



GUIDANCE NOTE 11

European Economic Interest Groupings (EEIGs)

- **What is an EEIG?**

An EEIG is a type of legal entity created under the European Community (EC) Council Regulation No. 2137/85. It is designed to facilitate or develop the economic activities of its members by a pooling of its resources, activities or skills. An EEIG is not a EU company but a vehicle allowing companies or individuals of different Member States to combine and register in any EU country a grouping that has legal personality and can operate across national frontiers. It is formed to carry out particular tasks for its member owners and is quite separate from its owners' businesses.

It is not intended that the grouping would make profits for itself, however. Any profits would be apportioned among the members and taxed accordingly, and in this it is similar to a partnership. The EEIG is not subject to corporate tax. It has unlimited liability.

- **What can an EEIG do?**

An EEIG's activities must relate to the economic activity of its members and must be ancillary to them, but the concept of "economic activity" can be interpreted very widely.

For example, universities and research institutes may participate in an EEIG. The creation of an EEIG between people in a profession (eg. solicitors) is also permitted. However, professional people will need to consider whether or not participation in an EEIG would be contrary to the rules of their profession.

Companies in the UK, Spain and France might form an EEIG to carry out scientific research in an area of common concern, or firms in Portugal and Scotland might use an EEIG to create a joint marketing operation for a new range of products. Lawyers in England, Denmark and Germany could join together to pool information.

▪ What may an EEIG not do?

An EEIG cannot:-

- hold shares in any of its members;
- be a member of another EEIG;
- employ more than 500 persons;
- invite investment by the public
- be used to make loans to a company director or any person connected with him where that would be restricted or controlled by national law.

▪ What are the Advantages of an EEIG?

An EEIG enjoys several advantages including legal capacity - the right to conclude contracts and sue (and be sued) and tax transparency. Members have flexibility regarding the method of financing the Group. For example, when smaller firms or non-profit making organisations are involved, their contribution may be in the services and skills that they can provide. There is no capital requirement for an EEIG. Members may vary their funding methods, rights and obligations by contract so that the Grouping can develop and change through time. Since an EEIG may not hold shares in its members, nor exercise any management control over them, it works for the members, and not vice versa.

▪ What are the Disadvantages?

The price to pay for the lack of a capital requirement is unlimited joint and several liability of the members. This means that not only is there no limit to the liability of any of the members for the activities of the EEIG, but also that each member can individually be held liable for those activities.

In addition, whilst an EEIG may, for example, be funded from members' funds, by raising share capital from its members, or by bank loans, it cannot seek funds from the public or buy a share in another EEIG.

▪ How is an EEIG Structured?

An EEIG is set up in much the same way as a normal company. At least two bodies must request its formation. The members must appoint **managers** to operate the EEIG on a day-to-day basis.

- **Who may be a Member of an EEIG?**

The rules on membership of the EEIG are set out in Article 4 of the EC Regulation establishing EEIGs. The Regulations aim to make membership of an EEIG open to as many people and organisations as possible within the Community, whether or not they are a company. The main requirement is that each potential member should have been engaged in an “economic activity” in the EU prior to becoming a member of the EEIG.

- **Is there a Nationality Requirement?**

An EEIG must have at least two members based in different Member States. To be eligible for membership, companies, firms and other legal bodies must have been formed according to the law of one of the Member States and have their central administration (i.e. place of central management and control) and their registered or statutory office - where this is required - within the EU. Individuals may become members if they carry on any industrial, commercial, craft or agricultural activity or provide professional or other services in the EU. Organisations from non-EU countries may not become members.

- **What is the Role of the Members?**

The members decide how the EEIG will be run. Normally this will be set out in the contract of formation for the EEIG. Each member has at least one vote. The contract of formation can give more than one vote to certain members (for example, if one member has subscribed a greater share of the capital or expertise).

The members are free to decide the voting procedures to be set down in the contract of formation except for certain fundamental decisions fundamentally affecting the existence and operation of the EEIG, for which unanimous decisions are required. The decisions requiring unanimity are set out in Article 17 of the EC Regulation.

- **What is the Role of the Managers?**

The members appoint managers who run the EEIG and make normal daily decisions. At least one manager must be appointed. EEIGs registered in Gibraltar may appoint legal persons (for example, a company incorporated under the Companies Act) as managers, provided that an individual is then registered as its representative.

The members lay down the powers of the managers. The actions of the managers are binding on the EEIG and the members are jointly liable for those actions. The only limitations that can be applied on the managers by the members in this respect is that of the “double signature”. This means that the EEIG is

only bound by the joint action of two or more managers. If this control device is used it will be effective only if its existence is published in the Gazette.

- **Does an EEIG have Legal Personality?**

An EEIG registered in Gibraltar is accorded legal personality as a “body corporate” from the date shown on its certificate of registration.

- **How is an EEIG Funded?**

The members of the EEIG are not required to subscribe any capital. The grouping can be financed by capital invested by the members, or by loans or donations from them or others. The contribution of some members may be in the form of the services and skills that they can provide. EEIGs may not seek investment from the public.

- **What Taxation Rules apply to EEIGs?**

Taxation operates under a system of fiscal transparency; that is to say, any profits, losses or gains are shared between the members according to their shares. These are then taxed in the hands of the members according to the relevant national law in the normal way.

For the purposes of taxation, a Grouping is regarded as acting as the agent of its members: its activities are those of its members acting jointly, and each member is regarded as having a share of the property, rights, liabilities and profits of the EEIG. The portion of profits, losses or gains going to each member is determined by the contract of formation where this is stated. If the contract says nothing the members are apportioned equal shares. The shares of property, rights and liabilities are determined in the same way.

The concept of tax transparency does not extend to other taxes such as VAT and stamp duty. An EEIG will have to register for VAT purposes if it makes taxable supplies in excess of the registration limits, in the same way as any other person.

- **What are the Accounting Requirements?**

The EEIG is not subject to any accounting or auditing requirements, and therefore does not have to file an annual return with Companies House.

- **Registration of Charges against an EEIG**

As an EEIG has legal personality: therefore charges and mortgages over its property can be registered against it.

The EEIG Act applies certain sections of the Companies Act to EEIGs. The sections applying to registration of charges in the Companies Act now also cover the registration of charges against EEIGs.

- **Registration of an EEIG**

An EEIG must be registered in one of the Member States of the EC. The Grouping's official address will determine which State this will be. The official address must be either:-

where the EEIG has its central administration, or

where one of its members has its central administration provided that the EEIG carries on an activity there.

Where a member is a natural person, the determining factor is his place of principal activity.

The EC Regulation requires or permits Member States to make certain provisions under national law in respect of EEIGs. As a result, there are some differences in the implementing legislation in Member States in areas such as legal capacity, the managers and auditing requirements.

- **Where do I register an EEIG in Gibraltar?**

The EEIG must be registered with the appropriate authority. In Gibraltar this is Companies House.

Additionally, if an EEIG opens an "establishment" in a Member State other than that in which its official address is situated, that establishment must be registered in the State where its official address

is situated. In Gibraltar the appropriate authority is again Companies House.

- **Publicity**

The birth and demise of an EEIG must be advertised in the Gibraltar Gazette and in the Official Journal of the European Communities (the registering authority will arrange for this). In addition various changes and other events also have to be advertised in Gibraltar.

- **What name can I give the Grouping?**

In the same way as companies are required to use the term "limited" or "plc" in their official title, EEIGs must include either 'European Economic Interest Grouping' or "EEIG" in their name. This can be in any of the official languages of the EC. The name cannot include any of the following, or abbreviations thereof: "limited", "unlimited" or "public limited company" or their foreign equivalent.

With this exception, in essence the same rules and restrictions on names apply for EEIGs registered in Gibraltar as for companies formed and registered under the Companies Act.

- **What is required for Registration?**

If the official address of the EEIG is to be in Gibraltar you must submit to Companies House:

Form EEIG1, and

the contract of formation.

If the contract is in language other than English, it must be accompanied by a certified translation.

- **What does the Formation Contract have to say?**

The contract of formation must, as a minimum, contain the following information about the EEIG:

- its full name (see "What name can I give the Grouping?");
- its official address;
- the objects for which the grouping was formed;
- the name/business names and legal form of each member;
- the permanent address or registered office of each member;
- the number, and place of registration (if any), of each member; and
- the duration of the EEIG, except where this is indefinite.

- **What other Documents have to be filed?**

Certain other additional documents and particulars must also be filed. These include:-

- Notice of the appointment and removal of managers, with their details.

In Gibraltar, this is done on form EEIG3 where the official address is in Gibraltar, and on form EEIG4 where it is elsewhere.

Form EEIG5 must be used to file notice of the setting up or closure of any establishment of the EEIG.

- **How much will this cost?**

A fee of £100, plus the cost of the advert to be placed in the Gibraltar Gazette and in the Official Journal of the European Communities, is payable on registration of an EEIG.

For other services the fees will be the same as for that of a company incorporated in Gibraltar.

Guidance only

This Circular is intended for general guidance only. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem we recommend that you seek professional advice

Registry Contact Details:

Companies House Gibraltar 1st Floor The Arcade, 30-38 Main Street, PO Box 848, Gibraltar

Tel: +350 200 78193

Fax: +350 200 44436

mail@companieshouse.gi

www.companieshouse.gi