

GIBRALTAR: THE FUNDS BUSINESS OPENS UP

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Gibraltar continues to be an attractive European jurisdiction for the establishment of funds, especially Experienced Investor Funds (EIF) following the recent enactment locally of the Experienced Investor Funds Regulations (the Regulations). In particular, one of the primary benefits to setting up in Gibraltar is the fact that the Commissioner for Income Tax (the Commissioner) has a discretion to exclude a fund's income from liability to payment of income tax in Gibraltar. This has attracted the attention of increasing numbers of fund promoters.

The Commissioner has indicated that he will grant such exclusion to any fund that is licensed by the Financial Services Commission (FSC) or which qualifies as an Experienced Investor Fund (EIF). This will require production of the appropriate FSC licence or approval in the former case, or a letter from a registered auditor, licensed fund administrator, custodian or legal counsel in the latter case.

ESTABLISHMENT AND PROMOTION

Promotion

Generally funds (whether set up as open investment companies or as unit trusts) cannot be promoted unless they are authorised or recognised by the FSC. EIFs are exempted from this prohibition so long as they are established and are promoted as permitted by the Experienced Investor Fund Regulations (the Regulations).

Forms of Establishment

A Gibraltar registered EIF may be established in any of the following forms:

- ❖ as a company under the Companies Act
- ❖ as a unit trust governed by Gibraltar law and subject to the jurisdiction of the Supreme Court of Gibraltar
- ❖ a protected cell company or
- ❖ any other form recognised by law in Gibraltar and approved by the Chief Executive of the FSC who is deemed the EIF relevant authority in Gibraltar, although none has yet been identified.

LICENSING

To gain a license an Experienced Investor Fund must be established in accordance with the procedure set out in the Regulations. These require the filing of certain documentation with the Chief Executive of the FSC, including a formal notification of establishment, the pertinent offer documentation, an appropriate opinion signed by a Gibraltar lawyer of at least 5 years standing as well as any other documents which the Chief Executive of the FSC may request (none to date). Annual audits and returns need to be filed with the Chief Executive of the FSC.

Primary Requirement

The primary requirement for an EIF is that its controller, administrator or trustee must not accept as an investor anyone who is not an experienced investor.

Essentially, an experienced investor is a person:

- ❖ engaged in investment business; or
- ❖ having net assets of €1,000,000, either on his own, as part of a group, or with a spouse; or
- ❖ investing €100,000 in the EIF.

Offer Documents

The primary requirement for an offer document is that it must contain sufficient information to allow potential investors to make an informed judgment and to be reasonably appraised of the risks involved in the investment. The offer document must be filed with the Chief Executive of the FSC.

Corporate Requirements

An EIF is required to have:

- ❖ an administrator authorised by the Chief Executive of the FSC
- ❖ a depository (subject to some exceptions including being exempted from having one) independent from the administrator
- ❖ control exercised by at least two directors who are resident in Gibraltar (if it is a company or a protected cell company) or by a trustee resident in Gibraltar (if it is a unit trust). In each case, the directors or trustees resident in Gibraltar must be authorised by the Chief Executive of the FSC.

income in Gibraltar. In appropriate circumstances Gibraltar authorised funds may passport into other EU jurisdictions.

COLLECTIVE INVESTMENT FUNDS

In addition to EIFs, the Chief Executive of the FSC has power to authorise collective investment schemes in Gibraltar and schemes authorised in other EU member states may be recognised. Any such scheme will also fall for consideration within the terms of the guidance given by the Commissioner of Income Tax (the Commissioner) for approval and may thus avoid liability to pay tax on its



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