

## **Private Assets Products – Considerations re Complexities**

In our previous posts on Private Asset Products, we talked about what they are, and the increasing demand for them. In this post we focus on some of the complex aspects, which must be carefully considered if you are planning to launch your own Private Asset Products

### ➤ **Legal Complexities**

- Different jurisdictions (e.g. UK, Lux, Dublin, etc.) for the product itself have different demands
- Different jurisdictions for the domicile of some investors may impair their ability to invest in the product.
- Complex legal structures are required to create the tax efficiencies (e.g. General Partnerships – and the accompanying paperwork, SPV's – for certain underlying assets, etc.)
- Multiple parties both internal and external (e.g. TSPs, depositories, etc.) have to be comfortable with the complex legal structures and so will need to conduct rigorous due diligence before agreeing to them
- Prospectuses and/or Private Placement Memoranda and any changes to either can be extremely complex with concomitant impact on time to market.

### ➤ **Regulatory Complexities**

- Caught by the AIFMD regime for those looking to market in Europe, but an EMT (European MiFID Template) is still required for the product.
- Tools for monitoring correct handling of assets from a compliance perspective are in their infancy, and expertise to ensure compliance for Private Assets is a different skills set from more conventional products
- Pricing of underlying assets has the opportunity to be inconsistently applied across the industry.
- Ensuring the ESG standards for regulatory purposes are still required.

### ➤ **Other Complexities**

- Not at all like exchange traded assets/products, particularly the bespoke nature of the operating models which introduces new (sometimes unforeseen) challenges to both the launch and ongoing support of Private Asset Products
- Designing a new Private Asset Product will usually require soliciting potential investors, potentially for funding during the product development stage.
- Costs of establishing the fund can be partly borne by investors (to a contractual cap) for certain specific set-up costs.
- “Carried Interest” could be seen as a potential conflict of interest for Fund Managers
- Illiquidity of the underlying assets, and the challenges associated with managing cash around this.
- Private Assets will generally be non-custodied, whilst cash will be. This can result in a split model on the actual holding of the assets.



- Outsourced services or similar arrangements can complicate the implementation and the ongoing process of running Private Asset Funds
- Chinese Walls must be maintained within the Asset Manager's organisation between Private Assets managers, and others.

ISC has a wealth of experience in this area. Do not walk into the minefield without first seeking suitable advice or engaging with experts.

Please get in touch with us should you wish to discuss how ISC Ltd can help you.

**Michael Hilton, Head of Product Practice**

[Michael.hilton@iscltd.com](mailto:Michael.hilton@iscltd.com)