Guide to relocation 2013

Surge in relocation to international financial centres
AIFMD drives search for AIF locations
Combining fund domicile with residency permits
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Introduction

The Global Fund Media Guide to Relocation November 2013 is the third edition of this unique online publication being made available to the 50,000-strong audience of investment managers, institutional investors and fund service providers that read GFM’s family of investment management newswires daily.

The focus of the Guide is to help managers, promoters and their advisers decide where best to locate their investment funds - and themselves - and complements the daily news, special reports and fund data delivered through our specialised investment management portals (see below for compete list).

This edition of the Guide draws together in one volume the key points covering the relocation of investment funds and managers to the following major jurisdictions - The Bahamas, BVI, Guernsey and Malta.

The Guide goes from strength to strength with the support of leading law firms, service providers and jurisdiction promoters, and in this regard we would like to thank all the firms who feature in this Guide for their invaluable time and assistance in preparing a comprehensive overview of each jurisdiction.

We look forward to your feedback and participation in forthcoming editions of this Guide.

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The Advantages of living in The Bahamas are as clear as the crystal waters that surround it.

The Bahamas is located in one of the most idyllic tropical settings in the world and offers many incentives to relocate permanently or to establish a second home. The most advantageous conditions have been created for wealthy individuals and their families to live and work in a tropical paradise where their assets are protected and their confidentiality is guaranteed.

Political and economic stability, advanced infrastructure and services, access from a strategic location and a welcoming cosmopolitan community are just a few of the advantages for those who choose to call The Bahamas their home.

To learn more please visit www.bfsb-bahamas.com, or bring your family to The Bahamas to see for yourself.

Go to www.bfsb-bahamas.com to see why our advantage is your business opportunity or call The Bahamas Financial Services Board for more information (242) 326.7100
The advantages of relocating to The Bahamas

With the globalisation of business there has been a corresponding surge in the movement of executives and their families, and in some cases businesses themselves, in relocating to new countries. In many cases the relocation has been temporary but for a growing number the move has been permanent, sometimes by design but on many occasions by choice.

Relocating one’s business, family or financial affairs takes into account a wide range of factors such as lifestyle, infrastructure, and the business and legal environment. For The Bahamas which has a long history of attracting wealthy individuals to settle permanently there, the factors that have given rise to its popularity as a choice for relocation have its roots and advantages in the country’s sovereignty, its 80 plus years of experience in international financial services, and its longstanding recognition and growth as the region’s leading tourist destination.

The combination has created a stable political environment and a service-based economy that caters to the business and financial needs of companies, individuals and their families, and a lifestyle that seamlessly blends cosmopolitan amenities within a tropical ambience.

While private banking and trust services are the bedrocks of the country’s international financial sector, asset management has emerged as a strong second pillar of services, serving both international and domestic clients, including those who have relocated to the country located just off the coast of Florida.

Wealth management operates at the
Qualified Investor Fund but popularly dubbed Model 007, may be offered on a private placement basis to up to 50 'super qualified' investors who must make a minimum initial investment of USD500,000. While it is much more institutionally focused than other models, it can also be used for private structures with a small number of investors.

The innovative approach embodied in the BEE and SMART Fund concepts is a strong asset for The Bahamas in competing for new business. It is also reflective of the country’s overall pro-business environment that welcomes foreign direct investment into the economy and its recognition that growth and development are contingent on creating economic opportunities for Bahamians and capitalising on its inherent and strategically-developed advantages to attract high net worth individuals and their families, boutique firms and independent trust companies and fund administrators to its shores.

The existing financial services infrastructure and the services it represents and the regulatory regime – including due diligence requirements, anti-money laundering legislation and the implementation of transparency and exchange of information standards – form the backbone of a comfortable and business-friendly environment for business owners and executives from any part of the world.

Tax neutrality for those wishing to relocate in a completely transparent way has always

very highest level of sophistication in The Bahamas, anchored by some of the leading global private banks and trust companies and supported by a legislative and regulatory framework that continues to evolve to meet international standards and the investment and planning needs of old school and new generation clientele.

Trust legislation in The Bahamas always has been leading edge and is often used as the standard for other jurisdictions to follow. This propensity to be ahead of the curve in addressing the needs of the marketplace and providing practitioners with the right tools, especially for succession planning and the transfer of wealth through the generations, extends across the wealth management spectrum.

The Bahamas Executive Entities Act (BEE) for example represents an important addition to the arsenal of the wealth management industry. Introduced in 2011 to resolve complex governance issues in fiduciary and wealth management structures, the BEE provides a mechanism by which persons can use an executive entity to carry out their business activities using a limited liability company or foundation. Its structure is designed to encapsulate powers within existing wealth management and estate planning structures in the form of a legal entity. It can act in various capacities: as a protector, as a governance structure or as an ordinary shareholder. Its benefits include limited liability and unlimited duration, as well as its ability to exist in a standalone capacity and to be tailored to perform specific functions.

The Bahamas SMART (Specific Mandate Alternative Regulatory Test) Fund is another example of a forward thinking philosophy to distinguish The Bahamas from other jurisdictions in the regions by creating a unique instrument adaptable to both the structuring needs of high net worth private investors and to the requirements of the alternative funds industry. SMART Funds allow promoters and clients to tailor a fund model and its reporting requirements to their needs. Once submitted and approved by the regulator, it is available to anyone in the industry. Seven Smart Fund models are now in place.

The latest version, formally the Super
been a part of the Bahamian economic landscape and one of the advantages of living in The Bahamas. There is no income tax, corporate tax, capital gains tax, inheritance tax or sales/value-added tax. The Government derives its revenue from import tariffs, license fees and property and stamp taxes.

While The Bahamas tax neutral environment is an important consideration, an equally important priority is maximising the efficiency of financial assets. Bahamian asset managers have the experience and global connections to provide the advice and planning to meet investment objectives.

Furthermore, the integrity and continuity offered by institutions located in The Bahamas provide a secure environment for individuals planning the future for themselves and their families. Many of the world’s largest and most prestigious financial institutions have branches or subsidiary operations in The Bahamas, taking advantage of the country’s stable political and economic system, and establishing the jurisdiction as a regional leader in wealth management. Both government and private business maintain levels of oversight that make The Bahamas one of the best-regulated jurisdictions in the world.

The financial services industry in The Bahamas is staffed and managed by a large pool of experienced professionals. With personnel committed to the local community, continuity of service, which lies at the heart of a successful professional relationship, is more predictable and secure in The Bahamas.

Moreover, respect for personal privacy is a strongly held tenet within Bahamian society and the government has long recognised and valued the right of the individual to confidentiality in financial matters. This right is carefully balanced with the need to protect the integrity of Bahamian financial systems.

The Bahamas is not only home to more than 260 banks and trust companies which enjoy long standing relationships with clients from around the world. As more and more individuals opt to “follow their money” with respect to where they live and work, The Bahamas also has become the preferred choice for many who have adopted this way of life.

The public and private sectors work hand in hand to create the most advantageous conditions for wealthy individuals and their families to live and work in a tropical paradise where their assets are protected and their confidentiality is guaranteed.

With a streamlined application process for Economic Permanent Residency (EPR), the ability for individuals to work and live in The Bahamas has become even easier and more attractive. A predictable and user-friendly EPR application process, combined with the country’s physical resources and infrastructure, enhances The Bahamas’ environment as a location for individuals and Family Offices as well as for more institutions to consider the establishment of subsidiary operations in the country.

The Government also maintains a flexible immigration policy which recognises that the national development objectives are pursued through a policy suited to the needs of international firms, individuals and families.

Location is the buzz word often cited by the real estate industry and it’s an apt expression for The Bahamas as well. Its location off the coast of Florida provides easy access to both North and South America. That access is facilitated by six major airports which allow services by various international airlines with direct flights to and from key destinations in Europe, North and South America and the Caribbean, with connections around the globe.

The Bahamas approach to real estate transactions is also geared to easy access. The Bahamian government encourages foreign investment in real estate and purchasing property in The Bahamas is relatively easy and straightforward. One simply has to register the property with the Investment Board and pay a registration fee. The purchase of raw land in excess of 5 acres by a non-Bahamian does, however, require a permit.

This approach has resulted in second and third home ownership becoming one of the fastest growing sectors in the real estate industry. The choices are endless, from gated waterfront communities packed with lifestyle amenities such as golf, tennis and marinas, and located in key tourist destinations with shopping and fine restaurants nearby, to grand estates on private islands or hideaways on the Family islands.

Residency in The Bahamas can be obtained by way of a Permanent Resident Permit, an Annual Residence Permit or a Home Owner’s Card.

There are two options for receiving permanent residency status. Accelerated permanent residency is now in place for substantial investors and individuals purchasing a residence of $1.5 million or more. Permanent residency may also be granted to individuals with a minimum investment of $500,000 in real estate.

For non-Bahamians wishing to reside in The Bahamas on an annual basis, individuals can apply for annual residence. Non-Bahamians who own homes in The Bahamas may apply for an annual home owner’s resident card that entitles the owner, spouse and any minor endorsed on the owner’s card, to enter The Bahamas and reside here for as long as the validity of the card.

All of these advantages may be summed up very simply: The Bahamas is committed to growth and developing its natural resources and cultivated assets to create an environment that supports business and the enjoyment of life in equal measure. Individuals, companies and family offices will all find a warm welcome when they come to The Bahamas.
The British Virgin Islands
is a highly attractive domicile for...

The BVI attracts the full range of investment fund promoters, from start-up hedge fund managers to large institutional sponsors of funds.

There are currently over 2500 active hedge funds registered in the BVI.

hedge funds and investment business

BVI Advantages
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The British Virgin Islands (BVI) remains one of the most popular offshore fund jurisdictions for hedge fund managers. In terms of ‘brand identity’ a BVI-licensed fund is recognised by global investors as a well-established, reputable fund vehicle.

“The BVI fund product has been around for a long time, there are lots of BVI funds in the global market, investors are familiar with them, it’s a proven fund product and conceptually people understand how it works. Consequently, it’s not an unusual choice of fund to establish when looking to attract investors and investors are very comfortable investing into BVI funds,” says Simon Schilder, a partner at the law firm Ogier.

According to Q2 2013 figures released by the island’s financial regulator, the BVI Financial Services Commission (FSC), 21 professional funds and nine private funds were established during the quarter. There are now 1,567 professional funds and 567 private funds active in the BVI.

These represent the vast majority (90 per cent) of funds on the island. Professional funds are targeted at professional investors (minimum investment of USD100K) while private funds have a maximum of 50 investors and are offered on a private basis. Practically all funds in the hedge fund space will take the form of either one of these fund structures.

*With respect to private funds, there will be limitations on the number of investors
who may invest and the way in which a fund may be marketed, which for a small manager is perhaps not an issue anyway. A manager is always able to convert into a professional fund should the fund suddenly grow and exceed 50 investors and the conversion process in these circumstances is fairly straightforward,” says Schilder.

Elise Donovan, the executive director of the BVI International Finance Centre, the marketing and promotional arm of the island’s financial sector, notes that when it comes to establishing a BVI fund the regulatory process is “very straightforward”:

“There are no detailed prospectus content requirements for such funds. Having filed an application for recognition, the licensing process will not involve a detailed regulatory review of the fund’s prospectus/offering memorandum. This therefore enables the licensing process to be concluded reasonably quickly (usually within 10 days).

“Additionally, for funds intending to be recognised as a ‘professional fund’, they are permitted to commence business for 21 days without holding a licence, which therefore enables such funds to launch as soon as they are ready (and so prior to receiving their licence from the FSC). This therefore provides investment managers with a quick time to market,” says Donovan.

Speed to market is certainly a major advantage, particularly for managers who fall under the Approved Managers regime, which the BVI introduced last year. This is effectively a ‘regulatory light’ regulatory regime for small and mid-sized BVI fund managers and is comparable to de minimis rules for European managers under the AIFM Directive.

“If you are setting up a professional fund, you can operate without being licensed for 21 days, provided that you file your licence application within 14 days of launching. If you are combining your professional fund set up with the set up of an Approved Manager, you can submit your application seven days before launch. In a market where it is still tough for managers to raise capital from investors, such that they need to be nimble and responsive, the BVI offers a number of opportunities for a manager to be just that,” says Schilder.

“The FSC are very efficient when processing applications for recognition and usually return the applications within five business days,” adds Tim Clipstone, a partner at the law firm Maples & Calder.

Another appealing feature is that the running costs of a BVI fund versus funds domiciled in other offshore jurisdictions are slightly lower. That is particularly helpful to new managers who are looking to control their cost base.

“Maintaining a fund in good standing is cheaper in the BVI than in comparable jurisdictions; from a regulatory perspective the BVI is largely comparable to other similar jurisdictions, so much so that it has express filing obligations in the event of a change to the structure of the fund, which are set out in the Mutual Fund Regulations and which provides clarity and certainty for practitioners and managers alike,” Clipstone explains.

The manager of a BVI fund is free to choose any service providers they like provided they are located in a recognised jurisdiction. Unlike the Cayman Islands, which requires the sign-off of a fund’s accounts by a local auditor, managers of BVI funds are free to use an auditor in their home jurisdiction (e.g. London) although there are international audit firms located in the BVI should a manager wish to avail themselves of someone local.

There is no requirement to have local directors or quarterly board meetings in the BVI. Having said that, corporate governance is taking on much greater importance.
Increasingly, there is an investor-led push for managers to appoint independent boards of directors.

“There are a number of service providers in the BVI who provide professional directorship services, should the manager want to have a BVI-based independent director. But the manager is free to choose, there is no requirement to use local directors just because you have a BVI fund.

“Often what we see is that managers like to review a number of potential candidates and pick and choose their directors depending on where the synergies are going to be. The current best practice is for funds to have a majority of directors independent of the manager, such that a fund’s board of directors frequently comprise three directors, two of which are independent. We also sometimes see managers choosing independent directors from separate service providers, so as to assemble a board of directors which is both truly independent of one another and offering complimentary skill sets.

“The only regulatory requirement in the BVI is for the fund to have at least two directors,” explains Schilder.

Aside from the flexibility of choosing service providers, the cost-efficiency and well-established brand of the BVI fund, and the ability for new managers to offer potential investors a regulated fund without being overburdened by heavy regulation, another feature for managers to be aware of, says Donovan, is that the BVI also has a dedicated Commercial Court presided over by Justice Edward Bannister QC:

“The legislative approach adopted by the BVI Court throughout the litigation coming out of the financial crisis has generally been fairly ‘investment manager friendly’ and, unlike the courts in other jurisdictions, the BVI Commercial Court has been reluctant to put BVI funds into an orderly wind down of their positions and return money to investors on the grounds of ‘loss of sub-stratum’.

“This has the advantage of providing the investment manager with certainty that it can rely upon the liquidity control mechanics provided for within the fund’s constituent documents.”

To expand briefly on the Approved Managers regime, this applies to any manager running an open-ended fund with no more than USD400 million in AUM and USD1 billion of aggregate capital commitments in a closed-ended fund. The
advantage to this regulatory light regime is that it avoids smaller managers having to become licensed under SIBA, whose ongoing obligations are more onerous.

Schilder explains: “For a small manager with say USD500 million under management and a small investment team, the Approved Manager regime offers many attractions over the more onerous Category 3 investment business licensing regime under SIBA. For instance, the business’ need for it to audit its financial statements is questionable, as is the need for it to have a compliance officer and a compliance manual. Similarly, for such managers, the need to prepare a detailed business plan containing their protections for the next three years or the need to obtain prior written consent from the FSC to appoint a new director, for example, would be unnecessarily onerous.”

Managers will only need to become licensed under SIBA once their AUM exceeds the USD400 million threshold: “If you’re trading USD370 million and you have a bumper month and you shoot up to USD410 million you don’t immediately become ineligible under the Approved Managers regime.

“However, if you track above USD400 million for three consecutive months then you will have to convert from being an Approved Manager to the more onerous Category 3 investment business license under SIBA,” says Schilder.

Clipstone says the Approved Manager regime has the potential to be very popular, in particular if extended to managers managing funds outside the BVI, but is yet to fully take off.

“At present, while the concept has been well received for providing a regulated product which takes into account the nature of the funds being managed, the take-up has been relatively slow due to it being limited to managers managing BVI-domiciled open and closed-ended fund structures and related enterprises. As such, many potential users have been disappointed that they cannot use the Approved Manager regime to manage their existing, usually Cayman, non-BVI funds.”

The Approved Manager regime is similar to the ‘excluded person’ product offered in the Cayman Islands, which also allows managers to benefit from light regulation but there is a crucial distinction between the two jurisdictions: in the Caymans, the manager benefits from exemption and has no requirement for the fund to be licensed whereas a BVI approved manager is licensed by the regulator and has ongoing obligations, albeit on a less onerous basis than SIBA-licensed managers.

It’s basically a win-win situation. Managers avoid the full force of regulation, yet at the same time can point to the fact that they have a regulated fund product that investors can take succor from.

Suitability of BVI funds to European investors under AIFMD

One of the major considerations for managers establishing new funds, especially in offshore markets like the BVI, is their suitability in the eyes of global regulators. With respect to the AIFM Directive in Europe, the BVI has signed up to the cooperation agreement with ESMA and already has 25 Tax Information Exchange Agreements (TIEAs) in place globally.

“The BVI IFC, together with the BVI Government, are being proactive in ensuring that the BVI continues to be eligible to sit at the top table of international financial centres. Along with all of its competitor jurisdictions, a cooperation agreement was successfully concluded in July between ESMA (on behalf of each EU Member State) and the BVI.

“The existence of this co-operation agreement together with a well-established TIEA network means that BVI funds can continue to be marketed into the EU under the AIFMD in accordance with domestic private placement rules,” confirms Donovan.

“The BVI government are in the process of signing up to TIEAs with each of the EU Member States to allow BVI funds to qualify for marketing under the pan-EU marketing passport if and when the regime is extended to non-EU funds and managers,” says Clipstone, with Schilder reaffirming the point by concluding: “In due course, the next phase of the Directive will allow non-European managers (third country managers) to passport their funds across Europe in 2015 and we are fully confident that BVI funds will qualify for passporting.”

BRITISH VIRGIN ISLANDS
AIFMD – another catalyst for a move to Guernsey

By Fiona Le Poidevin

The next 12 to 18 months will be crucial in determining the implementation of the Alternative Investment Fund Managers Directive (AIFMD) and therefore, the implications for investment houses. That said, already, research has indicated that a significant number of investment houses are considering taking steps to put themselves beyond the potentially onerous requirements of AIFMD by establishing their funds in non-EU jurisdictions, such as Guernsey.

However, this can only be achieved if there is sufficient substance in the jurisdiction to demonstrate that not just the fund but also the manager can be genuinely considered to be based outside the EU. So called ‘letter box’ entities cannot claim to be managers and substance will be required where a manager is claiming to be domiciled. As such, this might encourage investment houses, such as hedge fund groups, to strengthen their presence within a third country like Guernsey.

Indeed, a recent article in the Financial Times said that it was for precisely these reasons that Brevan Howard – the world’s third largest hedge fund manager – is growing its presence in a number of locations outside the EU, including the Channel Islands. Other similar groups may be thinking along similar lines and certainly it is my view that AIFMD acts as another catalyst for hedge fund managers to relocate not just their businesses but themselves to a jurisdiction such as Guernsey.

Guernsey has evolved its regulatory regime so that business which does not touch the EU can avail of a non-AIFMD route (based on Guernsey’s existing regulatory framework), while EU markets can be
accessed through National Private Placement (NPP) regimes or the Island’s opt-in AIFMD equivalent regime. This means that Guernsey is almost uniquely positioned to provide a variety of options for servicing both EU and non-EU business in the most effective manner from a European time zone.

Guernsey also has an advantage over many of its competitor jurisdictions in that there is already significant substance to many of the existing arrangements which investment houses have in the Island. For example, Bluecrest Capital Management – Europe’s third largest hedge fund manager – not only has several funds domiciled in Guernsey but it has staff employed within its headquartered offices in the Island.

However, while on the one hand, AIFMD might encourage investment houses to build up their substance and therefore take back in-house some of the functions that have previously been outsourced, on the other, the increasing burden of regulation globally – including AIFMD – might lead them to seek out greater support to meet these demands.

Again, Guernsey is very well placed because we have some 50 fund administrators, ranging from globally renowned names to independent, boutique operators, who have significant experience and expertise in supporting the various needs of the fund promoters. Indeed, many investment houses that have their funds domiciled in other jurisdictions, such as the Cayman Islands, actually have them administered in Guernsey.

Today, there is nearly £100 billion worth of ‘non-Guernsey’ open-ended funds managed or administered in the Island, with more than half represented by hedge funds or funds of hedge funds, including a significant number of the BlueCrest range. The quality of service in Guernsey is such that some investment houses which started by using the ‘non-Guernsey scheme’ route have migrated funds to, or established new funds in, the Island.

Choosing Guernsey offers the advantage of having funds domiciled in a jurisdiction where there are ‘fast track’ routes to market, access to global capital markets, flexible cell company legislation that provides for ‘incubator’ vehicles and a corporate tax regime which means that the effective rate for both funds and fund management groups is 0%. In addition, the Island has robust regulatory and tax transparency standards, which are increasingly important considerations for investors in the post-crisis environment and as such, have helped drive growth in the funds business in Guernsey.

The net asset value of all funds under management or administration in Guernsey has risen more than 5% in the last year to £286 billion, with around a third comprising hedge funds or funds of hedge funds as well as property and private equity funds. Global private equity houses such as Apax, BC Partners, EQT, Mid Europa, Permira and Terra Firma have offices and staff based in Guernsey. Terra Firma is not only headquartered in Guernsey but its Chairman, Guy Hands, also lives on the Island and he has been joined by another well-known figure in that sector, Jon Moulton, Chairman of Better Capital.

This evidence tells us that Guernsey is an attractive destination for basing a business as well as key personnel and AIFMD is set to become another catalyst for hedge fund groups to make the move.

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You can have it all when you relocate to Guernsey

By Shauna Clapham

An idyllic pace of life, stunning scenery, pleasant climate, low crime and low tax rates and all only 40 minutes from London Gatwick.

Guernsey is a small Island of approximately 25 square miles, 20 miles north of the French coast and 80 miles to the south of England.

It offers a lifestyle and environment that combines the best of British with a delightfully French accent and is easy to get to from the UK mainland, with regular daily flights from several major UK airports, including Gatwick, and Manchester and services by sea to Poole, Portsmouth, Weymouth and northern France.

At your leisure
The Island benefits from pleasant sunny summers and relatively mild winters. Heavy frosts and snow are rare as the temperature rarely drops below freezing making it a delight for gardeners and outdoor enthusiasts alike.

Summertime is when Guernsey really comes alive and when everyone seems to take to the sea from the island’s delightful tide-washed beaches and rocky coves to enjoy fishing, sailing, surfing, water skiing or simply lazing about in the sun.

After sunset, which is best viewed from the west coast, there are countless places to wine and dine, from elegant hotels to cosy bistros. Restaurants offer everything from traditional British pub fare to gourmet French and ethnic cuisine, all benefitting from the Island’s supply of fresh seafood and home-grown produce.

Almost every sport is catered for with the...
Relocate with ease
There are no restrictions on purchasing property but because the Island has a limited housing stock, Guernsey has a unique housing control system, which also functions as a form of population control.

Properties are classed as either Open Market or Local Market. Local Market properties can only be occupied by those who hold local qualifications, while any British or EU national can take up residence in one of the 1,600 Open Market properties. If you’re interested in seeing the largest range of properties that you could move into, please contact our Open Market team.

Looking after yourself and your family
Guernsey offers an excellent standard of health care. The government runs a specialist health insurance scheme that covers the cost of specialist medical care, and no charges are made to patients for hospital accommodation, nursing services or drug prescription while in hospital. Outside of this, residents need only meet the cost for visits to GPs, chiropodists, physiotherapists, opticians and dentists. Private medical care is also available.

The Island provides free education for pupils of all abilities and has an enviable track record in GCSEs and A levels. Primary schools age pupils will generally attend schools a short walk away and there are three schools catering for pupils with special educational needs. In addition to the States run schools there are also private fee paying schools.

Politically stable, fiscally independent
Guernsey has the right to govern itself and make its own laws and levies its own taxes. It is not part of the UK or the EU but has a special relationship with the Common Market under protocol 3. Most Common Market Law is not applicable in Guernsey and, as a result, the Island is not required to harmonise its taxation with that of the Common Market.

Guernsey’s rate of income tax has stood at 20 per cent for about 40 years. There are no capital taxes in Guernsey. While there is no council tax in Guernsey, there is Tax on Real Property and Parish Rates but these are very reasonable and particularly low in comparison with similar rates in the UK. Excise duties are charged on tobacco, beers, wines, spirit and petrol. Again these compare favourably with the UK. There is no VAT in Guernsey.
Unlock new ideas your business deserves

FinanceMalta is the public-private initiative set up to promote Malta’s International Financial Centre.

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...we’re open for business.
The island of Malta is establishing a solid reputation, particularly for small and emerging alternative asset managers, as an attractive location to establish their investment fund(s).

Currently, the number of funds domiciled in the island is 578 according to Malta’s main promoter, FinanceMalta. The majority of these funds – 460 to be precise – are Professional Investor Funds (PIFs). At 64, the number of UCITS funds is negligible but this is not a market in which Malta is trying to carve itself a niche given the EUR2.4trillion or so of UCITS assets under management in Luxembourg.

Alongside the PIF regime, which gives managers the choice to set up a cost-efficient fund structure, Malta has now successfully transposed the AIFM Directive into national law. This gives managers the choice of two alternative fund structures – either a PIF, which is a non-AIFMD compliant product and which managers can market to European investors using national private placement regime rules, or an AIF, which AIFMD-compliant managers can use to passport freely to all 27 EU Member States.

The AIFMD could well serve as a catalyst for further fund growth in Malta, particularly for non-European managers who right now have to decide carefully about whether to launch an AIF, and if so from which EU jurisdiction.

“Having Malta as your stepping stone into...
Europe is now even more relevant under the AIFMD. That’s probably the primary consideration for fund managers looking at where to relocate or set up new funds for the European market,” says Laragh Cassar, a partner at Camilleri Preziosi Advocates.

Choosing whether to have a PIF or an AIF will depend on the marketing strategy of each manager. Those that want to remain outside of the AIFMD will most likely want a PIF. There are three types of PIF to choose from: those that are promoted to experienced investors, which come with a minimum investment of EUR10K, those that are promoted to qualifying investors, with a minimum investment of EUR75K (the most popular choice), and those that are promoted to extraordinary investors, with a minimum investment of EUR750K.

“The most important piece of advice that I would give to managers is to think in advance exactly what you want to do with the fund, how large you expect it to be, to whom do you expect to market the fund to, and what kind of strategy are you going to pursue. Be clear in terms of what you want to achieve with the fund and be very specific in your planning,” explains Charles Cassar, a partner at Chetcuti Cauchi Advocates. “It is really important that managers have a clear idea of where they want to go with the fund.”

Deciding on which fund structure to use also depends on the size of the manager. Those that are managing less than EUR100million in assets would qualify as ‘de minimis’ managers under the AIFMD and would therefore likely avail themselves of the PIF, although Charles Cassar caveats this point by adding: “Managers who think they are ‘de minimis’ and fall outside of the Directive may actually find that they are not. The MFSA has developed a self-assessment questionnaire and I encourage all managers to go through this questionnaire to avoid any unnecessary surprises. If you look at the way AuM is calculated, it doesn’t simply look at the amount of assets in the fund. It takes into consideration leverage. You can have funds that are relatively small in terms of actual commitments from investors, but if sufficient leverage is being employed it could mean that the manager falls under the Directive sooner than expected.”

Managers who qualify as an AIFM under the Directive will likely choose to establish an AIF. They could also choose a PIF, should they wish, but the problem with doing this is that the managers would expose themselves to two layers of regulation: the PIF regime for the PIF fund, and the AIFMD for the manager.

“Malta has traditionally attracted small to medium sized managers – these managers have the opportunity to either license their funds under the PIF or the AIF regime, the deciding factor being whether they fall within the de minimis threshold and whether they wish to fall within the full scope of the AIFMD. What we’ve seen recently is managers wanting to come on board under the PIF regime with a view to then becoming fully compliant under the Directive when they exceed the de minimis threshold of EUR100million,” comments Laragh Cassar.

At this point, the PIF would be re-licensed with the MFSA (Malta’s financial regulator) as an AIF, therefore avoiding the issue of dual regulation.

So when thinking about which fund structure to use in Malta, it really is all about considering the size of assets currently under management and how big the manager expects to grow going forward.

“The PIF regime is particularly relevant to small de minimis managers,” says Laragh Cassar. “Third country managers, particularly Swiss managers, are showing strong interest to set up their own self-managed de minimis PIFs in Malta with a view to opting in to the AIFMD rules once their assets under management increase.”

For many managers, particularly established managers running successful offshore funds and who now need to prepare for full compliance with the Directive, there are two choices to consider when...
Fund custody is a core business for Sparkasse Bank Malta plc. Our experience and knowledge enables us to be nimble and flexible, allowing us to offer practical, workable solutions to our customers. By choosing not to provide other related fund services such as Fund Administration or Management, we avoid all potential conflicts of interest and focus entirely on what it is we do best – safekeeping, record keeping, monitoring and reporting.

We acknowledge the responsibilities and obligations bestowed upon us as custodians – for this reason, we are committed to making the necessary investment in IT, Human Resources and ongoing training in Legislation, Regulation and Compliance. Only in this manner can we guarantee a high and robust standard of service to our customer.

looking at an onshore domicile like Malta: either re-domiciliation of the offshore fund, or the establishment of a clone structure (parallel fund structure) that runs pari passu with the offshore fund.

"Over the last three years we’ve seen a number of fund managers seeking to re-domicile their funds to EU-based jurisdictions in response to the AIFMD. While the majority of managers are stopping short of making the decision right now to re-domicile their funds we have nevertheless seen a number of managers proceed and Malta has certainly been a net beneficiary," explains Joseph Camilleri of Bank of Valletta Fund Services, the island’s largest fund administrator.

The main advantage to re-domiciliation, as opposed to setting up an entirely new fund structure, is continuity. A manager can preserve the fund’s track record and demonstrate to the MFSA that they have run the fund properly in the original jurisdiction.

“For a fund re-domiciliation a manager and the fund will need to have local legal counsel which we can provide. We coordinate the whole process. We draft all the documentation for the Malta fund on the back of instructing the fund’s existing legal counsel to prepare the documents their side.

“We then co-ordinate and liaise with the regulator for the purpose of licensing the fund in Malta, and with the registrar of companies for the purpose of registering the actual corporate vehicle in Malta. Until the licensing and registration process is completed, the fund remains registered in its original jurisdiction and only gets officially re-domiciled when the license has been approved by the MFSA. It’s a very smooth process. Whilst the timing may change from fund to fund, I would say two months is a minimum period that managers should expect for the re-domiciliation process," explains Laragh Cassar.

If the manager is a start-up, one of the most cost-effective ways to establish a Maltese fund is to leverage turnkey fund formation solutions offered by the likes of Bank of Valletta Fund Services. This removes the burden of having to establish contractual relationships with different service providers. All the manager needs to do is focus on the process of investment management. These ‘incubation platforms’ are popular in many jurisdictions for new managers but as Camilleri explains, existing managers who want to re-domicile their fund(s) to Malta can also take advantage: “The key is to ensure that performance in the offshore fund is not lost, that the same company continues with the process of fund management in Malta without having to wind down the fund and start the whole process from scratch. It is the same legal entity, the only difference being that it effectively changes its address.

“Also, for some managers, the re-domiciliation of the fund involves a change in service providers, in particular the fund administrator. Most managers tend to opt for a local administrator and that’s where we can add additional value. This tends to happen before the re-domiciliation process. It is easier for us because we already hold all the shareholder data and portfolio data as the official fund administrator.”

Laragh Cassar says that another consideration for managers looking to re-domicile their fund(s) is to look at the structure they have in place today. For instance, if they have an EU fund that is investing in China and using a Chinese custodian, under the AIFMD this would not be permissible, as they must have an EU custodian. “Then it would be advisable to look at the PIF regime, provided the manager fell under the threshold of the Directive as managers can appoint any global custodian under the PIF regime. Managers, however, must always consider the currently limited marketing scope of a non-AIFMD licensed fund.”

A slightly easier option for managers who would prefer to avoid re-domiciliation is to establish a parallel fund structure; a clone of the offshore strategy aimed specifically at
EU investors and which essentially acts as a feeder fund.

“We’ve seen managers pursuing this strategy. They want a replica fund to target EU investors whereby this feeder fund invests in the offshore Master fund. All the investment decisions are made at the Master Fund level with the feeder fund sharing the same investment objectives. This is another way foreign fund managers are choosing to react to the AIFMD,” confirms Camilleri.

But Malta is not just an attractive option for funds. Increasingly, investment managers are choosing to relocate there. There are many issues managers need to consider before doing so.

Adam de Domenico is founder and CEO of Zodiac Advisory Services (ZAS) Malta, a boutique firm that specialises in regulatory compliance, corporate governance within the asset management industry. The firm also offers Non-executive Directorship and Investment Committee members, as well as risk management oversight and accounting services. According to de Domenico: “Things for managers to consider should include the following:

- Surround yourself with knowledgeable service providers to ensure a smooth application process and structure yourself appropriately from the outset;
- Engage with various service providers to do typical services outside of portfolio management. We have found that firms like ours offering a near one-stop-shop solution give significant support and time and cost efficiencies to the fund manager, allowing them to focus on other important matters of the business;
- When comparing to other jurisdictions consider ongoing costs besides set up costs both compare very favorably to other jurisdictions;
- Although costs are less expensive than other jurisdictions this does not imply inferior knowledge or quality of service;
- Plan ahead to find suitable office space;
- Plan ahead for recruiting and training local staff to enjoy employment cost efficiencies.”

When comparing to other jurisdictions consider ongoing costs besides set up costs – in Malta both compare very favorably to other jurisdictions.

Malta represents a highly attractive Plan B for hedge fund managers who already have existing operations elsewhere. As Chris Bond, HSBC Bank Malta Head of Global Banking and Markets says, “I’m meeting with hedge fund managers most weeks now, many of whom have recruited quality local graduates.

“We’re not seeing fully-fledged front-office teams relocating here but what we are seeing are many front, middle or back office operations increasingly basing themselves in Malta. These are people who hold senior roles within the fund manager, often the partners themselves. They tend to be HNW individuals and therefore have a real tangible impact on the local economy.”

Many of the funds being traded are not domiciled in Malta at all but remain domiciled offshore. In that sense, Bond says that while Malta has positioned itself to benefit from a wave of expected re-domiciliation under the AIFMD, “that wave has turned out to be more of a ripple. However, we are seeing growing interest in Malta as a location in which to base fund management operations.

“Malta is definitely upping its game as an attractive destination for HNW individuals. We enjoy over 300 days of sunshine a year; it’s a great lifestyle. It enjoys the same time zone as other European financial centres like Paris and Frankfurt and has excellent accessibility to London.

“I think it is quality of life as opposed to any potential cost savings that is the primary driver for managers choosing to relocate.
here. This is a great environment in which to bring up a family. It’s warm, it’s welcoming, and it has a low crime rate. You can enjoy a wonderful life on the island while at the same time still benefit from being well connected to London,” asserts Bond.

But managers should not adopt a light touch when considering Malta. The authorities emphasise substance and a real tangible commitment to the jurisdiction in terms of fund management operations according to Charles Cassar, who comments: “The regulator will not accept brass plates or soft operations which are established in Malta in name only.

Managers should put a lot of thought into the commitment they will bring here. I always tell my clients that the MFSA wants to grow the fund industry, they are pro-business but at the same time they don’t want to look silly. They want to see that you are able to present tangible proof that the business is indeed being managed in Malta.”

That said, the continued attraction of Malta is helped by the openness and approachability of the MFSA, the fact that it has a well-developed legal and support service infrastructure, and as Cliff Pace, product and business development manager at the Malta Stock Exchange explains, “there’s the connectivity factor – both electronically and in terms of physical location. The lifestyle is getting a little more hectic but nothing like other European capital cities. The cost of living is significantly lower and therefore the cost of services is significantly lower.

“One estimate is that we are 30 per cent more cost-effective than other jurisdictions such as Luxembourg. Another important factor is the skills and availability of Maltese practitioners. Anybody considering relocating to Malta will find that the Maltese financial service practitioners are extremely professional, trustworthy and well vested in Maltese as well as EU regulation. You’re paying a more cost-efficient price but you’re still getting a high-quality professional service, and that’s important to stress.”

“The MFSA is approachable and always willing to assist and to adopt a flexible stance when it comes to problem solving,” says Mel Roberts, a consultant with Maitland, a multi-jurisdictional administrative, advisory and fiduciary services firm. “In practical terms, it is possible to hold face-to-face meetings with the regulator within a matter of days. At the same time, adherence to the highest European standards is required. An extensive due diligence is conducted on every applicant, with new entrants being required to submit detailed documentation and references, which are vetted by the regulator as part of a rigorous process. This in turn, ensures that licenses issued in Malta enjoy a high level of international recognition.”

Being a small island, one of the main advantages is the networking opportunities on offer to managers. Everybody knows everybody.

“In Malta you’re only two times removed from knowing someone. That has good repercussions because networking is an enabler for businesses to work and function in line with clients’ requirements,” says Pace.

Aside from all the lifestyle and location benefits of Malta to managers, tax considerations are also important to consider. Reference may be made to the Highly Qualified Persons Rules, which ensure a flat rate of tax of 15 per cent on the personal tax for highly qualified professionals.

“This guarantees that human resources are maintained at a level sufficiently high to sustain the growth in the financial sector. In addition, Maltese fund managers benefit from a highly competitive fiscal regime, which is FATF and OECD compliant, whereby a refunds system results in a 5 per cent rate of net effective tax for the Maltese fund manager,” explains Roberts.

Already the island has global financial institutions such as HSBC and KPMG, amongst many others, and Pace thinks that, going forward, the trend of global firms establishing a local presence will continue in other areas of the financial services sector.

“That will be good for Malta because whilst having a local brand is good, a global brand creates a much stronger degree of networking opportunities and levels of connectivity which are very important to our international footprint,” says Pace.

“The local hedge fund community is growing steadily and many of our foreign client nationals have only good words to share about Malta,” concludes de Domenico.