

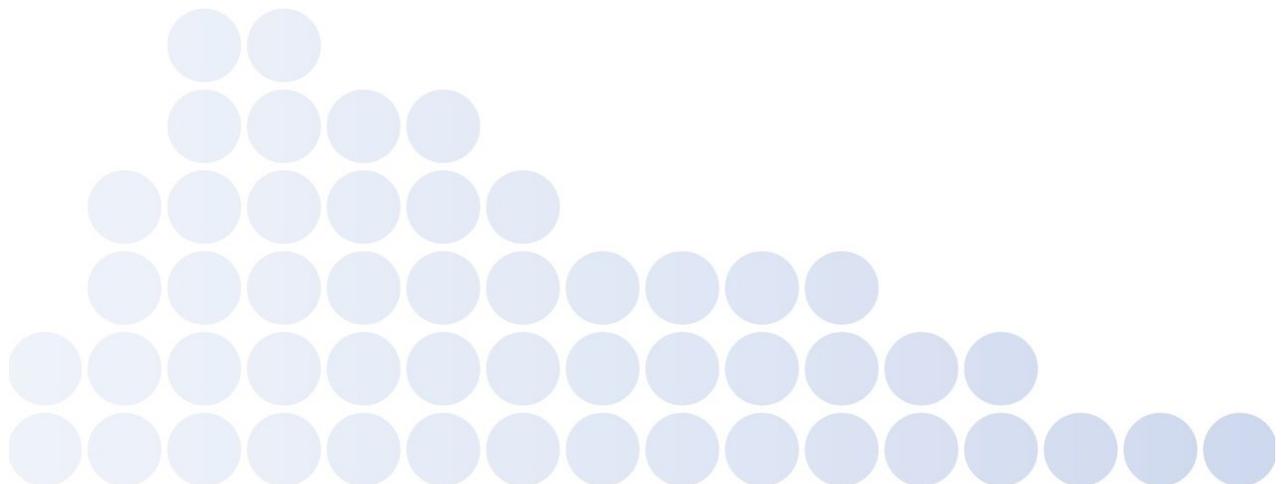


# The Gibraltar Financial Services Commission

EIF Director Thematic Review

Policy Statement

Published: 7 October 2015



## Introduction

The Gibraltar Financial Services Commission's ('GFSC') has carried out an assessment of the Experienced Investor Funds ('EIFs') regime and is publishing a Policy Statement outlining its expectations of EIF directors. The success of the EIF regime is reliant upon EIF directors understanding and complying with their obligations and responsibilities as directors, and the importance of this cannot be understated. We note that there are EIF directors who readily understand their responsibilities, the relevant risks, and the importance of their role.

Effective corporate governance arrangements are crucial to the proper operation of EIFs. Allied to this, investors should be confident that EIFs are delivering what they expect, and are organised and operated to appropriate standards, particularly in relation to the interests of investors.

In this Policy Statement, we set out our expectations of EIF directors, having particular regard to the interests of investors and the reputation of Gibraltar. We have also released a [Strategy and Expectations paper](#) for EIF directors.

## Who does this affect?

This Policy Statement is specifically aimed at all EIF directors (including restricted EIF directors). The contents will, however, also be useful for fund administrators, professional advisers, investors into EIFs, auditors, banks, insolvency practitioners and any other third parties who provide services to EIFs and their directors.

Readers should also note that new EIF director applications will also be assessed against the expectations outlined in this document and relevant standards of best practice.

## Further information

If you have any queries or comments regarding this Policy Statement, or our EIF regime more broadly, please contact Joanne Beiso at: [jbeiso@fsc.gi](mailto:jbeiso@fsc.gi) or 200 40283 or write to us at:

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Readers may also wish to refer to the following links for further details:

<http://www.GFSC.gi/applicants/eif.htm>

<http://www.GFSC.gi/GFSC/ExperiencedInvestorFunds.htm>

## GFSC Expectations of EIF Directors

- *Amongst our regulatory objectives, the GFSC aims to protect consumers and the reputation of Gibraltar. EIF directors have significant responsibilities towards ensuring that these objectives are met.*
- *EIF directors must operate in the best interests of investors and future investors. They must be clear about their responsibilities and take them seriously.*
- *In order to avoid presenting a risk to the GFSC's regulatory objectives and to meet their fiduciary duties, EIF directors must ensure that they comply with the expectations below. Failure to do so may result in supervisory or enforcement action.*

## Expectations

### Involvement and Ownership

1. An EIF director must demonstrate effective and appropriate corporate governance – including outside of formal Board meetings.
2. An EIF director must devote sufficient time to the role.
3. An EIF director must not delegate their responsibilities without maintaining effective supervision of work carried out by service providers (including promoters, external legal counsel, other experts and advisers), and must not place excessive reliance upon them.
4. An EIF director must be able to effectively challenge and lead, particularly at Board meetings.
5. An EIF director must comply with all applicable local and international laws and regulations – including the Alternative Investment Fund Managers Directive and the Foreign Account Tax Compliance Act.
6. An EIF director must be remunerated to reflect the responsibility of their role.
7. An EIF director must have a regular presence at offices within Gibraltar.
8. Before ceasing to be an EIF director, an EIF director must ensure that the EIF is adequately funded and that the GFSC and remaining directors are fully aware of any outstanding issues, which may impact the running and reputation of the fund.
9. When required, an EIF director must ensure the orderly closure of the fund.

### Knowledge and Experience

10. An EIF director must have appropriate knowledge and experience in order to carry out their responsibilities in the best interests of investors.
11. An EIF director must fully understand their responsibilities to the EIF and to the investors in that fund.
12. An EIF director, in conjunction with the rest of the Board of the EIF, must be involved in setting the strategy of the fund.
13. An EIF director must have a clear understanding of the underlying asset classes in the fund and how the fund is valued.
14. An EIF director must comply with the Gibraltar Funds & Investments Association Code, and must accurately complete the EIF Director Return and EIF Director Declaration of Compliance.

## Due Diligence and Conflicts of Interest

15. An EIF director must carry out appropriate due diligence.
16. An EIF director must effectively manage conflicts of interest.

## Operation of the Fund

17. An EIF director must understand and take responsibility for the operation and performance of the fund on an ongoing basis, including understanding and overseeing the NAV calculation, liquidity of the assets, relevant investments, redemptions and subscriptions.
18. An EIF director must monitor and adequately respond to changes in the market that could impact the fund.
19. An EIF director must effectively manage the flow of money from shareholders to investments and back, and also to the various service providers involved in the fund.

## Marketing and Audit Trail

20. An EIF director must have adequate oversight of how the fund is marketed.
21. An EIF director must review submissions of documentation by fund administrators.
22. An EIF director must appropriately document decision-making relating to the EIF – including disagreements and the rationale for relevant decisions.
23. An EIF director must ensure that the fund is effectively audited by external auditors.

## Risk Management and Financial Crime

24. An EIF director must understand and act appropriately to address the specific risks applying to the fund and its investors - including identifying, tracking and mitigating those risks.
25. An EIF director must take appropriate steps to ensure the effective identification, monitoring and mitigation of financial crime – including reporting to the relevant authorities where necessary.
26. An EIF director must take out appropriate directors and officers liability insurance, where necessary.
27. An EIF director must take sufficient action to protect the reputation of Gibraltar.

## Investor Focus and Ethics

28. EIF directors must maintain appropriate ethical standards, with the interests of investors being embedded in an EIF director's culture and work ethos.
29. An EIF director must be committed to improving professional standards – including ensuring that they have a 'Learning & Development Plan' in place.
30. An EIF director must ensure that appropriate complaints-handling procedures are in place, and must deal with complaints in a timely and satisfactory manner.

## Transparency and Communication

31. An EIF director must ensure that investors are provided with regular updates and relevant information in a transparent and timely manner.
32. An EIF director must maintain an open and transparent relationship with the GFSC – including providing regular updates and informing us of any issues or risks to our objectives.
33. An EIF director must be able to provide information to the GFSC when required.

## Legal Notice

Any advice or interpretation given in this document represents the views of the GFSC. This is not intended as a definitive interpretation of the applicable legislation and regulations, which are ultimately a matter for the courts to determine. The GFSC does not provide, or purport to offer, legal advice. The GFSC expressly disclaims all liability and responsibility for any direct, indirect or consequential loss or damage incurred by any person arising from any reliance placed on these materials.



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