
GIBRALTAR FUNDS

The background of the entire page is a photograph of Gibraltar at sunset. The sun is low on the horizon, casting a warm orange glow over the sea and the city lights. In the foreground, a modern glass observation deck with a metal railing is built into the side of a steep, rocky cliff. The deck is illuminated from within, and a glass elevator is visible on the left side of the cliff. The city of Gibraltar is visible in the distance, with its lights reflecting on the water.

KEY FACTS FOR FUNDS SUMMER 2021

GIBRALTAR FUNDS & INVESTMENTS ASSOCIATION
IN CONJUNCTION WITH
THE GOVERNMENT OF GIBRALTAR

GIBRALTAR FUNDS & **INVESTMENTS ASSOCIATION**

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

GFIA's objective is to develop and maintain Gibraltar as a specialised investments jurisdiction of choice and to promote the awareness of Gibraltar as one of the world's premier financial centres. In so doing, GFIA represents the industry through regular dialogue with its members and via cooperation and advocacy with the Government of Gibraltar and the Gibraltar Financial Services Commission (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 every effort to identify and promote learning opportunities and provide its members with professional development opportunities through regular training, considered essential developing and growing the capabilities of the local work force.

GFIA represents the industry both locally and on a global platform via its active participation in international seminars and conferences.

www.gfia.gi



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GIBRALTAR: KEY FACTS

“Throughout the ages, the Rock of Gibraltar has cast a powerful first impression on those that have seen it. Whether approaching by land, sea or air, the Rock looms stark and isolated as it towers above the region. At the neck of the Straights of Gibraltar, it is the final signpost before the Mediterranean joins the Atlantic and thus has been an important site throughout Europe” (HM Government of Gibraltar, 2016).

A peninsula linked to Southern Spain in the Mediterranean, the British Overseas Territory of Gibraltar, as well as being Europe’s gateway to Africa, provides a high-quality infrastructure and lifestyle.

Gibraltar is a self-governing and self-financing parliamentary democracy, with a legal system based on English Common Law and pound sterling as its currency. Its economy is highly-diversified and prosperous.

In addition to its demonstrable credentials in the more traditional of financial services, Gibraltar also possesses a strong track record within the regulated e-commerce (e-gaming, e-money and payments and other electronically supplied financial services) sector. Its reputation for attracting quality operators means that it is well positioned as a leading global hub.

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 has survived 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 licence.



“Over the last 20-30 years, Gibraltar has transformed itself from a place that used to rely very heavily on Ministry of Defence expenditure to a private sector economy where access to external markets is critical. Gibraltar is now a service economy in financial services, e-commerce, tourism and shipping. Gibraltar’s transformation has been absolutely unique in the context of Southern Europe and transformational” (Peter Montegriffo, Welcome to the Rock, Sky TV, 2018)



FUND MANAGERS



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.

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 has therefore survived Brexit. Gibraltar UCITS, ManCos, Gibraltar AIFMs and AIFs will be able to provide services in the UK under the new market access arrangement for financial services between the UK and Gibraltar: the Gibraltar Authorisation Regime (GAR).

Thus, Gibraltar distinguishes itself in being the **only** jurisdiction with "reciprocal access" to the United Kingdom. This means that Gibraltar UCITS, ManCos, Gibraltar AIFMs and AIFs will continue to have access to the UK market and will continue to be able to market their UCITS, AIFMs and AIFs in the United Kingdom on the basis of their Gibraltar licence.

Likewise, firms authorised in the United Kingdom can continue to access Gibraltar on the basis of their UK licence.



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.

Gibraltar will be able to attract funds that do not require the AIFMD passport and thus can reduce cost by domiciling in Gibraltar.



FUND MANAGERS

EXPERIENCED INVESTOR FUNDS...



Gibraltar's flagship fund product that has proven to be an extremely versatile way of setting up a fund that is authorised and which may be established quickly, without having to wait for regulator approval.

AGILE REGULATORY ENVIRONMENT (NOTIFICATION PROCESS)

Experienced Investor Funds (EIFs) benefit from a rapid and agile authorisation process, which promotes swiftness to market via a notification or a prior approval procedure.

The notification process requires no regulator pre-approval prior to launch. Rather it is sufficient for the fund to be incorporated, appoint service providers, produce its offering document and hold a board meeting as a precursor to launch.

Within **10** days, the EIF is required to notify the regulator, the Gibraltar Financial Services Commission (GFSC) of its launch. In so doing it must provide a copy of the offering document, the constitution documents, and a legal opinion from a 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 must also be submitted.

With no effective regulatory downtime, the fund may be launched without delay. An element of regulatory certainty is therefore obtained from the outset, and should any comments or questions from the regulator arise, these can be addressed subsequent to the fund's commencement of trading.



EIF characteristics include no investment or borrowing restrictions, no limit to number of investors, pre-authorisation launch option, tax neutrality, expedited start-up process and competitive start-up costs. An EIF may be established as a limited company, a limited partnership, a unit trust or as a protected cell company (PCC).



EXPERIENCED INVESTOR FUNDS...



Funds designed for professional, high net worth or experienced investors. EIFs are authorised in accordance with the EIF regime established under The Financial Services (Experienced Investor Funds) Regulation 2020.

AGILE REGULATORY ENVIRONMENT (PRIOR APPROVAL)

The optional prior approval process allows the fund to apply for approval at least **10** days before its proposed launch, with the same documents as outlined in the notification process having to be submitted to the GFSC.

ADDITIONAL REQUIREMENTS

A Gibraltar-licensed fund administrator, or one that is licensed abroad but has received GFSC permission to administer EIFs needs to be appointed.

Similarly, a Gibraltar auditor must be appointed and annual audited financial statements and regulatory returns submitted to the regulator.

An offering document complying with the EIF Regulations must be issued. This must state the fees chargeable out of the property of the fund, the investment objectives, borrowing or investment restrictions (if any) and the risks associated with such investments.



There are no restrictions on borrowing or owning investments. A fund may invest in any investment class and at any given percentage 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.



EIFs: **ADDITIONAL INFORMATION**

EXPERIE**I**NCED **I**NCVESTORS

Experienced Investors are defined as investors who have a Net Worth of €1 million (exclusive of principal residential property), individual investors whose normal business includes investment-related activity (investment professionals) or investors who invest a minimum of €100,000 in the fund. These definitions are individual and not cumulative.

PROTECTED **C**ELL **C**OMPANIES

Protected Cell Companies (PCCs) can segregate their assets and liabilities into statutorily protected cells. If one cell incurs a liability then 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 who might thus benefit from economies of scale.

MARKETING **M**ANAGEMENT **D**ISTRIBUTION

EIFs have no minimum or maximum requirements on invested capital and are typically marketed on a private basis under national private placement regimes and the laws of the jurisdictions in which they are promoted.

Generally 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.



The EIF fund board requires two EIF Directors, at least one of which is resident in Gibraltar. 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.



PRIVATE FUNDS



There are no restrictions under the Financial Services Act 2019 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.

Such funds are private by nature, being intended for friends and family of a promoter and, in some cases for family office structures not seeking external investors.

Private Funds are not authorised by the GFSC and have no statutory requirement 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 Funds cannot be listed on a stock exchange and are not permitted to have more than 50 investors of an 'identifiable category', members of which are deemed to possess sufficient information in order to reasonably evaluate the offer. Other than these restrictions, there are no other investor qualification requirements.

A private scheme must remain as such for one year, after which it may elect to become an EIF in order to it to accept external investors.



There are no requirements for licensing of directors on the board, nor for the appointment of a custodian or an investment manager. The private fund may be self-managed by its directors. Private schemes are generally within the scope of AIFMD and will therefore either be subject to registration with the GFSC or will be required to apply for an In-Scope Alternative Investment Fund Manager (AIFM) licence.



PRIVATE FUNDS

UCITS FUNDS



UCITS Funds (Undertakings for the Collective Investment In Transferable Securities) are regulated by the GFSC and may be licenced in Gibraltar in accordance with applicable laws on UCITS.

Undertakings for Collective Investment in Transferable Securities (UCITS) may be established in Gibraltar as an open-ended company, a Gibraltar unit trust comprising a trustee and an independent manager or as a contractual fund, the latter being an unincorporated body established by a management company under which the participants agree to share in the assets of the fund.

It is also possible for a Gibraltar UCITS to 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.

Gibraltar has transposed all EU Directives into Gibraltar law, this includes the applicable Directives on UCITS as consolidated in the Financial Services Act 2019.

Under the Gibraltar Authorisation Regime (GAR) (see page 4), it is possible for a Gibraltar UCITS to be managed from Gibraltar or from the UK under the GAR. Gibraltar is the only jurisdiction with such “reciprocal access” to the United Kingdom. This means a Gibraltar UCITS can also be marketed to investors in the UK.



A Gibraltar UCITS Fund may be licenced where the intention of the fund is to operate with the sole object of collective investment in transferable securities (or in any other liquid financial assets), raise capital from the public and invest on the principles of risk-taking, and to issue units which are, at the request of holders, redeemable (directly or indirectly) out of such assets.



NEW LEGISLATION

LIMITED PARTNERSHIPS BILL (2020)

Limited Partnerships will no longer be required to have legal personality. Upon registering a limited partnership or re-registering a company as a Limited Partnership, a choice can be made regarding legal personality.

Limited Partnerships registered under the former Act will continue to have legal personality unless the general partners, within three months, elect to cease the limited partnership's legal personality and make appropriate declarations. This would allow a Limited Partnership to be able to show that the limited partnership does not constitute a legal person separate from its partners.

The legislation will also define certain actions that a Limited Partner may undertake which will not amount to taking part in the management of the limited partnership. This would allow a Limited Partner to maintain limited liability whilst, for example, as an investor could actively participate in advisory committees to discuss the portfolio and individual assets without piercing its limited liability status.

The Bill also ensures voting rights of each partner will be in proportion to their partnership interest unless otherwise varied by agreement between or with the consent of the partners, enshrining a fairer system of management.

PROTECTED CELL LIMITED PARTNERSHIPS BILL (2020)

In further legislative modernisation, the Protected Cell Limited Partnerships Bill 2020 ("PCLP Bill") has also been introduced. The PCLP Bill enables Limited Partnerships that are authorised as Experienced Investor Funds to create one or more cells to protect and segregate cellular assets from non-cellular assets and keep each cell separate and separately identifiable from other cells.

Protected Cells will be able to be used to create multi-cell funds or "umbrella funds". Protected Cell Company legislation was first introduced in 2001, and Gibraltar was the first EU jurisdiction to offer this.



Gibraltar's funds industry welcomes significant new changes to the jurisdiction's Limited Partnership and Protected Cell Limited Partnerships which repeals the existing Limited Partnerships Act 1927, paving the way for significant modernisation.





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