

Gibraltar Funds and Managers

A guide to setting up in Gibraltar

Second Edition

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Opening remarks

I am delighted to provide a short introduction to this GFIA Guide which provides an excellent overview of the funds and investment industry in Gibraltar, and I also take the opportunity to thank Benjy Cuby and the editorial team for their work in putting the Guide together.

Gibraltar continues to offer a robust framework for funds and managers seeking an entry point to Europe. Whether prospective clients are based in Switzerland, Hong Kong or the USA, there are a wide range of solutions available from the Gibraltar. This Guide provides an overview of our industry and will be useful to market participants seeking a greater understanding of Gibraltar from a funds and investment managers perspective.

We have also been on the forefront of AIFMD developments in Gibraltar since the publication of our First Edition, and although the burden of introducing such legislation can be heavy, we expect to continue to see benefits moving forward. That is not to say that we expect to stop moving forward and the development of our Small AIFM regime, National Private Placement Regime and Exchange for the listing of Collective Investment Schemes will be something that we look forward to updating you on in future editions.

Gibraltar continues to have one of the most user friendly fund regimes in the European Union, without compromising on the robustness of regulation. As the only remaining alternative funds jurisdiction in the European Union to allow for the pre-authorisation launch of an Experienced Investor Fund, we are the jurisdiction with the greatest speed to market for new funds products.

GFIA continues to be positive on the outlook for the development of our industry, and our position as an alternative fund domicile offering an entry point to the European Union.

Joey Garcia

Chairman, Gibraltar Funds & Investments Association

Foreword by the Hon. Albert Isola MP

GFIA is an active and important Association in the promotion and development of the Gibraltar Funds sector and I always welcome their considered input when contemplating legislative changes in this area. I believe this second edition of GFIA's very successful guide to setting up in Gibraltar is a further example of the knowledge and expertise that is readily available in Gibraltar within this sector.

The guide has become the definitive source of information for those wanting to learn more about our growing funds and asset management sector. It is also used by Gibraltar Finance's senior executives, when meeting and presenting to fund lawyers, prime brokers, consultants and other professionals.

Gibraltar is a well regulated, EU compliant, transparent and an internationally-cooperative jurisdiction with access to the EU single market in financial services. Our proposition is offered in a modern environment with low personal and corporate tax, high quality infrastructure and a lifestyle that, taken together, creates a compelling combination.

Our Experienced Investor Fund (EIF) regime continues to grow and the pre-authorisation launch mechanism of EIFs gives them the advantage of enjoying unrivalled speed to market within the EU. The Alternative Investment Fund Managers Directive (AIFMD) was transposed into Gibraltar law on the 22nd July 2013, which together with our EIF regime will continue to position Gibraltar as the EU domicile of choice for funds and investment managers.

Hon. Albert Isola MP

*Minister with responsibility for Financial Services
HM Government of Gibraltar*

Introduction to Gibraltar

Gibraltar is a British overseas territory that was ceded to the United Kingdom under the treaty of Utrecht in 1713. Gibraltar is a peninsula adjoined to Southern Spain and can be accessed by foot, car, aircraft and boat. It is approximately 6.8 square kilometres in size and has a population of 30,000 people. The official language is English, but Spanish is also widely spoken.

Gibraltar is a self-governing jurisdiction with parliamentary elections held every 4 years. The elected parliament assumes responsibility for all aspects of running the territory including justice, taxation, education, health and policing. Gibraltar is self-financing with the United Kingdom's remit limited to defence and foreign policy.

Gibraltar is the only British jurisdiction in continental Europe. The legal system in Gibraltar is based on the English common law, the principles of equity and Gibraltar Acts of Parliament. Much of Gibraltar's legislation follows English law practice and procedure with certain variations to suit local conditions. Gibraltar's court system is in line with that in the United Kingdom. Gibraltar has its own Supreme Court for both civil and criminal jurisdiction and a Magistrates' Court. Appeals are heard by the Gibraltar Court of Appeal which is composed of three English judges who regularly sit in Gibraltar. A right of further appeal lies with the Judicial Committee of the Privy Council in London. Gibraltar lawyers train in the United Kingdom either as barristers or solicitors.

In 1973 Gibraltar became a member of the European Union by virtue of Article 353 (3) of the Treaty of Accession and is therefore subject to EU legislation. Gibraltar, however is exempt from VAT, the Common Agricultural Policy and the Common Customs Union. As a

territory within the EU, Gibraltar licensed financial services firms have access (passporting rights) to the single European market in investment services, banking, insurance and reinsurance. As is the case with other EU jurisdictions, Gibraltar is required to transpose into law EU directives, such as the Markets in Financial Instruments Directive ("MiFID"), directives relating to Undertakings for Collective Investment in Transferable Securities ("UCITS") and AIFMD. Gibraltar is fully up to date in the transposition of EU legislation.

The economy of Gibraltar is based on a broad range of industries. Gibraltar's strong and growing financial services sector is underpinned by a tradition in banking, insurance, investment and servicing the private client. Tourism is also one of the pillars of the economy. In recent years Gibraltar has positioned itself as the premium domicile globally for online gaming, attracting many of the leading operators in the sector. Given its unique strategic location at the entrance to the Mediterranean, Gibraltar also enjoys a thriving ship bunkering industry. The currency of Gibraltar is Sterling, with Gibraltar Pounds being issued at par.

Direct flights connect Gibraltar with London (Heathrow, Gatwick and Luton), Manchester and Birmingham. A new airport terminal was opened in 2012 increasing capacity and providing the opportunity for flights to other European centres. In addition, Malaga and Jerez airports situated in southern Spain are approximately an hour's drive from Gibraltar, providing easy access to most European countries, North Africa and North America.

Over the years Gibraltar has transitioned into an "onshore" financial centre, complete with signed Tax Exchange Information Agreements with major global economies and white listed by the OECD. More recently, an Intergovernmental Agreement was signed between the United States of America and Gibraltar to improve International Tax Compliance and implement FATCA (Foreign Account Tax Compliance Act). In addition, Gibraltar has successfully built and maintained a controlled and regulated business environment.

The cautious and guarded approach fostered in Gibraltar has proven mission-critical for the jurisdiction. In recent years corporate governance and regulatory control have become increasingly relevant across the EU and the global business community. Gibraltar embarked on this path by focusing early on good corporate governance and cultivating a workforce that is professional, knowledgeable and approachable.

When visiting Gibraltar the investment business service providers and the regulator can be visited all in one day. Gibraltar's closely controlled environment is central to its business model. Participants in Gibraltar's investment and fund business work hard to protect the reputation and integrity of their business, and by doing so, create an environment that allows for controlled growth.



Overview of Gibraltar's fund industry

Gibraltar has emerged as a popular alternative jurisdiction for investment funds and their managers, offering robust fund legislation, favourable tax advantages within an EU framework, efficient regulation, the flexibility of a small jurisdiction, quality infrastructure and European "passporting rights" for investment firms. The combination of Gibraltar's accessibility, European time zone, UK standard infrastructure, low crime rate as well as its Mediterranean climate and lifestyle, has positioned Gibraltar as a particularly attractive jurisdiction for investment funds and their managers.

Gibraltar's funds and investments infrastructure has developed over the past decade. During this time Gibraltar has become home to a broad spectrum of domestic and international firms, including banks, fund administrators, accountants, investment managers, stock brokers, corporate service providers, auditors and lawyers who together comprise Gibraltar's fund services industry. Gibraltar also presents political and economic stability, a professional workforce trained to UK standards and full employment rights for EU/EEA and Swiss citizens.



The Government of Gibraltar has been a consistent supporter of the domestic funds and investments industry since the early years of the industry's inception. The Government has adopted a commercial and user-friendly approach, often partnering with industry in presenting the jurisdiction to international fund practitioners. Government support has helped position Gibraltar at the forefront of dynamic innovation in the sector and as one of Europe's premier jurisdictions for the establishment and operation of alternative investment funds.

Gibraltar's financial services sector, which includes the fund and investment industry, is regulated by the Financial Services Commission ("FSC") which was established in 1991. The FSC regulates the administration and promotion of registered collective investment schemes and has a department that deals solely with the supervision of funds. The FSC maintains high regulatory standards and, whilst modelled on the UK's Financial Conduct Authority, it also benefits from the flexibility inherent in a small jurisdiction. Entities regulated in Gibraltar are able to work directly with the regulator when the need arises.

As a member of the European Union, Gibraltar benefits from EU Directives such as MiFID, Parent Subsidiary Directive ("PSD"), the Interest and Royalties Directive ("IRD"), UCITS Directive and AIFMD. Firms regulated to provide investment advisory or management services under MiFID are able to passport their services into other EU jurisdictions under their Gibraltar license. Gibraltar firms have enjoyed passporting rights in respect of investment services for several years. This enables providers of investment services to operate in other EEA member states based on the authorisation granted to them in Gibraltar by the FSC. While this is the case for similar managers domiciled in other European territories, Gibraltar's EU-compliant low cost and low tax environment, supported by established brand name service providers, presents a compelling opportunity for the informed fund manager.

Gibraltar's tax laws are central to its position as a thriving fund domicile. A new Gibraltar tax regime, launched in January 2011, has maintained the previous status quo such that any income received by a Gibraltar fund which is accrued and derived outside of Gibraltar will not be taxed in Gibraltar. This tax regime has now brought Gibraltar in-line with modern onshore financial centres.

Gibraltar's flexible funds legislation provides for a variety of fund products, ranging from small unregulated private schemes to regulated professional funds for experienced investors and UCITS retail funds.

A significant step forward in Gibraltar's development as a fund domicile jurisdiction was the introduction of the Experienced Investor Fund ("EIF") regime in 2005. The popularity of the EIF has been an important contributing factor to the advancement of Gibraltar's

fund industry. A revised EIF regime was introduced in 2012 to build on the progress achieved through the previous legislation. EIFs currently established in Gibraltar are a diverse assortment of open-ended and closed-ended funds with asset classes ranging from standard tradable securities to property, private equity, venture capital, fund of funds and other alternative investment classes.

Over the past decade the funds industry in Gibraltar has matured considerably, drawing on experience from international clients and professionals, as well as developing substantial home-grown expertise. Investment funds are today one of the pillars of Gibraltar's finance sector, along with insurance, banking and private client services. Gibraltar's size and the seamless communication between industry, the regulator and Government, have enabled it to develop into what is arguably the premier experienced fund regime in Europe and certainly the regime with the greatest flexibility and fastest time to market, presenting a healthy balance between flexibility on the one hand and investor protection on the other.

Gibraltar presents a unique offering to funds and their managers:

- Established EU jurisdiction for a wide range of investment funds
- Well-developed fund regime, including UCITS, Experienced Investor Funds and private funds
- High supervisory standards, supported by an approachable regulatory environment for fund managers
- Unique offering for asset managers, combining quality of life with fiscal and legislative stability
- Fully AIFMD and MiFID compliant, with passorting rights across the EU
- Professional and internationally recognized fund and investment expertise
- Specialist jurisdiction for European master feeder fund solutions



Setting up a fund in Gibraltar

The formalities, required parties and the process involved in setting up a fund in Gibraltar will depend upon the type of fund sought, its proposed investment activities, the legal entity required (often driven by tax considerations) and the method and extent of the intended marketing.

Gibraltar's fund legislation does not provide for different regimes for open-ended and closed-ended funds. For example, EIFs established under the EIF Regulations 2012, and private schemes, established under the Financial Services (Collective Investment Schemes) Regulations 2011 ("CIS Regulations 2011"), can opt to function as open-ended funds, closed-ended funds, limited partnerships or unit trusts. EIFs can additionally establish themselves as protected cell companies. UCITS may only operate as open-ended funds and funds established in accordance with the Prospectus Act 2005 can only function as closed schemes.

There are no specific registrations or filings which need to be undertaken in order to differentiate between open-ended or closed-ended funds. However the FSC requires that, in the case of an EIF, prior notification is made where the planned EIF's name contains certain words such as "fund" or "capital".

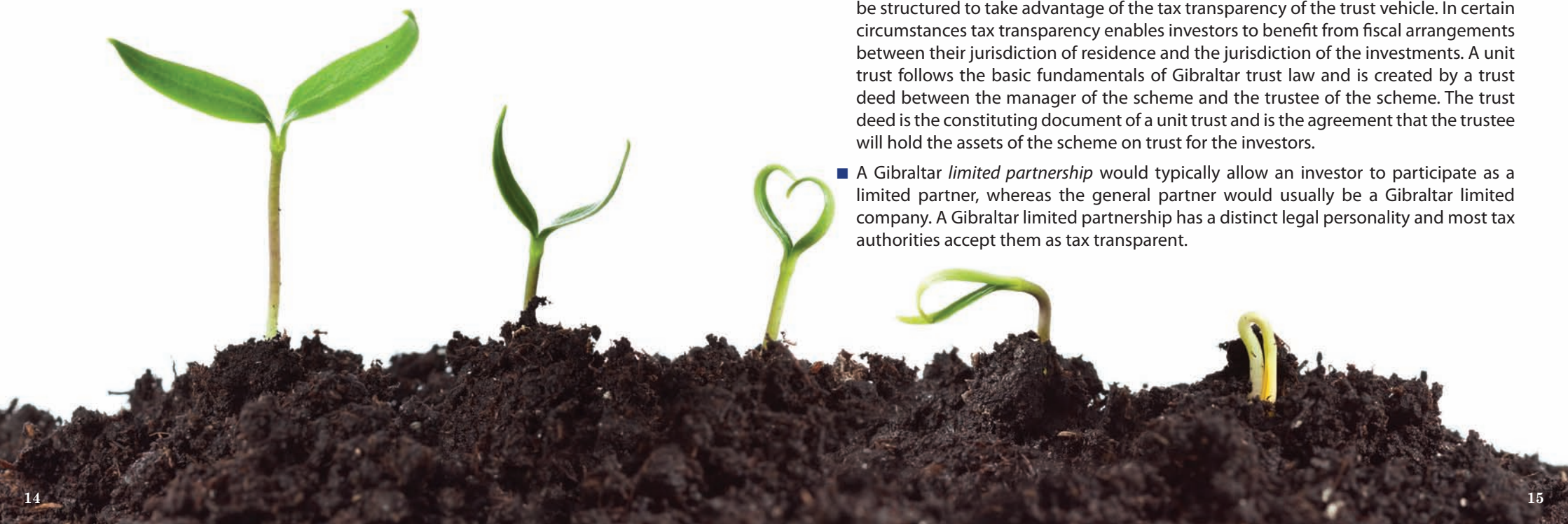
Private funds

A private scheme, or a "private fund", is established under the CIS Regulations 2011. A private scheme is a collective investment scheme that is not listed on a stock exchange and is not authorised to have more than 50 investors. A private scheme does not require authorisation by the FSC and is considered unregulated.

With the introduction of AIFMD legislation in July 2013, private funds are required to register with the FSC, providing a description of investment strategy, instruments and markets in which the fund operates. In addition, a private fund is required to monitor, on an ongoing basis, the level of its assets under management, ensuring that where the €100 million threshold (for unlevered assets) is reached, the fund complies with associated AIFMD requirements.

There are no restrictions under the CIS Regulations 2011 on the type of vehicle which can be used to establish a private scheme. However a private scheme may not establish itself as a protected cell company. The common structures are:

- A Gibraltar *private limited company* is considered as having a distinct legal personality and thereby the ability to make a legal claim or have a legal claim made against it in Gibraltar.
- A *unit trust* is not considered as having a distinct legal personality and would typically be structured to take advantage of the tax transparency of the trust vehicle. In certain circumstances tax transparency enables investors to benefit from fiscal arrangements between their jurisdiction of residence and the jurisdiction of the investments. A unit trust follows the basic fundamentals of Gibraltar trust law and is created by a trust deed between the manager of the scheme and the trustee of the scheme. The trust deed is the constituting document of a unit trust and is the agreement that the trustee will hold the assets of the scheme on trust for the investors.
- A Gibraltar *limited partnership* would typically allow an investor to participate as a limited partner, whereas the general partner would usually be a Gibraltar limited company. A Gibraltar limited partnership has a distinct legal personality and most tax authorities accept them as tax transparent.



Experienced Investor Funds

Private schemes in Gibraltar are not regulated and there are no statutory requirements for the production of audited accounts, a prospectus nor a requirement for the services of a fund administrator. However, industry practitioners in Gibraltar ordinarily insist on these elements as a matter of professional investor protection and good corporate governance. Private schemes are required to produce an offering document in order to ensure that investors have sufficient information to evaluate the offer.

Requirements

A private scheme is an unregulated collective investment scheme and is not subject to any licensing requirements. There are also no requirements for licensing of directors on the board. In addition there are no requirements for appointing a custodian or an investment manager. The private fund may be self-managed by its directors. It is noted however that private schemes are generally within the scope of AIFMD and will therefore either be subject to registration with the FSC or will be required to apply for an In-Scope Alternative Investment Fund Manager (AIFM) licence.

Private schemes have no statutory restrictions governing investment or leverage. A private scheme is not required by statute to make any filings or returns under the CIS Regulations. However, if the private scheme is established as a Gibraltar limited company, it is required, under section 153(1) of the Companies Act, to file annual returns with the Registrar of Companies.

Marketing the private fund

The promoter or agent of a Gibraltar private scheme may only offer the fund to an identifiable category of persons whose number is fewer than 50. An identifiable category could be the friends, family or close clients of a promoter of the fund. This makes private schemes generally geared towards “friends and family” or a known, identified and existing small investor base.

A private scheme must remain private for at least one year following the offer date. As such, it can only be “converted” into an EIF after a one year period.

Other than the restriction on the limited nature of promotion, there are no statutory restrictions on the type of investor that can participate or the minimum investment size. The units of private schemes may not be listed on a stock exchange and would ordinarily be offered to potential investors on a private placement basis. It is customary for local legal advice to be sought in the jurisdiction where the private scheme offer is being made.

The Experienced Investor Fund (“EIF”) regime is similar to professional or sophisticated fund products offered in jurisdictions such as the Caribbean, the Channel Islands, Luxembourg and Ireland. Since its introduction in 2005, the EIF has been the primary driver supporting the growth of Gibraltar’s fund industry, proving a robust and flexible product utilised by both EU and non-EU fund managers.

An EIF established under the current EIF Regulations 2012, is a regulated collective investment scheme exclusively for investment by experienced investors. Gibraltar EIFs are designed to invest in a wide range of traditional and alternative asset classes. EIF asset classes typically include tradable securities, commodities, currencies, property, private equity and funds, as well as alternative investments such as structured credit, mortgage tranches, credit loans, venture projects and aircraft. There are no restrictions in law as to the eligible assets classes for an EIF, and there are no diversification requirements within the relevant legislation.

Establishing a fund as an EIF presents a number of key advantages:

- pre-launch approval mechanism;
- expedited start-up process and competitive start-up costs;
- may be operated as a compliant Alternative Investment Fund (AIF) under AIFMD
- no investment or borrowing restrictions;
- fund may be self-managed; no limit to number of investors;
- reasonable ongoing operating costs;
- tax neutrality;
- benefit of EU directives such as PSD; and
- an EIF may be structured under a variety of formations.

Common EIF structures include:

- a Gibraltar limited company, unit trust or limited partnership. This can include foreign structures approved by the FSC where management and control is located in Gibraltar;
- other form recognised by the FSC; and
- a Protected Cell Company under the PCC Act 2001.

EIFs are often structured as open-ended companies. Open-ended funds require constituting documents to allow redemptions of shares at the prevailing Net Asset Value (“NAV”). Typically, an EIF will issue ordinary or non-participating controlling shares which carry most of the voting rights, and redeemable preferred or participation shares which

carry the economic rights. Participation shares are the units purchased by investors at the NAV price. The non-participating controlling shares are usually issued to the promoter, investment manager or the directors.

An EIF may also be structured as a closed-ended fund which locks in investors for a predetermined length of time, usually subject to one or more extensions. Closed-ended funds are popular with private equity or property funds where investments are deal-specific rather than being intended to facilitate continuous trading by the fund.

Limited partnerships

There is an increasing interest in utilising Gibraltar limited partnerships as the preferred vehicle for private equity, given their commercial flexibility and transparency for tax purposes. Gibraltar’s limited partnerships are comparable to English limited partnership, with some key differences. A Gibraltar limited partnership has perpetual succession and separate legal personality, the two key common law ingredients for body corporate status. Separate legal personality renders the vehicles also suitable for funds of funds.

Given the inherent tax advantages that Gibraltar offers, coupled with the light touch and flexible regime of the EIF, a continued interest is expected in these structures going forward. A recent amendment to the limited partnership legislation removed the upper limit on the number of partners so a Gibraltar limited partnership can now consist of an unlimited number of partners.

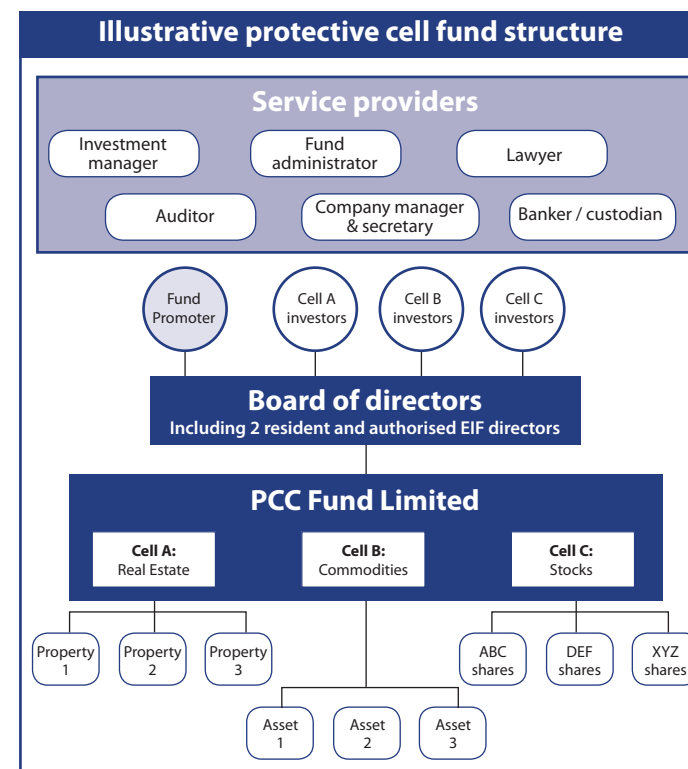
Protected Cell Companies

A Protected Cell Company (“PCC”) is a limited liability company established with a number of cells, or sub-funds, with statutory segregation of assets and liabilities into the different cells. Distinct classes of participation shares will normally constitute the different cells.

Instead of relying on a purely contractual arrangement between shareholders, Gibraltar’s Protected Cell Company Act 2001, provides a statutory basis for the segregation of assets that binds third parties, in addition to the shareholders. The PCC structure is multijurisdictional and employed in a number of financial centres under different names such as the Segregated Portfolio Company.

Although historically the PCC structure was most commonly employed in Gibraltar within the captive insurance sector, in recent years PCCs have gained greatest traction within collective investment schemes. The structure has been in use in Gibraltar since 2001 and funds have been using the PCC structure since the enactment of the original EIF regulations in 2005.

The PCC structure is versatile since it allows a manager to create a single investment house within which there can be several different cells with different investment and risk parameters. In this way, a fund manager may provide investment products to clients with varying risk and return appetites, all within one fund structure. The PCC structure is sufficiently flexible to permit individual cell assets to be managed by separate investment managers selected by individual policyholders, a structure common with high net worth individuals.



Over recent years, investment funds, including hedge funds and property investment companies, have been the catalyst for the growth of many PCCs. While larger funds will invariably be set up as single vehicles, there are often efficiency gains to be made by smaller funds pooling together under one PCC. Such structures are also fairly straightforward to establish and the documentation has become standardised.

The PCC structure serves as a useful tool for investing in a single corporate entity via distinct share classes. Each cell will hold securities or share classes which correspond to a particular risk/return investment objective or asset profile. Fund managers in particular have established PCCs as structured investment platforms for clients. For each separate investment a new protected cell is established. The promoters can use the PCC for any business transaction based on the investment objectives of its investors. The investors in turn, own the economic rights over the cells and are only exposed to a risk of loss in respect of the activities of the particular cell. In contrast, the promoters retain the ownership risk related to the PCC and its core assets in order to obtain the benefits of the PCC's management. There is therefore a significant case in favour of the PCC as a means of raising and segregating funds within a single vehicle. In general a fund's board is required to retain adequate knowledge of the asset class invested in to by the fund. In the case of a PCC structure, the board is required to retain sufficient understanding of the investments held at each and every cell in structure.

Registration and operational requirements

One of the attractions of Gibraltar as a fund domicile is that no regulatory approval is required before a fund can begin to raise capital and commence with its investment activities. Gibraltar is a unique European jurisdiction where a fund may be launched based on a legal opinion that confirms the fund has met all legal and structural requirements for its operations, and provided that the fund's documentation is submitted to the regulator within ten business days of launch. The majority of Gibraltar funds make use of this preferred route, however, alternative or exotic fund structures and strategies are generally discussed with the regulator ahead of launch.

An EIF is also entitled to opt for a pre-launch FSC registration where the fund notifies the FSC at least ten days prior to launch. If following ten days of receipt of the documents the FSC does not issue a notice to the applicant, the fund is deemed authorised. The pre-launch registration option is unique and allows the fund to be authorised on the day that it is launched, thereby enabling the manager to define the launch process and timeline with no regulatory uncertainty. Once launched, the fund may immediately begin its activities, including promotion, capital raising and investing. The pre-launch registration route allows promoters to complete the regulatory process prior to the fund launch.

A launch meeting marks the fund's authorisation and commencement of operations. As part of the launch meeting, a legal opinion provides that the fund meets all relevant provisions of the EIF regulations and the fund is deemed authorised. At launch, the fund will convene a meeting of the persons responsible for the management and control of the fund and the fund lawyer will opine that all the necessary contracts are completed allowing the fund to launch under the EIF regime.

In order for an EIF to be established in Gibraltar, the fund is required to notify the FSC, as described above, with the following materials:

- written notification of the establishment of the fund;
- the fund's Private Placement Memorandum ("PPM"), offering document or prospectus;
- a legal opinion from a Gibraltar lawyer of at least five years standing, who is independent to the administrator, that certifies that the fund complies with EIF regulations;
- an application fee;
- the fund's constituting documents; and
- any other documents requested by the FSC.

In essence, a fund is established in Gibraltar through the drafting and approval of the relevant documentation by legal counsel, along with input from the fund directors, administrator, investment manager and other service providers. The FSC does not review nor comment on the documentation prior to the establishment of the EIF. This provides the promoter with greater control over the process, and a fast time to market, all of which are unique to Gibraltar.

Following an EIF registration in Gibraltar the FSC may request further documentation or, on certain occasions, amendments to the prospectus. There is however no regulatory downtime to the authorisation of an EIF. If necessary, an EIF can be set up in a matter of days as many of the service providers in Gibraltar can offer turnkey solutions.

An EIF has the following key operating requirements:

- Where the fund is structured as a company, its board requires two Gibraltar resident directors who are authorised by the FSC to provide directorships to EIFs. A list of current authorised EIF Directors can be found on the FSC website (www.fsc.gi). Other fund directors may be resident in other jurisdictions, subject to fiscal considerations.
- In the case of a fund structured as a trust, two trustees are required to be resident in Gibraltar and authorised to act as a trustee of an EIF. If the unit trust is structured with a corporate trustee, two of the company's directors should be authorised and resident in Gibraltar.
- If an EIF takes another form, the person having ultimate responsibility for the management and control of the fund should be authorised by the FSC and be a Gibraltar resident.
- An EIF may be managed by a third party investment manager or "self-managed" by the fund directors. The investment manager or adviser may be from any jurisdiction provided that the entity or individual complies with the law of the jurisdiction from which it operates.
- An authorised Gibraltar administrator or an approved foreign administrator, is required for both open and closed-ended funds, regardless of the asset class in which the fund invests.
- An EIF operating as an open-ended fund is required to appoint a depository or custodial bank or agent. EIFs may work with any authorised depository or broker that is deemed acceptable to the FSC. A closed-ended EIF will usually appoint a banker for cash transactions, however, its assets are not required to be held for safe-keeping by a third party. Traditionally there was no requirement for an EIF to use a Gibraltar based

depository. This has changed in the case of those funds that are obliged to comply with AIFMD.

- An EIF is required to undergo an annual audit by an auditor approved under the Financial Services (Auditors) Act. There are a range of international audit firms based in Gibraltar, including the Big Four audit firms. A fund manager should therefore have no issue with engaging a global brand to audit a Gibraltar fund.
- An EIF is required to submit its audited accounts to the regulator within six months of its year-end, together with a form containing the fund's general compliance and statistical information.
- An EIF is required to produce an offering document, commonly referred to as a Private Placement Memorandum (PPM), which includes certain information about the fund. The PPM is typically drafted by the lawyers engaged to set up the fund and should be the only document that investors rely on when basing their decision to invest in the fund. Fact sheets and other marketing material are also permitted.
- An EIF is required to notify the FSC immediately of any regulatory breach and within 20 business days of any material change to the fund.

Marketing the EIF

An EIF can market its shares or units to *Experienced Investors* and begin trading from the time the fund is officially launched. Prior to launch, one is permitted to have discussions with professional advisers of potential anchor investors, provided it is made clear that the fund is not available for subscription at that time. Marketing EIFs should always be in accordance with the PPM and the laws of the jurisdiction in which the fund is being offered.

An *Experienced Investor* is defined as:

- a) A person or partnership whose ordinary business or professional activity includes acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or providing investment advice;
- b) A body corporate or unincorporated association which has net assets in excess of €1 million, or which is part of a group which has net assets in excess of €1 million;
- c) The trustee of a trust where the aggregate value of the cash and the investments which form part of the trust's assets is in excess of €1 million;
- d) An individual whose net worth, or joint net worth together with the individual's spouse, is greater than €1 million, excluding that person's personal place of residence;



- e) A participant who has a current aggregate of €100,000 invested in one or more EIFs;
- f) A participant who invests a minimum of €50,000 in an EIF and has been professionally advised, with the fund's administrator receiving confirmation of such advice;
- g) A person who is a professional investor, as defined under the Financial Services (Markets in Financial Instruments) Act 2006; or
- h) A participant in a fund that has re-domiciled to Gibraltar where the regulator has permitted the inclusion of such participant either in respect of a specific fund, or more generally, in respect of funds from a certain jurisdiction.

It is important to note that it is sufficient for the investor to fulfil any one of these conditions to be considered an *Experienced Investor* under Gibraltar law.

Since EIF investors are by definition experienced, there are no statutory restrictions on acceptable investment or borrowing strategies, except that the fund must provide in its PPM details of its investment and leverage policy.

EIFs have no minimum or maximum requirements governing the number of investors or amount of invested capital. In general EIFs have no legislative restrictions on accepting US investors, provided that the fund and its manager adhere to the relevant US securities laws. Since Gibraltar funds can trade as private companies, they are eligible under US law to make a "tick the box" election and thereby be treated, for US tax purposes, as partnerships. In some cases this obviates the need to set up a US feeder fund structure for US investors.

EIFs are typically marketed in jurisdictions on a private basis under national private placement regimes. A private placement is a private offering of securities to a select group of investors without requirements to register the product with the national regulatory authority or undergo disclosure requirements common when financial products are offered to the retail market. Each jurisdiction will generally have proprietary private placement regulations that may differ significantly between one jurisdiction and the next. AIFMD is designed to phase out national private placement regimes, creating a unified regulatory regime throughout the EU. EIFs and their managers complying with the AIFMD authorisation process receive a pan European marketing passport, thereby circumventing the private placement regimes in place and enabling AIFMs to passport the Alternative Investment Funds ("AIFs") they manage and market them to professional investors across the EU.

A Gibraltar fund may be licensed in accordance with the laws covering Undertakings for Collective Investment in Transferable Securities ("UCITS") where the intention of the fund is to: (a) operate with the sole object of collective investments in transferable securities or in other liquid financial assets; (b) raise capital from the public and invest on the principles of risk-spreading; and (c) issue units which are at the request of holders redeemed, directly or indirectly, out of those assets.

A Gibraltar UCITS may be established as:

- a Gibraltar open-ended investment company;
- a Gibraltar unit trust comprising a trustee and an independent manager; or
- a contractual fund which is an unincorporated body established by a management company under which the participants agree to share in the assets of the fund. As an unincorporated body the contractual fund will not have separate legal personality and will be tax transparent, thereby allowing investors to benefit from fiscal arrangements between their jurisdiction of residence and the jurisdiction of the investments.

A UCITS fund can be structured as an umbrella scheme under which the contribution of the participants and the profits out of which payments are to be made are pooled separately in relation to separate parts of the scheme.

Registration and operational requirements

A UCITS fund structured as a common fund is required to appoint an authorised UCITS management company and a licensed depository in Gibraltar. A standard arrangement would be for the UCITS fund to engage a UCITS management company, which in turn would contract with service providers such as an investment manager, administrator and distributor. However, a UCITS fund structured as an open-ended investment company may opt to be self-managed by the fund directors. In this case, the fund will contract directly with service providers in its own name.

The decision to structure a UCITS fund with or without a UCITS management company depends on factors such as corporate tax, legal structure, consolidation of agreements, commercial arrangements, oversight and costs. A UCITS management company is able to passport its services from the member state where it is domiciled to another member state where it wishes to provide services.

A UCITS management company requires an initial capital base of €125,000 and increase this figure by 0.02% of the amount by which the value of the portfolios it manages

exceeds €2.5 million (with a cap of €10 million). A self-managed UCITS fund which has not appointed a UCITS management company is required to have a minimum initial capital of €300,000.

The UCITS' Key Investor Information Document ("KIID") is a concise standardised one-page document which provides fair and clear information to investors. The KIID must contain a risk indicator based on historical volatility – a scale which indicates risk/reward.

The Financial Services (Collective Investment Schemes) (Corporate Restructuring) Regulations 2011 provide for procedures to merge UCITS and establish UCITS master-feeder structures. Merging UCITS funds (cross-border and domestic) facilitates the creation of larger funds, increasing efficiencies through economies of scale. The UCITS IV regime also enables master-feeder UCITS structures to be created. A master UCITS fund may be created in one jurisdiction with investors from other member states investing in the fund via a locally domiciled UCITS feeder fund. UCITS feeders can be used to facilitate tax efficiencies and better serve local distribution channels.

Marketing the UCITS fund

UCITS benefit from a full EU marketing passport. This passport allows UCITS established in one EU member state to market its shares or units in other member states by following a simplified regulator-to-regulator notification procedure via standardised electronic documentation. This removes the burden of undergoing time-consuming authorisation procedures in each member state where the UCITS wishes to raise capital.

A Gibraltar UCITS intending to distribute its shares/units in another member state is required to submit to the FSC a notification of its intention to market in a specified member state. The FSC will subsequently review the application and transmit the request, along with other supporting documents relating to the fund, to the relevant competent authority of the member state where the Gibraltar UCITS wishes to raise capital or make distributions. Once the transmission has been confirmed by the FSC, the Gibraltar UCITS may begin marketing in the target member state.

Funds re-domicile to Gibraltar because of many of the same factors attracting newly established funds to the jurisdiction – namely the fiscally effective legislative framework for funds and managers, combined with high regulatory standards, economic stability, accessibility, European time zone and the high quality professional services infrastructure. In addition, market observers believe that with the entry of AIFMD and the subsequent harmonization of fund regulation across Europe, AIFs located outside the EU wishing to market to EU-based investors will find it useful to establish a European feeder fund structure in jurisdictions such as Gibraltar. This will address the restrictions in place on fund managers marketing non-EU domiciled funds in Europe and provide funds with an EU marketing passport based on AIFMD.

Re-domiciling a fund to Gibraltar commences on the basis that the entity meets the provisions of the legislation, is established in a form recognised under Gibraltar law and is approved by the FSC. In addition, a fund's by-laws, as well as the laws and regulations of the home jurisdiction, must also allow for the re-domiciliation to take place. It is important to note that the re-domiciliation process does in no way operate to create a new legal entity, prejudice or affect the continuity of the company or affect the property of the company.

Apart from the established re-domiciliation provisions codified in Gibraltar law, the 2012 EIF Regulations include provisions within the definition of an *Experienced Investor* to allow for participants in funds that are re-domiciling to Gibraltar to automatically qualify, under certain circumstances, as *Experienced Investors* for the purposes of Gibraltar law. In addition, Gibraltar's 2012 EIF legislation dispenses with the requirement for a re-domiciled fund to appoint a local fund administrator. A foreign administrator, however, requires approval from its home regulator, must be located within the EEA or in a jurisdiction with similar regulatory and legislative standards to those of Gibraltar, and finally receive consent from the FSC and the Minister responsible for Financial Services. The foreign administrator may find it beneficial to appoint a local administrator to act as its agent. The local agent typically handles the co-ordination of filings with Companies House, the FSC and other functions that the foreign administrator may wish to delegate locally.



Investment management

Gibraltar funds do not require a Gibraltar-based investment manager or advisor. Non-EU managers of Gibraltar funds are also not required to be licensed under equivalent standards to AIFMD or MiFID. However an investment manager managing an EIF must comply with the legislation from its home jurisdiction.

If a manager is based in Gibraltar or any other European jurisdiction, it will ordinarily require a MiFID or an AIFMD license in order to conduct investment management or fund management business. At the time of writing, Gibraltar is also developing a Small AIFM regulatory regime for those managers managing AIFs that fall below the in-scope requirements of AIFMD. Once the Small AIFM regulatory regime is introduced, existing MiFID firms who conduct the business of managing AIFs through a MiFID license will be required to hold a Small AIFM license.

A Gibraltar firm carrying out core investment services will require authorisation under MiFID. Investment services include receipt or execution of orders relating to financial instruments, portfolio management and the provision of investment advice. There are three basic categories of license:

Category	1	2	3
Activities	<ul style="list-style-type: none"> • arranging deals • discretionary portfolio management • holding client money • deal on own account, both as agent and as principal 	<ul style="list-style-type: none"> • arranging deals • discretionary portfolio management • holding client money 	<ul style="list-style-type: none"> • arranging deals • discretionary portfolio management
Capital requirement	€730,000	€125,000	€50,000

In addition to the basic capital requirement under the license process, investment managers are required to complete an Internal Capital Adequacy Assessment Process (“ICAAP”). Submission to the FSC determines what additional capital is required to support the business, taking into account the risks faced by the business and mitigation controls in place. Typically licensed businesses will need to provide some additional capital above the minimum set out in the regulations.

A Gibraltar investment manager or advisor must have a physical presence and staff located in Gibraltar. Investment managers licensed in Gibraltar may apply to passport the provision of their services across the EU. Similarly EU fund managers relocating to Gibraltar may passport in, which requires a relatively routine notification process. A new investment manager in Gibraltar, or one relocating from outside the EU, will be required to complete the application process set out by the FSC. The FSC employs a universal application process across all licensed activities. The main elements of the application comprise:

- Completion of application forms for the business and all its controllers;
- Provision of a detailed business plan;
- Provision of a 3-year financial plan with accompanying statutory returns;
- Submission of an ICAAP assessment;
- Details of the systems and controls in place;
- Details of compliance and anti-money laundering procedures; and
- Business continuity plan.

The application time frame is driven by the quality of the application submitted. If the application includes the appropriate level of foresight and due diligence then an investment manager can expect a relatively expeditious licensing process. The FSC has set itself a service level standard of 18 weeks to process applications for authorisations, well below the statutory requirement of six months. Once an application is submitted, the FSC will work to ensure that the principal individuals behind the business are:

- fit and proper to run an authorised business;
- have the resources, systems and controls to effectively manage the business;
- adhere to the “four eyes” principle; and
- that mind and management of the investment manager is located in Gibraltar.



The following is a general commentary on taxation of Gibraltar funds in Gibraltar. Those considering establishing a fund in Gibraltar should seek full tax advice on the matter.

Gibraltar is unique in that it offers a fund domicile with a competitive tax system which has been approved by both the European Council of Economic and Finance Ministers (ECOFIN) and is compliant with the EU Code of Conduct of business taxation.

Income tax in Gibraltar is levied on a territorial basis, under the “accrued and derived in Gibraltar” principle. In most cases Gibraltar does not levy tax on investment or passive income wherever derived. Gibraltar does not typically tax dividends, bank or bond interest, income from debentures or capital gains. Gibraltar funds typically undertake investment activities which fall outside the Gibraltar tax regime on general principles, either because the income consists of exempt investment income, income from a trade conducted outside Gibraltar, income which accrues and derives outside Gibraltar, or capital gains on the disposal of assets. Therefore no special tax exemption is required in the case of most Gibraltar funds.

A Gibraltar fund may, however, obtain a confirmation from the Gibraltar Commissioner of Income Tax that the fund is not subject to corporate tax on its investment income. Private equity and real estate funds that wish to avail themselves of the PSD and IRD will typically not request an exemption, instead preferring to be taxed under Gibraltar’s 10% corporate tax rate and thereby demonstrate that they are taxable and able to benefit from these directives. Ultimately, these investment funds are unlikely to be liable for corporate tax as Gibraltar levies tax on a territorial basis on income accruing in Gibraltar, whereas the fund’s investments will ordinarily be located outside the jurisdiction.

Gibraltar is a well-regulated onshore finance centre located within the European Union. Similarly to a number of other international finance centres, Gibraltar does not have bilateral double tax treaties in place with other countries. At the time of writing the Government of Gibraltar was investigating the feasibility of implementing double tax treaties with certain countries. Notwithstanding this, Gibraltar funds can make use of the PSD and IRD from many jurisdictions, including Luxembourg, which is particularly popular. PSD provides for no withholding taxes on dividends payable by a subsidiary in an EU member state to a Gibraltar parent company. IRD provides that there should be no withholding taxes on interest or royalties paid from a group company to a Gibraltar company. This is particularly advantageous in private equity fund structures investing on a pan European basis.

Although within the European Union, Gibraltar is outside the common customs area and the VAT area. In the private equity arena in particular, where an investment adviser is based within an EU member state, the adviser need not charge VAT on its services, and neither is there any reverse charge in place in Gibraltar where the service is received by a Gibraltar domiciled fund. This compares favourably to other EU fund jurisdictions.

Gibraltar is not an island, and many people working in the financial services industry in Gibraltar live in Spain and commute daily across the Spain-Gibraltar border. Gibraltar has a burgeoning investment management community. Although not a tax benefit as such, it is worth noting that an investment manager with a Gibraltar issued MiFID license can passport its services throughout Europe. Where this can be achieved without creating a permanent establishment in the countries where the services are offered, foreign taxes will often be avoided.

Taxation of fund managers

A Gibraltar based investment manager providing licensable investment or fund management services is taxable in Gibraltar at the rate of 10%, as such activity is deemed to accrue in, and derive from, Gibraltar. The Income Tax Act makes it clear that activities which give rise to the profits of the business shall be deemed to take place in Gibraltar in the case of a business whose underlying activity that results in the income requires a licence and regulation under Gibraltar law.

Typical deductions from trading income, such as rents, salaries and office expenses are allowable in arriving at taxable profits, in accordance with Gibraltar Generally Accepted Accounting Principles (GAAP). The profits of any branch or permanent establishment of the investment manager are not subject to tax in Gibraltar, to the extent that those activities are undertaken outside Gibraltar.



The overall effective tax rate for investment and fund managers may be further mitigated where the owner or manager receiving a salary can obtain a special tax status in Gibraltar, such as High Executive Possessing Special Skills (“HEPSS”). The HEPSS scheme caps an individual’s personal employment and dividend income tax liability to under £30,000 per annum, provided the individual is an expatriate who possesses specialized skills, is earning over £100,000 per annum and owns or rents an approved residence in Gibraltar.

A self-managed fund, managed by its directors from Gibraltar, would not ordinarily become liable to income tax on trading income otherwise accruing and deriving from outside Gibraltar as a result of licensing under the Experienced Investor Fund regime or any other regime for the licensing of funds.

Where required, tax transparency is available in Gibraltar under certain structures. A Gibraltar limited partnership is confirmed by HM Revenue & Customs as tax transparent for UK tax purposes. There are similar rulings in place for certain other European countries. In addition, a Gibraltar private limited company is not considered a corporation for US tax purposes, and such an entity can therefore “check the box” for US tax transparency.

There are no withholding taxes in Gibraltar and Gibraltar does not typically levy income taxes on non-resident directors of Gibraltar companies who are occasionally present in Gibraltar for less than 30 days per annum.

Gibraltar’s Income Tax Act 2010 introduced tax self-assessment for companies and individuals. Companies that have income assessable for tax in Gibraltar are required to make returns of their income and, where there is taxable income, calculate their own tax liability for the relevant accounting period. Two payments on account are required for each calendar year – one on 28 February and one on 30 September. Each payment will equal to 50% of the tax payable for the last relevant accounting period. A balancing payment or refund is then due no later than six months after the accounting period year-end. Companies are required to submit their tax returns within six months following the accounting period end.

Taxation of investors

There are no withholding taxes in Gibraltar on dividends, capital gains or interest income. An exception to this is in connection to certain interest payments to UK resident individuals under the EU Savings Directive 2003/48/EC, where the payee elects for the withholding option. Consequently, non-Gibraltar resident shareholders in a corporate vehicle will generally not suffer any taxes in Gibraltar. Other interests, such as limited partners or unit holders, similarly will not suffer any Gibraltar taxes on income from a fund which does not accrue and derive income from Gibraltar. The introduction of FATCA may however require the imposition of a withholding tax where information on U.S. investors is not forthcoming.

Gibraltar resident shareholders will not suffer tax on income from a fund which does not accrue and derive income from Gibraltar. In addition, where a fund is marketed to the general public, such as a retail UCITS, there are no taxes payable in Gibraltar on income arising from the fund.



Regulatory and legislative developments

The conduct of investment services, fund management and administration in Gibraltar is governed by the financial services legislation. Detailed rules and regulations have been issued under several acts to give effect to EU directives relating to investment services and the regulation of collective investments, thereby harmonising investment funds within a European context.

The majority of Gibraltar's fund legislation is contained in:

- the Financial Services (Collective Investment Schemes) Act 2011 ("CIS Act 2011");
- the Financial Services (Collective Investment Schemes) Regulations 2011 ("CIS Regulations 2011"); and
- the Financial Services (Experienced Investor Fund) Regulations 2012 ("EIF Regulations 2012").

Since Gibraltar is a member of the European Union it is required to implement European legislation which is the main driver of developing legislation, including the already implemented AIFMD and the UCITS V legislation. A set of Gibraltar acts transpose into Gibraltar law European Directives relating to collective investment schemes. These include:

- Prospectus Act 2005, the transposition of the Prospectus Directive 2003/71/EC;
- Financial Services (Markets in Financial Instruments) Act 2006, the transposition of the Markets in Financial Instruments Directive 2004/39/EC; and
- Financial Services (Alternative Investment Fund Managers) Regulations 2013, the transposition of Alternative Investment Fund Managers Directive 2011/61/EU

The Government of Gibraltar has recently published new companies and insolvency legislation following a review of these areas. This results in a major overhaul, with a view to updating and modernising the legislation. It is expected that the new legislation will be commenced in November 2014. New legislation which will see the creation of a new vehicle available under Gibraltar law, the Limited Liability Partnership, is also expected during the course of the year.

Compliance with international standards

Gibraltar is consistently at the forefront of adherence to international standards of compliance, transparency and anti-money laundering practices. Since joining the EU in 1973 Gibraltar has routinely transposed EU directives to local law and has therefore adopted European standards of compliance and business practices before many other international financial centres and offshore jurisdictions have been required to.

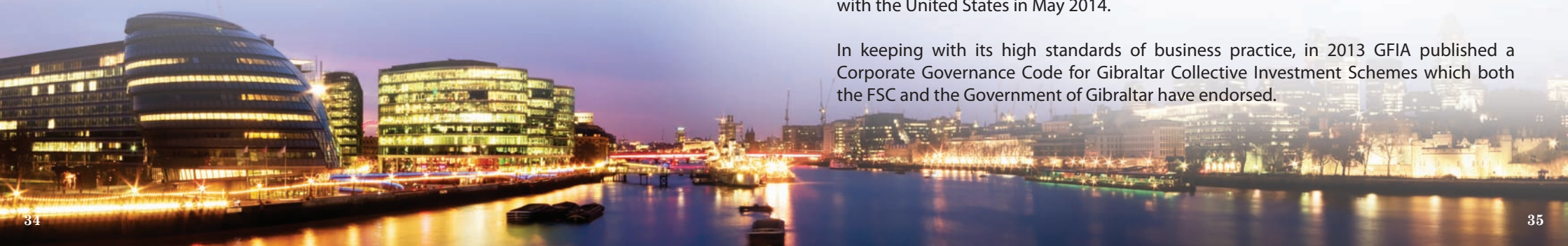
Gibraltar was one of the first jurisdictions to criminalize money laundering from all forms of criminal activity. Gibraltar was the first jurisdiction to regulate the providers of fiduciary services and apply the provisions of anti-money laundering regime in this sector. Persons who carry out financial services business in Gibraltar are required to put in place measures to ensure the prevention, detection and reporting of suspicious transactions.

Gibraltar complies with the EC Third Money Laundering Directive, as well as with international obligations governing the combating of terrorist financing. The jurisdiction is fully compliant with the revised Financial Action Task Force (FATF) recommendations, the Basil principles and the Vienna Convention. Evaluations of Gibraltar by the FATF concluded that Gibraltar was a cooperative jurisdiction in the fight against money laundering and found that:

"Gibraltar has in place a robust arsenal of legislation, regulations and administrative practices to counter money laundering. The authorities clearly demonstrate the political will to ensure that their financial institutions and associated professionals maximise their defences against money laundering, and cooperate effectively in international investigations into criminal funds..."

In line with a long standing commitment to transparency, Gibraltar has established exchange of information relationships with 79 international jurisdictions through Tax Information Exchange Agreements and the Convention on Mutual Administrative Assistance in Tax Matters. In addition following the introduction by the United States of the Foreign Account Tax Compliance Act (FATCA), Gibraltar signed Intergovernmental Agreements to improve international tax compliance with the UK in November 2013 and with the United States in May 2014.

In keeping with its high standards of business practice, in 2013 GFIA published a Corporate Governance Code for Gibraltar Collective Investment Schemes which both the FSC and the Government of Gibraltar have endorsed.



Alternative Investment Fund Managers Directive

The Alternative Investment Fund Managers Directive 2011/61/EU (“AIFMD”) is a European Directive which was transposed to Gibraltar legislation through the Financial Services (Alternative Investment Fund Managers) Regulations 2013. The European Commission has supplemented AIFMD with a Delegated Regulation, more commonly known as the Level 2 implementing measures.

AIFMD establishes common requirements governing the authorisation and supervision of AIFMs with a view to providing a coherent approach to the related risks and their impact on investors and markets in the EU. These changes have introduced a paradigm shift in the way European fund managers are regulated and how they distribute funds they manage. AIFMD is designed to:

- ensure all AIFMs are subject to appropriate authorisation and registration requirements;
- provide a framework, through regular reporting obligations, to monitor and mitigate overall risk to the financial system, as well as specific risk to individual investment vehicles;
- provide a common approach to protecting professional investors in AIFs;
- enhance public accountability of fund managers holding controlling stakes in companies; and
- develop a single European market for AIFs.

With implementation of AIFMD, all EU funds are classified as either UCITS or Alternative Investment Funds (“AIFs”). Therefore, the scope of AIFMD is very wide and in Gibraltar it covers EIFs, authorised funds, private funds and some recognised funds. AIFMD however does not directly regulate the operations of AIFs but instead regulates managers of the AIFs; i.e. the alternative investment fund managers (“AIFMs”).

AIFMs falling within the scope of AIFMD are required to comply with AIFMD in full, including adhering to requirements covering organisational structure, leverage, depositary relationship, delegation provisions, risk management practices, liquidity management, reporting and disclosure.

AIFMD applies to AIFMs domiciled in the EU which manage EU or non-EU domiciled AIFs, as well as to non-EU domiciled AIFMs that manage non-EU domiciled AIFs and market these funds in the EU. Self-managed AIFs are treated for all intended purposes as the AIFM, and will consequently need to be authorised under the Directive if they are in scope of the Directive.

Fund managers outside the ambit of AIFMD who do not wish to opt-in, may continue to domicile in an EU member state, if the national laws of that state allow. Managers may continue to offer their investment funds throughout the EU under the national marketing laws of each member state, usually under private placement regimes. If, as many industry practitioners believe, AIFMD establishes itself as a brand product, similarly to UCITS’ impact on the retail market, smaller fund managers will have an added incentive to opt-in and benefit from the product’s “gold standard” branding, which will be attractive in terms of capital raising.

AIFMD provides that after 2015, non-EU fund managers managing non-EU funds may also take advantage of the AIFMD passporting, provided that the regulatory regime of the non-EU domicile is on par with the regime provided under AIFMD. A co-operation agreement between the respective jurisdictions is also required to be in place.



AIFMD – impact on Gibraltar

Gibraltar is fully compliant in respect of EU investment business and fund legislation. As such, Gibraltar was one of the 13 EU jurisdictions that implemented AIFMD in to national law by the 22 July 2013 deadline. Gibraltar-based investment firms consequently comply with AIFMD and avail themselves of the European passport to market funds across member states on the basis of that authorisation, provided that they notify the FSC where they intend to market. Although AIFMD compliance carries a cost to funds and their managers, the ability to market funds to a wide range of investors across the EU is expected to reduce overall marketing costs for funds.

Gibraltar investment firms licensed under MiFID have traditionally passported investment advisory services or established branch offices in other member states. MiFID firms are not required to reapply to the FSC for authorisation under AIFMD, however they are required to be AIFMD compliant in order to provide services to AIFs. In addition, Gibraltar is developing a Small AIFM regulatory regime for those managers managing AIFs that fall below the in-scope requirements of AIFMD. Once the Small AIFM regulatory regime is introduced, existing MiFID firms who conduct the business of managing AIFs through a MiFID license will be required to hold a Small AIFM license.

AIFMD provides a lighter regime for boutique managers with assets under management (AuM) of less than €100 million, which is the case for a number of Gibraltar funds. These managers may choose to opt in to the Directive, for example following demands from institutional investors seeking an AIFMD seal of approval. Other investors may prefer not to press boutique managers for full AIFMD compliance as the additional compliance costs are likely to be passed on to the investors. AIFMs operating under the lighter regime that have not opted in will be unable to passport throughout the EU. Gibraltar funds managing less than €100 million have both options available to them.

AIFMD has polarised the investment fund industry into EU and non-EU fund jurisdictions, positioning Gibraltar as one of a handful of efficient European fund domiciles in which managers seek to establish alternative investment funds. In particular, fund managers licensed under AIFMD increasingly look for European vehicles through which to form their funds in order to comfortably market (or passport) across the EU. In particular, managers accustomed to working with Caribbean jurisdictions have turned to Gibraltar, given their familiarity with the English speaking common law system, as well as Gibraltar's light touch but robust regulatory approach which allows for pre-authorisation launch of funds.

Private placement regimes are intended to be phased out in Europe by 2018. In advance of this time a number of European jurisdictions have already commenced tightening the rules underlying private placements, making it harder for non-European funds to market in these jurisdictions. In order to streamline European marketing efforts, managers have also increasingly turned to EU jurisdictions like Gibraltar in order to establish parallel or master funds.

In the transposition of AIFMD to national law EU countries were permitted to decide how to address the various derogations inherent in the Directive. Indeed some countries decided to gold plate the Directive, taking the opportunity to include additional provisions, not covered by AIFMD, in to local law. As a result, although one of AIFMD's stated objectives was to harmonize fund law across the EU, different rules have materialized in different countries. Implementation differences range from differences in regulation covering managers managing assets below the Directive's de minimis threshold, to depositary rules for out-of-scope funds, delegation rules, remuneration rules and the application of private placement laws.

Following a comprehensive consultation between Government, the regulator and industry, Gibraltar's implementation approach has been to retain as much flexibility as the Directive provides for. The Gibraltar EIF continues to form the basis for the regulatory regime underlying an AIFMD-compliant fund. Gibraltar has also retained its EIF regime for those funds whose managers are out of scope of the Directive, while allowing these managers to opt-in to the Directive should they wish to.

An AIFMD-compliant fund is established in Gibraltar as an EIF, typically on the basis of a pre-authorisation launch process where the appropriate documentation is submitted to the FSC and the fund is deemed authorised. In parallel the fund may submit passporting notices to the FSC which are reviewed by the regulator within 20 days. This approach allows Gibraltar to continue offering promoters a fund structure with probably the fastest time to market in the EU. In contrast other EU jurisdictions require that managers establishing AIFs undergo an authorisation process for each AIF launched. This process may delay the fund launch by a several weeks or months.

Although AIFMD implementation requirements are broadly similar across the EU, the cost of implementation may vary across jurisdictions. Running costs are likely to be lower for operations run from a Gibraltar head office compared to operations based in many other European jurisdictions. This is owing to a number of Gibraltar-specific factors, including the special residency and tax status enjoyed by executives and the headline corporate tax rate of 10% with no applicable VAT or capital gains tax. The VAT exemption also provides useful options to a manager providing operational support to branch offices throughout Europe.

AIFMD contains new rules on the marketing of alternative investment funds in the EU by European and non-European managers, and provides regulation for the marketing of these funds to professional investors within the EU. For funds that market to EU investors, AIFMD presents a choice of keeping the fund domiciled outside the EU, re-domiciling existing funds into the EU or forming a new fund within the EU. Re-domiciliation to a jurisdiction like Gibraltar is often the choice approach as it usually involves a seamless transition without triggering a taxable event, while allowing established fund managers to maintain track record.

The Directive has already presented certain opportunities to the Gibraltar funds and investment sector. A number of Caribbean and other non-EU funds have re-domiciled to Gibraltar, in order to avail themselves of marketing advantages of European domiciled funds. This fundamental change in the international funds industry is therefore expected to drive funds that are marketed in the EU to be domiciled in the EU.

Gibraltar's 2012 EIF provisions paved the way for foreign funds to re-domicile to Gibraltar and for Gibraltar funds to use fund administrators based outside Gibraltar. These revisions may trigger interest in the jurisdiction as a location for re-domiciling AIFs and establishing new funds. Gibraltar's light but robust regulatory regime may very well make it the home of new EU feeder funds. Despite the 2012 EIF revisions, the introduction of AIFMD in Gibraltar may require further amendments to the EIF Regulations, particularly in regards to new depository requirements and the licensing of EIF managers. Discussions have taken place between the regulator and the industry, following which a proposal was submitted to the Government to amend the regulations.

As a well regulated and tax efficient domicile within the EU, Gibraltar is now one of a handful of jurisdictions positioned to offer efficient fund solutions to managers who seek to benefit from a streamlined access to EU investors within the single market. Unlike funds domiciled in the Channel Islands and Caribbean jurisdictions, Gibraltar based funds have benefited from the AIFMD passport from July 2013.

The Prospectus Act 2005, which transposes the Prospectus Directive 2003/71/EC into Gibraltar law, provides the conditions to which an issuer must adhere to when offering securities to the public or admitting them for trading. The Prospectus Act 2005 does not create a fund regime, but does allow for the establishment of a closed-ended collective investment undertaking which may, in accordance with the provisions set-out in the Act, offer its securities. The Prospectus Act 2005 requires that the offering of fund securities be accompanied by a prospectus drafted in accordance with the terms provided. Once the prospectus has been approved by the Gibraltar "competent authority", the fund may request that the Gibraltar competent authority notify competent authorities of other EU member states, in order to allow the fund to offer its securities in those member states.

A fund which intends to offer securities to the public, or admit the securities for trading in a regulated market, must issue a prospectus in accordance with the provisions set out in Schedule 5 of the Prospectus Act 2005. The fund is required to submit the prospectus to the FSC, who is obliged to notify the fund in writing of its decision on an application for approval of a prospectus within ten working days of receipt of the application. There are no requirements to appoint depositaries, administrators or any other party.

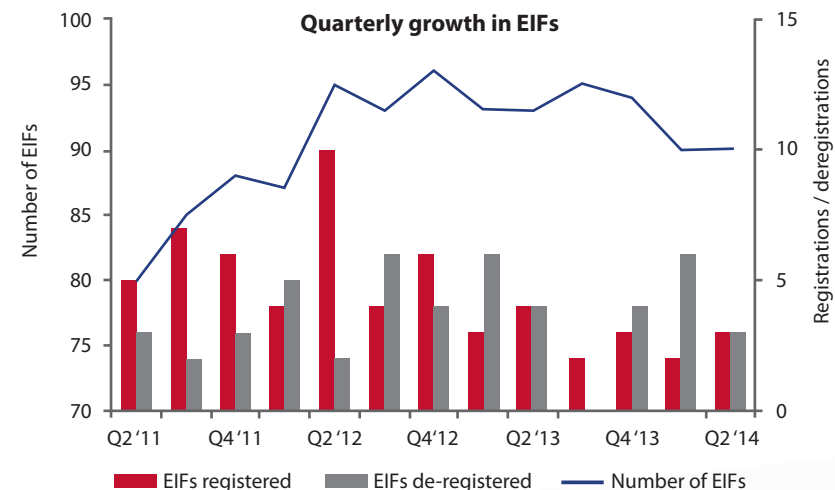
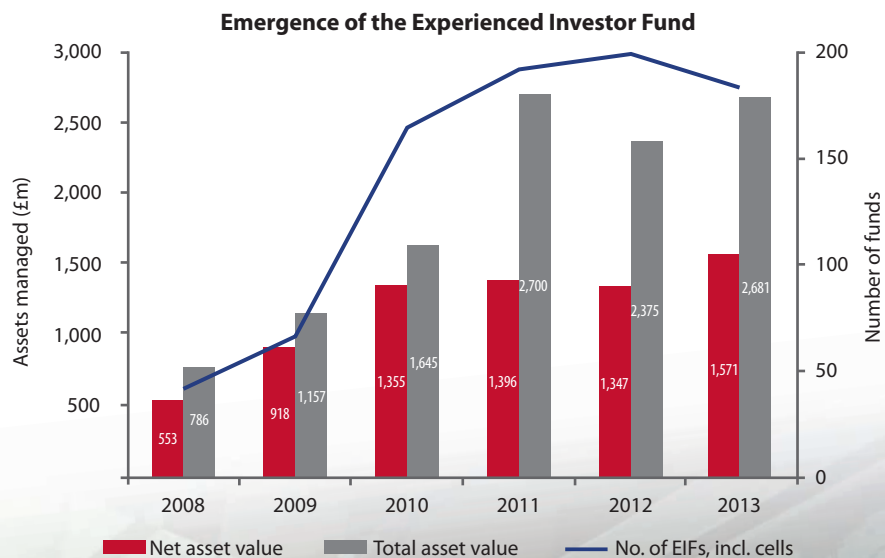
In order to take advantage of the marketing passport, a fund is required to be structured as a vehicle which is able to issue securities that fall outside the exempted securities covered by the Act, namely:

- units issued by collective investment undertakings other than the closed-ended type; and
- securities included in an offer where the total consideration of the offer is less than €2.5 million, the limit of which shall be calculated over a period of 12 months.

Once an offer to the public or admission to trading on a regulated market is approved by the FSC, the prospectus approved and any supplements thereof will be valid for the public offer or the admission to trading in any number of host member states, provided that the competent authority of each host member state is notified.

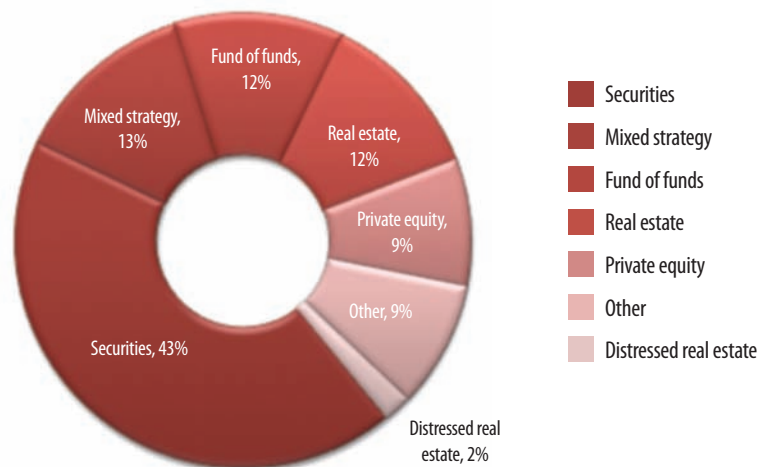


In recent years Gibraltar has witnessed a steady increase in the number of registered EIFs. As of 31 December 2013 there were 89 EIFs registered in Gibraltar through which roughly £2.7 billion of total assets were being managed. Many EIFs are structured as protected cell companies, each with a number of sub-funds or cells, statutorily segregated from each other. Including the various cells in the PCCs, Gibraltar has 183 fund strategies in operation.

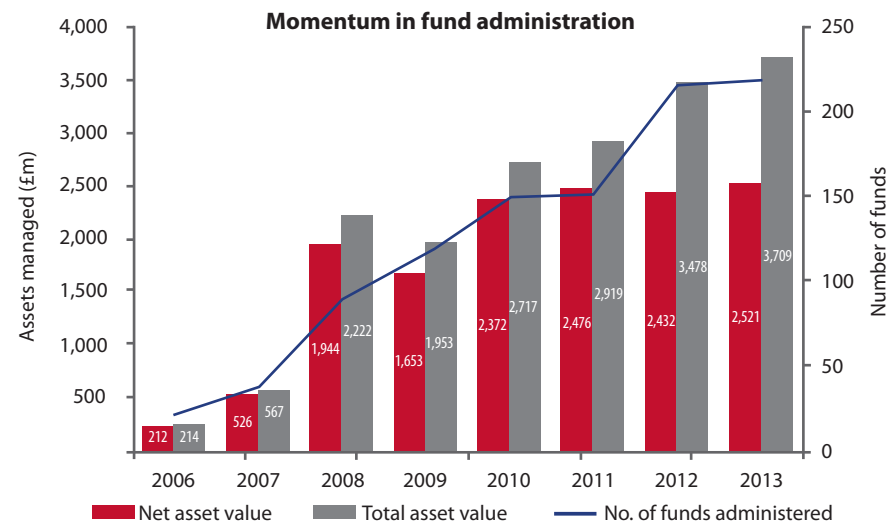


Gibraltar EIFs invest globally in a wide range of asset classes. Almost half of Gibraltar's EIFs are structured as hedge funds investing in tradable securities, commodities and currencies. The remaining funds mainly run real estate, private equity and fund of fund strategies. Non vanilla or exotic investment strategies make up 9% of EIFs. Approximately 1 in 7 funds employ a mixed strategy approach, usually via a number of cells, each with a distinct investment strategy.

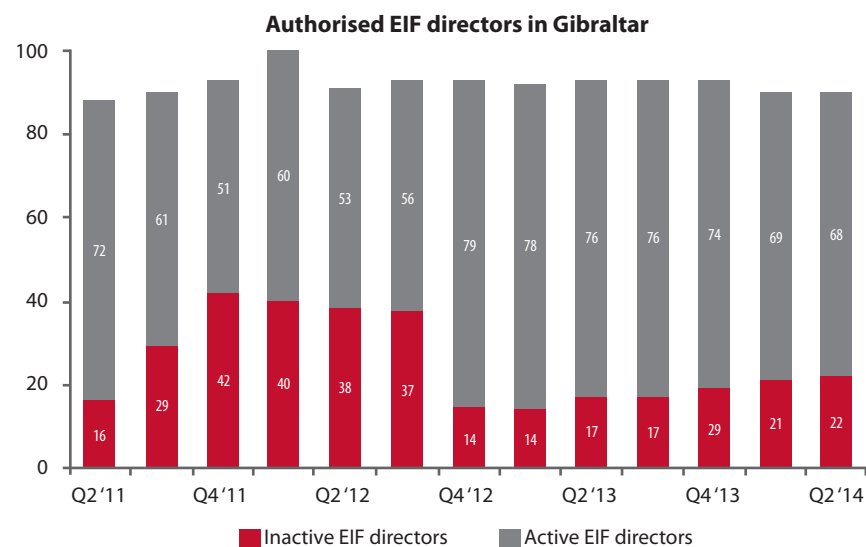
Experienced investor funds, by strategy



Ten licensed fund administrators in Gibraltar administer roughly £3.7 billion of assets in 218 local and foreign funds. Gibraltar fund administrators comprise accountancy firms, specialist fund administrators and corporate service providers. Fund administration in Gibraltar has enjoyed a sharp increase in the number of funds and capital managed since the sector's humble beginnings in 2006 when only 20 investment funds were administered in the jurisdiction.



On 30 June 2014 there were 90 authorised EIF directors registered in Gibraltar, of which 68 directors were actively running EIFs. The number of authorised EIF directors in Gibraltar has remained fairly stable in recent years.



About the Gibraltar Funds & Investments Association

The Gibraltar Funds & Investments Association (GFIA) is the association representing the interests of the funds and investments sector in Gibraltar. This includes the interests of investment managers, investment dealers, banks, brokers, fund administrators and fund directors. GFIA's objective is to develop and maintain Gibraltar as a specialized investments jurisdiction of choice within Europe, and to promote the awareness of Gibraltar as one of Europe's premier financial centres. We promote this through regular dialogue with our members and cooperation with local government and regulatory bodies.

GFIA encourages the exchange of information between members and the relevant authorities in order to establish a recognized medium of communication between GFIA, the Government of Gibraltar and the FSC. GFIA also strives to promote adherence by its members of the principals of investor protection, corporate governance, compliance and professionalism in investment and fund activities.

GFIA makes a strong effort to identify and promote learning opportunities and provide members with professional development opportunities through regular training. This is important in developing and growing the capabilities of the local work force. GFIA also makes a concerted effort to inform and advise its membership of emerging and relevant issues affecting the financial industry locally as well as globally which often involves participation in international seminars and conferences.

GFIA is in constant dialogue with the Government of Gibraltar and the FSC to improve conditions for the investment and funds business. We present workable, marketable initiatives to both the Government and the regulator in order to improve the robustness and competitiveness of Gibraltar's investment and funds business.

Listed on the following pages is GFIA's membership, which is comprised of companies and individuals operating in Gibraltar, including investment managers, fund administrators, stockbrokers, lawyers, EIF directors, banks and auditors. There are a number of other Gibraltar fund directors and investment funds that are not yet members of GFIA and they can be found listed on the FSC's website.

GFIA Members

Experienced Investor Funds

Alphen Oak Fund Limited
Algorithm Trading Technologies Limited
3GT Active Trading Funds PCC Limited
Beyond Africa Fund Limited
BlueRock Fund PCC Limited
Calderon Fund PCC Limited
Dharma Fund PCC Limited
Global Arbitrage Partners Fund Limited
Gotham Fund PCC Limited
Granite Alphen Capital Fund Limited
Hilltop Funds PCC Limited
Margaux Fund PCC Limited
Patron Capital LP III
Patron Capital LP IV
Plurimi Aviation Leasing Fund PCC Limited
ProAlp Fund Limited
Suisto Fund Limited
The Hideaways Club City Collections Property Company Limited
The Hideaways Club Property Company Limited
Turicum Global Investment Fund PCC Limited
Value Preservation Fund PCC Limited

EIF Directors

Aaron Payas
Christopher Wawn
Daniel Rudich
David D. Cuby
David William Alexander Frier
George Felipes
James David Hassan
James Lasry
James Levy QC
James Neave
Jonathan C. Stagnetto

Joseph Louis Tavares
Lindsay Adamson
Marc X. Ellul
Maurice Albert Perera
Michael L D Nicholls
Peter Yeoman
Raacida Amenzou
Subash Malkani
Tim Ireton
Tim Streatfeild-James
Mark Truman Davies

Investment Managers

Armor Portfolio Management Limited
Burren Capital Advisors Limited
Gibraltar Asset Management Limited
Huber & Co Limited
Hyperion Wealth Management Limited
Investglob (Gibraltar) Limited
Logistable Limited
Rock Limited
SMC Asset Management Limited
Sovereign Asset Management Limited
Taler Asset Management (Gibraltar) Limited

Collective Investment Schemes Administrators

Abacus Fund Administration Limited
B&C Limited
Castle Fund Administrators Limited
Fiduciary Fund Administration Limited
Finsbury Fund Services Limited
Grant Thornton Fund Administration Limited
Helvetic Fund Administration Limited
Velay Financial Services Limited
Whitmill Fund Administration Limited

Banks and Depositaries

Barclays Bank PLC
Credit Suisse (Gibraltar) Limited
Jyske Bank (Gibraltar) Limited
Lombard Odier & Cie (Gibraltar) Limited
The Royal Bank of Scotland International Limited (trading as NatWest)
SG Hambros Bank (Gibraltar) Limited
Turicum Private Bank Limited

Law firms

Attias & Levy
Ellul & Co. Law Firm
Hassans International Law Firm
Isolas
Ramparts
Triay & Triay
Triay Stagnetto Neish

Registered Auditors

EY Limited
BDO Limited
Deloitte Limited
KPMG Limited
Moore Stephens Limited
PwC (Gibraltar) Limited

Investment Dealers

ADM Investor Services International
Prospreads Limited

Business Consultancy

Global Advisory Services Limited

Other

Social Trading Limited
Investors Europe Limited
Financial Services Commission



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