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# INTERNATIONAL FUND INVESTMENT

**Offshore evolution:  
On to the next stage**



India investment debate • Hedge Fund Strategy Barometer • Transfer agency

By Joey Garcia\*

## Gibraltar: another European alternative

### GIBRALTAR FUNDS

The tremendous success of new and developing finance centres as a part of the global asset management industry is now a commonly reported feature. However, equally well reported has been the issue of 'capacity' within these often small jurisdictions. The global expansion in funds has unquestionably placed considerable pressure on the established fund centres of Dublin, Luxembourg and the Caribbean where spare capacity to deal with smaller sized funds is becoming increasingly rare. This has led not only to far greater selectivity by fund administrators but also to a natural increase in fees and set up costs.

Gibraltar, through the introduction of its Experienced Investor Funds Legislation and the necessary legislative changes made to accommodate the rapidly changing requirements of the global fund market is ready and well placed to offer itself as a serious alternative fund jurisdiction. Although Gibraltar is not unique in allowing administrators to work within a European time zone, its position is quite unique in that the jurisdiction offers a favourable tax regime while at the same time existing within the EU by virtue of its relationship with the UK. All relevant EU banking, insurance and investment services directives have been transposed into Gibraltar law allowing for the financial services sector to work within any integrated structured financial services system implemented by the EU. Financial passporting has also been in effect since July 2003 thus allowing financial services firms and certain funds to offer their products and services throughout Europe on the basis of their Gibraltar licence.

The value of the European passport cannot be underestimated with 27 member states, a strong euro and a population of 494 million all offering a wealth of marketing opportunity.

### GIBRALTAR'S UNIQUE POSITION

Gibraltar's growing success as a finance centre has been as a result of a number of factors and conditions but it is surprising to reflect that Gibraltar's place as a jurisdiction of choice for funds has actually been in part due to the phasing out of the Gibraltar tax exempt company, itself an important vehicle in attracting business to Gibraltar in the past. The phasing out of the exempt Company has allowed Gibraltar companies access in some jurisdictions to the benefits of the European Parent Subsidiary directive. As part of the solution for the phasing out of the tax exempt company in Gibraltar, the European commission notified member states that the parent subsidiary directive should be applied to Gibraltar tax resident companies in the same way that it is applied to companies that are resident in any other member state. The parent subsidiary directive is an extremely important piece of EU legislation, designed to eliminate tax obstacles in the area of profit distributions between groups of companies in the EU by effectively abolishing withholding taxes on payments of dividends between these associated companies even when they are domiciled in different member states. To use an example, if a Gibraltar company is properly tax resident in Gibraltar and has a relevant participation in a Luxembourg company, the tax authorities will not tax dividends that are paid from that Luxembourg company to the Gibraltar par-

ent. To take this a step further, the result is that the fund may invest in a wholly owned French company, and allow the French company, (after it has paid any French taxes on its income), to pay its dividends to the Luxembourg parent without paying French withholding tax. The structure would then allow for those profits to be sent as dividends to the Luxembourg corporation's Gibraltar parent without suffering Luxembourg withholding tax. In Gibraltar, the dividends would not attract any tax on the basis they are from the proceeds of the parent subsidiary relationship and there would be no capital gains tax, wealth or estate duty tax since these taxes do not exist in Gibraltar. Furthermore, there is no withholding tax on dividends paid to non-Gibraltarian shareholders of a Gibraltar Company (unlike for example in Luxembourg) so the profits of the French investment have essentially been repatriated to the investors of the fund without tax leakage. It becomes easy to see the potential that the Gibraltar domiciled fund has been able to offer to real estate and private equity funds, asset managers, and private investors.

In terms of the products available in Gibraltar, there have also been new and exciting developments recently, and these have not gone unnoticed within the fund industry. The Capita group have recently established themselves on the rock and executive director Robert Coyle believes that Gibraltar 'is on the cusp of taking off and already has a good infrastructure of lawyers and accountants...'. Locally, the Fiduciary Group, a long established company and trust administrator in Gibraltar and Spain also recently identified the funds industry as the primary

area of growth and set up Fiduciary Fund Administration Limited which provides independent 3rd party fund administration services. In short, everybody wants a piece of the action and competition has led to competitive pricing within Gibraltar, already economical relative to other jurisdictions.

## FUND TYPES

The current legislation in Gibraltar, namely the Financial Services Act 1989, Financial Services Act (Collective Investment Schemes) Regulations 1991, Financial Services (Collective Investment Schemes) Act 2005, the Financial Services (Collective Investment Schemes) Regulations 2006 and the Financial Services (Experienced Investor Funds) Regulations 2005 can be said to divide the types of licensing requirements for Gibraltar funds into four categories. Private funds, Experienced Investor funds, non-UCITS retail funds and UCITS funds.

In short, Private funds are funds that are promoted to a restricted category of persons whose number is less than 50. They are exempt from licensing requirements and generally produce an offering document to ensure investors have sufficient information to evaluate the offer.

Non-UCITS and UCITS funds reflect the European regulations that aim to allow creative investment schemes to operate freely throughout the EU on the basis of a single authorization from one member state. The licencing procedure which normally takes between three to six months requires submission of the formation documents of the fund, its prospectus and the application forms for the fund to be submitted to the Gibraltar Financial Services Commission (FSC). Requirements for licencing under the Financial Services Acts follow provisions of the UCITS directives, with the possibility of derogations from the FSC in the case of non-UCITS funds from certain aspects, such as invest-

ment restrictions. Gibraltar UCITS funds may passport their services within the EU on the basis of the Gibraltar Licence. The recent fund legislation brings Gibraltar fully into line with UCITS II and III, which allow more flexibility of investment.

## THE EIF

Without question the most exciting competitive innovation in the Gibraltar fund industry and also the most commonly used vehicle for funds is the Experienced Investor fund (EIF), a highly versatile and lightly regulated instrument which allows for the possibility to set up funds for experienced investors. This type or style of fund has pioneered a rapid growth in the funds industry worldwide, but the Gibraltar EIF is unlike many competitive products in that it also enjoys a light level of regulation providing a layer of comfort to its investors.

To establish the EIF the fund administrator needs to notify the regulator within 14 days of establishment, and provide the fund's offering documents along with an opinion from counsel that the fund complies with the relevant provisions. The EIF is designed for professional, high net worth or experienced investors so investors in this fund must have a net worth of 1 million euros, or invest a minimum of 100,000 euros. It is also a requirement that the EIF have two Gibraltar resident directors who are licenced by the FSC to act as EIF directors, a custodian or broker to hold its assets, and a Gibraltar-based licenced administrator. They must also produce annual audited accounts. In this way, the EIFs are 'fast tracked' through the regulatory process and do not have to go through the procedure for regulatory approval and licensing which allows them to set up extremely quickly, but at the same time are structured to ensure that there is adequate investor protection through the regulation of the counterparties to the fund, namely the administrator, directors and custodian.

This along with the opinion from counsel and the auditing requirement lessens the need for regulation of the actual fund. When compared to the private funds where the disadvantage is the restriction on marketing, and retail funds which can take months to launch, the EIF's provide an attractive regulated solution that can be set up by fund promoters very quickly. Furthermore EIF's are exempt from income tax in Gibraltar upon receipt of the relevant certificate from the Commissioner of Income Tax thus providing a favourable tax environment for the fund, investment manager and investors.

## PCC

EIF's are most commonly set up as companies or Protected Cell Companies (PCC's). The Protected Cell Companies Act 2001 at its simplest enables a single company to create separate pools of assets so that the assets of one pool are not available to creditors of another, therefore 'ring fencing' each separate class or cell even though the PCC is a single corporate body. Within a fund structure, cells can be used either by separate clients or by one client who wishes to promote several strategies. The use of the PCC as a single entity structure but with the ability to facilitate ring fencing of various strategies versus a group of funds structured with multiple entities saves time, cost and effort. With a PCC there is also a single board and one prospectus.

It is clear that with turbulent market conditions and ever changing and expanding investment strategies seeking less correlation to primary markets that the need to implement change and adapt quickly is essential. The PCC offers a realistic platform to implement such changes quickly and efficiently.

## INVESTOR PERCEPTION

There has been a sea of change in Gibraltar which has been reflected in

the rapid growth of the finance centre in Gibraltar. The Regulators in Gibraltar, the Financial Services Commission ([www.fsc.gi](http://www.fsc.gi)) were the first to pioneer this change proving to the International Monetary Fund that it takes a strong stand against money laundering with a sound regulatory body. This was fundamental in Gibraltar's adaptation to the competitive requirements of the low tax regime sector and the advances that have been reflected recently in the IMF evaluation on Gibraltar's supervision of Banking, Insurance and Anti-Money Laundering measures on the 2nd May 2007 which further endorsed Gibraltar's robust regulatory environment. The assessment was conducted against recently revised and strengthened international standards and Gibraltar was still found to be ahead of many other onshore and much larger financial centres.

In September 2006, CNBC European Business published a Country Report on Gibraltar recognizing Gibraltar as a serious financial centre that could become even bigger if London and Madrid agree on a development plan to open the border and expand the airport. Soon after this article was published the Cordoba Accord was signed by the UK, the Kingdom of Spain and Gibraltar ending all discriminatory restrictions on civilian flights to Gibraltar Airport, including the prohibition of flights over Spanish soil. The practical result of the Agreement is that Gibraltar will now benefit from full EU aviation measures allowing civilian flights from all nations into Gibraltar Airport. Currently, there are direct flights to London and Madrid with plans for a new air terminal that will assist in the development project of Gibraltar as an alternative funds jurisdiction within Europe, easily ac-

cessible and in the same time zone.

Overall, with an impressive location, legislative framework, regulatory regime, developed infrastructure and high calibre of advisors enhancing the perception of Gibraltar, Gibraltar has now evolved into a competitive option for a fund domicile with the capability and capacity to service clients on a personal and relationship driven level. A further boost to the industry is likely to be the new Gibraltar stock exchange provisionally named 'Gibex'. The exchange is a natural progression for Gibraltar and it is hoped will create various opportunities for Gibraltar funds, and even Gibraltar based companies who could opt for a secondary listing locally in the future. The future looks bright.

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#### GIBRALTAR EXPERIENCED INVESTOR FUND (EIF) HIGHLIGHTS

Regulatory Authority	Financial Services Commission	Local Directors Required	Yes; at least two Gibraltar resident directors
Type of Vehicle	- Company - Unit Trust - Protected Cell Company	Capital Requirements	Yes, depends on fund vehicle (if no management company then for EIF EUR 1.25 Million)
Eligible Investor Base	Designed for high net-worth or experienced investors	Taxation	Exempt from income tax and company tax. There is no capital gains tax and no gift or wealth tax in Gibraltar
Minimum Subscription Amount	Investor must show net worth in excess of EUR 1 million or invest a minimum of EUR 100,000 in the fund	Lodging of Financial Statements	Audited financial statements need to be filed within 6 months after year end
Multiple Currencies	Yes	Frequency of NAV	As set out in the constitutive documents
Approval Process and Timing	The fund administrator will notify the FSC within 14 days of establishment of the fund together with an opinion from a lawyer that the fund qualifies as an experienced investor fund	Local Stock Exchange	No, but plans are underway to set up a Gibraltar Exchange in 2008
Local Service Providers Required	Yes, the following: - Administrator - Local Auditor	Key Advantages	- Offshore but part EU - Fast track procedure - FSC notification only - No taxes