

Gibraltar

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Investment funds in Gibraltar

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The unique attraction of Gibraltar as a dependant territory of the UK, and thus a full member of the EU under section 227(4) of the Treaty of Rome 1973, is significant in its recognition as a quality and reputable jurisdiction in respect of financial services business. At the cornerstone of this progressive development is the expedient evolution of a strong legal framework. This is evident in the transposition of most, if not all, EU Directives, including the consolidation and extension of the Criminal Justice Ordinance 1995 (the primary piece of anti-money laundering legislation in the financial services sector).

The Financial Services Commission is the statutory body responsible for regulating the four main markets of the financial services sector: banking, insurance, investment services and company and trust management. Indeed, along with tourism and shipping, the financial services industry is now regarded as the third pillar of Gibraltar's economy. Apart from a robust regulatory regime, a multitude of factors such as low taxation, quick and efficient regulation and the recognition of passporting rights (allowing Gibraltar-registered investment companies to do business throughout the EU without further authorization) also contribute to the attractiveness of the industry to the offshore investor.

An area that has witnessed steady growth in recent years is fund management, encompassed in the investment services sector of the industry. Funds are a creative form of investment, and have captured the imagination of investors. A wide cross-section of funds can be tailored made to meet the profile of investors in the fund. This can be exemplified in the jurisdictional approach where, generally, the British Virgin Islands, the Cayman Islands or the Bahamas may be the preferred choice of domicile of the fund because of their relatively lower level of regulation. In conjunction with the jurisdictional issues, the type of fund vehicle can range from the unit trust or open-ended investment company to the closed-ended investment company.

Of particular significance in relation to the private fund, The Financial Services (Experienced Investor Funds) Regulations 2005 (the Regulations) made under Section 52 of the Financial Services (Collective Investment Schemes) Ordinance 2005, creates experienced investor funds (EIFs) provided notification is sought within 14 days of its establishment. EIFs can be set up as Gibraltar-domiciled companies, unit trusts or Gibraltar protected cell companies. These are funds designed for the professional, sophisticated or experienced investors prescribed under the Regulations. In particular, investors in

these funds must have a net worth (or joint net worth with their spouse, and excluding the value of the investor's principal place of residence) of greater than €1 million (\$1.27 million) or invest a minimum of €100,000. Notification is sought by the administrator of the fund, accompanied by a copy of the funds' offering documents, an opinion from a lawyer of at least five years' professional standing that the fund complies with the relevant legislation, and the prescribed fee. Part III of the Regulations comprehensively sets out the information that must be included in the offer document.

EIFs must have an administrator with physical presence and staff in Gibraltar, and at least two directors resident in Gibraltar. There must also be an independent depositary or, in the case of hedge funds, a prime broker. The EIF must also have at least two authorized Gibraltar-resident directors; unit trusts must have at least one Gibraltar resident trustee. EIFs must produce annual audited accounts.

Gibraltar licensed funds (including EIFs) are exempt from Gibraltar income and corporation taxes, upon receipt of a certificate from the Commissioner of Income Tax which is obtained upon application once he is satisfied that the fund meets the prescribed criteria. No death duties, capital gains tax, gift, wealth, inheritance or capital transfer taxes are levied in Gibraltar. There is an element of nominal stamp duty levied on the issue of the shares. Funds are not required to withhold tax from any distribution of income or capital gains made to their shareholders.

Gibraltar also forms part of a niche jurisdiction with the implementation of protected cell company legislation. The shareholding is broken into different cells, and although occasionally these may overlap, each cell is used for a different portfolio of business, the assets and liabilities of each ring-fenced from the others in terms of any claims or profits which may accrue or be made against it. Such a structure can be particularly beneficial in an umbrella structured fund to ensure segregation of the sub-funds. These umbrella funds can be used by separate clients, or by a sole client wishing to promote several investment strategies.

In conclusion, Gibraltar has been described as a small but mainstream international financial centre. The financial services market is constantly evolving in line with market demands, in particular given that wealth is being created more rapidly than at any time in the world's history. As a result, the business of providing for the financial needs of the wealthiest individuals is changing dramatically as well. Gibraltar provides a well regulated and disciplined regulatory regime that has maintained an ability to be open-minded and flexible. This, coupled with the aspiration to accommodate the requirements of investors, makes Gibraltar a highly attractive location for fund business. The industry is therefore very confident in Gibraltar's future in the fund market.

Corporate and commercial

Recommended firms

Tier 1

Hassans

Tier 2

Isola & Isola

Triay & Triay

Triay Stagnetto Neish

Tier 3

Marrache & Co

Massias & Partners

Hassans

Hassans continues to be “the number one” choice for corporate and commercial work in Gibraltar. The firm is Gibraltar’s largest, with seven partners devoted to corporate and commercial work. These include a number of highly-rated practitioners, with one rival lawyer commenting on senior partner James Levy that “he’s the top guy there”. The firm recruited Daniel Feetham, a partner specializing in financial services litigation from Isola & Isola in March 2005.

The firm’s dominance has been shown in the range and quality of deals it has worked on in the past 12 months, highlights of which include setting up the first branch of a Gibraltar financial institution, owned by General Electric, in Spain. This is the first Gibraltar-licensed financial institution to operate in Spain.

In the financial sector, partner Nigel Feetham has done pioneering securities work, cooperating with UK law firms Allen & Overy and Simmons & Simmons on structuring specific products and heading the repackaging and bond practice, where he has worked with leading investment banks and has set up numerous special purpose vehicles. Feetham was also involved in serving as Gibraltar counsel on the first subordinated loan issued by a Gibraltar insurance company. One insurance client praised Feetham’s work for its “accuracy, speed of response, breadth of view and commerciality”.

Elsewhere in capital markets, Hassans has acted for the Admiral Group on its flotation on the London Stock Exchange, and advised the Saga Group and its selling shareholders on its trade sale. It also represented Party Gaming on its flotation, which was so successful the company has now made it onto the FTSE100.

In merger work, Feetham took the lead when the firm was instructed to act for AIG in the sale of Euroguard Insurance Company to Alexander Forbes and for Guardian Group in its acquisition of the Zenith Group. The firm’s expertise on the rapidly growing insurance markets ensures that it has a steady flow of clients in that area too.

Leading lawyers

James Levy

Anthony Provasoli

Key contact partner

Michael Castiel

Triay & Triay

Established in 1905, Triay & Triay remains highly regarded by peers, with the Triay brothers in particular having a reputation for legal excellence. The firm has 11 partners, including three Queen’s Counsel, and provides advice on commercial and financial work, as well as on litigation, real estate and shipping law.

Raymond Triay has recently rejoined the firm after an absence of five years. He practises law in Spain and is registered with the Ilustre Colegio de Abogados de Cádiz.

Leading lawyers

Abraham Serfaty

Joseph Triay

Raymond Triay

Key contact partner

Joseph Triay

Triay Stagnetto Neish

Triay Stagnetto Neish moves up a tier this year after positive feedback from the market that it is “a solid firm,” and a client of a rival firm saying: “If we were to look at another firm it would be Triay Stagnetto Neish.” The firm strengthened its practice this year with the addition of the team from Denton Wilde Sapte, which closed its Gibraltar office in February 2006. The team that came across, along with its clients, included managing partner Brendan Murphy and Gabrielle O’Hagan.

James Neish has a strong reputation in contentious and non-contentious commercial work, and the firm represents a leading international petroleum company and regularly advises one of Gibraltar’s utilities companies. Triay Stagnetto Neish advises some of Gibraltar’s leading players in the gaming and financial services industry, a reputation that will surely be enhanced following Murphy’s arrival from Denton Wilde Sapte.

Leading lawyer

James Neish

Key contact partners

Brendan Murphy

Louis Triay

Other notable firms

Isola & Isola is a full-service law firm with five partners and five associates dedicated to corporate and commercial work. The key contact partner is Peter A Isola, son of respected partner Peter J Isola. The firm is closely associated with the Fiduciary Group, which provides offshore company and trust services.

Marrache & Co provides advice on all aspects of corporate and commercial law, continues to advise MCB on the Eastside real estate development and has worked on a number of big restructurings over the past few years. Managing partner Benjamin Marrache, and his brother and senior partner Isaac Marrache, are both respected lawyers on the island. It is the only firm with offices in other jurisdictions, including in Lisbon, London and Spain, along with a dedicated Spanish department in the Gibraltar office. The firm also recently opened another branch in Prague, which will have two lawyers and five members of staff in total.

Massias & Partners was also recommended by peers this year, with name partner Isaac Massias highly regarded. The firm advises on banking and general corporate work, as well as shipping and real estate.