

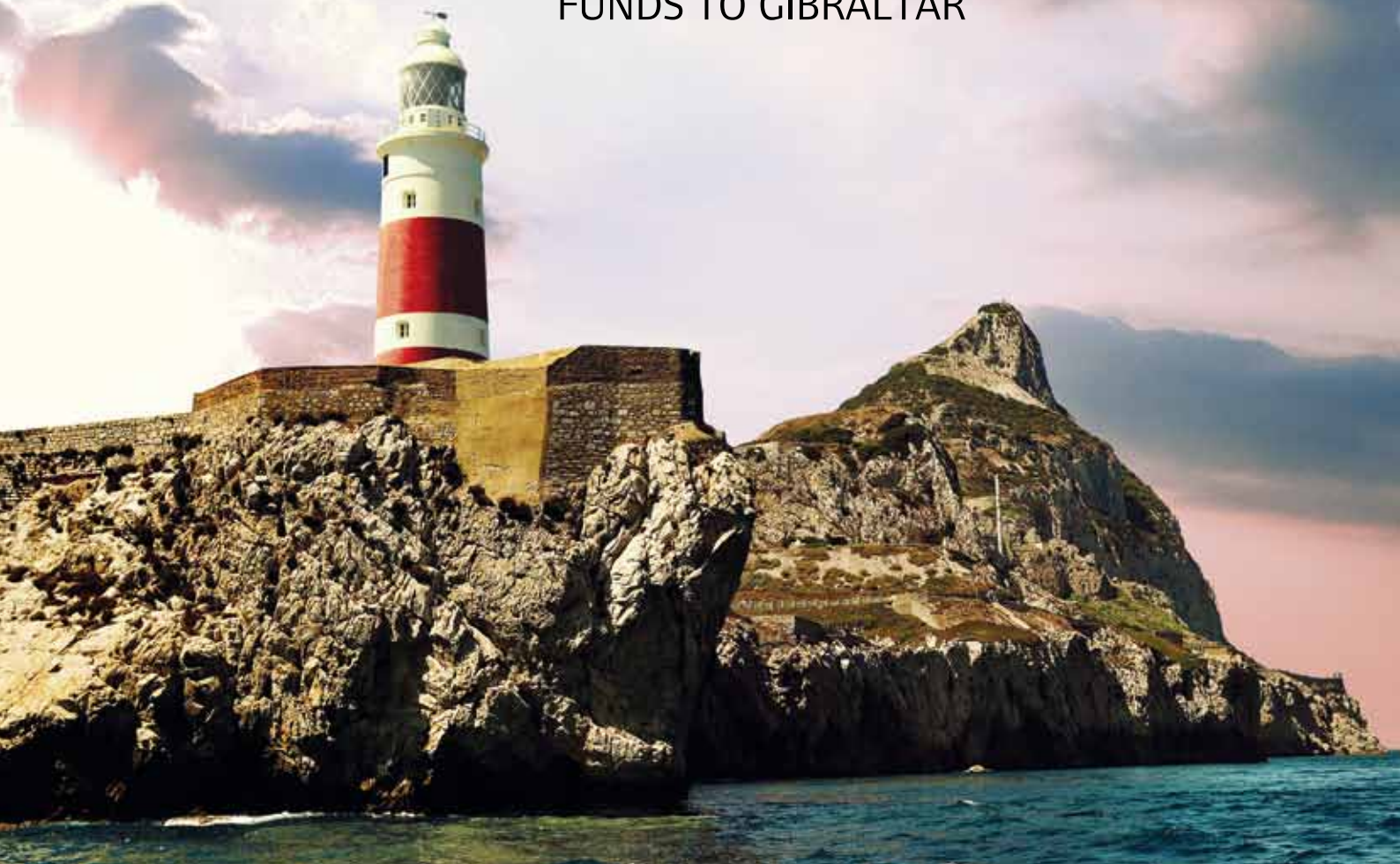


GFIA

GIBRALTAR FUNDS & INVESTMENTS ASSOCIATION

Moving to the Rock

THE RE-DOMICILING OF
ALTERNATIVE INVESTMENT
FUNDS TO GIBRALTAR





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Fund managers of alternative investment funds, which include funds such as hedge funds, property funds, private equity funds and funds of funds, domiciled in non-European jurisdictions are coming under increasing pressure to consider relocating their funds to a European jurisdiction. A recent report in the Financial Times Fund Management magazine states the number of hedge funds domiciled in the Cayman Islands has declined from 40.1% to 37.3% since the end of 2008. It is anticipated by industry professionals that this trend will continue, not just in Cayman, but also in other non-EU jurisdictions, such as the British Virgin Islands and the Channel Islands, as incentives for relocating to Europe are beginning to outweigh the benefits of staying domiciled in a “traditional” non-EU hedge fund jurisdiction. Gibraltar, a member of the European Union by virtue of the British Treaty of Accession, is one of four or possibly five jurisdictions in the EU which fund managers will want to consider due to its fiscally effective legislative framework for funds.

Gibraltar’s Mediterranean climate, on-shore location and a European Time Zone (GMT +1) make it a perfect location for managing a fund. Gibraltar is easily accessible by land and sea and also has an international airport with easy access to London. Furthermore the new airport construction project in Gibraltar promises to open additional routes. There is also a wealth of international companies in Gibraltar including

banks, fund administrators, accountants and lawyers which form part of and service the fund industry. Other factors why a fund manager would want to consider Gibraltar include political and economic stability, a professional workforce trained to English standards, no work permit restrictions for Europeans and also Gibraltar’s currency being the British pound.

The movement of funds from non-EU jurisdictions into Europe is due to a number of political, fiscal and regulatory factors. One of the central reasons is the impending enactment of the Alternative Investment Fund Managers Directive (“AIFMD”). AIFMD is a proposed EU Directive which, when it comes into force, will place substantive restrictions on fund managers marketing non-EU domiciled funds in Europe. Alternatively, for fund managers wishing to market an EU domiciled fund, AIFMD will provide for a “marketing passport” throughout the EU. This will allow fund managers the ability to market an EU-domiciled fund to professional investors throughout the EU without having to undergo extensive and time-consuming authorisation processes in each jurisdiction where it intends to market and without having to rely on national private placement exemptions. For a fund manager that seeks to raise investment in Europe, the advantage of being able to passport in the EU is almost certain to outweigh any reasons for establishing a fund outside the EU.

Another prominent reason fund managers are relocating their funds to Europe, is that investors increasingly want to invest in more regulated jurisdictions. Pension funds and family offices are putting pressure on fund managers to re-domicile their funds to well-regulated European locations as lightly regulated offshore products are becoming less attractive to savvy investors. AIFMD will require fund managers to meet transparency, reporting and organisational requirements. This means making certain disclosures to investors and to the competent authorities regarding the funds under management, potential risks of investment, fees borne by the investors and the amount of leverage used.

A further attraction to relocating to European jurisdictions, such as Gibraltar, is that fund managers will have the opportunity to convert their hedge fund to a UCITS scheme where the funds investment strategy allows for it. The UCITS Directive, like AIFMD, provides for opportunities of distributions throughout the EU. The UCITS Directive also affords significant investor protection by imposing restrictions and also heightened transparency for the sake of investors. Investors are often attracted to the UCITS brand for this reason alone.

Gibraltar has a regulatory framework for both UCITS funds and alternative investment funds, with the latter, the Gibraltar Experienced Investor Fund (“EIF”), being the

most popular product. EIFs are funds for investment by “experienced investors” and are governed by the Financial Services (Experienced Investor Funds) Regulations 2005 (the “Regulations”). Advantages of EIFs include no investment or borrowing restrictions; can be self-managed; quick to establish with competitive set-up costs; no limit to the number of investors; advantageous on-going running costs; tax efficiency; enjoy the benefits of the Parent-Subsidiary Directive; can be established as protected cell company¹; and can be listed on news reporting agencies, such as Bloomberg, and on international stock exchanges.

Establishing a new fund is not always a suitable option for an existing fund looking to change its jurisdiction. Gibraltar’s Companies Act provides for swift and efficient re-domiciliation of funds from both non-EU and EU jurisdictions. Two pre-conditions for re-domiciling are that the company’s articles allow for re-domiciliation and that the law of the jurisdiction of incorporation allows for re-domiciliation. To start the process, a fund domiciled outside of Gibraltar must apply to the Gibraltar Registrar to obtain consent to establish a domicile in Gibraltar by filing a standard form which must be accompanied by (i) a Registrar certified copy of the resolution of the company (in English or with a certified translation) regarding its re-domiciliation to Gibraltar accompanied by the name of the company as it was originally incorporated, the jurisdiction of incorporation,

Re-domiciliation to Gibraltar will allow alternative investment funds to continue without a break in their corporate life with no need to wind-up operations in their present jurisdiction. For a non-EU fund which is looking to market in Europe or wants to convert to a UCITS scheme, Gibraltar is a compelling option.

the name and address of the competent authority in the jurisdiction of incorporation, the date of incorporation, the address of the anticipated registered office in Gibraltar and amended Memorandum and Articles of Association which are in accordance with Gibraltar law; (ii) a certified certificate of good standing; (iii) evidence to show no insolvency proceedings have been commenced against the company; (iv) if the fund has received a licence from a competent authority, evidence of the competent authority's consent to the re-domiciliation; (v) a prescribed fee of £100 and (vi) a certified copy of the minutes of the EGM where shareholder consent has been obtained in accordance with the company's Memorandum and Articles of Association. If the Fund is established as a public company, the most recent prospectus, evidence of consent to the re-domiciliation of the regulatory body of the stock exchange and evidence of current members must also be provided. On being satisfied with the documents, the Gibraltar Registrar will certify that the company has established its domicile in Gibraltar and it will publish a notice in the Gibraltar Gazette. The Directors and Company Secretary must finalise the process by completing another filing which confirms the Company has ceased to be a company domiciled in the jurisdiction from which it was transferred to Gibraltar. This information must be communicated to the jurisdiction in which the company

was originally domiciled for the process of de-registration. This process may vary from state to state.

Once re-domiciliation has been completed and the certificate of re-domiciliation received, the company has fourteen days to notify the Gibraltar Financial Service Commission ("FSC"). Once this is complete, the Fund can resolve to become established as a Gibraltar EIF.. Notification to the FSC involves sending the certificate of incorporation, offer documents of the Fund, a notification form signed by the Administrator, a legal opinion by a Gibraltar lawyer, a FSC checklist and a registration fee of £2500.

The preservation of a track record and the ability to continue with all assets, liabilities, rights and obligations is an important factor when considering relocation of a fund. Re-domiciliation to Gibraltar will allow alternative investment funds to continue without a break in their corporate life with no need to wind-up operations in their present jurisdiction. For a non-EU fund which is looking to market in Europe or wants to convert to a UCITS scheme, Gibraltar is a compelling option. Prudent managers may wish to wait until AIFMD is implemented before making the move. In any case, Gibraltar's regulatory and legislative framework is in place and ready to receive those joining the exodus.

¹ A protected cell company ("PCC") in Gibraltar is a limited company which allows for the segregation of assets into separate "cells". The assets held under each cell are legally segregated from the assets held by other cells in the same structure. This allows fund managers to manage a series of sub-funds within one entity.