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Fund Management in Offshore Jurisdictions

An Overview of the Considerations for Asset Managers seeking to set up outside the UK

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What drives the decision?

- Tax implications for fund and investors
 - Need tax-neutral jurisdiction for the Fund
 - OECD 'white-listing': now covers virtually all significant offshore jurisdictions
 - Certain countries 'black-list' many offshore jurisdictions under local tax laws
 - Availability of double tax treaties may be important, eg where withholdings are problematic
- Legal/regulatory factors
 - Need credible jurisdiction with flexible laws/regulations
 - Range of structures available: open-ended companies, limited partnerships, trust-based structures

A vertical image on the left side of the slide showing light trails from a highway at night, curving upwards and to the right. The trails are white and yellow, set against a dark background with some green foliage visible at the bottom.

What drives the decision?

- Other considerations
 - Investor preferences: eg civil law over common law, or vice versa
 - Time zone and other practical issues
 - Quality, experience or specialisms of local service providers
 - Convenience for board meetings (NB management and control issues)



Where to set up – the main contenders

- Cayman Islands / BVI
 - Tried and tested
 - Don't need local fund administrators: need corporate secretarial/trust administration assistance
 - Flexible rules for private fund structures
 - Cayman investment managers may not require to be regulated (this can be an advantage or disadvantage)
 - Currently unclear how AIFM Directive will impact on non-EU managers



Where to set up – the main contenders (cont.)

- Jersey / Guernsey / Isle of Man
 - Flexible rules for private fund structures
 - Institutional acceptability
 - Looking to attract management firms as well as fund vehicles
 - Generally need local administrators
 - Managers generally require to be regulated



Where to set up

- Bermuda
 - Rather more regulated than Cayman/BVI
 - May need local administrators (can get case-by-case exemptions)
- Ireland / Luxembourg
 - Subject to regulation pursuant to MiFID: 'passporting' opportunities vs greater degree of regulation
 - Access to double tax treaties, if needed
 - Need local custodians/administrators
 - AIFM Directive likely to add further layer of regulation (expected to be adopted mid 2010)



Where to set up (cont.)

- Malta / Cyprus / Gibraltar
 - EU jurisdictions: regulatory pros and cons as for Ireland and Luxembourg
 - Relatively new entrants: less developed for funds business
- Switzerland / Monaco
 - Non-EU, therefore outside scope of MiFID
 - Switzerland doesn't regulate fund managers (if not marketing to Swiss public), though managers can submit voluntarily to regulation
- Hong Kong / Singapore
 - Well-established with good service providers
 - Singapore relatively unregulated for managers of non-retail funds



Where to set up (cont.)

- US
 - Generally, fund managers not currently subject to SEC registration (provided fewer than 15 clients)
 - However, this seems set to change