



## Interpretation of New Aspects of the 2012 EIF Regulation Amendments

### Introduction

The FSC has received some enquiries seeking clarification in respect of some aspects of the Financial Services (Experienced Investor Funds) Regulations 2012. The FSC has discussed these points with the Gibraltar Fund Industry Association ("GFIA") and this Newsletter summarises the output of these discussions.

### Meaning of an Experienced Investor

***Regulation 3(1)(f) - a participant who has current aggregate of 100,000E invested in one or more experienced investor funds;***

In the above regulation, 'current' is expected to be interpreted to mean at the time of the investment. Furthermore, the term 'invested' does not relate to only one investment of 100,000E, an investment of 100,000E can be spread across two or more funds simultaneously.

This regulation, therefore, allows funds to take into account the subscriptions' commitment made by subscribers to other funds in making up the 100,000E. In these cases, directors will need to be satisfied that this is being met, for example, by ascertaining that the deposit for the subscription is in a relevant account, thereby ensuring that the directors have completed the necessary checks to establish that they are satisfied that other investments are being made as well as the amount of these.

### Offer Document

***Regulation 15(4) - Information provided to potential participants to negotiate the terms of investment shall not be deemed promotion, so long as the status of the experienced investor fund at that time is made clear to each potential participant and if changes are subsequently made to the information provided the potential participants are informed of the fact that such changes have been made.***

This regulation is anticipated to be quite common for private equity funds. It is essential that 'draft' is clearly marked on every page.

When the fund offer document is finalised, subscribers should be advised as soon as possible of changes in an adequate manner. This is required particularly if there are material changes to the drafts.

### Information to be included in the offer document

***Regulation 16(3)(c) - the manner in which errors in valuation likely to have a material effect on participants will be dealt with and notified to the participants.***

The effect of this regulation depends on its materiality in terms of financial impact. The FSC is comfortable with the GFIA's suggestion that for the majority of funds, a valuation error may not be considered to be material if it is less than 50 basis points (0.5%) of the current Net Asset Value.