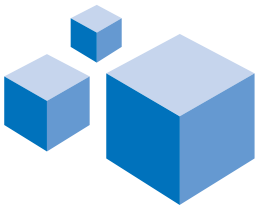

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How to set up an Investment Advisor and Arranger in the UK

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Incorporation

An investment advisor and arranger in the UK will generally be set up either as a limited company or as a limited liability partnership (LLP). This choice as to formation will depend upon a number of issues, including management and control, size, key individuals, employees, for example, but one of the key factors usually centres around the question of taxation.

Whereas a limited company is taxed separately from its shareholders and is subject to corporation tax and to NI contributions in respect of its employees, an LLP is regarded as a corporate entity, which confines the liability of its members to the assets of the LLP, but it is ordinarily tax transparent i.e. it is taxed like a partnership in that each of the members are taxed as partners, each being liable for tax on their share of the income or gains of the LLP.

The accounting and filing requirements for an LLP are broadly the same as those of a limited company, but another important difference is that a shareholders agreement is a public document, whereas any agreement between the members of an LLP (the LLP agreement) is a private document which is confidential to the members.

Thus, before deciding upon which type of entity the advisor and arranger should be, it would be advisable to seek tax advice as to which corporate formation would be beneficial in the particular circumstances, particularly as a result of the recent and proposed changes to the tax laws on partnerships and LLPs as regards salaried partners and mixed memberships.

FCA Authorisation

A further point to take into consideration is whether the advisor and arranger will need to be authorised by the Financial Conduct Authority in the UK (FCA). Pursuant to the Financial Services and Markets Act 2000 (FSMA), a firm carrying out a regulated activity in the UK must be authorised by the FCA and will be subject to continuing regulation by the FCA. Unless an exemption applies, advising and arranging will generally be a regulated activity in the UK if carried out in respect of certain specified investments, as set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

If authorisation is required, the firm will need to apply for authorisation and individuals who will be carrying out certain key roles (known as controlled functions) at authorised firms must also obtain approval from the FCA before doing so. Approval for both the firm and the individuals is commonly applied for at the same time and the authorisation process commonly takes between four to six months.

FCA Application

An FCA application requires a certain amount of preparatory work and applicants need to familiarise themselves with the FCA Handbook, which contains the rules of the FCA, particularly the Principles for Businesses (PRIN) as these are fundamental to the entire regulatory regime.

The FCA requires all applicants to demonstrate the following:

(i) that they have adequate financial resources to meet the minimum financial requirements for their particular prudential category (PRUD);

(ii) that they have determined the systems and controls they will need to put in place in order to support their activities and comply with relevant rules (SYSC);

(iii) that the relevant staff are approved or will be approved to carry out controlled functions (SUP); and

(iv) that they have determined which of their staff will require professional qualifications in order to perform their roles (TC).

The application process itself is a single process, which means that all applicants have to comply broadly with the same application requirements, but the amount of information required will, of course, depend on the nature of the business. Each applicant has to set out clearly in its application the regulated activities which it requires permission to carry on.

The application is time-consuming and quite complex and certain documents need to be supplied for an investment advisor and arranger. In addition, the applicant must include terms and conditions and an investment advisory agreement, both of which must be FCA-compliant as well as being commercially and legally correct. Due to its complexity, it is very common for counsel to be instructed to prepare the application pack.

Costs of setting up in the UK

The costs of establishing the advisor and arranger in the UK could include the following:

(i) incorporation costs (similar for both company and LLP);

(ii) preparation of articles of association (for company, can be off the shelf) and the cost is included in the incorporation costs above;

(iii) preparation of shareholders agreement/ LLP agreement which will vary according to structure and complexity;

(iv) costs related to FCA application, including application fee and requirement for minimum regulatory capital. Again, this vary depending on complexity and structure and will include the FCA's own fee;

(v) preparation of an investment advisory agreement, and possibly advice on the marketing rules;

(vi) costs of introducing systems and compliance; and

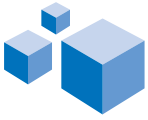
(vii) taxation and legal costs in relation to advice on the above,which again will vary depending on the UK issues as well as any offshore considerations.

Prospective managers should note that the FCA will require them to maintain regulatory capital and make at least quarterly reports, which will include financial reporting. Some firms may like to take compliance and/or accounting help with the returns.

Accountants will also need to be appointed to conduct an annual audit of accounts.

Other set up and on going costs will be those expected in the normal course of commercial events.

This document is for general guidance only. It does not constitute advice.
February 2014



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