funds global MENA

LEGAL COLUMN: THE DIFC'S FUND REGIME PLAYS CATCH-U

The Dubai International Financial Centre (DIFC), a free zone with a standalone legal structure founded upon the laws of England and Wales, has attracted many banks, financial institutions and law firms, thanks to its sophisticated legal and regulatory environment, governed by the Dubai Financial Services Authority (DFSA).

However, notwithstanding its accomplishments in furthering Dubai's economic development, it has achieved only modest success in the funds arena so far.

August 2014 saw the DIFC overhaul its funds regime and introduce a new category for sophisticated investors, the qualified investor fund (QIF). The new regime has been implemented to promote Dubai as an asset management centre by facilitating fast-track fund registration while maintaining international best practice in regulation.

The QIF regime has a number of defining principles, in particular:

- A minimum investment of $500,000 per investor is required.
- A maximum of 50 investors per fund.
- Available only to "professional clients".
- No requirement to pre-designate the nature of the fund (real estate, private equity, etc) – instead, appropriate disclosures in the private placement memorandum are made.
- Only annual reporting is required (no interim reporting, unless there is a material change to the fund in the meantime).
- A registration process of 48 hours.

At this stage it is difficult to deny that the DIFC is playing catch-up and batting in a field with extensive pedigree and history. But by removing the previous barricades for certain funds, the DIFC has created a fund regime that has become increasingly attractive and marketable. In fact, for Middle Eastern and North African geographically focused funds and investors in particular, the DIFC funds regime can now offer a comparative regime and a number of advantages. These include:

• Tax-free status: The DIFC allows for full repatriation of capital and a 0% tax rate.
• Benefit of double taxation and bilateral treaties: Although a number of the prominent fund domiciles are party to various double-taxation and bilateral investment treaties, the DIFC has succeeded in establishing understandings with various countries. A DIFC fund can also benefit from the UAE's double-taxation and bilateral investment treaties.
• Gulf Co-operation Council (GCC) nationality: One unique advantage of a DIFC fund over other regimes, which can be beneficial for regionally focused funds, is the current recognition of a DIFC entity in certain jurisdictions as a national of the GCC, provided that 100% of its investors are GCC nationals.
• Target investors: By providing a jurisdiction that can offer the same benefits and regulatory oversight as more established jurisdictions but which has a true nexus to the Middle East could well appeal to many Middle Eastern investors and foster their loyalty and patriotism.

Having recognised the shortcomings of its funds regime, the DIFC has sought to introduce a comparable regime for targeting professional investors with a greater risk tolerance. The DIFC's vision and advances signify a confident leap forward and have served to potentially remove the obstacles that a Middle East regionally focused sponsor or fund manager would have previously used to excuse domiciling a fund in the DIFC in favour of another jurisdiction.

As the Middle East's recovery surges, the DIFC has taken commendable steps to acknowledge the regime's failings and has laid a formidable groundwork and landscape for a comparable and accommodating fund regime. This is empirically supported as we have recently witnessed a noticeable increase in interest in the DIFC as a fund domicile, especially since TVM Capital Healthcare Partners launched the first QIF in March 2015.

Philip Dowsett is a partner in the Dubai office of Morgan Lewis

This article has been published in **Funds Global MENA**

The online version can be found here