Guide to relocation 2011

Alternative fund managers review jurisdiction options

Regulation and investors prompt structure rethink

Is redomiciliation the answer for offshore funds?
In this issue...

03 Fund and manager domiciles in a state of flux
By Simon Gray

04 Relocation has never been so attractive
By Peter Niven, Guernsey Finance

09 Malta: speedy, efficient, cost-effective – and sun-kissed
By Simon Gray

14 Is redomiciliation the answer for alternative funds?
By Simon Gray

16 Jersey: the blue-chip option for fund managers
By Simon Gray

20 Why Luxembourg will preserve its UCits dominance
By Michael Sanders, Alceda Fund Management
Fund and manager domiciles in a state of flux

By Simon Gray

A perfect storm of factors over the past four years has upended many of the traditional assumptions of asset managers, particularly those active in the alternative investment field, about how their business should be organised. The relative merits of different fund domiciles is a long-standing area of debate, but the past couple of years have seen management firms increasingly raise questions about where they should themselves be based.

The debate has been sharpened by a number of intertwined factors stemming from the global financial crisis and economic downturn. On one hand the crisis, together with the role in it perceived - not necessarily accurately - to have been played by alternative investment funds and/or by supposedly poorly regulated and tax-opaque offshore financial centres, has prompted a raft of new regulation around the world, including measures that will impose substantial compliance and reporting burdens on managers.

At the same time, many governments are casting round to maximise their tax revenues at a time when economic activity is subdued, social transfer payments are high and rising, and banks have either received or still need substantial support from the public sector. That is often squeezing fund management firms (and their employees) at a time when the performance of many alternative asset classes is in the doldrums, investors are hesitant about committing capital and profitability concerns are again pushing some firms out of business altogether.

In this environment it’s not surprising that...
Relocation has never been so attractive

By Peter Niven

No matter whether fund managers are considering relocating personally and/or corporately, there are few better options than Guernsey. The island’s coastline of cliffs, beaches and harbour ports combines with its French influence to provide a relaxed lifestyle in a temperate climate, in an environment where there is also a thriving international finance centre, including a leading investment fund industry.

Personal benefits

Lifestyle: Guernsey combines many of the reassuring elements of UK culture with the benefits of living abroad. For example, the island is English-speaking, uses the pound sterling and is in the same time zone as the UK, but enjoys a more temperate climate similar to northern France (see box 1). In addition, there are short journey times for on-island commuting, a good range of cafés, bars, restaurants and shops, and a host of recreational opportunities ranging from yachting and water activities to sport and music.

Integration: Moving to Guernsey is made easy by the potential for seamless integration into the local community, where there is no distinct divide between the native population and new arrivals.

Tax: The standard rate of personal income tax is 20 per cent, social security is levied at 6 per cent on salaries up to GBP105,144 (from January 2012), with personal allowances of GBP9,200 (from January 2012). In addition, individuals or married couples can take advantage of various tax capping arrangements (see box 2). Guernsey is particularly attractive because there are no capital taxes, wealth taxes, gift taxes, inheritance taxes or indirect sales taxes.

Education: Guernsey provides an extremely high-quality level of schooling. There is no shortage of places, UK curriculum and

BOX 1: Guernsey in brief

- Situated in Europe between the UK and France
- Area: 24 square miles (62 square kilometres); population: 60,000
- A British crown dependency
- A special relationship with the EU
- English-speaking
- Currency: Sterling (GBP)
- Same time zone as the UK
- Transport links to both UK and Europe

BOX 2: Personal tax cap – explained

A tax cap is available that applies equally to individuals or married couples and limits their income tax liability in any fiscal year. The cap is GBP110,000 for non-Guernsey sourced income and GBP220,000 for Guernsey-sourced income.

The overall cap for an individual (or married couple) is GBP220,000, regardless of source of income. Therefore, if an individual or married couple has income over GBP1 million (both Guernsey- and non-Guernsey-sourced) then, with a flat rate of 20 per cent, the tax cap would apply and their Guernsey tax liability would be limited to GBP220,000. Any income in excess of the GBP1 million would not be taxed. If all income was non-Guernsey-sourced, the maximum tax payable would be GBP110,000. (All figures apply from January 2012)
examinations are followed, and results are impressive. Many students continue their studies at UK universities, although further courses and qualifications are also increasingly available on-island.

Housing: There are no restrictions on purchasing property but there are on occupation. Any EU national may take up residence in an open market property; local market properties are available to those qualifying by birth or period of residency, or moving to the island as a designated key worker.

Corporate benefits

Financial services infrastructure: Guernsey plays host to a finance industry with unique breadth and depth (see box 3), including an investment fund industry with particular specialisation in servicing alternatives such as private equity, property, hedge funds and funds of hedge funds as well as other niche asset classes. These providers are supported by expert lawyers and accountants, a dynamic stock exchange, world-class telecommunications and a robust yet pragmatic regulator.

Reputation: Over the past five decades the island has established a reputation as a leading international finance centre providing a wide range of products and services to a global client base at the very highest standards. Guernsey has been commended by the IMF for its standards of regulation and was among the first to be placed on the OECD ‘white list’, as well as being commended by the OECD Global Forum for its commitment to tax transparency and exchange of information.

Tax: Guernsey is reviewing its system of corporate taxation but is committed to maintaining an internationally compliant and competitive regime, including an exempt regime for collective investment schemes and certain associated entities. Currently in place is ‘Zero-10’, where all companies are taxed at 0 per cent except for banks, which are liable at 10 per cent on certain activities. There is no withholding tax on dividends paid, no capital gains tax and no indirect sales tax. Employers pay social insurance on payroll capped at a rate of 6.5 per cent on a maximum salary of GBP125,268 per employee (from January 2012).

Travel links: Guernsey’s links to the UK (both London and the wider regions) and continental Europe mean that travelling for business or to visit family and friends is quick and simple. For example, the actual flight time to and from London is usually 45 minutes, enabling day trips in either direction.

Guernsey has already attracted some high profile individuals and firms from the funds world (see box 4), and we believe that the blend of island life and a leading international financial centre provides the ideal combination for you and/or your business. Visit www.liveguernsey.com to find out more about improving your work/life balance.

BOX 3: Guernsey as a financial centre – quick facts
- 37 licensed banks with more than GBP114bn in deposits
- Investment fund business with net assets of more than GBP270bn
- An investment management and stockbroking sector with more than GBP85bn in assets
- More than 150 fiduciaries holding more than GBP350bn in assets in trusts and companies
- World leader for Qualifying Recognised Overseas Pension Schemes (QROPS)
- No. 1 captive insurance domicile in Europe; fourth in the world

BOX 4: (Re)locating to Guernsey
The most high-profile fund manager to relocate to Guernsey is Guy Hands, chairman of Terra Firma. His firm has also established a significant operation in the island, alongside other private equity houses such as EQT and Permira. Another significant player in the private equity industry, Jon Moulton, chairman of Better Capital, has bought a house in Guernsey, and his investment company is domiciled and administered in the island.

BlueCrest Capital, the third largest hedge fund manager in Europe, relocated its headquarters from London to Guernsey in 2010 and shortly afterwards investment manager and stockbroker Shore Capital followed suit when its group managing director, Graham Shore, moved to the island. He has been joined by Stephen Lansdown, co-founder of financial services firm Hargreaves Lansdown and now owner and chairman of Bristol City Football Club.

Guernsey has also attracted world-renowned names such as JP Morgan, Bank of New York Mellon, Capita and Citic to establish fund administration operations in recent years, joined by other boutique fund servicing firms such as Custom House and Alter Domus, which has a particular specialism in the private equity sphere.
fund managers are re-examining their current jurisdiction and carefully assessing the benefits that might accrue were they to move all or part of their operations to a new domicile. At the same time, individuals in the industry are examining their own situation, to some extent with tax considerations in mind, but quality of life is also high in the list of drivers.

The country that probably has most to lose in this process is the UK, as home to something between three-quarters and four-fifths of the European hedge fund management industry, depending on who’s doing the counting and how, and a dominant player also in the private equity, property and infrastructure fund businesses as well. The potential beneficiaries include a number of offshore jurisdictions that are already significant fund domiciles and/or servicing centres and that would like to attract managers as well to give their financial industries greater depth.

“At the moment a lot of fund managers are thinking about their domicile and where they want to be located themselves in future,” says Robert Milner, a partner in the corporate group at law firm Carey Olsen in Jersey. “It’s a combination of things, including the increase in the top UK income tax rate to 50 per cent, but also regulation. The EU is taking a much more active interest in the activities of fund managers, particularly in the alternative investments sphere.

“Managers are actively reflecting on whether what they are getting out of their jurisdictions is worth what they’re putting back in. A lot of the time there’s a particular spur for this thought process, which might be getting a tax bill or talking to their compliance people and realising the extent of the regulation that they will have to fall into line with in the years to come.”

Much of the manager relocation discussion over the past couple of years has identified Switzerland as one of the main possibilities for firms looking for an alternative to the UK. Several Swiss cantons are offering attractive tax deals to incoming firms and highlighting their combination of business infrastructure and asset management clustering effects together with an outstanding natural environment and high standard of living.

However, there has never been an exodus to Switzerland in the numbers sometimes touted by consultants. In addition, industry members in other jurisdictions suggest that not everyone who’s taken the plunge to move to the Zurich region or Geneva is completely happy with the outcome. “We are dealing with one firm that moved to Switzerland from London, but found they didn’t like it,” Milner says.

“There seem to be quite a number of people in that boat, and they all have their own reasons. Certain cantons made a play for fund management business, but they are not always the most exciting places. Although there is a tightly-knit community of expatriates in Switzerland, those who come to Jersey are very pleasantly surprised by the more vibrant culture and opportunities to enjoy your leisure here.”

Giles Adu, inward investment manager at industry promotional agency Jersey Finance, also believes that there has been much more talk about Switzerland than concrete action. “There has been a lot of discussion about managers are decamping to Switzerland in the media, but it’s harder to come up with a list of names that have actually gone there,” he says. “Certainly prime brokers I speak to are not reporting that any of their clients have done so.”

In addition, other jurisdictions could benefit from dissatisfaction with Switzerland’s response to the awkward regulatory position in which the country’s alternative investment management industry currently finds itself. “We are receiving a large number of queries from managers in Switzerland who are extremely exasperated with the regulator, and we are very close to signing a number of mandates from these managers,” says David Griscti, senior partner with Maltese law firm David Griscti & Associates.

The Swiss authorities are in the process of bringing alternative managers, most of which are currently self-regulated, under the aegis of the financial regulator, Finma, in
part to position the country for compliance with the EU’s Alternative Investment Fund Managers Directive when it comes into force in July 2013. Managers must be regulated in their home jurisdiction in order to be eligible for the pan-European fund distribution passport once it is extended to non-EU firms, in or after mid-2015.

However, Griscti reports that the process of putting in place the new regulatory structure is creating such dissatisfaction among Swiss-based alternative managers that a number are looking to establish a management company within the EU - which has the added benefit of offering access to the AIFM Directive passport from 2013.

“They are telling us they want to set up a permanent base within the EU and employ people here,” he says. “We see plenty of scope for Malta in this trend.”

The EU directive is an important factor in the deliberation of managers everywhere about where they should be based in the future. “We have absolutely no doubt that after the introduction of the directive, Jersey will remain an attractive place to do business,” Milner says. “Until it is finalised, we cannot say for certain exactly what advantages would accrue to those coming here, but no matter what happens, we are very confident that Jersey will be at least as appealing as staying onshore.”

Hamid Parsa, director of sales and business development at Alceda Fund Management, notes that the Luxembourg is already drafting amendments to its legislation on Specialised Investment Funds, under which more than 1,100 alternative funds have been established in less than five years. “The new SIF law shows how fast Luxembourg is in adapting to new regulatory developments,” he says. “Most management companies are now tending to set up structures in such a way as to comply with the directive. There is also more pressure from investors to have your product in a regulated domicile.”

Tim Morgan, a partner with law firm Ogier in Jersey, says there is measured confidence that the directive should play well to Jersey’s regulatory approach and seems to present few obstacles to the island being accepted as a third-country manager location. However, he cautions: “The development of the rules is still unfolding. A number of managers are confidently planning around the generalities of the directive, in the knowledge that they may have to tweak some details when it is finalised.

“The expectation is that the Jersey model, which provides substance and meets the directive’s strictures on letterbox jurisdictions, differentiates itself from domiciles where management and fund structures lack that substance. But managers that are not targeting European investors will not be forced into complying with regulation set by the EU where it would not be relevant.”

Morgan notes that while even Caribbean island jurisdictions such as the Cayman Islands and British Virgin Islands have proclaimed their readiness to welcome fund managers who want to relocate there, in practice the numbers are likely to be very small. “Simply because of their location, some offshore jurisdictions will not be competition for physical relocation,” he says. “For all their other attractions, not many managers will want to move to the Caribbean.

“There is also the question of how well suited they are physically. Once you get much smaller than Jersey, infrastructure issues become a problem. I would say there will be competition from places such as Monaco, but it is a very different type of environment. The kind of people who might go to Monaco will never come to Jersey anyway, and vice versa. It's horses for courses.”

He notes that the relocation of managers does not fit a single model but covers a spectrum ranging from the movement of an entire firm and its employees, of which Altis Partners is probably the best example, to ‘supported managers’ that rely on locally-based service providers and that can comply fully with all the regulations and structuring requirements without needing any physical relocation. “In between you may have small teams or parts of teams coming over, perhaps covering part of the governance function or the middle office, without bringing the entire business,” Morgan says.

Fiona Le Poidevin, technical director and deputy chief executive of promotional agency Guernsey Finance, points to an illustrious list of alternative investment firms and individuals who have relocated to the island. “They include high-profile private equity businesses such as Guy Hands and Terra Firma, as

Chris Casapinta, managing director, Alter Domus (Malta)

Fiona Le Poidevin, technical director and deputy chief executive of promotional agency Guernsey Finance
Malta: speedy, efficient, cost-effective – and sun-kissed

By Simon Gray

At a time when an uncertain economic environment and financial climate is forcing existing investment fund managers to rethink their tried and tested models, and newcomers to the industry are struggling to gain traction amid rising regulatory constraints and costs as well as greater investor reticence, the emergence of the Mediterranean island nation of Malta as a player within Europe’s established fund centres is providing the industry with an attractive alternative at a vital time.

With a cost base significantly lower than in Luxembourg and Dublin, which up to now have been the continent’s main centres for both traditional and alternative investments, a regulator hailed for its flexibility and accessibility, a well developed physical and technology infrastructure and a well-educated and increasingly skilled workforce, Malta is rapidly becoming a popular choice as a domicile both for funds and management companies.

The island’s near-constant sunshine and quality of life – along with efficient fiscal concessions – is a lure for industry professionals who do not need to be permanently based in Europe’s main financial centres. And the interest in Malta appears destined only to grow as the
European Union’s impending Alternative Investment Fund Managers Directive, which will come into effect in July 2013, prompts non-EU alternative fund firms to consider how they plan to access European investors in the future.

According to Bruno L’ecuyer, head of business development at FinanceMalta, a public-private initiative established to promote Malta’s international financial centre, a number of unique selling points make Malta attractive for investors, “each having a different meaning to people,” he says. “There are three key areas, the first being steadfast regulation: the strength of the institutional and regulatory framework, coupled with the regulator’s firm but pragmatic approach and, of course, accessibility.

“The second is the domicile’s agility in the market, the can-do attitude in the industry, and the efficient, dynamic and effective business environment. Being a small country in fact works in our favour. Third is the cost-competitive quality of the English-speaking skills available thanks to an excellent domestic further and higher education system, an ongoing training culture in the sector, and a highly motivated workforce with a strong work ethic.”

Andrew Zammit, managing partner of Zammit & Associates Advocates, says the law firm is seeing a lot of interest in Malta for category two investment services licences, the category applicable to investment managers. “Although this has increased on the back of the AIFM Directive, the momentum was already there beforehand,” he says. “Managers are looking favourably at Malta, especially those breaking away from larger structures to set up their own boutique fund businesses. They are more sensitive to cost but still want to be within Europe, and Malta can meet those requirements.”

The development of the fund industry over the past decade, and especially since Malta joined the EU on May 1, 2004, has attracted a broad range of fund service providers to the island. They include leading alternative and Ucits administrators but also a number of custodian banks, adding depth to a sector that already includes the ‘Big Four’ accounting and audit firms and various law firms specialising in international financial services business.

“According to the Malta Financial Services Authority, there are now more than 100 asset management firms licensed on the island, as well as around 20 fund administrators,” says Charles Azzopardi, managing director of HSBC Securities Services (Malta). “Fund managers and promoters are setting up in Malta to benefit from advantages such as the level of costs and tax efficiency, as well as the regulator’s flexible but firm approach. As Malta becomes more a domicile of choice, we have seen some big investment managers come to the island. Whatever the scale of the fund manager, it is highly probable that they will find it easier to set up in Malta than in larger jurisdictions such as Luxembourg or Dublin.”

According to David Griscti, senior partner of law firm David Griscti & Associates, interest is particularly strong among existing firms based outside the EU that may be currently facing issues with regulatory changes in their current domicile and want to be certain they are positioned to tap into the European market after 2013.

“Many managers in third countries now see the need to have a permanent base within the EU, in part because they do not yet feel confident that there really will be an AIFMD passport for outside firms after 2015, so they’re looking at alternatives,” he says. “Malta benefits from having a regulator that treats its licensees reasonably and sensibly,

“Not even during the depths of the financial crisis have managers been under so much pressure.”

Joseph Ghio, Fenech & Fenech Advocates
and in general has a mature and engaging approach to the industry.”

Alongside the island’s advantage on overheads, which are materially lower than in Luxembourg or Ireland, uncertainty about future levels of taxation is a further factor, says Joseph Ghio, a partner with law firm Fenech & Fenech Advocates. “Not even during the depths of the financial crisis in 2008 have managers been under so much pressure as a result of declining performance and profitability threatening their very existence,” he says.

“Because of our attractive fiscal environment, the issue of redomiciliation to Malta can make or break an asset manager currently established and taxed in another jurisdiction. At a time when most European governments are looking to increase their tax take and find ways of raising new revenues, considering jurisdictions where you can manage your costs, including taxes, more efficiently is therefore paramount.”

**The Malta advantage**

Malta has benefited from a substantial overhaul of its corporate law and fund regulations, undertaken in stages over the 1990s, according to Chris Casapinta, managing director for Malta at fund administration firm Alter Domus. “Our corporate law is based on that in the UK, which provides managers and investors with a lot of confidence because they recognise and understand the kind of structures used in Malta,” he says. “At a second level, there are the operational advantages of an English-speaking working environment and a sound level of education with a very good work ethic.”

The country’s location in the Mediterranean is not a handicap, Casapinta argues, because it is in the same time zone as mainland Europe. “In part because Malta is a tourist destination, there are regular flights from all over the continent,” he says. “We are just two and a half hours away from London or Frankfurt, two hours from Munich and just an hour from Rome.”

International financial services firms are attracted by the combination of a Mediterranean quality of life and an Anglo-Saxon business and work ethic, says Paul Mifsud, managing director of custodian Sparkasse Bank Malta. “In addition, the country has a very mature regulatory and legislative framework that offers fund promoters – and indeed investors – security of law,” he says. “There are no grey areas; everything is documented as part of a coherent framework, and there is also political stability. That has been a factor in the arrival of firms such as Sparkasse Bank, whose parent is based in Austria.”

Members of the industry point to Malta’s sizeable (at least compared with other island jurisdictions) and well-educated workforce, noting the range of initiatives underway to develop skills in areas where demand is greatest. “A few years ago, specialist education and training mostly consisted of seminars organised by the MFSA, but today there is a proliferation of courses and qualifications offered by local and foreign educational institutions in partnership with industry organisations such as the Institute of Financial Services Practitioners,” Ghio says.

Joe Agius, head of custody at HSBC Bank Malta, notes that a steady stream of university graduates is coming into the industry every year. “About two or three years ago, a diploma in fund administration was launched by a leading UK university, and this has proved very successful amongst industry practitioners and service providers,” he says. “In addition, we are keen to encourage younger people to gain experience in other jurisdictions.”

Casapinta says that fund managers that have opted not to outsource their administration to third-party providers have found it easy to recruit staff with the required skills, and firms always have the option of bringing people over from Dublin or other centres if they need specific expertise not available locally.

Meanwhile, earlier this year the government brought in a new tax regime designed to attract expatriates with high-end skills and capable of transferring knowledge
to local employees. Says Zammit: “The Highly Qualified Persons Regulations aim to attract highly-qualified professionals, predominantly within the financial services sector, who would be working with licensed companies in Malta and whose annual income exceeds EUR75,000 a year. They must hold certain prescribed posts such as portfolio manager, chief executive or chief investment officer.

“They are eligible for up to five years for an income tax rate of 15 per cent, compared with the usual rate of 35 per cent, and anything above EUR5m is completely exempt from Maltese tax. The government is sending a message that it doesn’t simply want an increase in the number of licensed companies if it means brass nameplate entities. They want to bring substance and know-how to Malta.”

**Easy first steps**

The process of establishing a fund or other business in Malta is relatively straightforward, and can take just a matter of weeks. “A lot can be done in a first meeting,” Mifsud says. “Investment managers or promoters can obtain quite in-depth information free of charge before they actually set out on the process of establishment. That’s an advantage because there are no research and development fees to be paid before you set up an investment management company or fund.”

A management company established in another jurisdiction can in many cases be redomiciled to Malta without losing its continuity of existence. “Malta’s Continuation of Companies Regulations, which have been in place since 2002, make it possible to transfer a legal entity structured in a similar way to local companies to Malta without losing its legal personality,” Ghio says. “It would just be a continuation of the legal personality that started in another jurisdiction.”

Whether this is possible depends on whether the original jurisdiction allows outward redomiciliation – for example, he says, Ireland does not, but Caribbean jurisdictions such as the Cayman Islands and British Virgin Islands do. “What you need in practice is that the statute of incorporation of the foreign entity allows redomiciliation outside the jurisdiction,” Ghio says. “If that is not already included, a simple amendment of the statute or memorandum of incorporation will do, and the resolution by the company to continue in Malta, then filing the necessary documents in the original jurisdiction of incorporation and in Malta to allow for that continuation.

“For a fund manager, the company would also need to be authorised in Malta. If it is coming from a European jurisdiction where the asset manager is already regulated, or an outside jurisdiction that has legislation equivalent to MiFID, the process will be easier and quicker. In the case of a company moving from the UK to Malta, it would be much faster for the Malta Financial Services Authority to issue a new licence on the back of the authorisation the company previously had from the FSA. In tandem, the redomiciliation process will be carried out with the Registry of Companies – on the day the MFSA issues the license or authorisation, the registry issues the certificate of continuation that will make it a Maltese company.”

The MFSA allows transitional arrangements to facilitate the movement of an established firm from one jurisdiction to another. “The MFSA is willing to allow the launch of a fund management business with IT back-up based elsewhere,” Griscti says. “You can have a management set-up with research and back-office activities carried out here while the other operations would still be carried out in other jurisdictions, at least temporarily until the fund manager builds sufficient capability to move other parts of its operations here.”

L’ecuyer says the long-term vision for the fund industry involves the development of clusters to make Malta a full-service domicile in every respect. “This organic development is well underway, although more work needs to be done in the area of multinational banks and custodians,” he says. “But watch this space.”

---

“Our organic development is well underway, although more work is needed on multinational banks and custodians.”

**Bruno L’ecuyer, FinanceMalta**
well as the leading hedge fund manager BlueCrest, and Jon Moulton of Better Capital has a house in Guernsey."

Le Poidevin argues that many factors are driving people to consider relocation. "There is evidence that a lot of people are unhappy living and working in the UK," she says. "They are often looking for a better work/life balance, which is a cultural shift that favours Guernsey. At the same time, from a business perspective there is a flight to quality. Managers require that the jurisdiction in which they set up businesses be robust, with a combination of good regulation, fiscal transparency and the right expertise, and Guernsey fits the bill."

Being slightly smaller than its Channel Island neighbour at 65 square kilometres and less populous with some 65,000 people is a constraint but also an advantage, she believes. "Obviously space is finite, but in some respects that's what makes the island special," she says. "We have to manage the population simply from a resources point of view, including having a designated housing market for incomers. Those who do not qualify for licences may buy an open market property."

The licensing procedure for skilled workers allows people moving their fund management businesses to relocate individual staff members to Guernsey, although Le Poidevin adds that the island also boasts a plethora of skilled local staff with specific fund expertise to call upon. She adds: "In addition, our tax cap allows high net worth individuals moving to the island to limit their personal tax liability."

Human resources are not seen as an issue in Malta, either, especially as the Mediterranean island nation has a significantly larger population than either of the Channel Islands at more than 410,000. It also shares with the Ireland of the 1990s the benefits of being able to call on a diaspora whose members have in many cases gained hands-on experience of the fund industry in other leading jurisdictions, helping it gradually build up its level of expertise in parallel with the development of its business. "Malta did not go out there with a whole marketing spree about how good the jurisdiction is, but grew gradually," says Chris Casapinta, managing director of fund administration firm Alter Domus, who himself spent more than five years in Luxembourg. "Malta has been in this business since the mid-1990s and for a long time attracted little attention. That gave us the time to build up industry knowledge and the opportunity to attract home people who had left Malta to work abroad. It means that now resources are not an issue."

Paul Mifsud, managing director of custodian Sparkasse Bank Malta, believes the AIFM directive will prompt managers to seek regulation in jurisdictions that are sympathetic to their requirements and enable them to get in business as quickly as possible. "Managers are putting people on the ground because brass nameplating is a no-no," he says. "Offices are being taken up and manned. The business has matured globally, and people realise today that risk management is not a joke, nor is corporate governance."

While Malta’s attractions as a domicile for managers include a fast establishment and licensing turnaround and modest personnel, office premises and services costs, the country’s appeal also lies in the spirit of co-operation and community within the industry, according to Andrew Zammit, managing partner of law firm Zammit & Associates Advocates. "Professional firms tend to work very closely with each other to develop a quality product," he says. "People are willing to share knowledge and solutions based on their experience. Professionals support each other and work together to improve the legal infrastructure for this type of business, and fund managers clearly appreciate this." This attitude extends to the Malta Financial Services Authority: "The accessibility of the regulator is clearly a big plus, according to our clients, the fact that they are amenable to discussions and available to go over any operational or
Is redomiciliation the answer for alternative funds?

By Simon Gray

Never has there been so much discussion in the industry about the redomiciliation of funds from offshore to onshore financial centres, especially within the European Union, in order to meet the preferences of institutional investors cagy about jurisdictions and structures perceived to be scantily regulated, to widen their potential investor base, to position them for the impact of future regulation, or a combination of the three.

As with many aspects of the alternative investment industry, information on the subject is more anecdotal than rigorously statistical. However, a series of surveys seems to point to a broad shift toward a preference for onshore fund domiciles for the establishment of new funds and the moving of existing structures to new domiciles where this is legally possible (not all jurisdictions allow companies to move out to a new domicile with no interruption of their legal personality).

One of the biggest drivers of the redomiciliation process, it is reported, is the desire of alternative managers to take advantage of the marketing freedoms available within Europe to funds complying with the succession of directives on Undertakings for Collective Investment in Transferable Securities. Since the late 1980s the Ucits regime has grown into a regulatory standard for the cross-border distribution of retail funds accepted not only throughout the 27-member EU but increasingly worldwide.

However, there is also evidence of growing interest in transforming offshore funds into onshore structures subject to greater regulation, albeit proportionate to the investor protection needs of sophisticated clients such as institutions, corporations and high net worth individuals and families – in Europe usually Luxembourg-domiciled Specialised Investment Funds, Qualifying Investor Funds in Ireland or Professional Investor Funds in Malta.

Industry members nevertheless concede that, at least for now, redomiciliation is probably the exception rather than the rule.
Fuelled by **brain power**

Jersey’s elite professionals drive world-class institutions with intelligence and acumen

In partnership with:

[Logo of Carey Olsen]

[Logo of Ogier]

www.jerseyfinance.je
For nearly a decade Jersey has been focusing its strategy for developing the financial services industry on fund domiciliation and servicing for alternative investments including property funds, private equity structures and hedge fund platforms. However, the island’s concentration of fund expertise, structuring capability and robust but flexible regulation is also increasingly attracting managers interested in relocating all or part of their business, and often themselves.

Jersey has targeted hedge fund managers in particular (although this approach has also had a successful take-up with real estate and private equity managers) because their particularly light footprint in terms of on-the-ground in-house manpower requirements fits well with the constraints of Jersey as an island covering barely 118 square kilometres and with a population of less than 100,000, according to Tim Morgan, a partner at international law firm Ogier.

The success of managed futures specialist Altis Partners since moving to Jersey in 2005 has highlighted the benefits, both professional and personal, of relocating to the island, and managers who have done the move are among its most enthusiastic cheerleaders at conferences and roadshows in London and elsewhere.

“That is the best advertisement we can get, because those people have actually been there, done that and stood in the shoes of the people who are currently thinking about moving,” says Robert Milner, a partner in the corporate group at pan-Channel Islands law firm Carey Olsen. “They have made a decision to come to Jersey, and they haven’t regretted it.”

“We take a very joined-up, integrated approach that facilitates obtaining the other permissions that you need.”

Giles Adu, Jersey Finance

The law firms active in the island play a key role in providing information to firms considering relocation (“We don’t send people bills for ‘in principle’ conversations,” Milner points out), as does Jersey Finance, the promotional body for the industry backed by the private sector and the Jersey government, which offers a one-stop shop providing information and assistance for potential incomers.

Once a firm or its principals have taken the decision to relocate, obtaining the required regulatory licences and government
authorisation can take as little as four weeks, according to Jersey Finance’s inward investment manager Giles Adu. “We take a very joined-up, integrated approach that involves one stop and facilitates obtaining the other permissions that you need,” he says.

He adds that there is not one standard model for firms relocating. “One or two managers have brought themselves over lock, stock and barrel, with probably around eight to 10 people in total. Some larger firms are interested in placing certain activities in Jersey, such as risk management, cash management and portfolio construction, and sometimes portfolio management. These businesses, which might have hundreds of people globally, can nevertheless demonstrate substance on the island as part of their governance arrangements.”

Adu says interest is particularly strong from two distinct groups. “One is hedge fund managers that have been trading for some years, who are nimble and dynamic and not necessarily huge, with somewhere between USD50m and USD1bn in assets under management. We are also seeing interest from systematic CTA managers, perhaps because they can pick up their black boxes very easily and put them down anywhere. They don’t need to be in a particular location. We have several high-profile CTAs already, and there is a word-of-mouth effect.”

**Why choose Jersey?**

Ultimately the main drivers for relocation stem from the business environment in Jersey and how it stacks up against existing and would-be alternative fund management hubs. The island benefits from a long financial services tradition coupled with the more flexible and graduated regulatory approach characteristic of the offshore world. “Our long-standing experience with banks and large financial institutions has adapted itself enthusiastically toward alternative fund managers over the past six or seven years,” Morgan says.

“Regulation has become much more focused and tailored toward service providers rather than simply to the fund product, as it used to be, which facilitates the application of appropriate regulation for each structure. Offshore regulation is very real, but it tends to be more straightforward than onshore regulation.”

**“Offshore regulation is very real, but it tends to be more straightforward than onshore regulation.”**

Tim Morgan, Ogier

This is important as managers have recognised the importance of greater sophistication in the way they structure themselves, Morgan says. “In the past a management business might have consisted of two or three people and a few spreadsheets in Mayfair, but now there is a real need for a more structured corporate governance and regulatory function,” he says.

“That ties into the way regulation works in Jersey - it is more proactive, practical and predictable than it would be in the UK, but it is also proportionate. The Jersey Financial Services Commission will take into account your client base, who the investors will be and how many of them there are. Overall there is a very pro-business environment that is particularly supportive for alternative asset managers that want to come in.”

Jersey offers a zero rate of corporate income tax for investment businesses. “There is a very straightforward, clear and favourable tax regime that is lower than in many other jurisdictions,” Adu says. “If you set up your investment management company here, your net returns are going to be higher. Because managers here can reinvest more in their businesses, they can grow a lot quicker than they would if they were onshore.”

He points out that the island’s immigration and tax regime does not favour solely high net worth individuals. “People with a targeted skill set can come in whether they are setting up a business or being employed,” he says. “They receive a licence either for an indefinite period or for an initial period, which can be very easily rolled over.”

The standard rate of income tax is 20 per cent, although high net worth individuals can negotiate private arrangements. “In some other jurisdictions the heads of large firms can do private tax deals, but employees who don’t get the same chance may face quite high tax rates,” Adu says. “But in Jersey
employees who are not HNWIs can come in as a standard-rate taxpayer, which makes it flexible for building a business."

Milner notes that Jersey does not promote itself as a cut-price option or one offering regulatory short cuts. "We are by no means at the budget end of the offshore spectrum, and people can move to other jurisdictions for lower tax bills and less onerous regulatory obligations," he says. "But Jersey is a blue-chip offshore centre, and many people are prepared to pay some extra tax and put up with regulation that is not minimal because they and their families will enjoy living here."

Jersey’s vibrant culture reflects in part its background as a holiday island, he says. "It has outstanding natural attributes and climate, and plenty of green space – not to mention a remarkable number of good restaurants. Quality of life is an important part of the argument. Here you can send your children to a very good school, enjoy yourself on the beach or the fantastic sailing in local waters, but also benefit from a well-connected airport that put you within easy reach of onshore jurisdictions."

Shorter commutes – especially for someone coming from London – also mean more time for family and leisure activities. Adds Milner: "A decision on moving to Jersey often hinges on whether people see the island as a place they can see themselves bringing up their families. One of the most important aspects when a fund manager is weighing up the pros and cons is whether their husband or wife likes it here. We benefit very much from the fact that Jersey is fundamentally a nice place to live."

The relocation process
Adu says that before they make a final decision, managers will often have come with their partners and/or children for a day, visiting various schools and potential properties in a very easy, stress-free and time-efficient way. "By the time they come here, people may have already looked at one or two other places and are reasonably serious about wanting to make a move," he says.

Once a manager has taken a decision in principle, Carey Olsen can look at the business they plan to run and the number of people who will be moving to Jersey, and provide an analysis of how they would be regulated and what consents they would need. Says Milner: "At that point we would start putting together a preliminary application and holding discussions with agencies such as the Jersey Financial Services Commission, which would be the regulator of the fund management business, and the Population Office, which decides whether people can come to Jersey and buy property."

"We would discuss with the Controller of Income Tax the tax position of the principals when they move over here, which gives them certainty about their tax treatment and insulates them against nasty surprises. They can then start searching for a home and business premises and working out their employee requirements. We can liaise with estate agents and specialised agencies to assist them with those needs. Clients are often pleasantly surprised at what they pay to set up an office in Jersey. One said they were virtually paying more in rates in their London City office than on their lease in Jersey."

By the time the business licence application has been processed by the Jersey Financial Services Commission, the housing permits should be in place and the manager ready to launch the business. "Typically the entire process, from decision to the start of operations, takes between four and six months, but it can be longer or shorter," Milner says. "The start date may be determined by a key tax deadline such as January 1 or April 6."

Adu says the regulatory authorisation procedure typically takes around four weeks, perhaps six at the outside. "The various processes can run simultaneously," he says. "You can schedule all your key meetings with lawyers, service providers, government if necessary and Jersey Enterprise, which also co-ordinates and facilitates the permissioning process, over one or two days."
In many cases it is a cumbersome legal process that may well prove a distraction to all but the largest alternative investment managers from the more pressing tasks of managing their investments and attracting new capital.

It’s also sometimes insufficiently remembered that many funds draw capital from a variety of geographical sources. Investors from Asia, the Middle East or even North America may have little interest in seeing the funds in which they place their capital subject to what they might consider unnecessarily restrictive and costly regulation in Europe, even the light-touch approach available under the SIF, QIF or PIF regimes.

As a result, in many cases what industry members describe loosely as ‘redomiciliation’ in fact consists of establishing parallel structures, usually in a European jurisdiction alongside the Cayman Islands or another traditional hedge fund domicile, offering identical or similar strategies but serving different investor groups. This can give managers the best of both worlds, but it comes at a price, in terms of the cost of running and servicing two legal structures, the required governance and administrative obligations, and greater operational complexity.

A report last year from KPMG failed to detect a significant trend of alternative funds abandoning offshore centres, although it suggested that a dual strategy involving parallel structures could help managers maximise their appeal to different kinds of investor. The study found that domiciliation had little impact on allocation decisions for 81 per cent of institutional investors, especially those with the greatest experience with alternatives, but that new investors in alternatives were more concerned about liquidity and transparency and were more likely to allocate to funds domiciled onshore.

That’s not to say that redomiciliation in the literal sense is not happening. It does exist, especially the conversion of offshore hedge funds into Ucits-compliant structures, but just not necessarily on the scale suggested by the ambitious statements of marketing departments of law firms, consultants and business development agencies in onshore jurisdictions.

Authorities and industry members in Ireland have probably been as guilty as anyone of encouraging inflationary expectations about the amount of redomiciliation activity taking place. They loudly trumpeted the likely flow of funds crossing the Atlantic after the passage of the Companies (Miscellaneous Provisions) Act 2009 in December of that year made it possible for the first time to move companies to Ireland without winding them up and creating completely new structures. Ireland’s public relation blitz provoked a certain amount of mild irritation in Luxembourg, which had had similar provisions for years.

More vocal complaints were prompted in Cayman after the Irish Funds Industry Association was quoted as saying that the hedge fund industry was drifting away from the Caribbean island jurisdiction, which is still home to more than 9,500 registered funds. Tony Travers, then chairman of industry association Cayman Finance, tartly responded that at the end of 2010, a total of just four funds had been redomiciled to the EU, according to the Cayman Islands Monetary Authority – two to Luxembourg and two to Malta.

Today Cayman industry members say the volume of outward fund redomiciliation may have increased slightly in 2011 but remains insignificant by comparison with the total number of funds domiciled in the jurisdiction and the normal turnover of fund attrition (around 5 per cent a year) and creation.

However, Ireland has scored some successes. Earlier this month the migration was announced of the BlueAlpha Global Equity Fund from Jersey to Ireland as a Ucits fund. According to law firm Walkers, which managed the redomiciliation for South African-based investment manager BlueAlpha, the key factors behind the decision included investor appetite for Ireland’s regulatory environment, the global

“The choice of relocation method will depend mainly on legal structure rather than the investment strategy or assets.”

Olivier Sciales, Chevalier & Sciales
Why Luxembourg will preserve its Ucits dominance

By Michael Sanders

When Alceda Fund Management was established in 2007, Luxembourg was already a well-recognised fund domicile, so the choice was relatively straightforward. Now, with more than 3,800 investment funds and net assets of nearly EUR2.1bn, Luxembourg is Europe’s largest centre for investment funds and the second biggest fund domicile in the world, after the US, in terms of assets under management.

In our view, the development of the Ucits framework and, more importantly, the recent introduction of Ucits IV, which came into effect on July 1, will only serve to enhance Luxembourg’s leading position.

It’s not just my opinion; I have met fund managers from all over the globe, including the US, Russia, India, Asia and the Middle East, who are all keen to set up Ucits funds in Luxembourg.

This is because Luxembourg offers a wealth of benefits. The political environment is extremely stable, and due to its location in Europe, many of the staff are multilingual – a great asset for those looking to branch out across regions and into new territories.

Moreover, Luxembourg has one of the best infrastructure set-ups for the fund management industry, such as outsourcing service providers like our own that help to set up Ucits funds efficiently. There are also a plethora of management companies, custodians, administrators, auditors and law firms.

Many of the industry’s main players are based or have offices in Luxembourg. This wealth of experience, coupled with a business-oriented regulatory environment, leave it in a strong position.

Luxembourg is tax- and cost-efficient, making it a competitive domicile in the current climate. We also feel sure that the government in Luxembourg will do what it takes to ensure it remains the leader. You can see this from the amount of international promotion that is being done by the public authorities and the private sector in the grand duchy.

A further key advantage is that the regulator and the political authorities are fast-moving, which is illustrated by the fact that Luxembourg was the first country to integrate the Ucits IV directive into the local legislative framework, in December 2010. This positive and dedicated approach from the regulator gives managers confidence in the jurisdiction.

The Ucits regime, and particularly Ucits IV, already allows funds operating in Luxembourg to reach out across the European Union (and beyond). The extension of the passporting system to fund management companies, as well as the admission of master-feeder structures to the regime, is likely to prompt firms to concentrate all their resources in a single location instead of having them spread around the continent.

Luxembourg is likely to be the obvious choice. We can foresee under Ucits IV that large master funds will be based in Luxembourg, with feeder funds established in national markets across the EU.

The worldwide reputation of Ucits funds as a seal of quality – evident in the enthusiasm for Ucits in Asian markets such as Singapore, Hong Kong and Taiwan, as well as Latin American countries and the Middle East – should ensure that Luxembourg will continue to prosper. As a market-leading independent structuring specialist, Luxembourg-based Alceda is ideally positioned to cater to this growing demand.
branding of UCITS that makes it easier to register the fund for sale in South Africa as well as in Europe, and Ireland’s favourable tax regime and lower withholding tax rates.

The Irish legislation allows a fund to re-register in Ireland by way of continuation, which allows it to retain its existing corporate identity, track record and performance data. Migrating funds may be structured as UCITS (in order to benefit from the Pan-European marketing passport) or as QIFs, which offer greater flexibility in terms of investment strategy. Walkers says the redomiciliation is only the second to Ireland involving conversion of an offshore fund into a UCITS; the majority are redomiciled as QIFs.

It has been possible to redomicile funds to Malta since 2002 under the Continuation of Companies Regulations, which allow companies to retain the same legal personality. At the beginning of last year the Malta Financial Services Authority published guidelines regarding the redomiciliation of offshore funds due to an increase in the number of managers enquiring about the redomiciliation procedures. The MFSA notes that the Maltese regime allows funds to have external administrators and custodians, unlike Ireland and Luxembourg, which require service providers to have a presence in the fund’s domicile.

According to Olivier Sciales, a partner with Luxembourg law firm Chevalier & Sciales, the grand duchy offers a choice of vehicles into which an incoming fund can be redomiciled between a UCITS, a SIF and a fund established under Part II (non-UCITS funds) of the country’s investment fund legislation. The redomiciled fund can be an open-ended or closed-ended company (SICAV or SICAF) and in some cases a contractual fund (FCP), depending on the procedure employed.

The three methods of relocating a fund to Luxembourg consist of contribution in kind of all the assets and, if applicable, liabilities of the offshore fund to a Luxembourg UCITS, Part II or SIF fund in the form of a SICAV, SICAF or FCP; redomiciliation of the offshore fund as a UCITS, Part II or SIF fund, in the form of a SICAV or SICAF only; and merger of the offshore fund into a UCITS, Part II or SIF fund as a SICAV, SICAF or FCP. “The choice of relocation method will depend mainly on the preferred legal structure rather than the investment strategy or assets,” Sciales says. “The length of the process may vary according to the nature of the Luxembourg vehicle and the relocation method.”

However, the Luxembourg fund industry has generally remained measured about the outlook for redomiciliation, and its caution is supported by a study commissioned by the Association of the Luxembourg Fund Industry from Oliver Wyman and published last month. The report predicts that the EU’s Alternative Investment Fund Managers Directive will lead to some redomiciliation of alternative funds to onshore locations in Europe, mainly by European-based managers, but that offshore centres such as Cayman and the main US fund jurisdiction, Delaware, will remain major domiciles for such funds.

The study concludes that some alternative fund managers that otherwise would have domiciled funds offshore will instead go onshore due to regulatory reasons and/or investor demand, with European onshore funds likely to be domiciled in Luxembourg or Ireland. It forecasts increasing co-domiciliation and use of clone fund structures between offshore and onshore jurisdictions, the possible emergence of one or more new offshore fund centres in Asia and/or the Middle East, and efforts by existing domiciles to improve infrastructure and reduce bureaucracy as they compete more vigorously for business.

“While it was widely believed within Europe that a consequence of the AIFM Directive and the related regulatory pressure exercised by the G20 countries would be widespread redomiciliation of funds into EU domiciles and a fall in the number of offshore funds, this report demonstrates that the offshore landscape in the last two years has remained stable,” says Alfi chairman Marc Saluzzi.

“While Europe has established UCITS as a global fund brand, we have a long way to go if we are to achieve the same in the alternative fund industry. We need to work hard to ensure that we have the right regulation and infrastructure to attract funds here. In Luxembourg we are also committed to helping fund managers and institutional investors leverage the development of regulated European alternative funds.”