

HEDGE FUNDS

THE VOICE OF THE ALTERNATIVE INVESTMENT INDUSTRY **REVIEW**



Gibraltar

Solid foundation paying dividends

OVERVIEW

Gibraltar's growing ambitions for a bigger slice of the hedge fund industry pie are being matched by continued sound regulation and industry support.

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FUND ADMINISTRATION

Although the jurisdiction is keen to see at least one big-name administrator settle in the territory, other administrators continue to find work.

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Overview

Gibraltar's tactics have been to pursue slow, steady growth, taking time to build relationships with new partners. The proliferation of hedge funds and the expected continued growth of this sector of financial services could help give Gibraltar a much-needed boost in its efforts to become a mainstream EU hedge fund domicile.

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Chief Minister

Chief Minister Peter Caruana believes in being open and supportive of business without sacrificing oversight and adequate regulation. He believes hedge funds are needed and help make capital markets more efficient – something he believes needs to be recognised.

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Fund administration

Gibraltar has a number of small, local companies occupying specific niches in fund administration. It is keen to attract some of the big-name companies to the territory, hoping that will drive more business. Until then, however, the industry continues to expand, benefiting from a growing number of Gibraltar-domiciled funds.

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Legal services

The legal services community in Gibraltar is looking forward to opportunities offered by legislation coming out of the EU as well as what it believes will be a flight to quality European jurisdictions in 2010. One of the latest hot topics doing the rounds is Islamic finance as the jurisdiction explores the possibilities of Shariah compliant hedge funds.

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Building on a solid foundation

Ambitious but realistic, slow and steady. This characterises Gibraltar's approach to the hedge fund industry.

As more funds look for a well-regulated jurisdiction, Gibraltar believes it should be near the top of the list for consideration.

Gibraltar may be a tiny jurisdiction, but it is beginning to pack a punch. Slow, steady and careful progress, coupled with what many had seen as an obsession with regulation, may have made fund managers and promoters pass the state by in the past. Not so now. Like other EU jurisdictions, it is beginning to attract a lot more interest. And, unlike the

others, its UK overseas territory status coupled with EU membership is a plus point, particularly as more managers question the wisdom of the UK government in raising personal tax levels and creating what many are beginning to see as an environment that is rather hostile to free-wheeling fund managers.

Gibraltar, on the other hand, offers

the comforts of London (common law, English language and EU membership) with a Mediterranean climate, low tax and the solidity of an international financial centre with robust fund regulation but a regulator that is both approachable and willing to listen to managers and industry about adaptations and changes that may be needed.

While Gibraltar shares many of the same qualities as Malta, it is realistic about its prospects of developing a fund industry. Gibraltar's emerging funds association, known as Gibraltar Investment Funds Association, is aware that a lot of work needs to be done to get the jurisdiction on the radar of existing and new funds.

It is also realistic about its size. While it may be able to draw on a workforce based on the Spanish side of the border, space is not infinite in Gibraltar. In fact it is slowly reaching its maximum, although there are still some projects that may reclaim more land from the sea.

Already one of the most densely populated areas of Europe, Gibraltar knows space is at a premium and cannot hope to attract the large-scale operations of some of the global fund administrators.

That is one reason why the industry is likely to ask the regulator and government to consider allowing Gibraltar-domiciled funds

to have an administrator based outside the jurisdiction, as long as the administrator they choose comes from a reputable, well-regulated country.

Nevertheless, many within the reorganised Gibraltar Funds and Industry Association (Gfia) are anxious to attract at least one big-name fund administrator to the territory. They believe the presence of Capita Financial Administrators has given the jurisdiction a fillip but think the presence of larger fund administrators will help to drive fund business to Gibraltar.

At the centre of Gibraltar's growing hedge fund hopes is the legislation that launched the sector in 2005, the experienced investor fund (EIF) (article, page 13). This piece of legislation, together with the protected cell company (PCC) rules, has given the industry the foundation it needed to be attractive as a domicile.

The financial crisis has also helped boost Gibraltar's prospects. Alone in continental Europe, Gibraltar's economy has maintained its steady growth, albeit at a slower pace. However, 6% GDP growth in 2009 is an outstanding accomplishment. At the same time the jurisdiction's banking community and financial services in general have weathered the crisis well, and in fact, almost all have recorded growth with recruit-

ment continuing. Indeed, at KPMG, which only re-established itself in Gibraltar in late 2008, numbers have trebled and are continuing to grow. Legal firms, fund administrators and accountancy groups also report growth and not only retention of clients but expansion of business.

The jittery institutional investors who want to see better-regulated funds and a robust approach to the industry have seen Gibraltar as fitting the bill. Not only is the regulator, the Financial Services Commission (FSC), considered to be comprehensive in its oversight of the industry, it is also known to be approachable and open to innovation.

Regulatory direction

The FSC, led by CEO Marcus Killick, has pursued a measured and open approach to regulation as well as to the industry. Coupled with the Gibraltar government's own philosophy of encouraging financial services within a strong regulatory framework, Killick believes it is important to listen to what the industry suggests. Now with Gfia the industry has a stronger and more coherent voice. It intends to carry on working closely with the FSC to ensure new product development keeps pace with industry innovation and keeps Gibraltar competitive with other hedge fund jurisdictions without losing quality.

For his part Killick is very clear what he thinks a regulator should do and, perhaps just as importantly, when it should not meddle with the industry. An example of this is his view of the UK Financial Services Authority's (FSA) pronouncements on bonuses. "We'll do what the EU says through directive but we're not following the FSA. Philosophically a regulator should not be involved in remuneration unless it creates a risk in an organisation or a systemic risk in the system as a whole," says Killick.

He is more concerned about managers understanding risk. "Effective corporate governance is important," he says, adding that the issue was poor management and risk control. "We have a very specific, statutory role to reduce systemic risk and protect the reputation of Gibraltar," said Killick at a seminar in Geneva in 2009. "But rather than act as a brake on growth, our objectives require us to be a partner in it, complementing government and industry in developing the finance sector."

He continued: "It is Gibraltar's ability to innovate within a sound regulatory structure that will pro-

vide us with an opportunity to become a leading EU fund centre. Like so much in today's world it will be regulatory-driven." In Gibraltar, Killick says the territory was "lucky there were a number of measures in place looking at corporate governance internationally." He believes the regulator's nature and motives should be related to an understanding of the quality of corporate governance and risk management. His focus is on ensuring the licensing processes facilitate effective risk management. "Our role is not to try to run organisations or tell them what to do. It is dangerous for regulators to be too involved in approving business models. When they do that they are not concerned about regulation any more," he cautions.

He believes the proposals coming from the industry should be considered. On that front he is currently re-examining the experienced investor fund (EIF) legislation. He believes the jurisdiction has had "long enough and sufficient time" to see how the EIF worked.

Killick wants to make sure the EIF is fully compatible with the EU's markets in financial instruments directive (Mifid). For example, part of the package of measures expected to come into force some time in 2010 will clarify the definition of experienced investors among other things.

Killick agrees it is important to expand the product range and has been holding meetings with Gfia to look at "ways to enhance fund structures available". The EIF structure is highly adaptable, he says, but needs "siblings". One area recently identified by the industry is the impediments to creating Shariah compliant EIF funds.

A stumbling block centres on participation in risk and profit, something that under Shariah law needs to be shared.

One solution that is being looked at is using the PCC structure, creating a different class for the Shariah compliant part of the fund.

"The PCC is a great thing and has more international acceptance than 10 years ago," Killick says. "It is ideal for fund structures."

While no one wants to be the one to test the PCC structure in a court in a country where it is not recognised, Killick believes this particular drawback is likely to recede as more jurisdictions adopt the structure.

Another area Gibraltar has not yet developed in the way it has EIFs is a Ucits fund industry. This is likely

to change during 2010 as Ucits IV comes into play. Killick points to the changed market conditions with a switch from unregulated or "under-regulated" hedge funds into the retail Ucits model, albeit for many hedge funds as a wrapper around the more traditional fund strategies.

This option has become more popular and attractive in Europe over the past year and he expects the trend to continue. Gibraltar's fund industry hopes to be able to make inroads into this area with early adoption of Ucits IV provisions.

Killick says he agrees with a move towards early implementation of Ucits IV and wants to take the opportunity when introducing the directive to also remodel the collective investment scheme legislation of 2005 as well as the EIF. "The EIF could do with a spring clean. We want to look again at that and how we deal with closed-end funds, non-Ucits public, non-EIF and other types of funds. The industry has been very successful in the last three to four years. It has a range of flexible tools necessary to compete in the current and future markets," says Killick.

Draft decisions

On the draft EU alternative investment fund managers (AIFM) directive, Killick takes a pragmatic approach. "The uncertainty serves us well as funds and management companies consider migration and reallocation. If I were a hedge fund manager based in Cayman with a clutch of institutional European investors, relocating the business to the EU might be an option."

The trouble is that until there is a final version for the draft, fund management companies and domiciles of the funds will remain uncertain.

Killick believes that it is likely Gibraltar will need to align its current legislation to comply with whatever comes out of Brussels but believes it will be very close to what the regime has now.

He is also careful to point out that Gibraltar is required to "match" UK standards, not "narrowly follow" them. "We will look at the outcomes," says Killick. He does not agree with a more intrusive approach. "I have not seen the need to change our style of regulation in light of what happened. That doesn't mean we can ignore the need for far better regulation or that we might have to beef up our own regulation," notes Killick.

He maintains that the approachable, open-door policy he has pur-

sued works well. "We are robust where necessary," he concludes.

He does not think there will be an unregulated industry in five years. However, he has some concerns. "My major concern is that investors are not deprived of an opportunity to select their own appetite for risk and that certain benefits of hedge funds – of which there are a number – are not lost as result of the imposition of regulation," says Killick.

To back up his views that Gibraltar's fund industry will continue to expand, he is forming a separate division for funds within the FSC in 2010. "I wouldn't do that if I didn't believe there would be continued strong growth of the fund business in Gibraltar," he comments.

"If the fund industry grows beyond a certain point, we would have to adapt a different regulatory approach simply based on the scale of the industry. But we will deal with that when it occurs."

Killick welcomes the formation of the trade association Gfia and looks forward to working with it. "It would be foolish not to listen closely to industry, but we will not be led by the nose. I listen to the views of the industry because they are often correct," he states.

Generally the Gibraltar fund industry is in a buoyant mood, sensing opportunities brought about by a combination of factors: the financial crisis; a push towards better-regulated onshore EU jurisdictions for European managers and funds; and the uncertainty created by AIFM. Whatever the future may hold, Gibraltar's fund industry is confident the jurisdiction will become a main player. ■

GIBRALTAR AND THE EU

Gibraltar is a member of the EU through its status as a British dependent territory in Europe. It is the only overseas territory of the UK that is part of the EU. However, Gibraltar is excluded from the requirement to levy VAT or other turnover taxes, the common agricultural policy (CAP) and the common customs union. Otherwise all EU directives are transposed into local law. Gibraltar-licensed insurers, banks and investment companies with the consent of the Financial Services Commission, the regulator, are able to passport their services directly into EU member states without a separate licence in each member state.



Gibraltar open to reputable funds

Gibraltar's government is keen to promote the hedge fund industry and is backing a jurisdiction that is seen to be well regulated yet aware of the needs of the business world.

Chief Minister Peter Caruana, in an exclusive interview with *Hedge Funds Review* earlier in 2009, confirmed Gibraltar's commitment to the hedge fund industry. "Gibraltar's fund industry is one of the areas we have targeted for growth," he says.

While the industry at present is focused on retail and experienced investor funds, Caruana admits there is not a "huge degree of activity" in hedge funds. However he expects this to change, particularly as more managers based in the UK are told about what Gibraltar has to offer. "We think the hedge fund industry in the UK and elsewhere will be very attractive," says Caruana. He lists as plus points the fact that Gibraltar is part of the EU and is therefore regulated to EU standards. He believes access from a Gibraltar base to the rest of the EU member states through passporting will be an advantage.

One thing Caruana is adamant about is the protection of Gibraltar's reputation as an international financial centre. "This is a small place with no natural resources. The principle economic asset is our reputation," says Caruana. "Only blue chips operate here and they are coming in increasing numbers precisely because they know we have a commitment to an excellent reputation."

Gibraltar is welcoming to companies that are as concerned about their corporate regulation as the jurisdiction is, says Caruana. He also points to the reputation of the Financial Services Commission (FSC), Gibraltar's regulator, as another drawing point.

The FSC, Caruana says, is "approachable without dropping regulation and without stifling business competitiveness or the ability of business to flourish in an environment designed to do so: well regulated and closely supervised."

As a member of the EU through its association with the UK, Gibraltar has a particular challenge in making sure its voice is heard. "The only way we can make sure of this is that the UK knows our views and needs and takes these into account when formulating the UK view," he explains.

He admits this area of public administration is the most challenging. "The UK is a large place. We are small. The UK wants to be as protective of our needs as possible but in the context of greater UK interests, our views do not come out on top. To get our views reflected is a great challenge to government," notes Caruana.

Another pressing matter that affects not just the perception of Gibraltar to many outside the jurisdiction but is a direct concern to the people living there is its relationship with Spain. Although many believe relations with Spain have improved substantially and that many of the barriers and impediments to an easier co-existence have been dismantled, the issue of Gibraltar's continuing status as a British overseas territory continues to be a thorn in the side of governments on both sides of the border, as well as in London.

"Gibraltar offers a degree of political, social and economic stability

that is very high, notwithstanding the existence of the political problem with Spain," says Caruana. The repositioning of Gibraltar to a mainstream financial centre with the same regulations as the EU he believes has helped. Moving away from the brass plates jurisdiction to mainline in insurance, banking, funds, investment and wealth management was a good step, he believes. "The Gibraltar government is committed to regulatory and reputation excellence," he adds.

As finance minister, Caruana is also concerned about the impact the alternative investment fund managers (AIFM) directive being discussed in Brussels will have on the territory. Following the financial crisis Caruana says he expects a tendency for EU policy- and lawmakers to tighten regulations. "Policymakers and regulators are much more aware of what markets are doing and understand them better. Policy- and lawmakers want to make sure the statutory oversight of the market is adequate to protect consumers," says Caruana. "However, equally we do not want a knee-jerk reaction but rather a balance of interests," he adds.

"We do not want to stifle business and job creation, nor destroy jobs. We do not want to stifle financial creativity and entrepreneurs. The hedge funds are rightly concerned because there is the possibility that the baby will be thrown out with the bathwater. Yes, we need more transparency and visibility, so more understanding about what

an increasingly sophisticated and clever market is doing is needed but not something that suppresses the hedge fund industry which is a huge wealth creator," declares Caruana.

So when looking at the AIFM directive he wants to ensure the industry is not put into a straitjacket. Caruana believes hedge funds are needed and help make capital markets more efficient – something he believes needs to be recognised. "If they were thrown out there would be greater economic destruction and less creation of economic wealth," he says.

Looking at Gibraltar's own regulations Caruana believes a review of the existing legislation is necessary, particularly as the product range is increasing.

"We are trying to make sure we have struck the right balance to protect consumers and investors together with the desirability of facilitating business. Our role is not to regulate business out of existence.

"We have two objectives: business should be done and done safely and properly. In Gibraltar we have struck the right balance for hedge funds. We are determined not to overkill or under-kill on regulation but to provide a model that will be competitive, a facilitating environment for what we think is an important part of the economy. Reputable fund operators will welcome this knowing it will improve their standing without curtailing their ability to undertake business," Caruana concludes. ■




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Opportunities abound for Gibraltar fund administrators

Gibraltar has a number of small, local companies occupying specific niches in fund administration. It is keen to attract some of the big-name companies to help drive business to the territory. Until then the industry continues to expand, benefitting from an increase in Gibraltar-domiciled funds.

Gibraltar may be limited in space but it is ambitious in its desire to attract fund administrators to the territory. While there are several niche administrators operating there, the industry believes to move the jurisdiction to the next level, a big-name administrator needs to establish in order to act as a catalyst for fund development.

Meanwhile, the largest administrator in Gibraltar, Capita Financial Group, has seen its client base steadily grow since opening in the territory with the acquisition of an existing administrator in 2007.

"When I moved to Gibraltar the hedge fund sector was seen as a growth area," says Karthik Iyer, managing director of Capita Financial Administrators.

He sees the growth of Gibraltar-domiciled funds coming mostly through the popularity of the experienced investor fund (EIF) regime.

However, as a global administrator Capita is working with funds domiciled in the Cayman Islands, British Virgin Islands and Bahamas as well as looking at re-domiciling

funds from the Isle of Man and the UK.

"Our clients are widespread: UK-based, Switzerland, Austria. It is mixed with a bias towards the EU and Europe. We have a mixture of fund types, mainly hedge funds," explains Iyer. Capita in Gibraltar is focusing mainly on what it sees as medium-sized funds in the range of £30-£300 million. Iyer says administration in Gibraltar is more specialised.

"It is not like Dublin and Luxembourg. We're playing to our strengths with more and more clients coming from re-domiciles as well as start-ups usually from the EU," he notes.

He estimates Capita is picking up around one new client a month. At present the Gibraltar operation is serving around 25 funds with a total of assets under administration of \$1.3 billion.

Iyer says Capita is looking to get into the Ucits area and sees opportunities coming from Ucits IV, particularly from the passporting of management companies and the master/feeder structures.

Acknowledging that Dublin and Luxembourg have a headstart in this area, Iyer nevertheless believes Gibraltar will be able to pick up the smaller and medium-sized Ucits administration mandates.

Being a global administrator will help the Gibraltar operation pick up business, believes Iyer. He says the company is already looking at expanding into other European justifications including Dublin and the Channel Islands.

Iyer says Capita could enjoy a first-mover advantage in Gibraltar and thinks it is a particularly good move for the company to be based inside the EU.

Capita, says Iyer, will "concentrate on the fund administration services" which he says is its "bread and butter" core.

Already the company is servicing a wide range of funds, including some esoteric and exotic ones as well as plain vanilla. He believes being set up Gibraltar brings several advantages, not least of which is being in what is seen as a well-regulated EU jurisdiction.

A longer-established and well-regarded fund administrator in the territory is Grant Thornton. Established in 1995 Grant Thornton Gibraltar consists of a group of separate companies each delivering specific service lines.

Grant Thornton Fund Administration provides a range of services to the fund industry including fund set-up, fund accounting, transfer agency and client services, valuations, financial accounting and com-

IOSCO MMOU

The Financial Services Commission (FSC) has applied to become a signatory to the International Organisation of Securities Commissions Organisation (Iosco) multilateral memorandum of association (MMoU). The implementation of the MMoU is the first global information-sharing arrangement among securities regulators. The aim of the MMoU is to enhance enforcement capabilities and secure compliance with securities laws of the members' jurisdictions. The FSC has already been accepted as a B signatory to the MMoU and is seeking a signatory status.

pliance. According to Freddie White, managing director, the company has seen steady growth "as if the slow-down never happened" and believes this augurs well for the future.

Adrian Hogg, director, agrees. He is seeing an increase in "serious" enquiries as funds are beginning to launch again. Also some Caribbean and non-EU domiciled funds are considering moving to a more-regulated environment as they see being in an EU jurisdiction as insurance against any adverse effects from the proposed alternative investment fund managers (AIFM) directive.

White believes any new EU regulations are unlikely to mean substantial changes to Gibraltar's existing regulations but does say more Car-

PASSPORTING FINANCIAL SERVICES INTO THE EU

Passporting of financial services is an EU mechanism allowing companies that are authorised to provide financial services in one jurisdiction to provide them in another without the need for authorisation in this second jurisdiction. It can do this by establishing a branch or providing cross-border services.

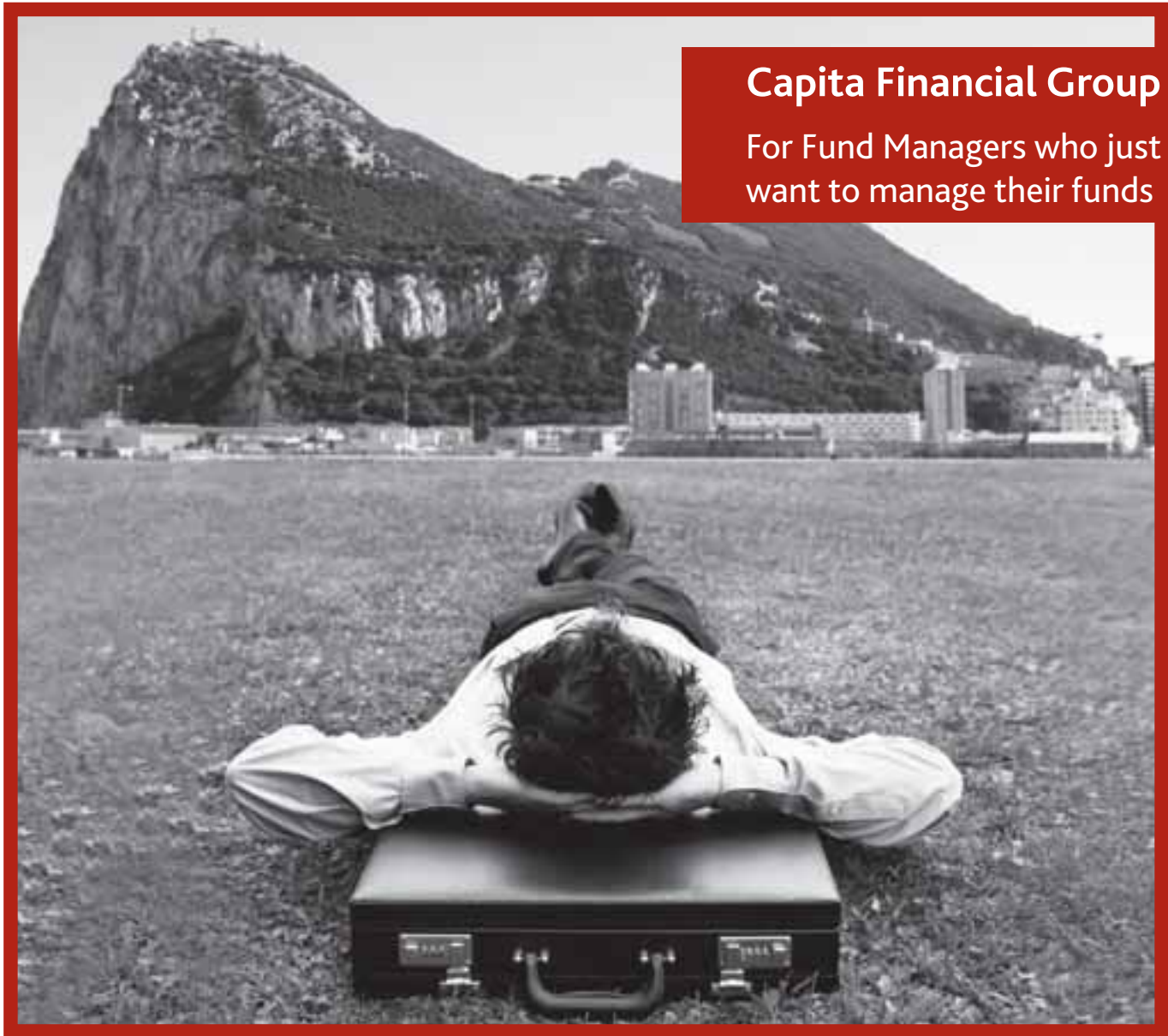
In order to do this the company is required to notify its home member state supervisory authority that it wants to provide these services in a named jurisdiction.

Companies that are authorised by the Financial Services Commission (FSC) have the right to passport their banking, investments and insurance services throughout the EU and European Economic Area.

Gibraltar is incorporated into the EU by virtue of the UK's membership. Under Article

299(4) of the Treaty of Rome, which established the European Community, the provisions of the Treaty of Rome are applied throughout the European territories for whose external relations a member state is responsible.

Within the EU there are various treaty provisions, directives, regulations and decisions that require competent authorities to communicate with each other. For these purposes the FSC is the competent authority in terms of regulated financial services activities. While, as the competent authority, the FSC would normally communicate directly with other competent authorities within the EU, Spanish sovereignty claims over Gibraltar and their consequential non-recognition of Gibraltar institutions require a slightly different process.



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Nicola Green,
Helvetic Fund
Administration

ibbean funds are approaching the company about re-domiciling. "It is a changed world out there," says White.

"Our strength is being relatively young in the hedge fund world and being a well-regulated and EU jurisdiction. The AIFM may prove an opportunity for us," he concludes.

He says the existing experienced investor fund (EIF) regime in Gibraltar, which is the favoured vehicle for hedge funds, has worked well. However, like Iyer, he is keen to see Ucits work coming into Gibraltar and believes Ucits IV, if Gibraltar is an early adopter, should drive more business towards the territory.

"An obvious theme is the opportunities from Ucits and the AIFM," he notes. Being in the EU, he believes, will be a major advantage in future.

Personalised service

Nicola Green, managing director at Helvetic Fund Administration, is equally upbeat about prospects. With assets under administration (AUA) at \$724 million in September 2009, up by over \$100 million from the end of 2008, Green has cause for optimism. She says she is seeing a lot more new funds setting up, although she admits the market has changed and there has been a lot of contraction over the last two years. Although Helvetic avoided slimming its staff, the company has lost a couple of funds through closure and liquidation. However, she now sees a real change in the market and expects the trend for new launches to continue into 2010.

"My opinion is that Gibraltar will remain a service centre mainly for the smaller funds. These, if not caught in too much legislation, should continue," says Green.

While there is a lot of talk about re-domiciling Caribbean funds to Europe, Green has seen little sign

of this being anything but talk at the moment, although she believes this will be one of the main trends in 2010. If it does happen Green believes Gibraltar will be well placed to attract these funds.

For Green the main competitive advantage of her business and other fund administrators in Gibraltar is the personalised service they are able to offer smaller funds. She says Helvetic is content to grow through word of mouth and referrals from existing clients. One trend she is detecting is the shift to administering more Gibraltar-domiciled funds. Around a quarter of the funds Helvetic services are Gibraltar EIFs. This is a substantial change of the last three to four years, although the majority of funds Helvetic services are still Caribbean based.

With more choice globally as well as within Europe, Green believes there is still room for everyone. She sees Gibraltar's main advantage as being focused on "an excellent level of service" that larger jurisdictions cannot give the smaller funds.

"For many of the other jurisdictions it is almost impossible for fund administrators to service anything under \$100 million," she says.

"Setting up in Luxembourg or Dublin can be costly. For us fund size is not a problem. We can set up and work with €10 million funds and still give them the same level of service."

Another niche administrator operating out of Gibraltar is Vista Fund

Services. In a management buyout in summer 2009 Gibraltar-based Quest Fund Administration was acquired by its management from Quest Holdings Gibraltar.

The new company trades as Vista Fund Services offering a full range of services for jurisdictions outside Gibraltar including the Cayman Islands, British Virgin Islands and Malta. According to CEO Malcolm Ruffell, AUA is around \$100 million and rising.

Like Helvetic, the smaller hedge funds are not a problem for Vista. Ruffell says limitations are more around the ability of the company to provide daily net asset values (NAVs). For Vista, monthly NAV is less of a "strain". Nevertheless, he says Vista is "fairly flexible" and is confident it can "cover anything".

"From our point of view we offer a hands-on, bespoke service to smaller funds. There is a lot of emphasis on customer service, something Dublin and Luxembourg can't offer the smaller funds. They just can't give them as much attention and that level of service," says Ruffell.

Like others in the sector he is confident of continued growth in 2010. "I think we will see steady growth of Gibraltar as a domicile. We are beginning to create an awareness of the jurisdiction and people should start considering it when launching new funds," notes Ruffell.

Another company like Grant Thornton offering a variety of services is Benady Cohen. Director Moe Cohen set up the business in 2007

with a business partner who was previously with KPMG. Cohen also comes from an accounting/auditing background having previously been with BDO Stoy Hayward.

He wants to expand his opportunities and saw the fund sector as the future. The company provides a range of services including audit and fund administration.

Through the international network of accounting organisations known as Nexia, Benady Cohen has access to a far wider client base.

With AUA of just under £80 million, Cohen, like other fund administrators, is focusing on providing a personalised service while he works to build up recognition of the jurisdiction.

The company provides a range of fund administration services including corporate administration services to offshore funds and fund accounting services.

Cohen is a strong advocate of Gibraltar's fund sector and has been working closely with Hassan's James Lasry, now chairman of the Gibraltar Funds and Investment Association, to help promote the jurisdiction.

"We're looking at promotion opportunities," he says, admitting Gibraltar is a long way behind other EU jurisdictions.

Despite playing catch up with the more established jurisdictions, Gibraltar's fund administrators are confident of increasing growth in the future, albeit tailored to the size and capacity of the jurisdiction. ■

GIBRALTAR'S FINANCIAL SERVICES CONTINUE ON GROWTH PATH

Gibraltar's financial services centre has continued to grow over 2008 and 2009, two of the toughest years it the world has seen in living memory, says Chief Minister Peter Caruana. "While other finance centres shed jobs on a large scale, ours managed a small increase of 2.3% in the year to October 2008," he told parliament in a statement in 2009.

The employment levels were broadly maintained in the first and second quarters of 2009. There are now 103 licensed

insurance operations; 63 in licensed companies and a further 40 in protected cell companies.

There are 28 intermediaries and nine managers. Gibraltar had 27 investment companies, 95 collective investment schemes, 87 licensed trust and company services providers, two pension providers and 19 credit institutions at mid-year 2009. Caruana said he was "confident that our finance centre is poised for further growth during the coming years."

FUNDS UNDER MANAGEMENT (AT END OF MARCH EACH YEAR) (£ BILLION)

	2001	2002	2003	2004	2005	2006	2007	2008	2009
Banks	5.9	5.5	5.2	5.2	5.2	6.5	6.7	7.0	7.8
Investment companies	1.2	1.4	1.0	1.0	1.4	3.7	3.6	2.8	2.9
Total	7.1	6.9	6.2	6.3	6.7	10.2	10.3	9.8	10.7

Source: Financial Services Commission.



Finding the right niche for Gibraltar

The legal services community in Gibraltar is looking forward to opportunities offered by legislation coming out of the EU as well as what it believes will be a flight to quality European jurisdictions in 2010.



The latest hot topic doing the rounds in Gibraltar is Islamic finance. The territory's legal community, together with tactical support from the Financial Services Commission (FSC), is exploring the possibilities. Leading the initiative is Joey Garcia, senior associate at Isolas.

According to Garcia the territory looked at introducing a framework for Shariah compliant financial services a few years ago, but the project was dropped. Garcia is keen to get it back on the agenda, having helped recently launch a Shariah compliant property fund using the experienced investor fund (EIF) vehicle. He and others believe there is a real possibility of making Gibraltar a jurisdiction of choice for Islamic alternative investment funds.

While within the hedge fund industry Shariah compliant funds have not had much success, Garcia believes Gibraltar may be able to introduce a mechanism that could act to reassure Islamic investors that a fund was truly compliant with Shariah law.

The idea is novel. Garcia is hoping the FSC will also find the idea workable. Working with Shariah scholars, he is looking at introducing a Shariah board as an overlay to the existing EIF legislation. The idea is for the FSC to refer any products that claimed to be Shariah compatible to the "outsourced" Shariah scholars to give its approval or not.

"This board would sign off on each Shariah product and add another layer of regulatory comfort," says Garcia. The regulatory framework still needs to be drafted and the FSC has not yet said if it would be happy with this idea, but Garcia is hopeful that Gibraltar's fund sector will soon be able to offer a workable and acceptable way to vet Shariah alternative investment funds.

Many in the jurisdiction believe if Gibraltar can find a workable framework, it will be able to attract hedge funds as well as others eager to tap into a new investor base in Europe. With significant Muslim populations in every EU member

GIBRALTAR STOCK EXCHANGE IDEA RESURFACES WITH RENEWED INVESTOR INTEREST

Gibraltar needs a stock exchange to take it to the "next level" in its development as a financial centre for the hedge fund industry, declares Rafael Benzaquen, chief executive at law firm Benzaquen & Associates.

The idea of a stock exchange for the territory is not new. The idea has been knocked around but so far has failed to gain traction, mainly, according to Benzaquen, because the right kind of model that is both sustainable and profitable has not yet been found.

While his ideas for an exchange are not quite finalised, he is optimistic that something could get off the ground in 2010. He hints money has already been committed and investors are just waiting to refine the model.

One of the problems of launching a new exchange is finding revenue streams that are sustainable. Pure listing of hedge funds, for example, is generally seen as a contracting market and one already well

covered by the Cayman Islands in the Caribbean and in Dublin by the Irish Stock Exchange.

The Channel Islands Stock Exchange has been a successful model but Benzaquen does not see room for two such exchanges for Europe.

So he is looking at some innovative models. One idea that could be gaining credence is a secondary hedge fund trading exchange. At present only a couple of companies offer secondary hedge fund trading. The practice lacks transparency and could get a boost from a more visible and easy-to-use exchange.

Other ideas concern exchange traded funds and index products. He also says the group behind the latest idea is looking at possible strategic partnerships, including links outside Europe in the Far East (Mauritius, India) and elsewhere.

His advice is to "watch this space".

state, Garcia believes there is a market for such products. In addition, following the financial crisis, he thinks more traditional institutional investors may also welcome the more ethical investment approach a Shariah compliant product offers, not least because of the absence of leverage and a more conservative approach in general to investment.

It remains to be seen, however, if the hedge fund community will be able to break into a market that has until now been sceptical of the ability of what are seen as “risky” alternative investments to be truly Shariah compliant.

Garcia is confident there is little to change in existing legislation to accommodate Islamic finance and thinks the territory may also be able to leverage off London’s growing importance as an Islamic financial centre to attract funds to the state.

Whatever happens, Garcia

is optimistic Gibraltar will continue to attract more hedge funds. Although he acknowledges there are many flaws and uncertainties still attached to the EU’s draft alternative investment fund managers (AIFM) directive, he sees potential advantages for Gibraltar. Garcia has already given presentations to Swiss clients warning of some of the negative effects the directive could have on funds and fund management companies based outside the EU.

There are risks associated with the implementation of whatever directive eventually makes it onto the statute books, warns Garcia. He thinks companies and funds based outside the EU should be preparing for worst-case scenarios.

Mark Truman-Davies, business development manager at Triay & Triay, sees opportunities for the legal profession from the EU’s other main legislation affecting the hedge fund industry, Ucits III

It remains to be seen if the hedge fund community will be able to break into a market that has until now been sceptical of the ability of what are seen as “risky” alternative investments to be truly Shariah compliant

BIG PLANS FOR EXPANDING SERVICES BUSINESS

Quay Financials is one of Gibraltar’s expanding financial services companies. Quay has taken an innovative approach to alternative fund management which has helped it develop an economies of scale model that is particularly useful for start-ups and emerging managers.

Quay Financials Investment Management, a division of Quay Financials, identifies and selects hedge fund managers. It offers a number of structural options to set up an offshore fund vehicle ideal for spin-out teams and emerging managers wanting to launch their own hedge fund.

The Quay Umbrella Fund offers investors a way to participate in alternatives. The investment management division provides services to the experienced investor fund (EIF) which has been created under the protected cell company (PCC) structure. This is the Quay Umbrella Fund PCC. Individual cells can be easily created under this and an umbrella structure used to add further funds (or cells) in a cost-effective and timely way to the platform.

The economies of scale extend to the use of service providers: fund administration is by Grant Thornton (Gibraltar) with SG Hambros as the custodian, ADM ISI as the principal broker, Deloitte & Touche (Gibraltar) as auditor and legal counsel provided by Hassans International.

In addition to the alternative

investment side of the business, Quay also has a broking division that provides institutions and professional clients with a package of optimised execution-only, advisory and full service brokerage products including direct, algorithmic and electronic trading in listed and over-the-counter securities, market information, instantaneous order execution and correspondent clearing services.

Chad Thomson, in charge of investment management and prime brokerage sales, is in an optimistic mood when looking at the future of the business in Gibraltar and the development of the hedge funds sector in particular. He says over the last year, business has picked up and he expects to be adding more funds as well as managed accounts to the platform in 2010. At the same time he has ambitious plans for providing services to brokers who are looking to relocate to Gibraltar from London.

He says Gibraltar is a “fantastic jurisdiction” and is keen, like many in the territory, to ensure the jurisdiction is being promoted as a good location for hedge funds and other alternatives as well as the various services related to the sector.

“We have big aspirations. We are very much in our infancy but we are still ambitious and are aiming to launch more services and extend existing ones in 2010,” concludes Thomson.

COLLECTIVE INVESTMENT SCHEMES (AT DECEMBER 31, 2008)

	Structural indicators		Activity indicators	
	Number	Total value of assets (£ million)	Net value of assets (£ million)	
CIS incorporated/registered in Gibraltar				
Public CIS (including funds of funds)	3	53	53	
Public CIS (excluding funds of funds)	3	53	53	
Private CIS (including funds of funds)	49	790	557	
Private CIS (excluding funds of funds)	49	790	557	
Total (including funds of funds)	52	843	610	
CIS managed in Gibraltar				
Public CIS (including funds of funds)	5	412	402	
Public CIS (excluding funds of funds)	5	412	402	
Private CIS (including funds of funds)	46	790	557	
Private CIS (excluding funds of funds)	46	790	557	
Total (excluding funds of funds)	51	1202	959	

Note: Figures for private funds include statistics for experienced investor funds. No statistics are available in respect of private funds *per se*. Statistics collated for experienced investor funds do not differentiate between funds of funds and other types of schemes. Management of schemes has been interpreted as the operation of the scheme and not necessarily the investment management of the scheme.

Source: Financial Services Commission.

EXPERIENCED INVESTOR FUNDS (AT DECEMBER 31, 2008)

	Structural indicators		Activity indicators	
	Number	Total value of assets (£ million)	Net value of assets (£ million)	
Experienced investor funds	42	786	553	

Notes: Total value of assets is the value of the underlying shares held in the fund’s portfolio together with other assets. While the net value of assets is the total value of assets less liabilities. Source: Financial Services Commission.



“I think over the next one to two years and up to as much as five to 10 years from now there will be a massive increase in Gibraltar’s fund industry”

Mark Truman-Davies,
Triay & Triay

and IV. Although the law firm is relatively new to the hedge fund sector, it has in only a couple of years grown a solid practice around the area. He believes Ucits III and IV offer substantial opportunities for Gibraltar. He reveals that Triay & Triay has some Ucits III fund launches waiting in the wings for 2010 and is gearing up to ensure it has the expertise to exploit Ucits IV. Truman-Davies is convinced that once a few Ucits funds are launched in Gibraltar the “floodgates will open”.

The Gibraltar Funds and Investment Association (Gfia) is keen to go down the Ucits IV route, says Truman-Davies. He is on the marketing committee looking at ways to promote the jurisdiction’s expertise in this area. The other two Gfia committees on technical issues and education are also looking at Ucits IV. The trade association is keen to push for early implementation of Ucits IV to ensure Gibraltar has an early-mover advantage.

Overall, Truman-Davies is in an optimistic mood. “I think over the

next one to two years and up to as much as five to 10 years from now there will be a massive increase in Gibraltar’s fund industry,” he says. “I think it comes down to what we are, where we are and what we do. It’s about costs, too,” he adds. He says the jurisdiction’s use of the English language and English law is a real plus point.

At Hassans, James Lasry, current chairman of Gfia and widely credited with leading the effort to promote Gibraltar as a hedge fund jurisdiction, is equally positive. He believes the work being done by Gfia will start paying off in 2010 and beyond as more people become aware of the services offered as well as some of the advantages of the EIF vehicle. Lasry, like many, believe the move to well-regulated jurisdictions will benefit Gibraltar.

At Hassans the fund team has increased to 12 and is expected to expand further. Like Garcia and Truman-Davies, Lasry sees opportunities in both the AIFM directive and the introduction of Ucits IV.

The use by hedge funds of Ucits

III to put a wrapper around existing or new hedge funds to make them attractive to institutional investors is a trend he expects to continue. Through the Gfia technical committee, he expects work to centre on finding ways to exploit the AIFM directive when it becomes law as well as ensuring Ucits IV rules are in place early.

The Gfia is also looking at modifications to the existing EIF legislation to bring it up to date and reflect changes in the industry as well as to include a wider range of product options. He believes the jurisdiction will greatly benefit from the timely introduction of updated EIF rules as well as Ucits IV provisions.

Meanwhile, Lasry is keen to keep the pressure up on promoting the Gibraltar. The Gfia was present at a few major industry events in 2009 and plans to continue to market itself actively in 2010. He, like many others in legal services, believes the more people know about the options available in Gibraltar for hedge funds, the more actual business the territory will attract. ■

EXPERIENCED INVESTOR FUNDS A GOOD MODEL

Gibraltar’s most popular hedge fund structure, the experienced investor fund (EIF), was created under the Financial Services (Experienced Investor Funds) Regulations 2005. An experienced investor is defined as either a corporate body, unincorporated association, trust or an individual whose net worth is over €1 million or someone who invests more than €100,000 in a fund. There is no requirement for the promoters of the fund to be licensed. It is sufficient for the fund administrator to perform the normal know your client and client acceptance procedures to be able to set up a fund in Gibraltar.

Each fund must have two directors authorised by the Financial Services Commission (FSC). If the fund is a unit trust with a corporate trustee or a limited partnership with a corporate general partner, two directors or the trustee or general partner must be FSC-authorized directors.

An EIF may appoint an investment manager in Gibraltar or in any other jurisdiction. It is sufficient under Gibraltar law that the investment manager or advisor is licensed or entitled to give investment management or advice in its home jurisdiction.

An investment manager or

advisor licence in Gibraltar is a full EU licence and can be passported anywhere within the EU. A Gibraltar investment manager or advisor must have a physical presence and staff in Gibraltar. An EIF that is open-ended must have a depository.

The fund can also appoint brokers to help with its trading activity. The depository and brokers do not need to be in Gibraltar, although in the case of protected cell companies (PCCs) there may be some advantage to having these in Gibraltar as there is greater certainty that a court there will enforce the statutory segregation of cell assets than a non-Gibraltar court which may not be as familiar with PCC legislation.

An EIF must issue a prospectus or private placement memorandum that must state the fees that are chargeable out of the property of the fund; the investment objectives; borrowing or investment restrictions and the risks associated with such investment.

An EIF must appoint its service providers, produce its prospectus and hold a board meeting to launch as a fund. No regulatory pre-approval is necessary. Within 14 days of launch, a fund must notify the FSC and submit several documents. A licence fee of £2,500 is also due. This means

there is effectively no regulatory downtime and the fund may be launched as quickly as possible. The FSC then reviews the submitted documents and may come back with questions or comments. The EIF needs to ensure it complies with EIF regulations. Breach of certain regulations requires the directors and/or administrator of the fund to notify the FSC.

The authorised directors and the administrators are expected to ensure compliance with Gibraltar legislation and corporate governance requirements. An EIF must have a fund administrator authorised and with a presence in Gibraltar.

In addition to the two Gibraltar-based EIF directors, the fund must appoint auditors that are registered in Gibraltar. There are no restrictions on borrowing or owning investments. A fund may invest in any class of investment and at any percentage.

Gibraltar funds may obtain an exemption from the commissioner of income tax on any tax on investment income. There is no capital gains tax, inheritance tax or wealth tax in Gibraltar. There is a stamp duty of £10 on the creation of share capital of a company and on any increase in share capital. There is no tax on

dividends from quoted securities or on income from trading listed securities. As Gibraltar is part of the EU, the fund can benefit from the EU parent-subsidiary directive. This means payments to a Gibraltar company from subsidiaries in certain European jurisdictions (for example, Luxembourg) will not be subject to withholding tax. There is no withholding tax on payments from a Gibraltar fund to its non-Gibraltarian investors.

The valuation methods for EIFs must be disclosed in the prospectus. There are no particular rules on valuations other than their disclosure.

It is also possible to set up a fund in Gibraltar as a PCC. PCCs can segregate their assets into cells which are statutorily protected and remote from each other in bankruptcy. This means if one cell incurs a liability, the creditors of that cell will be unable to pay their debts from assets attributable to another cell. This is particularly useful to investment managers that want to set up several funds with several strategies under one vehicle and save with economies of scale. Investors can invest in one or more cells according to their investment strategies.

Source: Hassans.



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Flight to Gibraltar EIF funds

As more investors look for safe, well-regulated jurisdictions, Gibraltar appears an attractive alternative within the EU. For the accounting and auditing practices based in the territory, the growth in the experienced investor fund vehicle is shifting work away from more traditional domiciles.

Despite an increased interest in Gibraltar's vehicle of choice for hedge funds, the experienced investor fund (EIF), the majority of audit and accounting work flowing to the locally based accounting and auditing firms is still firmly weighted in favour of the Caribbean jurisdictions and others in Europe. However, that could be changing.

Deloitte has seen a "steady stream" of work from new launches. According to partner Stephen Reyes and senior manager Jon Tricker, this has given the firm more confidence in the future for the jurisdiction. The scale of audits is still firmly weighted towards domiciles outside Gibraltar, but that is slowly changing.

As the general hedge fund industry begins to pick up with more launches planned in 2010, Deloitte expects to receive more Gibraltar-domiciled fund work as managers and investors in Europe shift towards the safety of EU jurisdictions. Both Reyes and Tricker believe Gibraltar will begin to benefit from this shift.

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At the same time Reyes expects managers based in Europe to start looking closer to home for new launches and may even look to re-domicile existing Caribbean-domiciled funds. Fear of what the EU's new rules regarding alternative investment fund managers will finally contain are adding to the uncertainty. Many are opting for what is increasingly being seen as a safe bet: an EU jurisdiction.

Tricker confirms Deloitte in Gibraltar is still working on audits primarily of funds based in the British Virgin Islands and the Cayman Islands but concedes that as more EIFs are launched it is likely they will start to become more numerous. Moves within the jurisdiction to start attracting more Ucits fund work could also bring increased domestic fund work to the accounting community.

Both say the combination of low tax, a well-regulated environment within the EU and the flexibility of the EIF should attract more funds in future.

At PricewaterhouseCoopers (PwC) senior manager (assurance) Kristian Menez agrees that Gibraltar-domiciled fund work comprises the minority of audit work. Menez estimates PwC has around a fifth of the local market in Gibraltar and confirms a shift towards local fund structures. Like Deloitte, he thinks the financial crisis is encouraging a flight to EU jurisdictions

for European-based managers and investment companies. He believes Gibraltar remains cost-effective in relation to Luxembourg and Dublin without loss of quality from service providers.

For 2010 Menez expects to see a growing number of Gibraltar-based funds replacing Caribbean work. "I do expect more work to come from the Caribbean but the increase in the Gibraltar side will be where our

growth will come from in future," predicts Menez. He also expects that once Ucits legislation is in place, Gibraltar may also start to attract more work from that segment of the market.

GIBRALTAR ON OECD TAX INFORMATION EXCHANGE WHITE LIST

With the signing of tax information exchange agreements (TIEAs) with Finland, Greenland and the Faroe Islands in October, Gibraltar now has a total of 13 agreements and has been transferred by the OECD to the white list.

The white list is a list of countries that have signed 12 or more TIEAs, criteria decided by the Group of 20 and the OECD in April 2009.

Gibraltar, like most other countries, and in order to avoid discrimination against its finance centre, waited for the establishment of a level playing field before actively seeking partner countries with which to sign TIEAs. This happened in March when Switzerland, Luxembourg and Austria, as full members of the OECD, accepted the tax information exchange principle.

In April 2009 the Gibraltar government declared a November 20 target date to sign at least 12 agreements and move onto the white list.

Gibraltar focused on signing TIEAs with the principal countries



of the OECD. In a statement the government said it was committed "to the underlying principles of the commitments that we gave. Therefore, in addition to these 13 signed agreements we have already negotiated and initialled several more, which will be signed when the other countries complete their internal constitutional procedures for doing so. Our offer to sign a TIEA with whatever country wants to sign

one with us remains open."

The government has also publishing a bill for an Act of the Gibraltar Parliament to put these agreements into practice. The Act is expected to be law by the end of 2009.

Gibraltar has to date signed TIEAs with the US, Ireland, Germany, New Zealand, Australia, UK, Denmark, Austria, France, Portugal, Finland, Greenland and the Faroe Islands.

GIBRALTAR ECONOMY COMES THROUGH CRISIS WITH SUSTAINED GROWTH

As Europe's economies struggle to pay off high debts and concern is expressed over sustainability, Gibraltar appears to be an island of stability and economic prudence.

"Throughout the crisis the Gibraltar economy has demonstrated a robustness and resilience that reflects its solid foundations, the benefit of the extent of diversification that it enjoys for one so small, and the fruits of our policy focus on high standards and high-quality operators in our principal economic sectors," said Gibraltar's Chief Minister (the equivalent of a prime minister) Peter Caruana to the local Chamber of Commerce in mid-November 2009.

"We have worked hard to achieve this solidity and stability and the success of our economic model is best tested in hard and stressful times for the rest of the world. I think it has passed the test with

high marks," he added.

Gibraltar's economy has continued to grow with over 8% GDP growth in 2008 and at least 6% in the year to March 2009. All current indicators point to continued significant growth for the remainder of the 2009/10 financial year ending March 2010.

Caruana says the country is "conservatively and very provisionally" estimating at least 5% growth which would produce a GDP of around £900 million at March 31, 2010.

"It is a measure of the extraordinary success of our economy that it has grown by 145% since 1996. That is an average of over 11% a year," he notes.

Assuming just 5% growth over each of the next two years, Gibraltar's economy will have nearly trebled in size in just 15 years.

Unlike most of the rest of Europe,

Gibraltar's government's fiscal position remains strong despite the global recession. Government revenue from its principal sources remains strong. The government is predicting a significant overall budget surplus for 2009/10 of at least £15 million or around to 5% of the government's total expenditure, and 1.75% of GDP.

Gibraltar's public debt is used only to fund investment, not recurrent expenditure. Its public debt remains low; at March 2009, the government's net public debt stood at 7.3% of GDP.

"Gibraltar is not just having a relatively good global recession and financial crisis, but is further positioning itself well to move into a significant new growth phase when the global economy and markets recover," declares Caruana.

A new 10% across-the-board corporate tax rate will be introduced in the next tax year. This

rate is already available for new business start-ups. Caruana expects Gibraltar's "conventional but competitive tax model coupled with Gibraltar's many other attractions as a business location" to fuel further economic growth and development of business.

The government is committed to Gibraltar's focus on selective licensing, high but reasonable standards of regulation and guarding its jurisdictional reputation. Although the government does not undertake public investment programmes to stimulate or grow the economy, there is a significant pipeline of projects to provide an important boost to many sectors of the economy which are expected to add significantly to growth.

Caruana says Gibraltar continues to study the "desirability, viability and feasibility" of a new locally owned bank.



At KPMG director Michael Harvey is also positive about potential growth in Gibraltar, mainly through the EIF vehicle. The office was re-established in May 2008 with only three staff and is now up to eight and growing.

Harvey believes the jurisdiction should be "very appealing" with its low tax and clear regulation. Like other firms he thinks once Gibraltar updates its Ucits III rules and gears up for Ucits IV, the jurisdiction can expect more business. For Harvey, Gibraltar is a "powerful" story and expects to see more business coming out of the territory.

Michael Harvey, director of the KPMG office in Gibraltar, is equally positive about the prospects for its hedge fund industry. "We're keen to get on the Ucits bandwagon," he says, adding Ucits IV should also "open some doors for us".

"What happens over the next 12–18 months could be important,"

he says in reference to legislation expected from Brussels.

David McGarry, managing director, KPMG Audit, based in the Isle of Man but responsible for the Gibraltar office, is equally positive. He believes Gibraltar occupies a unique space. It has the characteristics of a major jurisdiction within the EU but with a cost advantage not matched by Dublin and Luxembourg. He also believes the EIF is an ideal vehicle for funds and expects to see an increase in the numbers of launches using the structure in 2010.

For him the AIFM directive is "good news" and expects Gibraltar to gain a great deal from any tightening of hedge fund rules.

In future McGarry expects Gibraltar to continue to attract quality business. Its small size means it will be limited to some extent but says the territory is far from close to capacity. ■

BARCLAYS WEALTH LOOKING AT EXPANSION PROSPECTS IN GIBRALTAR AS IT EYES HEDGE FUND INDUSTRY

Barclays has been in Gibraltar for over 120 years. Without a doubt, things have changed considerably. For Franco Cassar Lopoerto, director (wealth intermediaries and corporates) and Paul Wharton, vice president (wealth intermediaries) at Barclays Wealth, the best may be to come.

Following a substantial reorganisation of the wealth side of the business in Gibraltar, Cassar Lopoerto is looking to move into hedge funds. "The jurisdiction is not yet a significant player in funds," he says, adding that Gibraltar's finance industry is moving to the next stage of development.

While the success of the fund sector may not have been as quick as many wanted, it is gathering momentum.

"We'll never be a large player. We only need a small slice of the pie for it to make a difference here," notes Cassar Lopoerto. He believes it is hard to single out any unique selling point for Gibraltar as a fund jurisdiction.

Like other EU domiciles, companies based there can take advantage of passporting rights as well as the speedy implementation of EU directives. What the jurisdiction can offer, he says, is strong links to the City of London, English-speakers and mainly English-qualified accountants,

lawyers and other service providers. Barclays Wealth plans to tap into the growing hedge fund market and will leverage the bank's international network to provide a range of services. He thinks Gibraltar has the potential to be a significant jurisdiction.

According to Wharton the Gibraltar operation is looking to provide custody services on the Rock, something that will be even more important as Ucits business develops.

A lot of work, he concedes, could be outsourced internationally but he points to the Barclays platform which he says is "secure and reliable".

For both the opportunities are wide. Historically, they admit, Gibraltar has now been in the "beauty parade" as a jurisdiction for specific services like custody and depository services.

Wharton also sees scope for extending prime brokerage services to the jurisdiction, too, over the next 12 months, particularly if the hedge fund sector continues to grow.

Cassar Lopoerto says he is actively looking at funds and what kind of services they will need in the next 18 months and beyond. With the Barclays global footprint, Cassar Lopoerto says he is confident he will be able to provide most services from Gibraltar.

"We're keen to get on the Ucits bandwagon... What happens over the next 12–18 months could be important"

Michael Harvey,
KPMG

GIBRALTAR MAINTAINS LOW TAX REGIME

Despite attempts by the European Commission to question Gibraltar's low-tax regime, the government's proposed changes to the Income Tax Act and corporation tax is likely to make the state even more attractive, particularly for disgruntled high earners resident in London, hopes Chief Minister Peter Caruana.

The exempt-status tax regime that Gibraltar has been running must end by December 31, 2010.

"In order to maintain Gibraltar's socio-economic prosperity the corporate tax rate needs to be as competitive as it is compatible with government's revenue needs," noted Caruana in his budget speech to parliament at mid-year 2009.

"Without this there would be large-scale loss of economic activity and job losses. Existing corporate tax payers (who presently pay 27%) will be huge windfall beneficiaries of the need to eliminate tax-exempt status and its replacement with a low rate for all companies," he added.

The new rate will be 10%. Energy and utility providers – including electricity, fuel, telephone service and water providers – will pay a 10% surcharge, bringing it up to a rate of 20%.

Most exempt-status companies currently hold exemption certificates that are valid, subject to repeal of the legislation, for 25 years.

The government believes it should honour this commitment and not remove the tax benefit provided by the exemption certificate until midnight on the December 31, 2010.

The flat corporate tax rate of 10% becomes effective on January 1, 2011, which means that the rate will change to 10% from the 2010 rate halfway through the year. Therefore companies that are

presently tax exempt will have to pay tax at 10% for the second half of 2010/11 only.

Those that are not tax exempt will pay at the corporate tax rate in force for the first half of the year and tax at 10% for the rest of the year.

The preceding year's basis of assessment will be abolished in favour of an actual basis. Commencement provisions will also be abolished and there will be transitional rules.

The basis of taxation will not change and will continue to be on an accrued and derived basis, effectively a source-based system.

There will be wide-ranging and far-reaching anti-avoidance provisions.

Until the new regime comes in, the corporate tax rate has been reduced from 27% to 22% (effective July 1, 2009).

As a further transitional measure and to encourage business start-ups, the government also introduced a start-up rate of 10% from July 1, 2009. This applies to any business established in Gibraltar after that date.

Tax will be assessed on an actual-year basis.

Personal taxation

The government also introduced a dual-tax system under which taxpayers may choose between two different systems for their tax. One, known as the allowance-based system, is the tradition model. The other is the gross income-based (GIB) system, under which the tax rates are lower but the taxpayer is entitled to no allowances.

The tax rate under the GIB system is: 20% on the first £25,000 of income; 30% on the next £75,000; and 38% on the remainder. This is considerably less than the tax imposed in other jurisdictions and most notably the UK.

What they say about Gibraltar



Désirée McHard, managing director, BDO

For McHard the biggest hurdle to significant fast-track growth of the jurisdiction is the lack of a large fund administrator like Citco. While she believes having Capita in Gibraltar will bring benefits, she says there is a need to spread the word to a much larger audience – something a big-name administrator would do. “We need to get the word out that we are a serious fund jurisdiction,” she comments. McHard believes the main advantages of Gibraltar are its onshore location and EU membership. She also expects benefits to flow to Gibraltar following the introduction of Ucits IV. She sees this as the future and a real benefit for the jurisdiction. The industry is in close contact with the regulator looking at ways to ensure early adoption of Ucits IV. Another area she thinks may give Gibraltar an edge over other EU jurisdictions is if it can start attracting Shariah compliant products and particularly alternatives and hedge funds. She points to the multicultural nature of Gibraltar’s society. “This is an advantage when looking to attract Islamic products or ethical investment products in general,” she concludes.

Joey Garcia, senior associate, Isolas

Gibraltar is not proactive enough as a jurisdiction, says Garcia. “We are not on the radar as much as we should be,” he says. Gibraltar needs to promote the jurisdiction as a package including things like re-domiciling, prospectuses for schools and the lifestyle to expect. “We have an advantage with our situation and climate. We offer tax benefits,” notes Garcia. He believes high-income managers may be tempted to come to Gibraltar, particularly from a higher-taxed London location, if they know what is available. He points to the territory’s English-speaking population and common law as other plus points. He believes the future is going to be positive for the jurisdiction, particularly with the introduction of Ucits IV. “There is a big effort to gear up for Ucits IV, especially the biggest change which will be the domicile of the fund not being the same as the management company. Through Ucits IV, funds can make use of the master/feeder or similar structures. And Gibraltar offers quick redomiciling as well as passporting throughout the EU for the management company,” he concludes.



Kristian Menez, senior manager, assurance, PricewaterhouseCoopers

Gibraltar is “very well placed” believes Menez. He points to the flexible fund vehicles available, particularly experienced investor funds (EIFs) and protected cell companies, which have been used to good effect as an umbrella fund allowing different types of strategies in one structure. “It is a creative structure and one of the more innovative,” he says. Like McHard, he sees a future for Shariah compliant products. “Geographically we are part way between the Middle East and Europe. We are multicultural and generally welcoming to people coming into Gibraltar. There is potential for growth in this area,” he says. In addition Menez says there is potential growth, pointing to the expertise and experience of professional services present in the jurisdiction. However he, like Garcia, says Gibraltar needs to “get the message out there” that it is a jurisdiction open for business and welcoming to the hedge fund industry.



Moe Cohen, director, Benady Cohen

Cohen points to EU membership as one of the biggest plus points for the jurisdiction. He thinks because Gibraltar is still growing and flexible in its approach, it has the ability to offer more personalised and cost-effective services to funds. For funds looking to establish a track record in the EU, he believes Gibraltar is an obvious choice. "Funds benefit from the way the regulator in Gibraltar is responsive and open to consider innovation and offer solutions," says Cohen. He wants to see the experienced investor fund product base expanded with the ability to attract other types of investors. Cohen wants to see a more diversified product offering moving away from white label private placements. He sees possibilities in the introduction of Ucits IV. "The combination of a proactive fund industry association and support the government provides, together with a responsible regulator, should equal success for Gibraltar," declares Cohen.

Adrian Hogg, director, Grant Thornton

Hogg believes Gibraltar's push into Islamic finance is well timed. He says Gibraltar's structures are responsive to Shariah procedures and sees no problems in following mandates that follow these strictures. He says having Shariah products is just "one more string to the bow" of what Gibraltar can offer and sees no impediments to introducing more of the same. He points out that legislation is already flexible enough within the experienced investor fund to accommodate Shariah compliant products, although some tweaks to the finer details may be needed. Looking at the European market, Hogg says his company is seeing a lot more managers, particularly from Switzerland and London, looking twice at Gibraltar. He believes they are looking at the options of where they can be based. Hogg says Gibraltar offers an ideal package, pointing to the leisure and lifestyle attractions available across the border in Spain.



Karthik Iyer, managing director, Capita Financial Administrators

For Iyer, Gibraltar is a niche market and is still emerging as a hedge fund jurisdiction. While the territory has solid governance and a good regulatory foundation, he says it is still at an early stage in its development. Gibraltar, says Iyer, offers a cost-effective alternative within the EU but in a common law environment. Other advantages, he says, are its low tax, accessibility (it is not an island) and culture which spans several different ethnic backgrounds. At a time when investors are demanding increased transparency, Iyer believes Gibraltar offers both good governance and high-quality services. Like others, he believes the industry needs to work harder to get the jurisdiction known to a larger client base.

Michael Harvey, director, KPMG

"The industry has moved on and is now pulling together actively to try to develop the fund industry," declares Harvey. The fund industry in Gibraltar is "getting its act together" and is more organised in how it approaches government as well as promoting itself outside the territory. Like others he sees the experienced investor fund (EIF) as a flexible and solid fund vehicle. The EIF together with the protected cell company legislation offers a flexible, niche product to the industry. While he concedes the jurisdiction "still has a long way to go" he believes it is capable of being a competitive domicile in Europe. Although it is physically small, he believes Gibraltar offers value for money coupled with quality services. "There are definitely opportunities for expansion," concludes Harvey.



Gibraltar at a glance

FACTS

Name of territory: Gibraltar
Status: self-governing part of UK, claimed by Spain
Population: 28,875 (Jan 2008 estimate)
GDP (PPP): \$1,066 million
GDP per capita: \$38,200
Currency: Gibraltar pound (GIP)
Capital: Gibraltar Town
Area: 5.8 km² (2.25 sq miles)
Major languages: English, Spanish
Vernacular: Llanito
Major religion: Christianity
Ethnic groups: Gibraltarian (of mixed Genoese, Maltese, Portuguese and Andalusian descent), other British, Moroccan and Indian
Life expectancy: 76 (men), 82 (women)
Main exports: Petroleum (re-exports), manufactured goods
Internet domain: .gi
International dialling code: +350
Time zone: CET (UTC+1); CEST (UTC+2)
Motto: *Nulli Expugnabilis Hosti* (No Enemy Shall Expel Us)
Patron saint: Bernard of Clairvaux and Our Lady of Europe

HOLIDAYS 2010

Gibraltar observes the same official holidays as the UK. In addition, National Day and dates with reference to the British Commonwealth are also observed.

New Year's Day: January 1
 Commonwealth Day: March 8
 Good Friday: April 2
 Easter Monday: April 5
 May Day: May 3
 Spring Bank Holiday: May 31
 Queen's Birthday: June 14
 Late Summer Bank Holiday: August 30
 Gibraltar National Day: September 10
 Christmas Day: December 27
 (in lieu of Saturday 25 December)
 Boxing Day: December 28 (in lieu of Sunday 26 December)

MEDIA

Television and radio services in Gibraltar are operated by the Gibraltar Broadcasting Corporation (GBC). GBC operations are overseen by a board, modelled on the BBC's board of governors. Radio and TV stations based in Spain and broadcasts for British forces in the territory can be received.

Print: *The Gibraltar Chronicle* (daily); *Panorama* (online news); *Insight Magazine* (monthly)

Television: GBC Television (operated by GBC)

Radio: Radio Gibraltar (operated by GBC); BFBS Radio Gibraltar (for British forces)

Source: BBC

GEOGRAPHY

Gibraltar is a peninsula situated at the southern end of Spain opposite the Moroccan coastline. It has a population of about 30,000.

Gibraltar's climate is relatively temperate. It is not at all uncommon for up to 90 days without rain during the summer months when the sun shines approximately 10.5 hours daily. Summer lows might reach 13°C but most days the temperature will hover nearer the high 30s°C.

Two winds embrace Gibraltar, each bringing different meteorological phenomena. The first comes from the east and brings a humidity factor that sometimes crowns the rock with a cloud of its own. The second, usually coming from the west, brings clear, dry weather.

The territory covers 6.843 km² (2.642 sq mi). It shares a 1.2 km (0.75 mi) land border with Spain. On the Spanish side is the town La Línea de la Concepción, a municipality of Cádiz province. The part of Cádiz province next to Gibraltar is Campo de Gibraltar, literally Gibraltar Countryside.

The shoreline measures 12 km. There are two coasts (sides) of Gibraltar: the east side, which contains the settlements of Sandy Bay and Catalan Bay, and the west side, where the vast majority of the population lives.

Gibraltar has negligible natural resources and few natural freshwater resources, limited to natural wells in the north. Until recently Gibraltar used large concrete or natural rock water catchments to collect water.

Gibraltar is one of the most densely populated territories in the world, with approximately 4,290 inhabitants per km². The growing demand for space is being met by land reclamation. Reclaimed land currently comprises approximately 1/10 of the territory's total area. The Rock itself is made of limestone and is 426 m high. It contains many tunnelled roads, most of which are operated by the military and closed to the public.

ARMS OF GIBRALTAR

BARBARY APES

The apes are a species of tailless monkey called Barbary macaques. These Macaques can be found in Morocco and Algeria, with those in Gibraltar being the only free-living monkeys in Europe today. There are about 160 monkeys living in Gibraltar in two main areas. About 20 of them at Apes' Den can be observed closely. However, the largest pack resides in the Great Siege area.

Behaviour (things to look out for)

Putting: a warning to keep your distance.

Tooth chattering: used to calm down and make-up after confrontations

Grooming: keeps fur clean and is a social activity. They spend about 20% of their day grooming each other. At stressful times adults may grab an infant, hold it between them and tooth-chatter. This behaviour, unique to Barbary Macaques, is thought to help keep peace in the group.

The Arms consist of a triple-towered castle with a golden key granted to "the most loyal city of Gibraltar" by Ferdinand and Isabella of Spain in 1502.

The words usually found underneath the Arms are Montis Insignia Calpe (Badge of the Rock of Gibraltar).

These words also appear on the colours of the Suffolk Regiment, which obtained permission to have the Arms of Gibraltar inscribed on their colours in recognition of the gallant part they played in the Siege of Gibraltar.

The motto *Nulli Expugnabilis Hosti* (No Enemy Shall Expel Us) also occasionally appears under the Arms of Gibraltar.

It was copied from the official seal of the colony. This consists of a picture of the Rock with these words underneath.

FLAG OF GIBRALTAR

The flag of Gibraltar is an elongated banner of the arms of Gibraltar, granted by Royal Warrant Queen Isabella of Castille on July 10, 1502.

The flag is described in documents from then as: "An escutcheon on which the upper two thirds shall be a white field and on the said field set a red castle, and below the said castle, on the other third of the escutcheon, which must be a red field in which there must be a white line between the castle and the said red field, there shall be a golden key which hangs by a chain from the said castle."

According to ancient and heraldic traditions much symbolism is associated with colours. The colours on the Gibraltar flag represent peace and honesty (white) and hardiness, bravery, strength and valour (red).

The flag of Gibraltar has two horizontal bands of white (top, double width) and red with an emblem of a three-towered red castle in the centre of the white band.

Male macaques live for about 15–17 years and females for 18–22 years. Every birth and death is recorded and each ape is given an official name at birth.

In 1915 the government provided the army with money to feed the monkeys and reduce their roaming and marauding. Responsibility has now reverted back to the government of Gibraltar.

The monkeys often supplement their diet with a few wild plants and can sometimes be seen foraging in the early morning.

They are used to people so you can get close to them. Some may permit people to approach them but do not touch them. Monkeys will bite if frightened or annoyed.

They spend over 30% of their day interacting with visitors but are still semi-wild animals. They need time to rest and take part in other 'monkey activities', advises the tourism authority.



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Whatever or wherever the challenge, we can provide the solutions.

The development of the fund industry in Gibraltar has witnessed a tremendous growth with many funds being domiciled in this rock-solid and well-regulated offshore environment. Hassans has been at the forefront acting as advisers to both the Gibraltar Government and Fund Managers.

Hassans can be your perfect partner in setting up funds whether Private, Experienced Investor Funds, Non-UCITS Retail Funds, UCITS Funds or Protected Cell Companies. You could say we're fundamental to any fund being set-up in Gibraltar.

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