WealthBriefingAsia
Global Perspective, Regional Focus

Fundraising In Japan: Opportunistic Or Long-Term Play – A Regulatory And Marketing View

CATHY BRAND
19 May 2023

The article looks at the regulatory and marketing implications of raising money in Japan for types of fund manager, such as those in the alternative asset class space.

The author of this article is Cathy Brand, CEO Sales Road Maps Online Ltd.® – someone who has written in these pages before about compliance and strategy in the financial world. The usual editorial disclaimers apply to views of guest contributors. Jump into the conversation! Email tom.burroughes@wealthbriefing.com

When clients ask us about fundraising in Japan, we advise them to think about Japan as a "long-term play" for fundraising and not an opportunistic "short-term play." Below is the regulatory and marketing analysis to back up our views.

What is an opportunistic approach to AIF marketing?

An opportunistic approach to AIF fundraising is when AIFMs send out their initial marketing collateral (i.e., a two-pager describing their AIF) to potential clients in as many countries as they can (i.e., 70 countries) to see what "sticks."

While this opportunistic approach may be viewed by sales teams as a way to generate potential client interest in the AIFM's fund, it may backfire if you get interest from clients in countries where the restrictive regulations don't permit you to market there and/or in countries where you have to do a lot of work to register your fund, comply with licensing rules, while incurring costs and devoting time to simply deliver the fund to your potential client.

What is a strategic approach to AIF marketing?

Fundraising cross-border (overseas) should commence after the AIFM investigates the local marketing regulations (not before). We always advise clients not to send any fund marketing collateral into any country without checking the fund marketing regulations first.

In order to fundraise in one's AIF in an efficient manner with the least amount of time and cost, we advise clients to focus marketing efforts using a strategic approach to selecting countries that represent "low hanging fruit."

Benefits of a strategic marketing approach

A strategic approach to fundraising can prevent an "egg on your face" result with potential clients who receive your two-pager and respond with, "Why did you send me your AIF two-pager? You cannot legally market your fund in my country due to AIF marketing restrictions." Or "Is your AIF registered and are you compliant with our licensing rules? When can we receive an AIF PPM, we cannot wait months to see your fund documentation."

Focus on "low hanging fruit" countries

To raise capital in your fund from investors across the globe, you have a choice of countries in which you can market your fund. Each country has different regulatory regimes to each other for the purposes of cross-border marketing.

We use the analogy of a marketing tree bearing fruit. In the spirit of fundraising efficiency, it can be beneficial for AIFM/asset managers to target countries with easy to fulfil, developed marketing regimes with clear regulations for the purposes of marketing your AIF. These countries are "low hanging fruit."

We define "low hanging fruit" countries as those that have robust private placement fund marketing regulations (no requirement to register your fund with the local regulator), robust licensing exemptions (no requirement to register for a fund marketing/broker-dealer licence) and defined categories of institutional and exempt investors under available private placement exemptions to whom you can market your fund, with little to no ongoing regulatory reporting or filings. Easy.

Picking "low hanging fruit" from the marketing tree can provide quick, easy wins on AIF fundraising due to the country's regulatory ease and you can benefit from mitigated five key distribution risks.

Do the research on "high hanging fruit" countries

By contrast, there are other countries with complex regulations that are more difficult for compliance and time consuming/costly to investigate and research. We categorise these countries as "high hanging fruit."

We define "high hanging fruit" countries as those with regulatory regimes that are either undeveloped (emerging markets), potentially high risk and/or have highly developed, complex regulatory regimes that require the AIFM/asset manager to incur more costs, time and ongoing resources in order to investigate and comply with that country's regulations.

If AIFM/asset managers choose to pick the "high hanging fruit," then they should be very aware of what lies ahead in terms of things they have to do to comply with that country's laws. It's important to do the research and analysis on "high hanging fruit" countries on a case-by-case basis up front.

Case study: Japan, long-term play

In our view, Japan is "high hanging fruit" from a regulatory and marketing perspective and should be viewed as a long-term play, not as an opportunistic play. Our message to AIFMs is to do the research upfront on Japan regulations and brace yourself for significant upfront regulatory work as well as ongoing compliance obligations.

In other words, Japan is not a country where AIFM/asset managers can "lob in a two-pager," take the ticket (investor subscription) and walk away without significant regulatory compliance work.

Below are several factors which should be considered by AIFM/asset managers before commencement of fund marketing to investors in Japan.

Factor 1: complex fund regulation

Japan's regulations governing the marketing of funds even to institutional investors are extensive and complex. To fundraise in your funds or financial services in Japan requires an outlay of costs and legal and compliance resource mobilisation. Even through Japan's regulatory regime is quite sophisticated, it is not uncommon for us to observe conflicting (and confusing) advice from different law firms in Japan (although not our Japan law firm!). You could spend significant legal fees with many law firms in Japan and still remain confused on how to operate in Japan.

As an example: Funds in the form of limited partnerships (LPs) used to be subject to light touch regulation. Then financial scandals triggered a regulatory overhaul and more extensive regulation, culminating in Japan's "New Act." Other types of fund structures (i.e., corporate form funds, trusts) are subject to different regulatory regimes in Japan.

In addition to upfront fund (and GP) registration work, you'll need to comply with several types of ongoing regulatory reporting to Japan regulators, appointment of a Japan representative … the list goes on.

Factor 2: complex licensing regulation

Japan has strict regulations concerning licensing requirements for marketing funds and the provision of financial services to investors in Japan, even to institutional investors. Over the past couple of decades, breaches of Japan's licensing regulations have been the hot button for Japan FSA regulatory enforcement.

Factor 3: detail-oriented clients

Japan institutional clients are detail oriented and well informed of their country's complex regulations governing the AIFM/asset manager's marketing efforts in Japan. Japan clients will hold AIFM/asset managers to a high standard of compliance with their country's regulations: You'll need to prove to Japan clients that you understand and fully comply with fund marketing regulations, in detail.

For example, when completing Requests for Proposals (RFPs) for institutional business from Japan, AIFM/asset managers will be required to cite the specific regulatory exemption, section of the relevant Japanese law, fund/GP filing registration as well as the licensing exemptions that you are operating under in Japan, all in RFP documentation before your fund is even considered for investment by the Japan client. Be prepared.

Factor 4: regulatory enforcement

Japan's FSA is known to be an ever-vigilant regulator, ready to enforce Japan's regulations and focused on investor protection, especially to protect their pension fund investors. As Japan has the oldest population in the world, its pension funds need alpha but also cannot afford to lose precious investment returns due to the pressures of meeting projected benefit obligations (PBOs). Breaches of Japan's regulations concerning fund and financial services regulations and/or licensing rules can incur years of imprisonment time – always a strong indicator of the willingness of Japan FSA to enforce its regulations.

Summary: Japan is a lucrative market for fundraising from institutional investors. However, there are extensive regulatory requirements – with significant work upfront and on an ongoing basis, clients who will hold you to a high standard of compliance with their regulations and a regulator that means business on enforcement. For these reasons, Japan is a "high hanging fruit" on the marketing tree.

That's not to say that AIFM/asset managers should avoid marketing or fundraising in Japan or other "high-hanging fruit" countries if that's what's right for your business. Go in with your eyes open, understand the compliance requirements up front and get the right legal advice to ensure that you can actually deliver to clients in Japan. We have more than two decades of experience in Japan regulations and are here to help.

Because Japan is a long-term play, if AIFM/asset managers get compliance with Japan's regulations right, your clients in Japan will be happy, Japan's regulators will be happy, and your Japan book of business could be "the gift that keeps on giving."