as it falls outside the regulated collective investment fund rules.

Consent is required under the Control of Borrowings (Jersey) Order 1958 (COBO) for the fund to issue its securities to investors. The Jersey regulator – the Jersey Financial Services Commission – has pledged a turnaround time of five days for the issue of COBO consent.

Finally, where a VPF is structured as a professional investor regulated scheme, at least GBP250,000 must be invested by each investor as a qualifying amount. This is very achievable, given that most families establishing this type of structure place much more into the fund. The funds can be administered through a traditional trust licence held by local trust companies. Of course, many of the functionaries, such as investment managers and advisor roles, can be family members, giving them control over the fund's investment process and strategy.

If the vehicle selected for the fund is a company, it is possible for shares in that company to be held in a trust. This gives family members an added layer of protection and privacy.

Private trust companies (PTCs) and foundations

Another trend for clients from emerging markets is the need to retain a degree of influence over their structure. Many clients are nervous about what they see as 'giving away' their hard-earned wealth. Careful advice may be needed to explain the differences between legal and beneficial ownership, and even when this concept is fully understood, clients may remain uncomfortable with the idea.

As a result, structures such as the PTC and Jersey foundation have become more important. At the heart of both structures are the PTC's board and the foundation's council, which are the decision-making units for both structures. The key to both the PTC's and the foundation's success is that family members, trusted professional advisors, industry experts and new fiduciaries are able to comprise the PTC board or the foundation council. This is important, as the client is able to influence decision-making on the board and council. This could be a big difference from a standard discretionary trust run by an offshore trustee.

In addition, if the client wants another layer of control, it is possible to appoint either a protector (for a trust administered by the PTC) or a guardian (for the foundation). In fact, in Jersey the guardian is mandatory for foundations. These two roles can have various powers appointed to them, not least of which might be the power to veto any decision made by the PTC's board or the foundation's council. For clients who find the PTC or foundation a new and perhaps difficult concept this is a useful way of protecting their interests, not least as the protector or guardian role can be filled by the client themselves.

Final thoughts

Generating new business in 2013 is tough for those in the private client space. However, emerging-market clients who seek non-traditional private client work offer plenty of scope. The core issue is that the work is often quasi- private client/corporate/funds, and to be able to undertake this level of work effectively requires people and teams who are working collaboratively and who have the requisite skills.