



Acquarius Trust Group

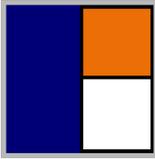
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Establishing a Fund in Gibraltar

“Gibraltar has the legislation in place to service Private Funds, Experienced Investor Funds and Protected Cell Companies...”

the people
the service
the quality



establishing an investment fund in Gibraltar

Member status of the European Union, in combination with its favourable tax regime, has resulted in Gibraltar emerging as an attractive destination for fund location.

Gibraltar has a high quality infrastructure which includes major international banks, skilled financial services professionals and top tier accountancy firms who are able to service the funds industry.

The governing legislation is The Financial Services (Collective Investment Schemes) Act 2005 (the 'CIS Act') which sets out the parameters of fund formation, promotion and operation of all funds which is complimented by supporting regulations which detail the regulatory framework.

the advantages of Gibraltar as a funds destination

destination

- ✓ part of the European Union and considered 'onshore';
- ✓ highly regulated fund administration: Financial Services Commission ("FSC");
- ✓ lower cost base to that of traditional EU jurisdictions;
- ✓ no capital gains, inheritance or wealth taxes;
- ✓ no tax on dividends from quoted securities;
- ✓ the ability to passport services throughout the EU;
- ✓ no withholding tax on payments from Gibraltar funds.

why relocate an existing fund to Gibraltar

- ✓ AIFM Directive beneficial to EU Fund jurisdictions;
- ✓ legal system is based upon UK common law.



traditional fund types in Gibraltar

The most popular funds types are:

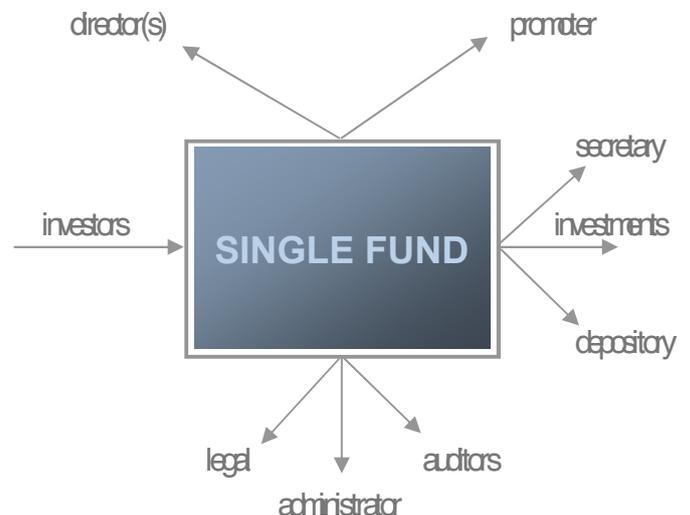
- (i) single funds;
- (ii) private funds;
- (iii) the experienced investor fund; and,
- (iv) UCITS.



the single fund

This is an individual fund which is created for a specific purpose and therefore does not have the versatility of an umbrella fund structure.

Such a fund can be either open or closed ended and would be tailored according to its overriding purpose. Once the objective of its formation had been achieved, the fund would be closed and the assets distributed to the investors.



Gibraltar has the legislation in place

to service private funds, experienced investor funds and protected cell companies

private funds

Private fund schemes are permitted under the Collective Investment Schemes legislation and are offered privately to a maximum of 50 participants who are within an identifiable category. Typically, private funds are suited to a group of individuals who wish to manage collective investments within a fund structure.

scheme summary

- ✓ private schemes are unregulated and are not therefore required to be registered with the Financial Services Commission;
- ✓ no statutory restrictions on types of investment although directors must follow the objectives set out in the offering documentation;
- ✓ no statutory requirements on the type of investor (as compared to an EIF) as long as members are of an identifiable group;
- ✓ common practice to establish a private fund as a limited company with two share classes - ordinary and preference shares;
- ✓ may be both an open or closed ended fund;
- ✓ cost effective and easy set up process;
- ✓ no audit, custodian, or FSC licensed Directors' requirements.

the experienced investor fund ("EIF")

The Experienced Investor Fund ("EIF") regime was first launched in Gibraltar in 2005 with the publication of the Financial Services (Experienced Investor Funds) Regulations 2005. The legislation was recently amended by the Financial Services (Experienced Investor Funds) Regulations 2012.

As its name suggests, the product is aimed at the professional investor and as such, an EIF is both highly versatile and lightly regulated. It does not require prior regulatory approval and therefore can be set up in a matter of days.

advantages of the EIF

- ✓ ease of set up;
- ✓ versatile: no restriction of 'eligible assets';
- ✓ promoters and administrators can use the EIF legislation to set up Hedge Funds;
- ✓ an EIF can use hedge strategies more easily and less expensively for private clients and external asset managers;
- ✓ recent regulatory change now permits an existing relationship with an overseas administrator to be maintained making Gibraltar even more attractive for redomiciliation.

experienced investors: qualification

- ✓ individuals whose net worth (or joint net worth with spouse) exceeds €1m aside from residential property;
- ✓ professionals or partnerships whose normal business is investment related activity;
- ✓ corporate bodies or unincorporated associations which have net assets in excess of €1m;
- ✓ a trustee where the trust assets are in excess of €1m;
- ✓ a participant who has a current aggregate of €100,000 invested in an EIF;
- ✓ a participant who has a current aggregate of €50,000 invested in an EIF and who has received professional advice to invest in the fund.

EIF structures

The new regulations permit a legal entity established in an EEA state to be set up as an EIF. The most common structures used in Gibraltar are:

- (i) an umbrella fund with protected cells; or,
- (ii) a single fund structure (*ibid*).

Gibraltar: a safe and secure jurisdiction

a typical umbrella fund structure



the advantages of an umbrella fund with protective cells

- ✓ single legal entity established (umbrella fund) with segregated cells or 'sub-funds' which can trade independently of each other;
- ✓ each cell can be used for specific investment objectives and/or strategies;
- ✓ specific clients can be allocated to specific cells;
- ✓ specific cells can be closed once the purpose of their particular creation has been achieved;
- ✓ streamlines set up and operational costs;
- ✓ new investment strategies can be implemented easily and quickly by the Board to maximise investor opportunities when they arise;
- ✓ versatile and flexible - additional cells can be created with minimum formality.

EIF : general information

promoters

There is no requirement for promoters of an EIF to be licensed as the underlying nature of the fund is that it is for the experienced investor. Due diligence and client acceptance procedures may be carried out by the funds' administrator.



Any safeguards are provided by the requirement that an EIF must have two directors who are authorised to carry out such duties by the FSC.

management

Again, due to the nature of an EIF, there is no requirement for an investment manager.

However, where such an individual is desired, there is no requirement for that person or body to be located in Gibraltar as long as he/it is licensed or entitled to give investment management in the jurisdiction of residence.



depository

An open-ended EIF must have a depository; in effect, a custodian who holds the investments on behalf of the investor participants.

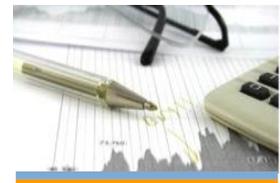


Additionally, the fund may appoint brokers to assist with trading activity, neither or which need to be in Gibraltar.

personal placement memorandum

An EIF must issue a prospectus that is consistent with recognised industry standards. The prospectus essentially sets out:

- ✓ the operational rules of the fund;
- ✓ the respective fees that are chargeable;
- ✓ the objectives of the fund;
- ✓ any restrictions relating to asset classes; and,
- ✓ investment risk.



authorisation and regulatory requirements

There is no requirement to obtain pre-approval from the FSC before an EIF is launched. This principle underlines the self-certification of experienced investors. As a result, the ability to incorporate, appoint service providers, produce a prospectus and hold a board meeting to launch the fund ensures an expedited process.

Within 14 days of the funds launch, notification of the fund must be given to the FSC with various supporting documentation to detail fund operation and legal standing.

Undertakings for Collective Investment in Transferable Securities

UCITS

introduction

Typically used where the intention is to invest solely in transferable securities such as stocks and bonds, UCITS are regulated and require a licence from the Financial Services Commission.

scheme summary

- ✓ open-ended investment scheme which may be offered to the general public across EU member states;
- ✓ established in accordance with EU Directive 2009/65/EC, Gibraltar UCITS funds may passport their services within the European Union;
- ✓ governing Gibraltar Legislation is the Financial Services (Collective Investment Schemes) Act 2011;
- ✓ specialised investment limited to specified liquid securities;
- ✓ highly regulated to protect the interests of the investor;
- ✓ Gibraltar offers a favourable combination of on-shore status, EU membership, a low-tax regime and an experienced financial centre;
- ✓ choice of structures: common fund established by trust deed or, as an open ended investment company ("OEIC");
- ✓ ability to create UCITS fund within an umbrella scheme with multiple sub-funds within a single structure.

distinctions between a 'common fund' and OEIC

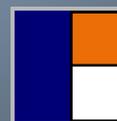
- ✓ common fund structures must appoint a UCITS authorised management company to contract with service providers: administrator, investment manager and promoter;
- ✓ a UCITS management company must have an initial minimum capital of €125,000.

common features

- ✓ in addition to a full prospectus, a UCITS fund must issue a Key Investor Information Document ("KIID") summarising the main aspects of the fund which is clear and readily comprehensible;
- ✓ as a result of the European directive, larger fund structures may be created by the merger of cross border UCITS thereby structuring master-feeder funds. This allows investors who have invested in an UCITS in one country investing in a foreign UCITS via their locally domiciled master-feeder fund.
- ✓ an OEIC may self-manage through the Directors. The fund itself will be responsible for appointing service providers;
- ✓ a self-managed fund must have an initial minimum capital of €300,000;
- ✓ the KIID must include a risk analysis and appropriate indicator. In the event of a sub-fund structure, such risk indicators must apply to each in addition to the head fund;
- ✓ Gibraltar UCITS will be taxed according to the local Income Tax Act 2010 at 10% on the 'accrued and derived' principle. Due to the nature of investment activities, income into a Gibraltar based UCITS is likely to fall outside of the tax regime.

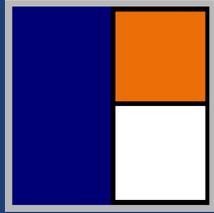
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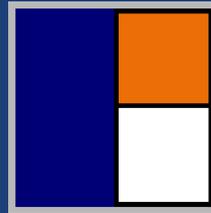
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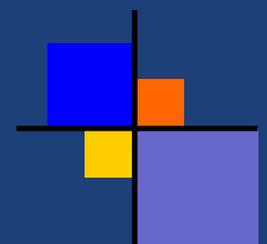
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