

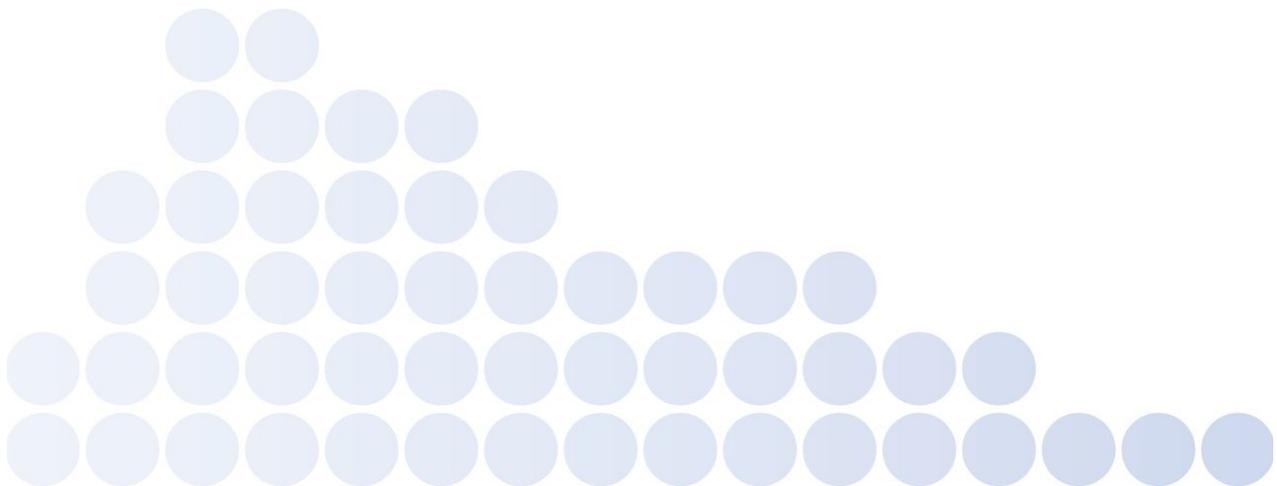


# The Gibraltar Financial Services Commission

EIF Director Thematic Review

Strategy & Expectations

Published: 7 October 2015



*We have a strong history as a forward-looking and effective regulator, and in order to maintain and enhance this position, it is essential that we take ongoing steps to identify and address areas that pose particular risks to our regulatory objectives. A particularly useful tool for achieving this is to carry out thematic work focused upon a specific area of our regulatory remit.*

*This thematic review aims to address the risks arising from the current Experienced Investor Funds regime, and in particular it sets out both our expectations of - and supervisory programme for - the directors of Experienced Investor Funds.*

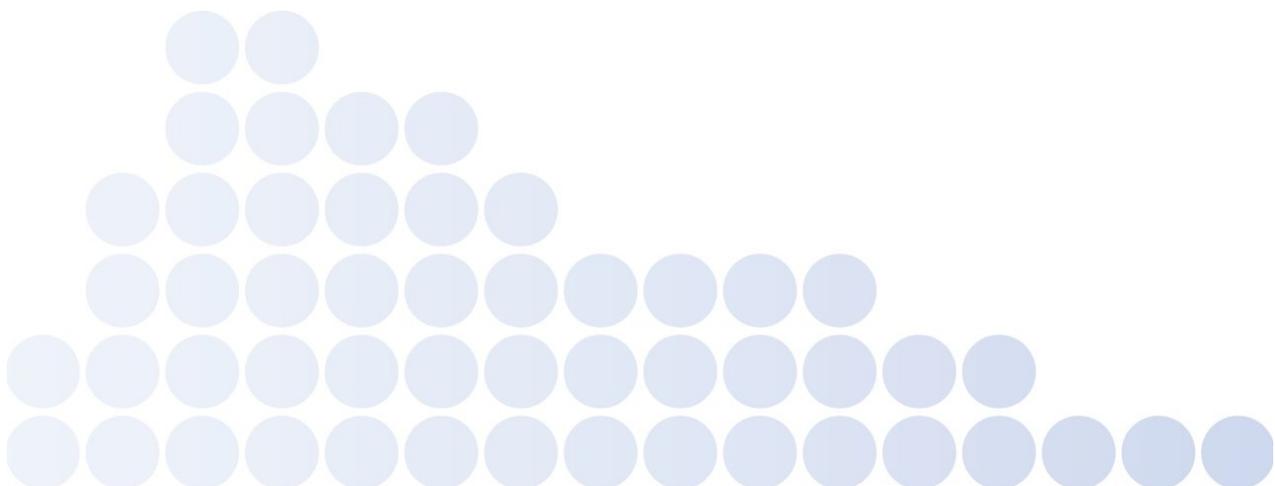
*Indeed, we have seen several recent examples where the conduct of the directors of Experienced Investor Funds has caused us serious concerns, a notable example being the directors of Advalorem Value Asset Fund Limited, who were subject to significant regulatory action.*

*Investors should be confident that Experienced Investor Funds are delivering what they expect, and are organised and operated according to appropriate standards, and in the best interests of investors.*

*We are keen, not only for our views and expectations to be taken on board, but also to maintain an open and constructive relationship with licensees. To that end, we look forward to engaging with industry on this particular topic and welcome any comments you may have regarding the review itself.*



**Samantha Barrass, CEO, Gibraltar Financial Services Commission**



## 1. Background and Scope

### Background

- 1.1 The Gibraltar Financial Services Commission ('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.
- 1.2 This paper sets out our expectations of the directors of EIFs, in addition to outlining the GFSC's strategy for addressing the risks posed to investors and the reputation of Gibraltar by EIFs more broadly.

### Scope and purpose of the review

- 1.3 This review will outline the GFSC's expectations of EIF directors regarding oversight, corporate governance, record-keeping, ethical and competency issues, and risk management.
- 1.4 The review will also focus on the risks the GFSC has identified with EIF directors' conflicts of interest (including relationships with promoters), marketing strategies, and relationship with the GFSC, as well as the types of investor being attracted to EIFs.
- 1.5 We will also be working to increase standards in respect of new EIF directors, including setting out and applying clearer authorisation requirements. We also plan to proceed with a review of inactive EIF directors to ensure that their licences are not inappropriately used as a 'stamp of approval'.
- 1.6 This review will be supported by changes to the GFSC's risk-based supervisory approach to fund administrators and auditors, including devising an annual plan to address the specific risks arising from each of these licensees. Non-EIF directors and funds will also be risk profiled via the GFSC's broader supervisory work.

## 2. Key Messages

- 2.1 There are a number of key messages, which this review intends to convey. Overall, EIF directors will be provided with clear expectations regarding competence, risk management and conduct. This will promote clarity, transparency and consistency, in addition to supporting both fair investor outcomes and a competitive market, and protecting the integrity and reputation of Gibraltar.

### Expectations of EIF directors

- 2.2 This review will highlight the importance of the role of EIF directors, and given that EIF directors are responsible for their EIFs - including policy making, decision-taking and oversight – we expect EIF directors to:

- be sufficiently competent;
- be appropriately informed about EIFs;
- devote sufficient time to their EIF responsibilities;
- be independent and challenge effectively; and
- possess integrity and high ethical standards.

2.3 We also expect EIF directors to:

- adequately document (e.g. via detailed Board minutes) discussions and investment decisions (including the rationale behind such decisions);
- hold at least four Board meetings per annum in order to discuss the fund's investment and administrative affairs;
- carry out sufficient due diligence, including the review of significant investments;
- provide oversight and challenge regarding the marketing of the fund;
- comply with the 'Corporate Governance Code', as issued by the Gibraltar Funds and Investments Association; and
- deal with the GFSC in an open, timely and co-operative manner.

2.4 Further details regarding our expectations can be found in the accompanying [Policy Statement](#). New EIF director applications will also be assessed against GFSC expectations.

### Key risks

- 2.5 From our supervisory work, it is evident that there currently exists significant risks to GFSC objectives (having particular regard to consumer protection and reputational risk), stemming from EIF directors.
- 2.6 Specific risks arise from the lack of experience and knowledge of certain EIF directors, in addition to the limited number and quality of EIF Board meetings, insufficient levels of challenge provided by various EIF directors, inadequate record-keeping and a failure to identify, track and mitigate key risks (including where there are conflicts of interest).
- 2.7 Of particular concern for the GFSC regarding some EIF directors is their limited experience of the asset classes of the EIFs they oversee, in addition to poor corporate governance, limited oversight and a lack of understanding of risk management.

## 3. Time-line and Further Action

### Timeline and next steps

- 3.1 The GFSC intends to follow the publication of this paper and our accompanying Policy Statement with an industry outreach programme to further explain the GFSC's expectations.
- 3.2 EIF director interviews will begin in Q4 2015 and from Q2 2016 feedback will be provided to the industry - with any follow-up supervisory work or enforcement action commencing after the feedback has been provided to the relevant EIF directors. Any on-going work addressing crystallised risks or urgent enforcement action will continue separately.
- 3.3 The GFSC expects all EIF directors and relevant parties to digest and ensure compliance with the expectations outlined within this document and the accompanying Policy Statement. All EIF directors will be assessed against these expectations. Where appropriate, we will seek evidence of any claims made and conduct in-depth interviews and arrange and monitor action plans.
- 3.4 We may also require EIF directors to establish and implement individual development plans, attest to compliance with GFSC expectations and promptly communicate any material issues to the GFSC.

3.5 The GFSC will place particular focus upon higher risk EIF directors based upon whether they are involved in any problem funds, their individual risk appetite, the quality of their corporate governance and risk management, and if they are dedicating sufficient time to their EIF responsibilities. We will also maintain an open and proactive dialogue with higher risk EIF directors to support a clearer understanding of the risks posed by their behaviour and level of competence.

3.6 Appropriate feedback and recommendations will be provided by the GFSC, and we will also be running compulsory workshops for all EIF directors to ensure that they are aware of (and able to meet) our expectations. This will include examples of lessons learnt and guidance on being transparent with the GFSC.

## Enforcement

3.7 Enforcement action against EIF directors will be considered on a case-by-case basis and taken forward in respect of individuals who do not meet our fit and proper criteria. This may include a re-authorisation process, the imposition of licence restrictions, specific action plans being put in place or the removal of licences where necessary. Publication of enforcement action will also be considered, and the GFSC may disclose enforcement action, and the reasons for the surrender or withdrawal of licences, to other regulators conducting due diligence on firms and individuals.

## Further information

If you have any queries or comments regarding this paper 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:

Joanne Beiso (Head of Conduct of Business)

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

<http://www.fsc.gi/firms/policystatement.pdf>

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

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

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