

Gibraltar

Chamber of commerce:

Gibraltar Chamber Of Commerce
Watergate House
2/6 Casemates
Gibraltar
Tel: +350 200 78376
Fax: +350 200 78403
Email: info@
gibraltarchamberofcommerce.com
Web: gibraltarchamberofcommerce.com

Professional body:

General Council of the Bar of Gibraltar
P.O. Box 919
Watergate House
2/7 Casemates Square
Gibraltar
Tel: +350 200 59026
Fax: +350 200 49178

Offshore no longer: developments in the fund industry

James Lasry and Anthony Jimenez
Hassans
Gibraltar

Following the introduction of the Experienced Investor Fund (EIF) regime in 2005 there has been substantial growth in the \ funds industry. The number of funds established in Gibraltar has grown at a steady rate as Gibraltar's reputation as an alternative jurisdiction to domicile a fund has spread internationally.

Gibraltar's success is mainly attributable to the strength and flexibility of the Financial Services (Experienced Investor Fund) Regulations 2005 (the EIF Regs) which provide a robust legislative framework for the establishment of the popular EIF product. Recent developments, both internationally and local to Gibraltar, have also played an important part in promoting Gibraltar as one of only a handful of jurisdictions a fund manager would want to consider when establishing a Fund.

Such developments include the pending implementation of the Alternative Investment Fund Managers Directive (AIFMD), the transition of Ucits (Undertakings for Collective Investment in Transferable Securities) IV into Gibraltar legislation, the introduction of a new Gibraltar tax regime and dialogue currently being held between the Gibraltar Funds and Investments Association (GFIA) and the Gibraltar Government regarding enacting proposed amendments to the EIF Regs.

An EIF can be set up and become operative within days as it is sufficient for the fund to incorporate, appoint service providers, appoint two local directors who are authorised by the FSC, produce a prospectus and hold a board meeting to launch itself as a fund. There is no need to go through the often protracted process of obtaining a licence.

However, it must notify the FSC of its launch within 14 days as well as provide corporate documentation.

Gibraltar is easily accessible by land and sea and also has an international airport with easy access to London. It is Gibraltar's membership of the Europe Union which has recently become one of its most attractive assets to investment managers looking to set-up a professional fund.

AIFMD, when it comes into force, is likely to place substantive restrictions on fund managers marketing non-EU domiciled funds in Europe. Alternatively, for fund managers wishing to market an EU domiciled fund, such as a Gibraltar EIF, AIFMD will provide for a marketing passport throughout the EU. This will allow fund managers the ability to market a Gibraltar EIF to professional investors throughout the EU without having to undergo extensive and time-consuming authorisation processes in each jurisdiction where it intends to market or without having to rely on national private placement exemptions.

Gibraltar has introduced a new tax regime which will impose a 10% corporate tax on Gibraltar based companies, including any investment managers set-up in Gibraltar. Gibraltar Funds on the other hand will continue to pay no tax in Gibraltar. This has effectively transformed Gibraltar from an offshore jurisdiction to an onshore jurisdiction. An additional advantage of Gibraltar being an EU member is that Gibraltar funds can benefit from the European Parent Subsidiary Directive. This means that dividends to a Gibraltar company from subsidiaries in certain European jurisdictions (such as Luxembourg) will not be subject to withholding tax. This is particularly relevant for private-equity and real-estate funds.

Under the EIF Regs, subscription to an EIF must be restricted to investors who are deemed to be "experienced investors". These are investors who have a net worth of ?1 million aside from their residential property or

whose normal business activity includes investment related activity or those investing a minimum of €100,000 in the fund.

Significantly, these definitions are individual and not cumulative so it is sufficient for an investor to invest €100,000 for it not to have to prove any of the other conditions. However, discussions are currently being held between industry bodies with the view of amending the EIF Regs to allow for "professionally advised investors" to be able to invest a lesser amount than €100,000.

An open-ended EIF must have a depositary and may appoint brokers to assist with their trading activity. However, neither the depositary nor the brokers need be locally based. Currently an EIF must have a fund administrator that is authorised and has a presence in Gibraltar. This is currently under review with the aim to relax the requirement for Gibraltar based administration.

In addition to the two Gibraltar based EIF directors, the fund must also appoint a Gibraltar registered auditor. Although any internationally accepted accounting standard might be used for the audit, many Gibraltar funds are audited under IFRS or UK GAAP.

The efficient regulatory notification process, the possibility of setting up protected cell funds, Gibraltar's recognised position within the EU and the improvements to the EIF regime maintain Gibraltar's stance as an interesting and competitive European alternative for the establishment of funds.

Financial and corporate

Recommended firms

Tier 1

Hassans

Tier 2

Isolas
Triay & Triay

Tier 3

Attias & Levy
Massias & Partners
Triay Stagnetto Neish

The normally sleepy legal market of Gibraltar gained unwanted notoriety and the attention of the European legal press when it emerged that the Gibraltar partners of Marrache & Co (distinct from the Marrache London office) were part of a £5.27 million money laundering scandal. The family-run business licenses were cancelled and PricewaterhouseCoopers and Chantrey Vellacoot were appointed as joint liquidators for the firm. Grant Thornton was appointed administrator.

Many partners in Gibraltar feared that this event would have a terrible affect upon the jurisdiction. "Gibraltar is a small place, we are sad the partners resulted to this. This kind of thing is not good for the jurisdiction, but it does not reflect the tone of the lawyers here," says one partner.

Despite this, Gibraltar was not as badly-hit as other countries by the global financial crisis. "We have been hit, but not as badly as London. We have a smaller economy, so the worst effects have not been felt," says one partner.

Gibraltar has seen a lack of transactions on the banking and M&A side, although more work is being generated from the advisory side. "The fact that banks aren't lending freely has had a huge impact on the legal markets. We are struggling on this side," says one partner. However the restructuring side and disputes side have shown a definite rise in work.

Another developing trend in Gibraltar is an increase in the number of insurance firms and investment funds being set up. Gibraltar has also attracted attention from investors on a global basis. "The UK property market is depressed, people aren't investing there right now, we are seeing more people coming to Gibraltar to invest," says one partner.

Hassans

"They are the biggest firm in Gibraltar and are by far the best firm in Gibraltar, they stand out amongst the rest of the firms," says one client. Despite the lack of work in the market Hassans, have remained active and gained a

strong market share. "The firm have led the jurisdiction in many cases, a fine outfit," says one peer. "We see the firm working with some of the biggest players in the market, across the globe they are definitely our biggest rivals."

Clients appreciate the way in which the firm operates: "They provide us with excellent work on transactions, whenever we use them. They are always great to have on side and [are] commercially aware," says one.

The firm houses several leading lawyers and Nigel Feetham is a name that clients appreciate. "He is one of Hassan's stars, a true leader, I have worked with him on several transactions and his knowledge is brilliant. He is very responsive, approachable and extremely confident. I like him," says one.

Fabian Picardo, who is an elected member of parliament for Gibraltar, and Nicholas Howard, acted on the global co-ordination of the Herald USA fund last year, the assets of which were connected to with Madoff Securities. Fabian Picardo chaired a meeting with all the investors of the fund in London, which, supported by a massive majority, resulted in the board's work to date to recover the assets of the fund.

Another highlight of the firm's work last year saw it advise the Transcoma Group on the re-launch of the Gibraltar to Algeciras Ferry. Hassans was instructed to apply for and obtain licences and authorisation for this new line; the first in 40 years. This was Transcoma's first project in Gibraltar.

Leading lawyers

Lewis Baglietto
Nigel Feetham
John Rastano

Isolas

Although Gibraltar is a small jurisdiction, Isolas is another firm that has generated some prominent transactions from international banks, financial institutions and insurance companies.

Despite the global crisis, the firm has managed to keep a tight network with many of its clients and expanded their client database. One peer says: "Isolas is a family run firm, they are trying to break away from the norm. They are showing more ambition by extending their client database."

Christian Henandez has been commended by clients: "He knows his market extremely well, I like the way he works and I enjoy working with him. He is a cracking lawyer." A rival partner adds: "He is a good guy, very pragmatic, I admire his approach."

Leading lawyers

Christian Henandez

Triay & Triay

Triay & Triay retained their two position again this year, after market feedback proved the firm are active, but still slightly below Hassans. "Triay & Triay do some good work, but they are not on the same level as Hassans; not yet anyway," says one client.

However the firm has is praised heavily by clients and peers: "We have used the firm previously, on a number of transactions. I was very satisfied with the services that they provided to us," says one client. A partner adds: "They are a good firm, they merit their ranking, they have a lot of depth to them."

The firm has many stars, but the name on many clients' lips is named partner Javier Triay: "The backbone of the firm," says one. His knowledge and expertise is a element that clients appreciate: "He really knows, his stuff. His legal knowledge is of a high standard." says one.

Commentators point out the firm has attracted some international clients over the last 12 months and improved its market share within Gibraltar.

Leading lawyers

Javier Triay

Other ranked firms

Triay Stagnetto Neish has been described as a small firm but with a substantial market share. The firm has a strong reputation in Gibraltar and is commended on the quality of work it produces.

Brendan Murphy has been praised by peers: "He is an amazing corporate and commercial lawyer that knows his market extremely well," says one.

Leading lawyers: Brendan Murphy

While Attias & Levy has not been particularly visible to peers this year, it is described by the market as a small firm which provides solid corporate and commercial advice.

"They are a nice firm, they work on some good transactions, they are small but aren't really a dominant force in the market," says a peer. "The firm has some really good lawyers; a name that stands out to me is Stephen Catania. He is a very good corporate and commercial lawyer, I always trust his judgement."

Leading lawyers: Stephen Catania