

Financial Services Bulletin Experienced Investor Funds

On 5 August 2005 the long awaited Financial Services (Experienced Investor Funds) Regulations 2005 came into force. This has given rise to a niche area for funds in Gibraltar.

This bulletin summarises the Gibraltar Fund Legislation and provides guidance and highlights a number of practical issues for clients wishing to invest in Gibraltar.

Regulation

Funds in Gibraltar are supervised by the Financial Services Commission.

The Regulations effectively divide the funds that may be set up in Gibraltar into four:

- Private funds
- Experienced Investor funds
- Public non-UCITS funds
- UCITS funds

Private funds

Private funds are not regulated in Gibraltar. These are funds where the shareholders are an identifiable group of persons not exceeding 50 in number, such as close clients, friends and family of the promoter or manager. These funds can not promote themselves to the public and all investments must be made by way of a private placement.

Experienced Investor funds

These are funds designed for high net-worth or experienced investors. An investor must either show that they have a net worth in excess of €1million or invest a minimum of €100,000 in the fund.

The fund must have at least two Gibraltar resident directors who are pre-approved by the Financial Services Commission, a Gibraltar licensed fund administrator and a custodian or prime broker.

The fund administrator will notify the Financial Services Commission within 14 days of the establishment of the fund together with an opinion from a lawyer that the fund qualifies as an experienced investor fund.

These funds do not have to go through the regular licensing procedure and are intended to provide adequate investor protection whilst at the same time providing for a flexible and "lighter" regulatory environment.

Ongoing supervision of these funds is carried out through the licensed fund administrator and the requirement to file audited financial statements with the Financial Services Commission four months after the funds year end.

Public funds

These are licensed funds which are allowed to sell their share to the public.

The licensing procedure can take between three to six months and is quite involved, requiring the submission of application documents, prospectus and incorporation documents for the fund, the investment manager and the directors, together with copies of administration agreements, custodian agreements, investment management agreements and registrar and transfer agent agreements where applicable.

All of the directors (at least two of which have to be Gibraltar resident) have to be approved as "fit and proper" persons with the proper level of investment experience.

The minimum share capital requirement is £50,000 and public funds are required to have a "bricks and mortar" presence in Gibraltar.

Public fund are supervised by the Financial Services Commission and ongoing supervision is exercised by the requirement to submit semi-annual reports and an audited annual report.

- **Non-UCITS public funds**

A non-UCITS fund is one that does not invest in transferable securities. The Regulations impose restrictions on the types of investments that a non-UCITS public fund may hold but it is possible to obtain derogations from the Financial Services Commission allowing the fund to invest in almost any type of investment.

- **UCITS public funds**

A UCITS fund is one which invests in transferable securities (stocks and bonds registered in a recognised stock exchange). A UCITS fund is licensed in compliance with EU Directives.

Unlike with the non-UCITS public funds, they must comply with all of the regulations with regard to investment restrictions and structure, for example:

- no more than 10% of the fund's assets may be invested in one entity
- the fund can invest only up to a total of 10% of the share capital of any one entity

In addition the investment manager, custodian and fund administrator of a UCITS fund must also be licensed.

A UCITS fund is usually set up by a bank or an investment manager and its shares or units will be marketed to clients and retail investors. A UCITS fund licensed under the Regulations will be able to "passport" into the EU.

Taxation

Licensed funds in Gibraltar (including Experienced Investor Funds) are exempt from taxation in Gibraltar upon receipt of a certificate from the Commissioner of Income Tax.

In addition there is no capital gains tax or wealth tax in Gibraltar and stamp duty on the increase of capital and on the transfer of shares is fixed at £10.

Confidentiality

As with any licensed entity, a fund must know the identity of each investor by following the local "know your client" rules. However it is possible for the investor to remain anonymous on the corporate register by registering the shares in the name of a nominee. The nominee will then hold the shares in trust on behalf of the investor and the name will not be disclosed in any public register.

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