

Fund industry looks to EIFs to drive international demand

By *Anonymous*

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Gibraltar has a long-established pedigree as an international financial centre and it has been a domicile for alternative funds for years, but it was the introduction of legislation establishing the Experienced Investor Fund four years ago that brought the jurisdiction properly to the attention of international fund promoters. Now the industry hopes that planned changes to the EIF rules will increase its appeal.

'The vast majority of funds now are set up as EIFs,' says James Lasry, head of funds business at Hassans International Law Firm. 'Previously we had private funds that were completely unregulated. However, we set them up in a very professional way so that in effect, when the EIF regime came into effect, it was merely a codification of existing practice under the private funds regime.'

According to Lasry, an EIF fund can be set up and become operative within days, because there is no requirement to obtain regulatory authorisation ahead of the launch. It is sufficient for the fund to incorporate, appoint service providers, appoint two local directors authorised by the Gibraltar Financial Services Commission, produce a prospectus and hold a board meeting to launch itself as a fund. The fund must notify the regulatory of its launch within 14 days, and provide certain documentation as well as paying a one-off license fee of GBP2,500.

To qualify for the EIF regime, a fund may only accept investors deemed to be experienced under the Financial Services (Experienced Investor Funds) Regulations 2005, who have a net worth of EUR1m aside from their residential property, whose normal business activity includes investment-related activity, or who invest a minimum of EUR100,000 in the fund.

Unlike a private fund, there is no minimum or maximum number of investors stipulated for an EIF, and there is no requirement for the promoters of the fund to be licensed. The two directors authorised by the regulator are required to ensure proper governance of the fund. If the fund is a unit trust with a corporate trustee or a limited partnership with a corporate general partner, two directors of the corporate general partner or trustee must be authorised. The fund administrator is required simply to perform the normal know your client and client acceptance procedures.

Private funds, which do not carry the statutory regulatory requirements of EIFs, restrict investor numbers to 50 and limit distribution to categories such as friends, family and close clients of the promoter. In some respects the private fund structure may suit asset managers who already have a client following and want to put them into a fund structure, rather than actively marketing the fund, but Lasry adds: 'The added regulation of EIFs is not at all intrusive or onerous.'

He argues that the flexibility that allows EIFs to be established via simple notification without prior regulatory approval removes what might have been considered the drawback of a regulated fund, the possibility of delays to time-sensitive investments. However, this does not mean that investors in the fund are without protection from the regulator. 'Once the fund has been set up, the regulator has a full array of powers to issue public statements, make directions or to intervene,' Lasry says.

'If one of the directors or service providers is worried about something and the board either is not taking action or is doing so in a way they don't agree with, there's a mechanism to go to the regulator and ask for intervention. Fortunately it's never happened so far, but the mechanism is for the regulator has the power to examine the fund and if necessary to act to protect investors.'

Fund professionals in Gibraltar emphasise the close co-operation between industry and regulator in drawing up and revising financial services legislation. 'The EIF regulations were effectively put together by industry professionals and taken up by the government,' says David Wahnnon, managing

director of Capita Financial Administrators (Gibraltar), who notes that efforts are already underway to update and revise the legislation.

'The regulator recently came up with some suggestions on potential new products and called a group together. We can pull something together very quickly that can be put to government as a new piece of legislation. At the moment there are variants of the EIF in the pipeline, designed to accommodate other types of investors within the private fund category.'

James Tipping, director of the government's promotional department, the Gibraltar Finance Centre, says: 'We are doing work on what types of different funds legislation can be safely, responsibly and professionally introduced. In the medium term we are looking to the development of Gibraltar as a Ucits jurisdiction. We have the legislation, although there are no Ucits funds based here as yet.'

The implementation of the European Union's Ucits IV directive, which will extend the scope of funds that can be freely marketed across borders within the European Economic Area, is seen as a priority once the legislation is finalised over the coming months. 'The regulator is keen to get Ucits IV through very quickly,' Wahnnon says, noting that Capita Financial Group may well be the only fund administrator in Gibraltar that currently has the resources to service a Ucits fund.

Capita came to Gibraltar two years ago when it acquired out Global Fund Administration, the largest local fund administration firm. Says Wahnnon: 'Before Capita came in we worked on a small general ledger system, which is used by most if not all local administrators to record transactions. One of the main changes was that Capita invested as a group in SunGard InvestOne Enterprise, one of the top software packages in the administration world.'

'We have invested a lot of time in this change, and migrating funds onto the new system, which enables us to provide a full-blown administration service including NAV calculation, transfer agency, shareholder services.' Capita Financial Group currently has around 25 clients with some 45 funds and around GBP1.5bn in assets under administration, with around 60 per cent of the business coming from Gibraltar-domiciled funds and the rest from Cayman vehicles.

Gibraltar's two most important markets for fund business are Switzerland and the UK, although Lasry says Hassans also deals with Germans, Swedish, Spanish, Israeli, American and Canadian promoters. He adds that the EIF structure is flexible enough to accommodate vehicles ranging from closed-ended private equity funds to hedge funds managed by traders sitting in the City of London.

'The regulatory environment here has proven quite effective,' Lasry says. 'The regulator knows what kind of business is going on, and he's happy to let people get on with it. The Experienced Investor Fund regulations and the way they are interpreted in practice are very robust while allowing managers enough flexibility to serve the kind of investors they are marketing to. These are not widow and orphan funds but for people who can either read a prospectus or employ someone to do it for them and explain the risks to them.'

EIFs have greatly expanded the scope of protected cell companies, which were introduced in 2001, but up to 2005 were used exclusively by the insurance industry. 'We recently set up a hybrid between a fund and managed account, with each investor having his own cell,' Lasry says. 'The manager wanted the economies of scale of a fund, but in today's environment investors did not want their assets commingled with those of other investors.'

As with most other international financial centres in small jurisdictions, the availability of staff and skills is an issue that industry practitioners need to bear in mind. 'There are skilled people, but obviously it is a small place and you would have difficulties creating a really big set-up,' Wahnnon says.

'The labour market remains tight in Gibraltar, because we have a growing economy and unemployment is extremely low. There is a small pool of professionals coming in from outside, and you find people moving around between companies. We knew from the outset that staff numbers here would be limited, so we decided to take advantage of the scalability of our Exeter office, which enables us to deal with any fund that comes our way.'

Tipping adds: 'Gibraltar is a high value-added platform. We are neither a zero-tax jurisdiction, nor a cheap jurisdiction in which to establish labour-intensive operations. Unemployment is extremely low at less than 2 per cent and the economy continues to look extremely robust, even with the ripple effects from what's happening in the wider world, not just in financial services but tourism, shipping and port services, and online gaming.'

'Any EU, EEA or Swiss national is entitled to work in Gibraltar under EU directives, and for nationalities not covered by those criteria there are no ideological issues regarding work permits for individuals in demand. Clearly we're not the location for a large enterprise that requires hundreds of administration staff, but Gibraltar is well suited to operations that might require 10 or 20 front-office employees.'

'We don't have a high cost base in terms of office space, and personal taxation is very competitive by EU standards - for example, a GBP100,000 salary is subject to an income tax rate of 27.5 per cent. For an EU jurisdiction with a high quality of life, a free health service, free education to university level, that's a pretty good package, especially when we have no capital gains tax, inheritance tax, wealth tax, tax on investment income, or on occupational pensions.'

Tipping says the government would be happy to see fund managers base part of their operations in Gibraltar. 'A 50-strong fund management firm in Knightsbridge is not going to close down and move lock, stock and barrel to Gibraltar,' he says. 'But for a couple of star traders who don't necessarily need to be in London, who might be better suited by Gibraltar in terms of lifestyle, family considerations or tax issues, they might think about opening a complementary office in Gibraltar under equivalent regulation. We will see what happens once one or two people try it and are happy with it, and people in the industry start talking to each other.'

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