

A large, abstract graphic of a network or sphere made of interconnected blue nodes and lines, positioned in the upper right background of the page.

Gibraltar

Regulation

FUNDS AND FUND MANAGEMENT 2009

2.1 Type of funds

The legislation in Gibraltar divides funds into three categories, as follows.

Private funds

These are funds which (independently of their set up as unit trusts under trust law, a Gibraltar Company registered under the Gibraltar Companies Act, a protected cell company under the Protected Cell Companies Act or a common or mutual under the law of contract) are not listed on a stock exchange and limited by the constituting document to less than 50 investors. These funds may only be promoted to a restricted category of persons by way of private placement. These funds are not subject to any further regulation by the regulatory body, the Financial Services Commission (FSC).

Experienced Investor Funds (EIFs)

EIFs may be set up as a unit trust established under and governed by Gibraltar Law, a Gibraltar Company registered under the Gibraltar Companies Act, a protected cell company, or any other form recognized by law and approved by the Financial Services Commissioner.

To qualify as an EIF, the fund must have an authorized administrator, an authorized custodian who is a different person to and independent of the authorized administrator. Management and control of the fund must be undertaken by two Gibraltar resident directors pre-approved by the FSC in the case of a company, or, in the case of a unit trust, at least one Gibraltar resident trustee pre-approved by the FSC.

The requirement to have an authorized custodian is waived where the fund is a closed fund or where the fund is a hedge fund and has a prime broker with a minimum A1/P1 rating.

Once the fund is established, the administrator has 14 days to notify the FSC of the establishment of the fund and file with the FSC a copy of the offering documents and a legal opinion from a Gibraltar lawyer that the fund complies with the applicable legal requirements. There is therefore no approval process

by the FSC and the fund is deemed authorized to commence its investment business on notification.

EIFs have no investment or borrowing restrictions.

EIFs are available to investors who have a net worth in excess of EUR 1 million or who invest a minimum of EUR 100,000.

Funds marketed to the general public (public funds)

Funds marketed to the general public require authorization by the FSC under the Undertakings for Collective Investment in Transferable Securities (UCITS) Product Directive as transposed to local law. Such funds are authorized as UCITS schemes or non-UCITS retail schemes. Both these schemes may be set up as a unit trust or an open-ended investment company.

2.2 Laws

The main laws that govern funds are as follows:

- Financial Services (Collective Investment Schemes) Act 2005, Financial Services (Collective Investment Schemes) Regulations 2006 and the Code of Practice - Collective Investment Schemes;
- Financial Services (Experienced Investor Fund) Regulations 2005
- trust law; and
- company law

Gibraltar has Protected Cell Companies legislation in place allowing funds to set up as protected cell companies. This legislation allows for the segregation of assets and liabilities within different cells of the same corporate vehicle. Issuing a different class of share capital would create a cell, and it is therefore possible to grant different rights and obligations to different classes of shareholders and segregate these from other classes of shareholders. It is envisaged that this type of company could be used to house different funds within an overall structure that is already licensed, thereby enabling smaller funds to be set-up and approved quickly and cost efficiently.

2.3 Managers, trustees, and custodians

The FSC may authorize a body corporate, which has a permanent place of business in Gibraltar, as a trustee, custodian, or manager of a scheme if it is satisfied that that body corporate has sufficient financial resources and experience necessary to enable it effectively to conduct its business and to satisfy its legal obligations as a trustee, custodian, or manager.

The manager and the trustee/custodian must be different persons and must be independent of each other. The trustees or custodians of a fund are usually credit institutions authorized in Gibraltar or another EU Member State.

The manner of calculation of a manager's fees must be included in the rules of the fund. A manager cannot charge fees or costs on account of transactions relating to the units of a scheme where the assets of the scheme include units in another scheme managed or controlled by that manager. Fees of trustees and custodians must be disclosed in the rules of the fund. Otherwise there are no legal restrictions on fees charged.

Any person providing fund administration services from Gibraltar also requires licensing by the FSC.

2.4 Investment restrictions

There are a number of restrictions on the investment powers of funds marketed to the general public in order to ensure a prudent spread of risk and hence protection to retail investors.

The categories of investment which a UCITS (Undertakings for Collective Investment in Transferable Securities) fund may invest in are detailed in section 24 of the Financial Services (Collective Investment Schemes) Regulations 2006 and the specific investment restrictions applicable are set out in Part III Division 3 – Investment and borrowing powers of the Financial Services (Collective Investment Schemes) Regulations 2006.

The investment restrictions referred to above are relaxed in certain cases in respect of non-UCITS retail funds. The modifications from the restrictions imposed by Part III Division 3 – Investment and borrowing powers of the Financial Services (Collective Investment Schemes) Regulations 2006 are set out in the Code of Practice – Collective Investment Schemes.

2.5 Borrowing

Subject to any restrictions contained in the constituting document, schemes marketed to the general public may borrow up to 10 percent of the fund's net assets on a temporary basis (not longer than three months).

2.6 Accounts and prospectus

A fund must publish its audited accounts annually. It may choose any reporting date. A fund must publish a prospectus, which must conform to the requirements set out in the regulations.

2.7 Supervision

The supervisory authority in Gibraltar is the Financial Services Commissioner, Financial Services Commission, Suite 943, Europort, Gibraltar.

2.8 Fund ownership

There are no restrictions on the percentage of units in a fund, which may be held by any one person or group of persons.

2.9 Fund structure

Both funds of funds and umbrella funds are permitted in Gibraltar, subject to specific investment restrictions and regulations.

Given the investment and borrowing restrictions and conditions, hedge funds marketed to the general public cannot be set up in Gibraltar. However, funds that are not marketed to the general public such as Experienced Investor Funds may be set up as hedge funds.

2.10 Stock exchange

A stock exchange quotation is not currently available in Gibraltar to Gibraltar funds.

2.11 Bank secrecy

Gibraltar has anti-money laundering rules. There is no bank secrecy legislation in Gibraltar with secrecy and confidentiality governed by common law relating to fiduciary duties and obligations.

2.12 Fund set-up

The setting-up of a public fund would take approximately three months. Set up costs, inclusive of all fees and professional costs, would be in the region of GBP 25,000 depending on the complexity.

Experienced Investor Funds may be set up in matter of weeks and costs inclusive of all fees and professional costs, would be in the region of GBP 17,000 again depending on the complexity.

2.13 Foreign funds

Schemes incorporated in other jurisdictions may not be marketed in or from within Gibraltar unless they are recognized by the FSC. Schemes constituted in an EEA Member State and certified by the relevant competent authority as

falling within the UCITS definition are recognized as a matter of course. In the case of other schemes, the FSC must be satisfied that adequate legislation for the regulation and supervision of funds exists in the country in which a fund has been constituted.

2.14 Bearer shares

Funds wishing to issue bearer shares or units are not likely to obtain regulatory approval.

2.15 Use of the internet

Subject to compliance with the provisions of the Financial Services (Conduct of Business) Regulations and the Financial Services (Advertisements) Regulations the Internet can be used as a marketing tool for the sale of public funds.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.