Guide to Relocation 2014

AIFMD drives choice of European stepping stones

Jurisdictions focus on fund manager communities

Non-EU domicile options for funds and managers
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Introduction

The Global Fund Media Guide to Relocation 2014 is the fourth 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 complete 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, Malta and Ticino.

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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It is not by chance that The Bahamas is amongst the most successful international financial centres in the region today. More than 80 years of thought, effort and co-operation have produced ideal conditions for High Net Worth individuals, families and businesses as well as funds related companies to manage wealth efficiently in comfort and style. The country’s mature financial services industry, established infrastructure, progressive government, tax neutral environment and luxury lifestyle all have been carefully cultivated to satisfy the specific needs of the most exclusive clientele.

The advantages of doing business in The Bahamas are as clear as the crystal waters surrounding the 700 islands of the archipelago:

**Advantage – strategic location**
The Bahamas is situated at the crossroads of the Americas, just 65 miles off the east coast of Florida, and on the same time zone as New York and Toronto. It is an ideal hub for regional investment and business in the Eastern United States and Canada, and much of Central and South America, offering a favourable location for ownership of intangible assets, and the operation of corporate offices and businesses involved in international trade.

**Advantage – political and economic stability**
The Bahamas has an outstanding record of political and economic stability, progress and stewardship, with more than 285 years of uninterrupted parliamentary democracy. It
has been an independent nation since 1973, and retains a Westminster-based system of Government and an English-based legal system. It maintains a high ranking for civil liberties & political rights from the World Bank.

**Advantage – regulation**
The Bahamas encourages the growth of its financial sector through adherence to internationally accepted regulatory principles, and efficiency in their administration. Regulatory independence is maintained through the separation of roles of policy makers and regulators. Regulation and regulators are subject to independent assessments by the Caribbean Financial Action Task Force, the Caribbean sub-group of the Financial Action Task Force, and the International Monetary Fund.

**Advantage – wealth and asset management options**
The Bahamas offers owners of capital a broad choice of financial institutions that deliver myriad services including banking, private banking and trust services, investment fund administration, capital markets, investment advisory services, accounting and legal services, e-commerce, insurance and corporate and shipping registries. It is home to over 270 licensed banks and trust companies including seven of the world’s top eight private banks and 35 of the top 100 global banks. The Bahamas is a favourable jurisdiction for the establishment of family offices, which help wealthy families achieve their goals while dealing with increased regulations, and complex issues of taxation, distribution planning and charitable giving.

The range of professional investment management services available in The Bahamas continues to grow. There are more than 140 broker dealers and investment advisory firms that offer investment management services, custodial services, corporate services and registrar and transfer agent services. More than 60 fund administrators provide fund administration, corporate services and registrar and transfer agent services. In excess of 780 Funds are licensed in The Bahamas, with assets under management totalling in excess of USD128bn.

Refocused efforts by The Bahamas on captives is also seeing growth in this area as they represent an attractive risk financing option in today’s unpredictable insurance market.

**Advantage – taxation**
The Bahamas remains committed to a tax neutral platform upon which international persons receive the same tax benefits as Bahamians. The Bahamas adheres to the principle that persons have a right to privacy with respect to the conduct of their affairs. As such, it will only share information on agreed and transparent protocols under bilateral agreements to which it is a party.

**Advantage – investment policy and incentives**
The Bahamas’ government is committed to building an economic environment in which free enterprise can flourish. The National Investment Policy is designed to support an investment friendly climate and complements Bahamian and overseas investments. Investors may acquire publicly-owned lands for approved developments on concessionary terms, and lease low-cost industrial space.

**Advantage – human capital**
The Bahamas has a highly educated local workforce and a long tenure in financial services excellence which has created a deep pool of skill and experience that is recognised and trusted worldwide. With more than 6000 experienced financial professionals committed to the local community, clients can expect to build deeper and more lasting relationships and receive more consistent service in The Bahamas than in locations largely dependent upon imported skills.

**Advantage – public-private sector partnership and innovation**
Government and business interests in The Bahamas act in close partnership to respond to market needs and at the same time adhere to international standards. Spearheaded by The Bahamas Financial Services Board (BFSB) this partnership has created a wide range of innovative products such as Smart@Funds, the Bahamas Executive Entity and most recently The
the United States. The Bahamas is easy to get to, with six major airports, more than 50 other airports situated throughout the archipelago, as well as countless ports of entry and marinas that can accommodate the largest yachts.

**Advantage – permanent residency opportunities**

The Bahamas has a liberal process for granting Economic Permanent Residency (EPR) that makes it easier for individuals to “follow their money” with respect to where they live and work. Persons with permanent residence are for all intents and purposes treated like Bahamians, except for the right to vote. Economic permanent residence application is available for persons who spend a minimum of USD500,000 on a residence. For more substantive investments of USD1.5m or greater, there is accelerated consideration of applications.

**Advantage – work permits and immigration**

The Bahamas has a flexible immigration policy which encourages companies to develop Bahamian talent but recognises the needs of international firms, individuals and families to recruit additional human resources abroad. The country welcomes non-Bahamians with specialised skills and expertise which are not otherwise locally available.

**Advantage – physical resources**

The Bahamas has developed its land, premises and fit-for-purpose infrastructure with the singular focus of facilitating international business. Modern office facilities are connected globally through three separate, fully redundant, self-healing, fibre optic cable networks, with data protection at the OECD Standard.

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.

Bahama Investment Condominium (ICON) to establish The Bahamas as an innovative choice for wealth and asset management.

**Advantage – lifestyle**

The Bahamas is located in one of the most idyllic tropical settings in the world and has many attractive features for those who may wish to relocate permanently or establish a second home. Gated waterfront communities packed with lifestyle amenities from golf and tennis to spas and marinas are attracting more second and third-home buyers from North and South America, Europe and the Far East.

The Bahamas is a service economy accustomed to providing concierge residential management services for homeowners who are not in residence. Direct flights are available to The Bahamas from all major US cities, Canada, the UK, Europe and Panama, and the country has numerous ports of entry and marinas. US pre-clearance for commercial passengers exists from Nassau, while commercial passengers, private jets and goods shipped from Freeport also enjoy pre-clearance to
Fund numbers in the British Virgin Islands ("BVI") remain steady in 2014 with 53 mutual fund licenses having been granted during the first half of 2014 according to statistics released by the BVI Financial Services Commission.

There are now 1,538 active mutual funds in operation, just slightly down on last year’s Q2 figure of 1,567 funds. Of greater contrast is the increase in the number of limited partnerships that have been formed; a total of 27 LPs were recorded in Q2 2014 compared to 16 in Q2 2013.

The BVI remains highly favoured, especially with China asset managers looking to set up GP/LP structures for hybrid and private equity funds. Just this month, Ogier (BVI) advised DT Asia Investments Limited on an IPO on Nasdaq, raising USD60m. DT Asia Investments incorporated a special purpose acquisition company (SPAC) in the BVI to engage in companies with one or more businesses. Simon Schilder, a partner at Ogier who led the team was quoted as saying: “This IPO is yet another example of SPAC sponsors opting to utilise the BVI as the domicile for their listing vehicle, whether with a view to then seeking a listing in New York on Nasdaq or on the London Stock Exchange.”

Part of the BVI’s popularity is that the BVI fund is such a well-established and well recognised product among the global investment community. For private equity managers, the BVI has a good corporate statute in the BVI Business Companies Act 2004 (the “BC Act”).

“The vast majority of funds are incorporated as business companies under the BC Act and to a lesser extent as limited partnerships under the Partnership Act 1996 (the “Partnership Act”). It is relatively
It is relatively straightforward to set up a limited partnership as the law requires limited information to be contained in the constitutional documents.”

Valerie Georges-Thomas, Bedell Group

British Virgin Islands

“feel confident that they are choosing a reputable domicile with a strong regulatory environment,” says Georges-Thomas.

• There are no restrictions on investment strategy or borrowing and also no need for board or members meetings to be held in the BVI or for the directors of a fund to be resident 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.

At the same time, the fund’s constitutional documents can be structured to include controls on borrowing, requirements for regular meetings of investors and other requirements that investors may find appealing. In that way the fund can be tailored to meet the exact needs of the type of investor or investment the investment manager plans on targeting.

Main advantages to the BVI

There are a number of benefits to establishing a fund in the BVI:

• It is a stable, well regulated jurisdiction with the Securities and Investment Business Act 2010 as amended (SIBA) together with the Mutual Funds Regulations 2010 and the Regulatory Code 2009 governing funds and persons carrying out “investment business” in or from within the BVI. The Regulatory Code does not apply to funds.

The BVI government when overhauling its regulatory regime in line with changing global regulatory standards, maintained what worked well under the former regime (the Mutual Funds Act) but extended the scope of regulation to include other persons not previously regulated under BVI law. SIBA basically codified a lot of what developed over time as practice under the former regime; for example, the requirement for funds to have a minimum of 2 directors at all times and the requirement for funds to now file annual audited financials with the Financial Services Commission (FSC).

“SIBA is a robust but flexible regime that accords with international standards so that when considering the BVI as a domicile for their funds, managers can

straightforward to set up a limited partnership as the law requires limited information to be contained in the constitutional documents. The limited partnership is formed by the filing of a memorandum of limited partnership with the Registry of Corporate Affairs (the “Registry”). The articles of limited partnership, which is the core governing document of the limited partnership, is a private document and is not required to be filed at the Registry. The manager just needs to keep a copy of articles of limited partnership at the registered office of the limited partnership,” explains Valerie Georges-Thomas, Senior Associate at offshore law firm Bedell Group.

“The Partnership Act was enacted in 1996 and has had very little revision since then. The BVI government is looking to review it and make to some amendments to it, most likely in the coming year. The amendments are not expected to significantly alter the characteristics of a limited partnership,” adds Georges-Thomas.

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British Virgin Islands

- Stability - An important advantage to the regulatory regime having recently undergone major review and overhaul means that the BVI funds industry is unlikely to see any significant amendments to the regulations, “which would require funds to change the way they are doing business or result in additional costs to meet new compliance standards. I think that any significant change any time soon will likely be designed to further enhance the attractiveness and competitiveness of the BVI as a funds jurisdiction,” opines Georges-Thomas.

The legal process of establishing a BVI fund

The legal process for setting up a BVI fund is quite straightforward, particularly if the manager is setting up a standalone private/professional fund or a closed-ended private equity vehicle.

The process involves the preparation of the fund documents and submission of the constitutional documents to the Registry for the incorporation of the entity. Incorporation whether as a corporate vehicle or as an LP is done electronically and is completed within one to two business days.

“Once incorporated, a closed-ended fund can commence business immediately as is it not subject to regulation under SIBA. If the fund is an open-ended fund, it will need to be recognised if it is a private or professional fund or registered if it is a public fund, before it can commence business.

“The application for recognition involves a relatively simple application made to the FSC and once in order, is usually processed and approved within five to seven business days. An application for registration as a public fund is much more involved; here the timescale is typically two to four weeks for processing and approval. There is a fast track process available to a professional fund whereby the fund can commence business once incorporated provided that an application for recognition is submitted to the FSC within 21 days of commencing business.

“If the investment manager of the fund is to be a BVI-domiciled company, it will require a license under SIBA whether the fund is open-ended or closed-ended. Licensing under SIBA can be a protracted process. However, managers who meet the eligibility requirements, where time to market is a factor can apply for approval under the Approved Managers Regulations where the timeframe for approval is seven days and no more than 30 days. The manager will generally be able to commence business seven days after submission of the application to the FSC,” explains Georges-Thomas.

Approved Manager regime

The BVI introduced the much anticipated Approved Managers Regulations in 2012; one that provides lighter touch regulation to managers – in particular start-ups – who are keen to be licensed to better appeal to prospective investors yet at the same time do not want to be subjected to the full weight of SIBA.

“It is a welcome development. The full licensing regime under SIBA is substantial. The BVI attracts its fair share of start-up managers so providing this lighter touch approval and oversight by the regulator makes for a more balanced approach to the regulation of the managers,” comments Georges-Thomas.

That this regime exists is testament to the commitment that the FSC and the BVI government have to supporting smaller investment managers. It is basically a win-win situation. Managers avoid the full force of regulation under SIBA, yet at the same time can point to the fact that they are regulated with the FSC, which investors can take succour from.

As of 30 June 2014, there were 43 approved managers registered in the BVI.

From Approved Manager to SIBA Licensee

There are limits as to whom the Approved Manager regime applies. This is based primarily on AuM: USD400m where the manager is providing services to open-ended funds and aggregate capital commitments of USD1bn where the manager is acting in relation to closed-ended funds.

“If a manager under the Approved Manager regime exceeds those caps, it will have to apply for a full license under SIBA. The Approved Manager regime essentially takes account of the relative risk profile of
the business carried on striking a balance between flexibility and effective regulation,” says Georges-Thomas, adding: “A lot more information needs to be provided in the licensing application for managers under SIBA. The directors have to be approved by the FSC, the manager will have to submit a business plan as well as appoint a compliance officer and issue a compliance manual. It quite a step up from the Approved Manager regime. The SIBA licensing process would typically take four to six weeks, possibly faster depending on how familiar the FSC already is with the manager.

“Once licensed under SIBA, the manager will have to file annual financial statements and meet all of the ongoing obligations that apply under SIBA and under the Regulatory Code.”

Having this two-tier regulatory system for managers is a sensible approach and one that should benefit the BVI in the long run.

Some of the more pertinent issues that a manager should think about when looking to establish a BVI fund include the following:

- **Selection of legal counsel** – there is a lot of expertise on the island;
- **Selecting service providers** – 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;
- **Type of fund** – will it be open-ended or closed-ended? Managers will need to think about the regulations if open-ended;
- **Licensing process** – managers will need to think about whether they can meet the FSC’s ‘fit and proper’ criteria if setting up a BVI manager;
- **The extent of the documentation** – in the case of a start up, whether they will issue an offering document.

### Suitability of BVI funds in Europe under the AIFMD

In short, there are no concerns for managers of BVI funds. The BVI has taken the necessary steps to ensure that these funds qualify for marketing in Europe. The BVI has entered into cooperation agreements with ESMA and has tax exchange information agreements (TIEAs) in place with several of the EU’s leading Member States in accordance with each country’s domestic private placement rules.

An AIFM proposing to market their BVI fund to a Member State(s) may rely on the private placement regimes in the Member State until at least 2018 without having to seek authorisation under the Directive. However, the manager will need to ensure that it complies with disclosure and reporting requirements set out in the Directive and that there is a cooperation agreement between the local regulator (i.e. the FSC) and the financial regulator in the relevant member state. The BVI is not listed as a non-cooperative country by FATF and is a member of the Caribbean FATF.

Georges-Thomas provides the final word of advice to managers who are considering the BVI: “The BVI is a viable jurisdiction for funds in its own right and should be viewed as such. We boast a modern, user-friendly regulatory regime that meets international standards and appeals as much to managers of large and institutional funds as well as small to mid-sized funds. We also have a well-established legal system with the seat of the commercial court based here. There are a large number of industry professionals on island. The BVI is open for business.”
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During the last year we have seen increased interest among fund managers in the potential upside of relocating operations to Guernsey. A contributing catalyst has been the introduction of the Alternative Investment Fund Managers Directive (AIFMD), including the end of the transitional provisions in jurisdictions such as the UK.

AIFMD

AIFMD has introduced some potentially onerous requirements but managers can put themselves out of scope by establishing their funds in non-EU jurisdictions, 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, 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.

However, there are some conditions that need fulfilling if a firm is to be truly out of scope; there must be 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 mind and management will be required in the place where a manager is claiming to be domiciled. This is encouraging investment houses to strengthen their presence within third countries like Guernsey and some of the principals have also decided to relocate to the Island.

Guernsey’s close proximity to London is a major attraction but it 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, leading global private equity firms Apax, BC Partners, Mid Europa, Permira and Terra Firma not only have Guernsey domiciled funds but they also have offices and staff in the Island.

Terra Firma is not only headquartered in Guernsey but its Chairman, Guy Hands, also lives on the Island. He has been joined by another well-known figure in that sector, Jon Moulton, Chairman of Better Capital and who, since moving to the Island, has also become Chairman of the Channel Islands Securities Exchange (CISE). The CISE is part of the wider infrastructure and expertise which has been built up during the last 50 years and is on hand to support fund promoters no matter their level of presence in Guernsey.

Substance

Today, more than 1,000 funds with a value of nearly half a trillion US dollars are serviced by more than 50 fund administrators and custodians in Guernsey. Administrators range from major international names such as Northern Trust, State Street and Citco to independent specialists focusing on particular asset classes such as real estate and private equity. There are also major global custodians and they are now being supplemented by the specialist administrators who are establishing Guernsey-based depositaries to service private equity and real estate funds which have not previously had the requirement for a depositary but who can take advantage of a ‘depositary-lite’ regime for non-financial
assets under AIFMD. They are supported by multi-jurisdictional law firms, global accountancy practices and independent investment advisers.

The quality of fund servicing in Guernsey is evidenced by the fact that our providers now administer nearly US$140 billion worth of open-ended funds which are domiciled in other jurisdictions, typically the Cayman Islands, where there may be local substance challenges. Some promoters have also decided to re-domicile funds to Guernsey, which is facilitated by flexible migration rules.

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 principal managers is 0%. In addition, the Island has a strong pool of qualified non-executive directors to provide enhanced corporate governance and there are robust regulatory and tax transparency standards, which are increasingly important considerations for investors in the post-crisis environment.

**Conclusion**

The requirements of cornerstone investors, such as the large pension funds and insurance companies, are increasingly important for fund managers. They will be keen to maximise returns and not see the performance of the fund dragged down by costs associated with AIFMD, especially when these are unnecessary given that a jurisdiction such as Guernsey provides optionality.

However, to ensure that they are truly out of scope of AIFMD, investment houses do need to ensure they have sufficient substance in the domicile where the fund is managed. This is driving up interest in the potential upside of fund management firms and their principals of relocating to Guernsey.

Indeed, such has been the interest that the Guernsey government has just revamped its website providing businesses and individuals with more information about relocating to the Island so please take a look at [www.businessguernsey.gg](http://www.businessguernsey.gg).

_Fiona Le Poidevin is Chief Executive of Guernsey Finance – the promotional agency for the Island’s finance industry._

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Quality of life isn’t easy to measure – perhaps because it is more readily defined through its absence. A gradual waning of the old *joie de vivre*, a lack of spring in your step, a busy schedule that feels like Ground Hog day...

Relocating to Guernsey offers the chance to create a new and exciting work/life balance that could re-inspire the whole family. Located approximately 70 miles south of England and a few miles away from France, it offers a quality of life far removed from the daily grind. Whether you are attracted by the beauty of the coastline, clean beaches, mild climate, good schools or the gentle tax regime, the lifestyle enjoyed by those who live here is exceptional. Essentially British, Guernsey’s beguiling and exotic flavour of the continent makes for the best of both worlds, but without the language barrier!

What’s more, Guernsey is one of the most dynamic environments in which to do business – people relocate here precisely because they can enjoy all the benefits of a city career, but without the drawbacks of city living or long commutes.

**Live to work...**

Guernsey is a major international business centre offering beneficial tax laws and a refreshing “can-do” attitude. It is a politically and economically stable environment, regulated to a high standard, and benefits from laws that were designed to support international business. What’s more, the island offers same-day trading with Asia and North America and easy access to London (40 minutes from Gatwick), other UK cities and Europe.

There’s a real vibrancy to business in Guernsey and local companies are supported by world-class services in banking, finance and law. Entrepreneurs are drawn to the Island’s receptive business community and have access to a pool of non-executive directors that would be the envy of any global city.

Guernsey is a hot-house for investment fund business – at the end of March 2014 the overall value of funds under management and administration in Guernsey stood at £264.2bn.

**Work to live...**

Whilst Guernsey offers all the ingredients for a successful career, island culture encourages residents to remember that there is more to life than work.

With no rush hour or gruelling daily commutes (everything is just a walk or short drive away) newcomers feel as though they gain several extra hours a day. An active social scene makes it easy to meet the friendly international community.

Sport and outdoor activities are very popular – adrenaline junkies can enjoy surfing, windsurfing, water-skiing, coasteering and sailing whilst more than 28 miles of cliff paths and rural lanes make walking, jogging, cycling or horse-riding great ways to let off steam. The island has private health clubs, a public leisure centre and two 18-hole golf courses. Football, rugby and cricket all have active leagues.

More sedate pastimes include lingering over fresh seafood at waterside restaurants; films, music, theatre or opera; and exploring the charming cobbled streets of the town. Visiting the smaller islands of Alderney, Sark and Herm make wonderful day trips for those who enjoy exploring.
Family life
Guernsey’s high quality free education system is a big selling point for families moving here. Primary education (5 to 11 years) is followed by a place at the Grammar School, one of three secondary schools or at one of the independent colleges. There are also several private primary schools and provision for pupils with special educational needs.

One of the best things about Guernsey, particularly for youngsters who need to be tempted away from television and computer screens, is the outdoor lifestyle. With 27 beaches and stunning countryside, a free-range childhood is what life here is all about. An afternoon at the beach and cooking sausages on the barbecue as the sun sets are simple pleasures that make Guernsey such a special place for children.

The standard of health care is excellent - residents contribute to a government run health insurance scheme which covers hospital treatment, specialist medical care and some of the cost of GP consultations.

Making the move
Guernsey has a wide selection of beautiful homes ranging from stylish apartments, elegant Victorian townhouses and cosy cottages to large detached houses with land. Similar in price to London and parts of the south-east of England, there is something to suit all tastes.

A housing system controls the occupation of property and helps to manage the population. Properties are classed as either Open Market or Local Market. Local Market properties can only be occupied by people who were born in Guernsey, or who come to the island as an “essential employee” to fill a post for which no residentially qualified local person is available, whereas Open Market properties, of which there are 1600, can be occupied by any British or EU National.

Guernsey is a unique island offering the best of both worlds: an environment in which your career can flourish and where quality of life is excellent. With a flat Income Tax rate of 20%, no capital gains tax, no inheritance tax and no value added tax, Ground Hog Day on Guernsey is not such an unappealing prospect!

Jo Stoddart is the Managing Director of Quintessential Relocation Consultants, independent property finders and relocation service providers who work alongside private individuals and businesses relocating their home, staff or business to Guernsey.

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Guernsey fact file
- Guernsey is a “Crown Dependency” relying on the UK for matters of foreign affairs and defence.
- The island has its own democratically elected parliament, makes its own laws and sets its own budgets and levels of taxation.
- Tax on Real Property (TRP) and Parish Rates are the island’s equivalent of UK council tax. However these are very low in comparison to charges levied in the UK.
- Guernsey is not part of the EU but has a special relationship with the Common Market under protocol 3.
- The Island has a total surface area of 25 square miles.
- The population of Guernsey as of March 2013 was 62,732
- Guernsey has a milder climate than the UK and more sunshine hours.
Of the 600-plus investment funds registered in Malta it is estimated that at least 85 per cent of them can be characterised as being in the EUR20-100m range.

This means that for alternative fund managers who don’t have grand plans to grow their funds beyond the EUR100m threshold they can choose to remain under the PIF regime – which the island’s regulator the MFSA wisely chose to retain alongside the AIFMD – and privately place their fund(s). This can help managers avoid falling under the scope of the directive, providing them with an alternative fund product that other EU domiciles simply cannot offer.

There are in effect three types of PIFs that managers can select: 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.

New licences for PIFs will continue to be issued under the updated Investment Services Rules for Professional Investor Funds in the following cases:

i) Applicants who opt to apply to be licensed as a ‘de minimis’ self-managed AIF;

ii) Applicants who opt to apply for a PIF licence provided the PIF is managed by a de minimis AIFM;

iii) Applicants who opt to apply for a PIF licence provided the PIF is managed by an AIFM in full compliance with the AIFMD;

iv) Applicants who opt to apply for a PIF licence provided the PIF is managed by a non-EU AIFM in terms of the relevant conditions of the AIFMD under which other EU-Member States may allow them to market to professional investors in their territory.
The potential problem with category (iii) is that hedge fund managers who choose the PIF and who exceed the ‘de minimis’ threshold will expose the fund to two regimes and layers of regulation. With that in mind, the PIF regime is better suited to promoters/managers who prefer to remain de minimis. If their fund does well and assets climb above EUR100m, they should then re-license the fund with the MFSA as an AIF, which is a relatively straightforward process.

Where a manager to launch a Qualifying Investor PIF, they would not be allowed to passport it across Europe because the fund would not fall within the scope of the Directive. It would only be available to investors through national private placement regimes of EU member states, or reverse solicitation.

Ultimately it boils down to the manager, how large they are, and what their long-term objectives are. Even if they qualify as ‘de minimis’, some managers might still choose to have an AIF - or a PIF - and comply with the Directive because it might help them attract potential investors.

And on this point – the nature of the investor - rests a crucial difference between a PIF and AIF, which could further influence a manager’s decision.

If a manager sets up an AIF under the AIFMD in Malta they can only sell it to professional clients as defined under MiFID I, which mainly covers institutions and other eligible professional clients. This is a much narrower definition than ‘qualifying investors’. For managers wishing to market their fund beyond the EU, in Switzerland for example, and who do not wish to be constrained by only targeting professional clients, then the PIF would be the fund vehicle of choice.

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

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 a number of service providers in Malta. 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. Indeed, existing managers who want to re-domicile their fund(s) to Malta can also take advantage, safe in the knowledge that performance in the offshore fund is not lost. Fund management activities in Malta can continue without having to wind down the offshore fund and start the whole process from scratch.

Ultimately, a fund redomiciliation to Malta, either as a PIF or an AIF, merely involves a change of fund management address.

That said, an easier option for managers who would prefer to avoid redomiciliation 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.

All the investment decisions are made at the Master Fund level with the feeder fund running pari passu, sharing the same investment objectives. This is another way foreign fund managers are choosing to react to the AIFMD. Malta, in that respect, is an attractive jurisdiction for managers to consider, not just for their funds, but to establish fund operations as well.

As is well known, Malta enjoys over 300 days of sunshine each year, it is an English-speaking island, it has excellent transport links to all of Europe’s leading financial centres and benefits from having both a low crime rate and a highly proactive business friendly regulator in the form of the MFSA.

In practical terms it is possible to hold a meeting with the MFSA within a matter of days. Not that the MFSA adopts a light touch to approving fund managers on the island. It has a strong reputation to uphold and whilst approachable, the MFSA conducts thorough due diligence on each manager that passes through its doors. The authorities emphasise substance and a real tangible commitment to the jurisdiction in terms of fund management operations.

New entrants are required to submit detailed documentation and references, which are vetted by the regulator as part of a rigorous process. The MFSA 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. This in turn, ensures that licences issued in Malta enjoy a high level of international recognition.

Aside from all the lifestyle and location benefits of Malta to managers, tax considerations are also important. Maltese fund managers benefit from a highly competitive fiscal regime, which is FATF and OECD compliant. Malta is the only EU member state that operates a system of dividends based on full imputation. A fund management company would be required to pay the standard corporate tax rate of 35 per cent on its profits. However on distribution, the shareholder receiving the dividend qualifies for a credit in respect of the tax paid by the AIFM. Distributions to shareholders would trigger refunds to the shareholders of 6/7ths of the tax paid by the AIFM on the distributed profits.

It is also pertinent to note that in relation to Article 13 of the AIFMD, the MFSA’s approach is that remuneration policies and practices shall apply at the level of the AIFM – specifically to “those categories of staff, including senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage.”

This means that the approach adopted by the MFSA does not require that entities to which portfolio management or risk management activities may have been delegated be subject to similar remuneration requirements as the AIFM.

Reference may also be made to the Highly Qualified Persons Rules, which ensure a flat rate of tax of 16 per cent on the personal tax for highly qualified professionals.

The cost of living is significantly lower and therefore the cost of services is significantly lower. For example, the turnkey cost of setting up a fund in Malta costs in the region of EUR15,000 to EUR25,000. When you apply that kind of cost to a fund of EUR30-40m, it becomes attractive as the overall impact on the TER is a manageable one.

Fund administration costs for a Maltese start-up fund are traditionally in the region of EUR15-20,000 per annum depending on the key features of the fund; e.g. the frequency of valuation, number of positions, trading volumes and number of share classes. Audit fees would be in the region of EUR6,000 per annum.

Malta has built out a solid infrastructure and boasts a wide range of top tier service providers such as HSBC, Deutsche Bank and the top four international audit firms all having robust operations in Malta. There are now over 130 asset servicing operators – including 28 fund administrators – delivering high-quality support to funds.

Whether its legal support for fund formation or ongoing administration, brokerage and custodial support, managers who look towards Malta will find a vibrant funds ecosystem when they set foot on the island.
Ticino – a place in paradise

By James Williams

Lugano is the principal city of Ticino, in Switzerland’s southernmost region and is the Italian speaking region of the country. Milan in the north of Italy is less than a one-hour drive away. Lugano has a long tradition as a financial centre; its first bank was established more than 150 years ago. There are nearly 60 banks and many other financial operators, making Lugano the third main financial hub in Switzerland after Zurich and Geneva.

In total, there are nearly 300 operators in the Ticino financial centre working directly or indirectly in the management of traditional and alternative funds.

“There is now a strong international fund manager community that has chosen Lugano in which to set up operations. There is also a growing number of commodity trading companies, around 70 at present. Among them is Duferco, one of the biggest steel traders in the world. In Lugano in 2013, the commodity trading sector paid more taxes than any other part of the financial market,” comments Franco Citterio, President, Ticino for Finance.

Ticino for Finance provides information to companies/managers on doing business and living in Ticino. “Our goal is to help them locate their business in Ticino, put them in contact with the right professionals. We are a public-private partnership and basically an enabler to make things as straightforward as possible to someone who is interested in setting up their business in Ticino,” adds Citterio.

Ticino is ideal for managers wishing to
target the Italian market without needing to relocate to Italy where bureaucracy is quite heavy. Currently, 38 per cent of people living in Lugano are foreign, with UK and Russian managers amongst that number.

Importantly, for any manager considering Ticino, there is no foreign language issue to be concerned with.

“The local regulator is used to conducting its business in a multilingual environment. Since Ticino is only a small part of Switzerland, we have a lot of high-level people here who speak fluent Italian, German, French and English,” says Citterio.

Over the years, Lugano’s service provider infrastructure has continued to improve. The IT infrastructure is excellent, as is the transport infrastructure.

“In Lugano there is a small airport. It is very quick and easy to use. Geneva is a 30-minute flight away. The longest railway tunnel in the world is currently being excavated – 57 kilometres long - which, when ready, will allow people to get from Lugano to Zurich in just 90 minutes,” adds Citterio.

For any asset manager wanting to start a business in Switzerland, it is necessary to receive a license from the financial regulator, FINMA. The management company managing foreign funds must have starting capital of CHF500,000 to meet the minimum capital requirement. Also, there needs to be a proper separation of functions between administration (compliance, risk management) and front-office; those managing the trading of the fund(s).

“The positive for Switzerland is that the organisational requirements are not so strict. You can put a small management company in place, let’s say with three or four people working in a management company, the Board of Directors controlling the activity done by this employees and outsource compliance, risk management, etc. You can keep the structure small and nimble,” says Lars Schlichting, Partner at KPMG Lugano.

To receive a FINMA license, all the persons connected to the management company including the board of directors need to pass a fit and proper test. What is specific to Switzerland, more than other countries, is that managers can develop a very close dialogue with the regulator.

“This is a benefit to being a small country. You can call and speak to the person handling the supervision of your license to discuss any issues or problems with the application and typically, depending on the structure of the company, you might expect the fund management application to be approved in four to six months,” explains Schlichting.

Fund distribution opportunities
From Switzerland a manager is free to manage any kind of fund, be it a Swiss fund, a European fund (e.g. a Luxembourg SIF) or an offshore fund. Switzerland has an excellent fund market for qualified investors for which the SIF, the Maltese PIF are commonly used according to Schlichting.

With respect to distribution of these funds, it is very easy if the manager intends to target qualified investors. A manager of a foreign fund can place the fund by going to speak with private banks for them without any issue.

“When you do so, you don’t need to have the foreign fund regulated in Switzerland, you don’t need the fund to be registered in Switzerland, you don’t need to have a legal representative or a distribution license. You take your fund to Private Bank X, and see if they want to buy it for their clients under an Asset Management Agreement. It’s that simple.

“Now, if you want to expand your distribution strategy – to target not only...
private banks but also external asset managers, pension funds, etc – again the foreign fund doesn’t need any registration. However, what you do need is a Distribution licence, a Swiss legal representative and a paying agent. The distribution licence is more a registration to FINMA. It does not require any supervision from FINMA, but just an audit for the distribution of the funds. The Management Company, which is supervised by FINMA, does not need such a registration. The legal representative is an appointed company that represents the said fund in Switzerland,” says Schlichting.

Schlichting says that Ticino’s biggest advantage compared to other Swiss financial centres is cost. Quite simply, the canton of Ticino is less expensive than Zurich and Geneva when it comes to rental costs, living costs, salaries etc.

Ticino’s tax regime is also attractive. There are three levels of tax in Switzerland: federal taxation (8.5 per cent), which is the same across Switzerland, canton taxation and communal taxation.

“If you look at the statistics of where management companies are usually based you will see that they are mostly located where tax regimes are attractive. In Switzerland, we have three places which are well known fiscally speaking; Pfaffikon, which is tax attractive but expensive to live there; Zurich, which is also tax attractive and also expensive; and finally, we have a lot of managers choosing Paradiso, located next to Lugano, which is very tax attractive but not as expensive. According to estimates on 2011 fiscal data, Zurich’s tax was 18 per cent, Paradiso was 13 per cent and Pfaffikon was less than 13 per cent,” comments Schlichting.

**Ongoing obligations to FINMA**

Instead of having the supervisory authorities supervising the manager directly, Switzerland has what it calls an ‘indirect supervisory system’. This takes the form of audit companies, which every year submit audit reports to FINMA.

“They ensure that the management company is fulfilling its obligations in respect to minimum capital, that the risk management processes are in place, that compliance is doing its job etc. Every year a manager needs to have this audit and all these points are then reported back to FINMA,” confirms Schlichting.

“We aren’t the biggest financial centre in Switzerland so it’s very easy to speak with the authorities to find a tailor-made solution,” says Citterio in conclusion. “The work environment is good. At the same time you have the mountains and lakes surrounding you and one of Europe’s leading cities in Milan just an hour away. Ticino offers a very attractive work, life balance.”