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# GIBRALTAR FUNDS

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## GIBRALTAR FUNDS & INVESTMENTS ASSOCIATION

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*The Gibraltar Funds & Investments Association (GFIA) is the mouthpiece of the funds and investments sector in Gibraltar. This includes funds, investment managers, investment dealers, banks, brokers, auditors, fund administrators and fund directors.*

GFIA's objective is to develop and maintain Gibraltar as a specialized investments jurisdiction of choice and to promote the awareness of Gibraltar as one of the world's premier financial centres. GFIA represents its industry through regular dialogue with its members and through cooperation and advocacy with the Government of Gibraltar and the GFSC. GFIA also strives to promote adherence by its members to 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 represents the industry locally as well as globally which often involves participation in international seminars and conferences.

[www.gfia.gi](http://www.gfia.gi)



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*Disclaimer*

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MINISTER FOR DIGITAL AND FINANCIAL SERVICES

## MESSAGE FROM THE MINISTER

*Hon Albert Isola MP*

Dear Reader

Gibraltar is a well-established jurisdiction for the establishment of investment funds and managers. We offer a robust legislative framework, favourable tax advantages, the flexibility of a small jurisdiction and the security of high regulatory standards which meet UK and EU requirements.

Our partnership with GFIA and the Gibraltar Financial Services Commission has nurtured the growth of this sector and has resulted in the creation of an extensive ecosystem which now also includes a large number of family offices.

Brexit has created new opportunities for this sector and we are delighted to have worked with GFIA in delivering the Dual Regime which will allow Gibraltar to compete with a larger number of jurisdictions whilst also, uniquely, being able to offer access to the UK market under the UK-Gibraltar authorisation regime which gives us passporting access into the UK for financial services.

Our focus on making our funds legislation even more competitive, we believe, will guarantee Gibraltar's position as a centre of excellence for the domiciliation of funds, on the European continent, with a global reach, for the foreseeable future.

HON ALBERT ISOLA MP  
*Minister for Digital and Financial Services*



Dear Reader

The strong partnership between the Gibraltar Funds and Investments Association, the Gibraltar Financial Services Commission and the Government of Gibraltar allow the jurisdiction to deal with a multitude of issues in a timely and effective manner that is unlikely to be matched in a larger jurisdiction.

The advent of Brexit, for example, has found a swift response in Gibraltar's Dual Regime which allows Gibraltar's funds and fund managers the option of opting out of the Alternative Investment Fund Managers Directive requirements. This means that Gibraltar can attract the same fund clients who may have gone in the past to the Channel Islands or the Caribbean jurisdictions. In fact, Gibraltar funds can be marketed to the same types of investors as the Caribbean or Channel Islands funds.

On the other hand, Gibraltar distinguishes itself in being the only jurisdiction with "reciprocal access" to the United Kingdom. This means that Gibraltar financial services firms including fund and asset managers, UCITS funds, banks and insurance companies can market to and serve clients within the United Kingdom on the basis of their Gibraltar license. Likewise, British firms can serve Gibraltarian clients on the basis of their British license.

I am sure you will find the business community in Gibraltar as "can do" and ready to serve your financial services needs.

I would like to pay tribute to my GFIA colleagues Yan Delgado, Head of Marketing, Jay Gomez, Deputy Chairman, Jonathan Garcia, Chairman of the Technical Committee, Jose Luis Martinez Moreno and to Jeremy Evans for their commitment and hard work in preparing this guide.

Yours sincerely

JAMES G LASRY  
*Chairman*





## BREXIT IMPACT

On June 23 2016, the United Kingdom voted to leave the European Union. Although 96% of the Gibraltarian electorate voted to remain, this result was subsumed into the general result.

Consequently, on 31 January 2020, Gibraltar, by default, joined the UK in its withdrawal from the EU.

The UK and Gibraltar are navigating their way through a transition period due to end on 31 December 2020. Until 31 December 2020, Gibraltar is required to apply and observe EU law in accordance with its status under the EU Treaties. Thereafter, the UK and Gibraltar are unlikely to be able to use the EU financial services “passport” unless the transitional period is extended or unless an agreement is reached between the UK and the EU.

In preparation for a post-Brexit world, Gibraltar will adopt a dual regulatory regime for its funds sector. The European Alternative Investment Fund Managers Directive (AIFMD) provisions will remain in place but funds and managers may ‘opt out’ of these requirements.

Therefore Gibraltar will be able to attract funds that do not require the AIFMD passport and its increased regulation and cost for their marketing needs. Gibraltar will also maintain its position as the only jurisdiction in Europe to allow for the launch of experienced investor funds of all sizes without having to wait for regulatory approval.



GFIA believes that Brexit is likely to have little negative impact on Gibraltar’s fund industry and could even improve Gibraltar’s prevalence in the international arena.

## RECIPROCAL ACCESS

### The Brexit Silver Lining

Gibraltar’s bilateral relationship with the UK which allowed Gibraltar financial services firms to do business in the UK and UK firms to serve Gibraltarian clients is unrelated to the European Union and it will therefore survive Brexit. Thus, Gibraltar distinguishes itself in being the only jurisdiction with “reciprocal access” to the United Kingdom. This means that Gibraltar financial services firms including fund and asset managers, UCITS funds, banks and insurance companies can market to and serve clients within the United Kingdom on the basis of their Gibraltar license. Likewise, British firms can serve Gibraltarian clients on the basis of their British license.

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## THE GIBRALTAR EXPERIENCED INVESTOR FUND REGIME

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The Experienced Investor Fund (EIF) regime is Gibraltar's flagship fund product. It has proven to be an extremely versatile way of setting up a fund that is fully regulated and yet may be established quickly and without having to wait for regulatory approval

### AUTHORISATION AND REGULATORY REQUIREMENTS

One of the key points of the EIF is the authorisation process, which may be via a notification or prior approval procedure. Under the notification procedure, there is no regulatory pre-approval necessary for launch. It is sufficient for the fund to be incorporated, appoint its service providers, produce its offering document and hold a board meeting to launch itself as a fund. Within 10 days of launch, the EIF must notify the Gibraltar Financial Services Commission (GFSC) of the launch and provide them with a copy of the offering document, the constitution documents, a legal opinion from senior Gibraltar counsel stating that the fund was established in accordance with the Financial Services (Experienced Investor Funds) Regulations 2020 (the EIF Regulations) and other relevant legislation, a form signed by the administrator and the registration fee. This is very significant as it means that effectively there is no regulatory downtime and the fund may be launched as quickly as necessary. Furthermore, there is regulatory certainty. If there are comments or questions from the regulator, those can be addressed while the Fund has commenced trading.

There is also an optional prior approval procedure whereby the fund can apply for pre-approval at least 10 days before the

proposed launch. The documents outlined above will also need to be submitted to the GFSC for filing and approval.

An open ended EIF must generally have a depositary. The fund may also appoint brokers to assist with their trading activity. Neither the depositary nor the brokers need be in Gibraltar. EIFs must appoint a fund administrator that is licensed in Gibraltar or that is licensed abroad but has received Gibraltar regulatory permission to administer EIFs. A Gibraltar auditor must be appointed and annual audited financial statements as well as a regulatory return are annually submitted to the regulator.

*There are no restrictions on borrowing or owning investments. A fund may invest in any class of investment and at any percentage given that this is a fund that is targeted to experienced investors who are informed and are able to bear the risks of such investments. The fund may, however, impose certain restrictions on itself and these must be reflected in its offering document.*

An EIF must issue an offering document that complies with the EIF Regulations. This is consistent with industry standards and allows an investor to make an informed investment decision. The offering document must state the fees that are chargeable out of the property of the fund, the investment objectives, borrowing or investment restrictions if any, and the risks associated with such investment.

### EXPERIENCED INVESTORS

In order to qualify for this regime, marketing must be restricted to investors who are deemed to be experienced under the EIF Regulations. The EIF Regulations define "Experienced Investors" as, inter alia, investors who have a net worth of €1 million aside from their residential property, individual investors whose normal business activity includes investment related activity (i.e. investment professionals) or investors who invest a minimum of €100,000 in the fund. It is important to note that these definitions are individual and not cumulative. Therefore, by way of example, it is sufficient for an investor to invest €100,000 without having to prove any of the other conditions.

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## PRIVATE FUNDS

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Private Funds are, as the name alludes, private in nature. They are intended for friends and family of a promoter and in some case for family office structures that do not seek external investors. They are not regulated by the GFSC although they are subject to registration as a "small AIFM." Private Funds cannot be listed on a stock exchange and are not permitted to have more than 50 participants. Furthermore they must remain as private funds for one year, after which they may elect to become EIFs in order to allow them to accept external investors.

## PROMOTION

Promotion is limited as follows:

- To an identifiable category of people to whom it is directly offered by the offeror or its appointed agent;
- the members of that category must have sufficient information to reasonably evaluate the offer; and
- the number of people to whom the offer is made must not be more than 50.
- Other than these restrictions, there are no other investor qualification requirements.



## MANAGEMENT

The EIF Regulations require a fund board to include two directors in respect of which the GFSC has granted consent, at least one of whom is resident in Gibraltar (unless regulatory dispensation is obtained in which case neither need be Gibraltar resident).

The fund may be managed by a manager in any jurisdiction provided that manager is entitled in that jurisdiction to manage funds. Many funds in Gibraltar do not have external investment managers and are managed by their boards of directors.

The Alternative Investment Fund Managers Directive (AIFMD) was transposed into Gibraltar legislation via the Financial Services (Alternative Investment Fund Managers) Regulations (AIFM Regulations). However, as mentioned, these obligations relating to the AIFMD shall only remain obligatory up to and until the end of the Brexit transition period (due to end on 31 December 2020). Going forward, managers of EIFs will be at liberty to opt out of the AIFMD regime altogether.

## PROTECTED

### *Cell Companies*

An EIF may be established in Gibraltar as a limited company, a limited partnership, a unit trust or as a protected cell company (PCC). PCCs are companies that can segregate their assets into cells, which are statutorily protected and are remote from each other in bankruptcy. This means that if one cell incurs a liability, the creditors of that cell will be unable to satisfy their debt from assets attributable to another cell. This is particularly useful to investment managers that wish to set up several funds with different strategies under one vehicle and to save with economies of scale. Investors can invest in one or more cells.

## MARKETING

### *and Distribution*

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.

EIFs have no minimum or maximum requirements governing the 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.

## TAXATION

Gibraltar has a territorial basis system of taxation. Companies are only taxed on profits accruing in or deriving from Gibraltar, meaning the location of the activities that give rise to the profits. The corporate tax rate for taxable profits is 10%. There is no capital gains tax, inheritance tax, value added tax or wealth tax in Gibraltar. There also is no withholding tax on dividends from a Gibraltar fund to its non-Gibraltar-based investors. Interest income, however, is charged at 10% for sums over £100,000. It is generally possible to structure funds in Gibraltar so that they do not suffer any Gibraltar taxation.

## CONCLUSION

The quick and efficient regulatory notification process, the possibility of setting up funds under the PCC structure and a tax-neutral environment are factors that are certain to make Gibraltar a very interesting and competitive jurisdiction for the setting up of funds.





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