



## The EU's delegation delusion

Brexit will expose the Alice in Wonderland world of delegation in EU fund management. We will find out if the investment manager is really just another delegate to the fund, as at present, or not.

Whilst the UK was part of the EU this question was of little more than academic interest. Delegation worked well enough for everyone. Europe's investment managers were able to be where they wanted to be, which in most cases is London (over 80% of those running alternatives are in the UK) with their funds were domiciled elsewhere. In reality it didn't really matter who was delegating to who.

But now that ESMA is looking to change the EU's delegation rules, because of Brexit, it might very well matter. In theory the directors of the fund, based in places like Dublin and Luxembourg, 'delegate' the portfolio management function to a team in London, whilst they are responsible for everything else – including the risk management.

Whole industries have grown up in Ireland and Luxembourg around a framework that is intended to demonstrate that there is real substance to the fund structures in these jurisdictions. *Continued on page 8 >>*

## How much substance needed?

To avoid tax problems managers are told they will need more substance in the jurisdictions where their funds are domiciled in future. But what and how much substance will be needed? Is substance, like beauty, in the eye of the beholder?

The substance issue in offshore fund jurisdictions is shooting up the agenda and appears likely to be one of the big themes of the year. In order to avoid being placed on its blacklist back in December the EU has stated that offshore jurisdictions have made commitments to improve their substance (and their transparency too). The EU has said it will 'introduce substance requirements' this year. But no one yet knows that these will be.

On top of the EU's ongoing review of offshore jurisdictions there is BEPS. To avoid falling foul of BEPS funds will be required to demonstrate that they have real substance in the jurisdiction where they are domiciled. For the alternative fund management industry (the long only side of the business is exempt) the critical point is to be able to show that their funds are not seen to be letter box entities and that they are not domiciled in a particular jurisdiction to avoid tax.' *Continued on page 12 >>*

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Make cheque payable to:  
IFI Global Ltd.  
10 Arthur Street  
London EC4R 9AY

For additional information please contact Tamara Sims at [sims@ifiglobal.com](mailto:sims@ifiglobal.com)

IFI Global Ltd, 10 Arthur Street, London EC4R 9AY Tel: +44 (0) 207 220 9077

ADI is published by IFI Global Ltd, 10 Arthur Street, London EC4R 9AY Tel: +44(0)207 220 9077

Editorial & research enquiries:  
**Simon Osborn** e-mail: [osborn@ifiglobal.com](mailto:osborn@ifiglobal.com)

Directory, event and subscription enquiries:  
**Tamara Sims** e-mail: [sims@ifiglobal.com](mailto:sims@ifiglobal.com)

IFI Global Ltd. Registered Office: Greyfriars Court Paradise Square Oxford OX1 1BE Registered in England: No.7648308