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Gibraltar's new fund regulations



Gibraltar introduced its new Experienced Investor Fund Regulations on the 12th April 2012 with the aim of continuing to develop the jurisdiction as an alternative EU Fund Domicile and further enhance the list of incentives which makes Gibraltar, in our view, the European domicile of choice for Alternative Investment Funds. So what are the main changes? What do they mean? And how does Gibraltar distinguish itself from other European Fund Domiciles?

EU or equivalent administrators may act as administrators to Gibraltar funds

Introduction of prior approval process for a fund which is now unique in Europe

'Experienced Investor' definition widened & expected to make regime more attractive

Re-domiciliation of funds facilitated by amendment to 'Experienced Investor' definition as Gibraltar positions itself for AIFMD.

Fund Administration

The change

For the first time, a Gibraltar Fund may appoint an administrator that is not licensed locally in Gibraltar, subject to certain conditions. Primarily the requirement that the administrator is established in the European Economic Area or in a jurisdiction with a legislative and regulatory regime that provides at least equivalent protection to Gibraltar with respect to the administration of funds.

The effect

Managers and advisors may consider Gibraltar as part of a line up of potential domiciles for their fund on the basis that an existing relationship with their administrator may be maintained. "Brand" administrators may for the first time consider Gibraltar as a viable alternative EU fund domicile which should provide an attractive option both in terms of set up costs, and critically, time to launch. ►

Establishment and Authorisation

The change

As well as continuing to have the facility to launch a fund and notify (rather than apply to) the Regulator within 10 days of the launch, Gibraltar has introduced an additional process whereby a fund may file for registration no less than 10 working days before the establishment of the fund. This 'prior approval' process allows for the fund to be deemed to be authorised on the day that it launches, thereby allowing the manager to clearly define its launch process and timeline with no regulatory uncertainty.

The effect

This has been a reaction to a growing demand and a common complaint across various jurisdictions where promoters or managers have raised issue with approval processes falling well outside initially promised timelines for launch. Note that the recent change to Luxembourg law of the 6th March 2012 (Bill no 6318) removed the possibility of prior authorization for Specialized Investment Funds thereby losing one of its predominant characteristics.

Re-Domiciliation

The change

As well as having long standing re-domiciliation provisions codified in law, the new EIF Regulations have also included provisions within the definition of an 'experienced investor' to allow for participants in funds that are re-domiciling to Gibraltar to automatically qualify, under certain circumstances, as 'experienced' for the purposes of Gibraltar law.

The effect

Funds domiciled in territories outside of the EU are provided with a platform to re-domicile those funds into the EU, and into an EU territory for the purposes of the Alternative Investment Managers Directive (AIFMD). The advent of the AIFMD is likely to widen the gap between EU and non-EU fund domiciles for the purposes of marketing and distribution within the EU. An EU Alternative Investment Fund Manager (AIFM) managing a non-EU

Experienced Investor Definition

The change

Gibraltar has amended the definition of an 'experienced investor' for the purposes of Gibraltar law. Professional clients as defined by MiFID are now included and an investor who invests an aggregate of EUR 100,000 across one or more experienced investor funds would also now qualify. Similarly, a participant who invests EUR 50,000 and who has been professionally advised in relation to making that investment, would also qualify. The older qualifications also remain.

The effect

The Gibraltar regime now encompasses a wide range of potential clients within its definition. The purpose of this is geared towards 'equivalence'. That is, catching within the Gibraltar law definition categories of individuals who typically qualify to receive such financial promotions in other jurisdictions under the relevant distribution/private placement rules. As opposed to other jurisdictions which set out different categories of 'experienced/professional/qualifying' (non-retail) funds the Gibraltar EIF neatly wraps these within a single legislative framework.

Alternative Investment Fund (AIF) may be able to rely on local private placement rules after the 22nd July 2013, but there is no guarantee of what those private placement rules will look like. Similarly, after 2018, such distribution channels may become unavailable. What is also clear is that a passport will automatically apply to the marketing of an EU AIF by an EU AIFM from the date of transposition, while the pan European passport may only apply to the marketing of a non-EU AIF after 2015 (and subject to certain conditions).

Summary

There are a series of technical amendments that are beyond the scope of this newsletter but the main changes represent a significant step forward for the Gibraltar Funds industry.

When you ally this fund regime to the existing regulatory framework in place for Investment Managers who are able to passport their services into the EU from Gibraltar, whilst enjoying a

Management and Control

The change

Many commentators have made the point that regulation and codification are the future of fund governance, and Gibraltar has taken its first steps into introducing such duties into statute. Some jurisdictions have issued guidance on governance standards that are non-binding and essentially voluntary while others, notably the Cayman Islands, have no such directors' code. While the changes to the EIF Regulations do not act as a form of governance code, they do increase the responsibility of the controller of the fund, and essentially introduce a requirement for a certain level of operational and risk management which must also be detailed in the fund's offer document. Gibraltar has always had a licensed fund directors regime which includes on-going direction from the Regulator as to duties expected from licensees in respect of fund governance.

The effect

Continued development of the fund governance model in Gibraltar, and requirements laid down in law in respect of certain duties and responsibilities of the controller of a Gibraltar Fund.

headline 10% corporate tax rate, the jurisdiction should continue to attract new business.

In addition, the very favourable personal tax regime, and in particular options for higher executives within the industry, should put Gibraltar on the map for Investment Managers likely to be negatively impacted by, for example, the recent partial revision of the Swiss Federal Act on Collective Investment Schemes and/or other regulations being introduced in Switzerland. Similarly for Investment Managers based in higher tax jurisdictions looking for EU standardised levels of regulation, within a highly competitive tax framework, Gibraltar continues to develop into a genuine European choice for discerning fund managers, investors and administrators alike.

For information in respect of Gibraltar Funds or Gibraltar investment services please contact Joey Garcia at ISOLAS.

For more information or for any enquiries please do not hesitate to contact joey.garcia@isolas.gi or log on to our website for more information.



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