Gibraltar aims to profit from global focus on regulation

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The people that inhabit the imposing physical mass of the Rock of Gibraltar, standing at one of the southernmost points of Europe with the mountains of Morocco clearly visible to the south, have over the years stubbornly resisted pressure to accept Spanish sovereignty, both from their neighbour and from the UK government, which in recent years has seemed keen to divest itself of a dependent territory that represents a long-running irritant to its relations with Spain.

Now the Gibraltar government and financial services industry believe that the jurisdiction is poised for take-off as an international fund domicile, having to a large extent seen off concerns about the legitimacy of the territory's tax regime and suggestions - often fanned in Madrid - that its regulatory standards and willingness to exchange tax information are not up to the highest international level.

True, Gibraltar remains on the so-called 'grey list' published earlier this month by the Organisation for Economic Co-operation and Development of 'tax havens' and 'other financial centres' that have committed to what the OECD defines as the internationally agreed standard on tax information exchange, but have not yet substantially implemented it.

The tax haven designation is a source of great indignation to the Gibraltar authorities and financial services professionals, who note that the unified corporate tax regime that next year will replace the previous distinction between offshore and onshore activities provides for a rate of 10 per cent.

This is not far off the 12.5 per cent applied by OECD member Ireland and in sharp contrast to the zero corporate tax regimes in force in Jersey, Guernsey and the Isle of Man - all of which escaped the tax haven label because they are deemed to have substantially implemented the internationally agreed tax standard.

True, it could be argued that Gibraltar has been relatively sluggish in following up on its 2002 pledge to eliminate harmful tax practices, having signed its first tax information exchange agreement with an OECD member - the US - just the day before the April 2 G20 summit in London at which the world's leading economic powers agreed to pursue global tax transparency with a new urgency and to chivvy, at the very least, jurisdictions that were slow to fall into line.

Chief Minister Peter Caruana acknowledges that the OECD's progress report 'is a fair and accurate assessment of where we are', but says the territory is well placed to join the ranks of countries that have substantially implemented international standards, having invited a number of OECD members to open negotiations on information exchange agreements. He believes Gibraltar should have the 12 agreements in place that would take it off the grey list by November.

In the longer term, industry members believe, removal from the list of countries and territories over which the OECD has raised a question mark, coupled with Gibraltar's status as part of the European Union and its adoption of the full range of EU legislation and regulation, is likely to boost interest in the jurisdiction's funds regime, which has already enjoyed significant success since the launch of Experienced Investor Funds in 2005.

Accurate statistics on the size of the industry are hard to find. The latest figures published by the Gibraltar Financial Services Commission, for the end of 2007, list just 39 collective investment schemes incorporated and registered in the jurisdiction, with total assets of USD1.2bn. However, a total of 46 EIFs were registered by April 8 this year, along with 10 fund administration firms - up from just a couple four years ago.

James Lasry, head of funds business at Hassans International Law Firm, estimates that including the sub-funds of the umbrella funds that have been set up using protected cell companies, Gibraltar is now home to around 90 or 100 separate investment portfolios, and that total assets exceed USD5bn.

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Perhaps surprisingly, he says, hedge funds account for the lion's share of fund business.

'I would have expected us to be much more of a private equity real estate jurisdiction, like Jersey, especially because we have access to the EU Parent-Subsidiary Directive, but in practice it's only about 40 per cent. The rest of the business consists of more securities-driven strategies from the classical to the very exotic. Over the past year we have seen growth in the number of distressed funds, particularly those investing in distressed real estate, and we've also seen a number of environmentally-driven funds investing in different forms of energy and resources.'

The government is not expecting the fund industry to expand dramatically overnight, according to James Tipping, director of the Gibraltar Finance Centre, a promotional organisation with the Ministry of Trade, Industry and Telecommunications. 'What the government is trying to do, in conjunction with the industry, is to energise the fund sector,' he says.

'We take as an example what's been achieved in insurance, where Gibraltar plays in the premier European league and competes directly against Dublin and London for the establishment of both captive and open-market insurers that access the European market. We have seen steady growth since 1999 and attracted insurance companies that are world-class and household names.'

Tipping notes that the fund industry already enjoys a solid foundation. 'We've had good growth as a result of the Experienced Investor Fund legislation that came into effect in 2005, in conjunction with the use of the protected cell company legislation, which has worked very well for funds as it has with insurance. Now we want to take it to another level, in the full knowledge that it will take some time.'

He emphasises that Gibraltar's aim is to build up high added-value activities rather than seeking business volume at any cost, and that the jurisdiction is certainly not looking to poach business from other jurisdictions. 'The government's basic philosophy with regard to inward investment in any area of business, including financial services, is quality not quantity, in a well regulated environment,' Tipping says. 'We encourage people to use Gibraltar as a fund centre that care for their own reputation as much as we care for Gibraltar's reputation.'

In collaboration with the Gibraltar Funds Industry Association, the Finance Centre has embarked on a series of international marketing and outreach events targeted at financial industry professionals and business introducers such as lawyers and accountant in jurisdictions such as the UK and Switzerland.

'The authorities and regulator recognise the importance of a growing industry and are very supportive,' says David Wahnon, managing director of Capita Financial Administrators (Gibraltar). 'They arrange a series of seminars through the year. One is coming up in Switzerland, followed by London, and we're going back to Switzerland and Germany in October. We are also attending conferences such as Gaim. The authorities understand the importance of the industry in growing the economy.'

Tipping says the message varies subtly according to the kind of prospective business sought in different markets. 'In Frankfurt the message is much more geared to institutional funds, and we emphasise that we are part of the European Union and an internationally co-operative jurisdiction,' he says, 'whereas the message in Switzerland is aimed more at private wealth management clients.

'We are adopting a long-term strategic approach designed to raise Gibraltar's profile slowly over time among the blue-chip members of the fund industry and their advisers. We are looking at a two- to three-year horizon to start to change the perception of Gibraltar, not so much for back office fund administration business but among people who want to domicile their funds here, and also to move onto the next level, the basing of actual asset management operations in Gibraltar.'

The current debate about regulatory standards and tax co-operation in the offshore world notwithstanding, Tipping argues that a change has been underway since at least 2001. 'It's clear for a long time that international financial centres have largely fallen into two groups, those that can demonstrate they can meet international standards and keep up with the pace of change through such efforts as IMF assessment and other statutory reviews of the competence of the regulatory

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authorities, and those that really aren't making a lot of effort to do so,' he says.

'Our two reviews from the IMF have been excellent not only in providing in-depth third-party analysis of the ability of Gibraltar's regulator, but allows us not just to tell other people we are keeping up with regulatory standards but point to the IMF's assessment. Secondly, our legislation demands a periodic independent review to make sure the regulators are doing what they're supposed to, and thirdly, we legally have to adopt all EU directives, and are immediately affected by any regulations that have binding effect, as with any member state.

'The fact that MiFID and a whole host of financial services directives apply helps to put Gibraltar at a competitive regulatory advantage over other territories, because the compulsion of law means that the focus given to international initiatives on proper regulation is much more detailed. There is no room for prevarication or delay. One could make an argument that there is more flexibility and fewer regulatory hurdles outside the EU, but paradoxically we've found that's not the case. What it does is raise the standard, resulting in better-quality names using the jurisdiction.'

He agrees that where once fund promoters might have prized being outside EU regulation, today they are finding that their investors appreciate the assurance provided by this greater regulatory certainty, and adds that Gibraltar's embrace of EU standards is part of a well established philosophy. 'This is not a knee-jerk reaction to what's happening now but a long-term approach, but in the current environment it reinforces the benefits of our position,' he says.

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