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New Swiss Collective Investment Scheme Regime
Cooperation Opportunities with Gibraltar

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Introduction

Gibraltar has historic business ties with Switzerland and this is likely to grow as a consequence of the implementation of the Alternative Investment Fund Managers Directive **("AIFMD")** on 22 July 2013. Gibraltar has already implemented AIFMD in the form of the Financial Services (Alternative Investment Funds Managers) Act 2013.

Gibraltar is within the Europe Union **("EU")** and accordingly managers based in Gibraltar can be licensed under AIFMD which will enable them to utilise the EU-wide marketing passport. Gibraltar has other advantages, referred to below, making it a jurisdiction of interest for many alternative fund managers looking at the EU market.

AIFMD was a key motivator to the recent changes in the collective investment scheme regime of Switzerland, which came into effect on 1 March 2013 with implementation of The Collective Investment Schemes Act and related Ordinance **("CISA")**.

The aim of CISA is to bring the Swiss fund management industry in line with the latest international regulatory standards and in particular AIFMD. Switzerland is a third country under AIFMD, and within AIFMD there are third country provisions which may enable EU fund managers to delegate services to Swiss based managers but only if they are regulated and appropriate cooperation agreements are in place between the Swiss regulatory authorities and their EU counterparts. Under the old regime, certain Swiss fund managers would not have been able to meet these requirements.

New Swiss Regime

In essence, CISA has meant that all Swiss fund managers, regardless of the domicile of the funds they manage, are now subject to licencing and regulation by FINMA. Certain exemptions are available, amongst them a partial exemption for smaller fund managers (the definition of which is drawn from AIFMD) of collective investment schemes.

Amongst other matters, CISA also introduced new requirements relating to safekeeping for Swiss custodian banks and also relating to the distribution of funds within or from Switzerland. It is understood that nearly all distributors of funds in Switzerland will now need to be authorised in some manner, which includes distributors of funds to "qualified investors".

Cooperation Opportunities with Gibraltar

As mentioned, Gibraltar has numerous business links with Switzerland. Many Gibraltar funds have Swiss based managers, most such funds being "Experienced Investor Funds" ("EIF") aimed at institutional investors, being funds available for investment by experienced investors only, who in short are defined as persons whose ordinary business includes acquiring investments, and includes persons who invest a minimum of €100,000 into the fund, or €50,000 if the investors have been professionally advised. An EIF has no investment or borrowing restrictions, and is an ideal format for a European hedge fund. Further details in respect of EIFs can be provided by Hassans upon request.

To some extent the new Swiss regime is now closer to the regulation applicable to fund managers in the EU, including Gibraltar. Having said the above, Switzerland is not a member of the EU and in that regard Gibraltar is fundamentally different to it. It is that EU membership in particular that may be of interest to fund managers in non-EU countries, as being a means to gain access to the EU market. How exactly can Gibraltar be of use to such managers?

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Firstly, larger Swiss fund managers, who will have to comply with CISA and be regulated by FINMA, will have significant regulatory constraints largely equivalent to those which are currently imposed by AIFMD. However, an AIFMD license is passportable across EU member states unlike the Swiss equivalent. A Gibraltar AIFMD licensee will automatically be able to provide cross border services to EU alternative investment funds. There are a number of service providers already in Gibraltar who are accustomed to providing both the technical services and personnel in Gibraltar for Swiss based managers to establish an AIFMD licensed manager in Gibraltar. Gibraltar is particularly attractive because of it's well organised collective investment scheme and financial services laws and regulatory system (which can readily be understood by new entrants into the jurisdiction), the familiar English basis of its legal system, its efficient and approachable regulator, and its low corporate tax rate (10%) that is nevertheless fully EU tax compliant.

Secondly, Gibraltar will be interesting to Swiss fund managers with assets under management at the smaller end of the scale that are largely exempt from the new licencing rules under CISA and who also fall under the small AIFM regime under AIFMD. A small AIFM is one that manages funds below €100 million for leveraged funds and €500 million for unleveraged closed ended funds (the "**Threshold Amounts**").

The small AIFM exemption rules allow small AIFMs to manage EU funds provided they fall below the Threshold Amounts, and this will not change from 2015. This is not the case for non-EU managers of EU funds who are above the Threshold Amounts, as by 22 July 2015 they will need to be authorised by a "member state of reference" and consequently by then be substantially AIFMD compliant.

Smaller fund managers intending to manage small AIFs may find some EU jurisdictions more attractive to them. In the largest alternative fund jurisdictions, which includes Luxembourg for example, even prior to the implementation of AIFMD, investment managers based outside those countries were coming under increasing scrutiny by the relevant member state regulator where it proposed managing an EIF equivalent fund. We are aware of cases where managers have waited many months for such approval.

The Gibraltar EIF regime does not require a local investment manager. It simply requires the investment manager to be licensed in the place where it is based. So long as that is the case and there are no jurisdictional concerns, the Gibraltar regulator will have no issue with a non-Gibraltar manager. In addition, for a small fund manager managing an out of scope EIF there is no requirement to have a Gibraltar custodian bank, whereas the Luxembourg and Irish equivalents require a local custodian. Local administrators are typically required as well, however in Gibraltar there is a procedure whereby internationally renown administrators outside Gibraltar may administer an EIF.

An alternative approach for a smaller Swiss manager will be to set up a small AIFM management business in Gibraltar, which will also be able to manage small AIFs and market them in the EU through the private placement regime. However if in due course such manager decides to become a full in-scope AIFM, it has the ability to "opt-in" to full in-scope AIFMD by means of a regulatory approval process which should be a comparatively smooth process bearing in mind the pre-existing experience in Gibraltar that such manager would have gained by that time. Once fully in-scope, the Gibraltar AIFM could delegate aspects of its business to its Swiss operations should it so choose.

There has always been plenty of scope for cooperation between Switzerland and Gibraltar, and that will only increase further as a consequence of AIFMD.