

FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES) ACT 2011

Principal Act

Act. No. 2005-48	<i>Commencement</i> <i>Assent</i>	<i>See below</i> 2.8.2005
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Commencement

LN. 2005/112	sections 1, 2 and 3; Part VI, as it applies to experienced investor funds; sections 49, 50, 51, 52 and 55(1) (b) (2), (3) and (4); and section 57, as it applies to the EIF Regulations.	5.8.2005
2006/015	sections 4 - 5; Parts II, III, IV, V and VI; sections 53 - 54; section 55(1)(a), section 55(1)(c), and section 55(5); sections 56 - 58; and schedule 1 and schedule 2.	9.3.2006

Amending enactments	Relevant current provisions	Commencement date
Act. 2006-34	28(4)	1.11.2007
LN. 2011/191	Long title, 2(1), 3A, 5, 6(3) 7 (4), 11(1) & (2), 12(1) & (2)(a), 13(1)(b), 15(4)(a) & (5), 16(1)(a) & (2)(a), 18(1)(b), (4)(b), (5) & (6), 22(1)(a), 28, 33(1)(a)(i), 35, 36, 38, 43(1)(g), 50, 53, 54, 57 & Sch.1	13.10.2011
2012/221	ss. 2A & 2B	13.12.2012

English sources:

None cited

EU Legislation/International Agreements involved:

Directive 85/611/EEC	Directive 2004/39/EC
Directive 93/6/EEC	Directive 2007/16/EC
Directive 93/22/EEC	Directive 2009/65/EC
Directive 2000/12/EC	

ARRANGEMENT OF SECTIONS**PART I
PRELIMINARY AND INTERPRETATION**

1. Title and commencement.
2. Interpretation.
- 2A. Meaning of “transferable securities”.
- 2B. Liquid financial assets with respect to financial derivative Instruments.
3. Meaning of “collective investment scheme”.
- 3A. Meaning of “UCITS” for purposes of Act.
4. Meaning of open-ended investment company.

**PART II
PROHIBITIONS AND RESTRICTIONS**

5. Authorisation of UCITS: General Provisions.
6. Restrictions on promotion of collective investment schemes
7. Meaning of “restricted activity”
8. Prohibition on carrying on restricted activity without authorisation
9. Exemptions from sections 6 and 8.
10. Control over use of names

**PART III
AUTHORISED SCHEMES**

11. Authorisation of collective investment schemes.
12. Application for authorisation of collective investment schemes.
13. Authorisation of collective investment schemes: supplementary.
14. Determination of application for authorisation.
15. Imposition of conditions.
16. Constitution of an authorised collective investment scheme.
17. Scheme property of authorised open-ended investment company to be entrusted to depositary.
18. Managers, trustees and depositaries of authorised schemes.
19. Directors of an authorised open-ended investment company.
20. Participants rights with respect to redemption and repurchase.
21. Alteration of authorised schemes.
22. Changes in manager, depositary, trustee or director.
23. Approval of proposal under section 21 and 22.
24. Exclusion clauses.
25. Provision for authorised schemes in CIS Regulations.

PART IV
AUTHORISATION TO UNDERTAKE RESTRICTED ACTIVITIES

26. Application for authorisation to undertake a restricted activity.
27. Granting of authorisation to undertake restricted activity.
28. Authorisation of Gibraltar UCITS management company.
29. Determination of application for authorisation.
30. Imposition of conditions.
31. Financial resources to be maintained by authorised person.
32. Approved persons.
33. Enforcement action may be taken against persons authorised under section 28.

PART V
RECOGNISED COLLECTIVE INVESTMENT SCHEMES

34. Recognised schemes.

RECOGNISED EEA UCITS SCHEMES

35. Recognition of EEA UCITS Schemes.
36. *Repealed.*
37. Voluntary cessation of recognition.
38. Deemed authorisation of operator, trustee or depositary of recognised UCITS scheme.

RECOGNISED FOREIGN SCHEMES

39. Application for recognition as a foreign scheme.
40. Recognition of foreign scheme.
41. Determination of application for recognition.

GENERAL

42. Provision for recognised schemes in CIS Regulations.

PART VI
ENFORCEMENT ACTION - COLLECTIVE INVESTMENT SCHEMES

43. Grounds for taking enforcement action.
44. Revocation and suspension of authorisation or recognition.
45. Protection order.
46. Directions.
47. Appointment of examiner.
48. Public statements.

**PART VII
GENERAL**

- 49. Applications.
- 50. Appeals against decisions of Authority.
- 51. Offences.
- 52. Experienced Investor Fund Regulations.
- 53. Collective Investment Scheme Regulations.
- 54. Regulations made under the Financial Services (Investment and Fiduciary Services) Act.
- 55. Codes of Practice and Guidance Notes.
- 56. Approval of forms by Authority.
- 57. Application of Financial Services (Investment and Fiduciary Services) Act and Financial Services (Markets in Financial Instruments) Act 2006.
- 58. Repeals and consequential amendments.

SCHEDULE 1

Persons exempted from sections 6 and 7.

SCHEDULE 2

Repeals and Consequential Amendments.

AN ACT TO REGULATE THE PROMOTION, ESTABLISHMENT AND OPERATION OF COLLECTIVE INVESTMENT SCHEMES AND TO TRANSPOSE IN PART INTO THE LAW OF GIBRALTAR DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 JULY 2009 ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS), AS AMENDED FROM TIME TO TIME.

PART I

PRELIMINARY AND INTERPRETATION

Title and commencement.

1.(1) This Act may be cited as the Financial Services (Collective Investment Schemes) Act 2011.

(2) The provisions of this Act shall come into operation on such day as the Minister may by notice in the Gazette appoint, and different days may be appointed for different purposes.

Interpretation.

2.(1) In this Act, unless the context otherwise requires—

“approved form” means a form approved by the Authority in accordance with section 56;

“authorised open-ended investment company” means an authorised scheme that is an open-ended investment company;

“authorised person” means a person authorised under section 27, an authorised open-ended investment company or a person deemed under a provision of this Act or the CIS Regulations to be an authorised person;

“authorised scheme” means a common fund or an open-ended investment company in respect of which an authorisation issued under section 13 is in force;

“authorised UCITS scheme” means an authorised scheme that is a UCITS scheme;

“authorised common fund” means an authorised scheme that is a common fund;

“Authority” means such person or persons or body as the Minister may, by Order, appoint to exercise the powers, discretions and functions conferred on the Authority under this Act*;

“CIS Regulations” means the Financial Services (Collective Investment Schemes) Regulations 2011 made under section 53;

“collective investment scheme” has the meaning specified in section 3;

“common fund” shall be interpreted in accordance with section 3A(2);

“common fund” means a collective investment scheme under which the property subject to the scheme is held on trust for the participants;

“depository” shall be interpreted in accordance with regulation 2 of the CIS Regulations;

“EEA” means the territories to which the EEA Agreement applies;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;

“EEA State” means a State which is a contracting party to the EEA Agreement and any reference to EEA State shall, except where otherwise specified, be construed as including Gibraltar;

“EEA UCITS management company” shall be interpreted in accordance with regulation 13 of the CIS Regulations;

“EIF Regulations” means the Experienced Investor Fund Regulations made under section 52;

“experienced investor fund” and “experienced investor” have the meanings specified in the EIF Regulations;

“Gibraltar UCITS management company” means an authorised person that is authorised to be the operator of a UCITS scheme, whether or not it is also authorised to be the operator of one or more non-UCITS collective investment schemes;

* *The Commissioner, as defined in the Financial Services Commission Ordinance 1989, is appointed as the Authority see LN. 2005/183.*

“management agreement” means an agreement for the management of funds constituting the whole or part of a collective investment scheme;

“management company” means a company, the regular business of which is the management of UCITS in the form of common funds or of investment companies (collective portfolio management of UCITS);

“manager” has the meaning specified in the CIS Regulations;

“Minister” means the Minister responsible for financial services;

“Non-UCITS” means a collective investment scheme which is not a UCITS;

“open-ended investment company” has the meaning specified in section 4;

“operator”–

- (a) in relation to a common fund with a separate trustee, means the manager of the scheme;
- (b) in relation to an open-ended investment company which is a UCITS scheme, the person appointed to manage the scheme; and
- (e) in relation to any other open-ended investment company, the company itself;

“participant” means a person who participates in a collective investment scheme, and includes a shareholder in a collective investment scheme that is constituted as a corporate body;

“public interest” means the public interest of Gibraltar as determined by the Minister;

“prescribed” means prescribed by the CIS Regulations or, in relation to an expert investor fund, by the EIF Regulations;

“private scheme” means a collective investment scheme having the characteristics of a private scheme prescribed by the CIS Regulations;

“recognised foreign scheme” means a collective investment scheme recognised under section 40;

“recognised scheme” means a recognised foreign scheme or a recognised UCITS scheme;

“recognised UCITS scheme” means a UCITS scheme recognised under section 35;

“restricted activity” has the meaning specified in section 7;

“transferable securities” means—

- (a) shares in companies and other securities equivalent to shares in companies (shares);
- (b) bonds and other forms of securitised debt (debt securities);
- (c) any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange;

“trustee”, in relation to a common fund, means the person holding the property subject to the scheme on behalf of the participants;

“UCITS” means a collective investment scheme to which this Act applies pursuant to section 3A;

“UCITS Directive” and “Directive” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended from time to time;

“UCITS scheme” means a scheme which, in accordance with the UCITS Directive, is an undertaking for collective investment in transferable securities subject to that Directive;

“unitholder” means—

- (a) in relation to a unit which is represented by a bearer certificate, the person who holds that certificate; or
- (b) in any other case, the person whose name is entered on the register of the scheme as the holder of that unit;

“units” means the rights or interests, however described, of the participants in a collective investment scheme.

(2) For the purposes of the interpretation of “management company” in subsection (1), the regular business of a “management company” includes the functions referred to in Schedule 3 of the CIS Regulations.

(3) For the purposes of the interpretation of “transferable securities” in subsection (1), “transferable securities” excludes the techniques and instruments referred to in regulation 48 of the CIS Regulations.

Meaning of “transferable securities”.

2A.(1) The reference to transferable securities in section 2(1) shall be understood as a reference to financial instruments which fulfill the following criteria—

- (a) the potential loss which the UCITS may incur with respect to holding those instruments is limited to the amount paid for them;
- (b) their liquidity does not compromise the ability of the UCITS to comply with regulation 99 of the Financial Services (Collective Investment Schemes) Regulations 2011;
- (c) reliable valuation is available for the financial instrument as follows—
 - (i) in the form of accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers, in the case of securities admitted to or dealt in on a regulated market as referred to in regulation 47(1)(a) to (d) of the Financial Services (Collective Investment Schemes) Regulations 2011;
 - (ii) in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from competent investment research, in the case of other securities as referred to in regulation 47(2) and (3) of the Financial Services (Collective Investment Schemes) Regulations 2011;
- (d) appropriate information is available for the financial instrument as follows—
 - (i) in the form of regular, accurate and comprehensive information to the market on the security or, where relevant, on the portfolio of the security, in the case of securities admitted to or traded on a regulated market as

referred to in regulation 47(1)(a) to (d) of the Financial Services (Collective Investment Schemes) Regulations 2011;

- (ii) in the form of regular and accurate information to the UCITS on the security or, where relevant, on the portfolio of the security, in the case of other securities as referred to in regulation 47(2) and (3) of the Financial Services (Collective Investment Schemes) Regulations 2011;
- (e) the financial instruments are negotiable;
- (f) the acquisition of the financial instruments is consistent with the investment objectives or the investment policy, or both, of the UCITS pursuant to the Financial Services (Collective Investment Schemes) Act 2011 and the Financial Services (Collective Investment Schemes) Regulations 2011; and
- (g) the risks associated with the financial instruments are adequately captured by the risk management process of the UCITS.

(2) For the purposes of paragraphs (b) and (e) of subsection (1), and unless there is information available to the UCITS that would lead to a different determination, financial instruments which are admitted or traded on a regulated market in accordance with regulation 47(1)(a), (b) or (c) of the Financial Services (Collective Investment Schemes) Regulations 2011 shall be presumed not to compromise the ability of the UCITS to comply with regulation 99 of the Financial Services (Collective Investment Schemes) Regulations 2011 and shall also be presumed to be negotiable.

(3) The reference to transferable securities in section 2(1) shall be taken to include the following—

- (a) units in closed end funds constituted as investment companies or as unit trusts and fulfilling the following criteria—
 - (i) they fulfil the criteria set out in subsections (1) and (2);
 - (ii) they are subject to corporate governance mechanisms applied to companies;
 - (iii) where asset management activity is carried out by another entity on behalf of the closed end fund, that entity is itself regulated for the purpose of investor protection;

- (b) units in closed end funds constituted under the law of contract which fulfill the following criteria—
 - (i) the closed end funds fulfil the criteria set out in subsections (1) and (2);
 - (ii) the closed end funds are subject to corporate governance mechanisms equivalent to those applied to bodies corporate under the Companies Act;
 - (iii) the closed end funds are managed by an entity which is subject to regulation under Gibraltar law for the purpose of investor protection;
- (c) financial instruments which fulfil the following criteria—
 - (i) the financial instruments fulfil the criteria set out in subsections (1) and (2);
 - (ii) the financial instruments are backed by, or linked to the performance of, other assets, which may differ from those referred to in regulation 47(1) of the Financial Services (Collective Investment Schemes) Regulations 2011.

(4) Where a financial instrument covered by subsection (3)(c) contains an embedded derivative component, the requirements of regulation 48 of the Financial Services (Collective Investment Schemes) Regulations 2011, shall apply to that component.

Liquid financial assets with respect to financial derivative Instruments.

2B.(1) The reference in section 3A to liquid financial assets shall be understood, with respect to financial derivative instruments, as a reference to financial derivative instruments which fulfil the following criteria—

- (a) their underlyings consist of one or more of the following—
 - (i) assets as listed in regulation 47(1) of the Financial Services (Collective Investment Schemes) Regulations 2011 including financial instruments having one or several characteristics of those assets;
 - (ii) interest rates;
 - (iii) foreign exchange rates or currencies;

(iv) financial indices;

- (b) in the case of OTC derivatives, they comply with the conditions set out in regulation 47(1)(g)(ii) and (iii) of the Financial Services (Collective Investment Schemes) Regulations 2011.

(2) Financial derivative instruments as referred to in regulation 47(1)(g) of the Financial Services (Collective Investment Schemes) Regulations 2011 shall be taken to include instruments which fulfil the following criteria—

- (a) they allow the transfer of the credit risk of an asset as referred to in subsection (1)(a) of this section independently from the other risks associated with that asset;
- (b) they do not result in the delivery or in the transfer, including in the form of cash, of assets other than those referred to in regulation 47(1) and (2) of the Financial Services (Collective Investment Schemes) Regulations 2011;
- (c) they comply with the criteria for OTC-derivatives laid down in regulation 47(1)(g)(ii) and (iii) of the Financial Services (Collective Investment Schemes) Regulations 2011 and in subsections (3) and (4) of this section;
- (d) their risks are adequately captured by the risk management process of the UCITS, and by its internal control mechanisms in the case of risks of asymmetry of information between the UCITS and the counterparty to the credit derivative resulting from potential access of the counterparty to non-public information on firms the assets of which are used as underlyings by credit derivatives.

(3) For the purposes of regulation 47(1)(g)(iii) of the Financial Services (Collective Investment Schemes) Regulations 2011, the reference to fair value shall be understood as a reference to the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

(4) For the purposes of regulation 47(1)(g)(iii) of the Financial Services (Collective Investment Schemes) Regulations 2011, the reference to reliable and verifiable valuation shall be understood as a reference to a valuation, by the UCITS, corresponding to the fair value as referred to in subsection (3) of this section, which does not rely only on market quotations by the counterparty and which fulfils the following criteria—

- (a) the basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised methodology;
- (b) verification of the valuation is carried out by one of the following—
 - (i) an appropriate third party which is independent from the counterparty of the OTC-derivative, at an adequate frequency and in such a way that the UCITS is able to check it;
 - (ii) a unit within the UCITS which is independent from the department in charge of managing the assets and which is adequately equipped for such purpose.

(5) The reference in section 3A and regulation 47(1)(g) of the Financial Services (Collective Investment Schemes) Regulations 2011 to liquid financial assets shall be understood as excluding derivatives on commodities.

Meaning of “collective investment scheme”.

3.(1) In this Act, “collective investment scheme” means any arrangement with respect to property, the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) An arrangement referred to in sub-section (1)—

- (a) must be such that the participants do not have day to day control over the management of the property subject to the arrangement, whether or not they have the right to be consulted or to give directions; and
- (b) must have at least one of the following characteristics—
 - (i) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled,
 - (ii) the property is managed as a whole by or on behalf of the operator of the scheme.

(3) Where an arrangement provides for such pooling as is referred to in sub-section (2)(b)(i) in relation to separate parts of the property, the arrangement shall not be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(4) The CIS Regulations may provide that an arrangement which would otherwise fall within the meaning of “collective investment scheme” specified in subsection (1), is deemed not to constitute a collective investment scheme for the purposes of this Act or for the purposes of certain specified provisions of this Act—

- (a) in specified circumstances; or
- (b) if the arrangement falls within a prescribed category of arrangement.

Meaning of “UCITS” for purposes of Act.

3A.(1) A UCITS is a collective investment scheme—

- (a) with the sole object of the collective investment of capital raised from the public in transferable securities or other liquid financial assets referred to in regulation 47(1) of the CIS Regulations and operating on the principle of risk-spreading; and
- (b) with units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings’ assets,

and for these purposes—

- (i) UCITS may consist of several investment compartments with the Authority’s written consent; and
- (ii) action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value is deemed equivalent to a repurchase or redemption for the purposes of paragraph (b).

(2) Undertakings falling within the provisions of subsection (1) may be constituted in accordance with contract law (as common funds managed by management companies), trust law (as unit trusts), or statute (as investment companies), and for these purposes—

- (a) “common funds” include unit trusts; and
 - (b) “units” of UCITS include shares of UCITS.
- (3) Open-ended investment companies–
- (a) the assets of which are invested through the intermediary of subsidiary companies; and
 - (b) mainly other than in transferable securities,
- do not fall within the provisions of this section.
- (4) A UCITS may not transform itself into a collective investment undertaking of a type not covered by this section.
- (5) Where a UCITS established in another EEA State or units issued by such UCITS are marketed in Gibraltar–
- (a) the Authority may not apply any other legislative or regulatory provisions thereto in respect of any matter covered by this Act; and
 - (b) the provisions of regulations 106 and 107 and 123(2)(b) of the CIS Regulations apply.
- (6) For the purposes of this Act, a UCITS is deemed to be established in the EEA State in which it is authorised.

Meaning of open-ended investment company.

4.(1) In this Act, “open-ended investment company” means a collective investment scheme where the following conditions are satisfied–

- (a) the property subject to the scheme belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of–
 - (i) spreading investment risk; and
 - (ii) giving its members the benefit of the results of the management of those funds by or on behalf of that body corporate; and
- (b) in relation to the body corporate, a reasonable investor would, if he were to participate in the scheme–

- (i) expect that he would be able to realize, within a period appearing to him to be reasonable, his investment in the scheme, represented, at any given time, by the value of shares in, or securities of, the body corporate held by him as a participant in the scheme; and
- (ii) be satisfied that his investment would be realized on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements.

(2) In determining whether the conditions specified in subsection (1)(b) are satisfied, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under—

- (a) the relevant provisions of the Companies Act;
- (b) the corresponding provisions in force in an EEA State; or
- (c) such provisions in force in a country or territory other than an EEA State which may be designated as corresponding provisions in the CIS Regulations.

PART II PROHIBITIONS AND RESTRICTIONS

Authorisation of UCITS: General Provisions.

5.(1) It is an offence for a UCITS to carry out any activity to which this Act applies, unless it has been authorised under this Act or in an EEA State, as the case may be.

- (2) The Authority—
 - (a) shall authorise a common fund only where it has approved the application of the management company to manage that common fund, the fund rules and the choice of depositary;
 - (b) shall authorise an open-ended investment company only where it has approved both its instruments of incorporation and the choice of depositary, and, where relevant, the application of the designated management company to manage that open-ended investment company.
- (3) Without prejudice to subsection (2)—

- (a) where Gibraltar is not the home State of a management company but is the UCITS' home State, the management company shall apply to the Authority for an authorisation to manage the UCITS pursuant to regulation 17 of the CIS Regulations;
 - (b) an authorisation to manage a UCITS under paragraph (a) shall not be subject to a requirement that the management company have its registered office in Gibraltar, that the management company pursue any activities in Gibraltar or that it delegate any responsibility to undertakings established in Gibraltar.
- (4) The following provisions apply–
- (a) the Authority shall not authorise a UCITS under this Act where–
 - (i) it has reason to believe that the open-ended investment company does not comply with the preconditions laid down in Part IV of the CIS Regulations; or
 - (ii) the management company designated to manage the UCITS is not authorised for the management of UCITS in its home EEA State;
 - (b) without prejudice to regulation 26(2) of the CIS Regulations, a management company or, where applicable, an open-ended investment company, shall be informed, within two months of the submission of a complete application, whether or not an authorisation of the UCITS has been granted;
 - (c) the Authority shall not authorise a UCITS where the directors of the depositary designated in relation to that UCITS are not of sufficiently good repute or are not sufficiently experienced in relation to the type of UCITS to be managed. To that end, the names of the directors of the depositary and of every person succeeding them in office shall be communicated forthwith to the Authority,

and for these purposes, a “director” means a person who, under the law or the instruments of incorporation, represents the depositary, or who effectively determines the policy of the depositary.

(5) The Authority shall not grant an authorisation to a UCITS applying to be authorised under this Act where the UCITS is legally prevented (for example, through a provision in the fund rules or instruments of incorporation) from marketing its units in Gibraltar.

(6) It is an offence for the management company or the depositary of a UCITS authorised under this Act to be replaced, or the fund rules or instruments of incorporation of the open-ended investment company to be amended, without the prior approval of the Authority.

(7) The Authority shall ensure that—

- (a) complete information on the laws, regulations and administrative provisions which relate to the constitution and functioning of UCITS are easily accessible at a distance or by electronic means;
- (b) such information is available in the English language and is provided in a clear and unambiguous manner, and is kept up to date.

Restrictions on promotion of collective investment schemes.

6.(1) Subject to subsections (3) and (4), a person shall not, whether in or from within Gibraltar, promote a collective investment scheme unless the scheme is—

- (a) an authorised scheme; or
- (b) a recognised scheme.

(2) Without limiting subsection (1), a person promotes a collective investment scheme if he communicates, or causes to be communicated, an invitation or inducement to any other person, or advises or procures any other person, to participate in, or to offer to participate in, a collective investment scheme.

(3) Section 5 and subsection (1) do not apply –

- (a) with a respect to an experienced investor fund, provided that the fund is established and promoted in accordance with, and as permitted by the EIF Regulations;
- (b) to a communication originating, or advice given, outside Gibraltar unless the communication or advice is capable of having effect in Gibraltar;
- (c) to the promotion, otherwise than to the general public, of a private scheme provided that the scheme is promoted in accordance with, and as permitted by, the CIS Regulations.

(4) The CIS Regulations may provide that section 5 and subsection (1) does not apply –

- (a) of a specified description; or
- (b) made or given in specified circumstances.

(5) A person who contravenes subsection (1) commits an offence and is liable–

- (a) on summary conviction, to a fine up to level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

Meaning of “restricted activity”.

7.(1) A person carries on a “restricted activity” if he carries on, by way of business–

- (a) any of the following activities–
 - (i) establishing, acting as the manager or administrator of, or otherwise as the operator of, or winding up a collective investment scheme;
 - (ii) acting as the trustee of a common fund;
 - (iii) acting as the depositary or sole director of an open-ended investment company; or
- (b) any activity prescribed in the CIS Regulations as a restricted activity.

(2) The CIS Regulations may provide that an activity which would otherwise fall within the meaning of “restricted activity” specified in subsection (1), is deemed not to constitute a restricted activity for the purposes of this Act or for the purposes of certain specified provisions of this Act–

- (a) in specified circumstances; or
- (b) if the activity falls within a prescribed category of activities.

Prohibition on carrying on restricted activity without authorisation.

8.(1) Subject to section 9, no person shall carry on, or purport to carry on, a restricted activity unless—

- (a) the person holds an authorisation granted by the Authority under this Act with respect to that restricted activity; or
- (b) the person is deemed to be authorised by any provision in this Act or the CIS Regulations with respect to that activity.

(2) The CIS Regulations may specify circumstances in which—

- (a) EEA UCITS management companies undertaking business or providing services in Gibraltar are deemed to be authorised persons; and
- (b) Gibraltar UCITS management companies may carry on business in an EEA State other than Gibraltar.

(3) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction, to a fine up to level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

Exemptions from sections 6 and 8.

9.(1) Sections 6 and 8 do not apply to a person specified in Schedule 1 to the extent specified in that Schedule.

(2) The CIS Regulations may add to or delete from the list of persons exempted from sections 6 and 8 by subsection (1).

Control over use of names.

10.(1) No company shall be incorporated, and no person shall carry on business in or from within Gibraltar, under a name that contains a restricted word or phrase, unless—

- (a) it is an authorised scheme, a recognised scheme or an experienced investor fund that is using the restricted word or phrase as permitted by the notice published by the Authority under subsection (2);

- (b) he is an authorised person who is using the restricted word or phrase as permitted by the notice published by the Authority under subsection (2); or
- (c) the Authority has given its prior written consent to the use of the word or phrase.

(2) For the purposes of subsection (1), the Authority may, by notice published in the prescribed manner, specify words or phrases as restricted words or phrases and may specify categories of collective investment scheme or authorised persons who may use the restricted words or phrases, the circumstances in which they may be used and conditions attaching to their use.

PART III AUTHORISED SCHEMES

Authorisation of collective investment schemes.

11.(1) A collective scheme may be authorised under this Part as–

- (a) a UCITS scheme; or
- (b) a non-UCITS retail scheme.

(2) The provisions of this Part do not apply for the purposes of subsection (1)(a) to the extent that CIS Regulations make conflicting provision.

Application for authorisation of collective investment schemes.

12.(1) Application may be made to the Authority in accordance with subsection (2) for the authorisation as an authorised collective investment scheme of–

- (a) a common fund which satisfies, or immediately after authorisation will satisfy, the requirements specified in section 18(2), (4), (5) and (6); or
- (b) an open-ended investment company incorporated under the Companies Act.

(2) An application under subsection (1) shall be made–

- (a) if authorisation is sought in respect of a common fund, by the manager and trustee, or the proposed manager and trustee, of the common fund; or
- (b) if authorisation is sought in respect of an open-ended investment company, by the manager and depositary, or the proposed manager and depositary, of the open-ended investment company.

Authorisation of collective investment schemes: supplementary.

13.(1) Subject to this section, the Authority may grant an application for the authorisation of a collective investment scheme if the Authority is satisfied—

- (a) that the scheme complies with the requirements of this Act and the CIS Regulations in respect of the application and will, upon the grant of the authorisation, be in compliance with the requirements of this Act and the CIS Regulations with respect to authorised schemes;
- (b) in the case of a common fund, the manager and trustee is each fit and proper to act as manager or trustee, as the case may be; and
- (c) in the case of an open-ended investment company, that the manager, the depositary and each director is fit and proper to act as manager, depositary or director, as the case may be.

(2) In considering whether to authorise a collective investment scheme under this section, the Authority shall have regard to the need to protect the public against financial loss and the reputation of Gibraltar and, to that end, shall consider—

- (a) the general nature and specific attributes of the scheme to which the application relates and whether the purposes of the scheme are reasonably capable of being successfully carried into effect;
- (b) the manner in which it is proposed to organise the operation of the scheme to which the application relates, the number of persons who will be responsible for carrying on each aspect of the operation of the scheme and the experience of and the relationship between the persons who will be so responsible;
- (c) the adequacy of the systems of control and record keeping, having regard to the nature of the proposed scheme;

- (d) whether the name of the scheme is undesirable or misleading;
- (e) any written representations received from any member of the public in response to and within three weeks of the advertisement of the application; and
- (f) any other factors which the Authority considers appropriate.

(3) Where the Authority authorises a collective investment scheme as an authorised scheme, it shall issue a certificate of authorisation to the applicants which shall—

- (a) state the date upon which the authorisation takes effect;
- (b) state whether the scheme is authorised as a UCITS scheme or a non-UCITS retail scheme;
- (c) if the scheme is authorised as a feeder fund or an umbrella fund, state that the scheme is so authorised; and
- (d) in the case of an authorised UCITS scheme, state that the scheme complies with the conditions necessary for it to enjoy the rights conferred by the UCITS Directive.

(4) An authorised open-ended investment company is authorised to carry on, so far as it is a regulated activity—

- (a) the operation of the scheme;
- (b) any activity in connection with, or for the purposes of, the operation of the scheme.

Determination of application for authorisation.

14.(1) The Authority shall determine an application for the authorisation of a collective investment scheme not later than six months after the date upon which it receives a complete application that complies with section 12 and the CIS Regulations.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so and, if it does, it shall determine the application not later than twelve months after the date upon which it first receives the application.

(3) If the Authority refuses an application for authorisation, it shall give each of the applicants written notice of its refusal and state the reasons for its decision.

Imposition of conditions.

15.(1) The Authority may on or at any time after granting authorisation under section 13, subject the authorisation to such conditions as it considers necessary for the protection of investors and may, at any time, vary or revoke any condition so imposed.

(2) Without limiting subsection (1), a condition imposed under this subsection may–

- (a) prohibit an authorised scheme, or its manager, depositary, trustee or any administrator or other person undertaking any function with respect to the scheme, from–
 - (i) entering into transactions of any specified description or in specified circumstances or to a specified extent or with persons of a specified description,
 - (ii) soliciting participants of a specified description or in a specified place,
 - (iii) operating the scheme in a specified manner or otherwise than in a specified manner,
 - (iv) disposing of, or otherwise dealing with any, or with any specified, assets of the scheme in a specified manner or otherwise than in a specified manner;
- (b) require an authorised scheme, or its manager, depositary, trustee or any administrator or other person undertaking any function with respect to the scheme, to take all necessary steps to transfer to the custody of a person approved by the Authority all, or any specified, property of the scheme.

(3) A prohibition or requirement under sub-section (2) may relate to assets outside Gibraltar.

(4) Where the Authority imposes a condition under subsection (1), or varies or revokes a condition, the Authority shall send a written notice specifying the condition or the variation or revocation of the condition–

- (a) in the case of a common fund, to the trustee; or
- (b) in the case of an open-ended investment company, to the manager.

(5) No condition may be imposed pursuant to this section where it conflicts with a provision of the Directive.

Constitution of an authorised collective investment scheme.

16.(1) The constituting instrument of an authorised collective investment scheme shall be—

- (a) in the case of a common fund, a trust deed or binding agreement, as the case may be. Made between the manager and the trustee; and
- (b) in the case of an open-ended investment company, the memorandum and articles of association of the company.

(2) The constituting instrument of an authorised collective investment scheme shall not contain any provision that—

- (a) conflicts with this Act or the Directive;
- (b) prevents the units of the scheme being marketed in Gibraltar; or
- (c) is unfairly prejudicial to the interests of unitholders of any class of units.

(3) The constituting instrument of an authorised collective investment scheme must include such provisions as are specified in the CIS Regulations.

Scheme property of authorised open-ended investment company to be entrusted to depositary.

17.(1) Subject to subsection (2), all the scheme property of an authorised open-ended investment company must be entrusted for safekeeping to a depositary appointed for the purpose.

(2) Subsection (1)—

- (a) does not apply to scheme property exempted from subsection (1) by the CIS Regulations; and
- (b) does not prevent a depositary from—
 - (i) entrusting all or part of the scheme property in its safekeeping to a third party; or

- (ii) authorising a third party to whom it has entrusted scheme property to entrust all or part of the property to other specified persons.

Managers, trustees and depositaries of authorised schemes.

18.(1) An authorised scheme shall have a manager that shall be—

- (a) a Gibraltar UCITS management company; or
- (b) subject to the provisions of the CIS Regulations, an EEA UCITS management company that has a place of business in Gibraltar.

(2) The trustee of an authorised common fund shall be independent of the manager and shall be a person authorised to act in that capacity under this Act.

(3) An authorised open-ended investment company shall have a depositary who shall be a person—

- (a) authorised under section 27 to act in that capacity;
- (b) independent of the manager and of the company and its directors.

(4) The trustee of an authorised common fund and the depositary of an authorised open-ended investment company shall each—

- (a) be a body corporate incorporated in Gibraltar or in another EEA State; and
- (b) save where the CIS Regulations otherwise provide, have a place of business in Gibraltar,

(5) The business and affairs of a manager or trustee of an authorised common fund and of a depositary of an authorised open-ended investment company shall be administered in the jurisdiction in which the manager, trustee or depositary is incorporated.

(6) A common fund shall not be authorised under this Part if—

- (a) it is a UCITS scheme constituted under the laws of another EEA State; and
- (b) the manager of the scheme is incorporated in that EEA State.

(7) The head office of an authorised open-ended investment company shall be situated in Gibraltar.

Directors of an authorised open-ended investment company.

19.(1) An authorised open-ended investment company shall have at least one director and, if the company has only one director, that director shall be a person licensed to act as director under section 26.

(2) If an authorised open-ended investment company has more than one director, the combination of the directors' expertise must be such as is appropriate for the purposes of carrying on the business of the company.

Participants rights with respect to redemption and repurchase.

20. An authorised scheme shall meet one or both of the following requirements—

- (a) participants are entitled to have their units redeemed, on request, at a price related to the net value of the scheme property and determined in accordance with the scheme's constituting instrument, the CIS Regulations and any Code of Practice issued by the Authority and any Guidance issued under section 55; or
- (b) participants are entitled to sell their units on an investment exchange at a price not significantly different from that specified in paragraph (a).

Alteration of authorised schemes.

21.(1) The operator of an authorised scheme shall give the Authority written notice of any proposal to alter the scheme, including a proposal to amend its constituting instrument, or to change the name of the scheme.

(2) Without limiting subsection (1), in the case of an authorised open-ended investment company, the following represent alterations in respect of which notice is required to be given to the Authority—

- (a) any proposed material alteration to the company's prospectus;
- (b) any proposed reconstruction or amalgamation involving the company; and
- (c) any proposal to wind up the affairs of the company.

(3) Any notice given under subsection (1) of a proposal to amend the constituting instrument of a scheme shall be accompanied by a certificate of a barrister or solicitor of the Supreme Court of Gibraltar that the change will not affect the compliance of the constituting instrument with section 16 or with the CIS Regulations.

Changes in manager, depositary, trustee or director.

22.(1) Written notice of any proposal to replace the manager of a scheme shall be given to the Authority—

- (a) in the case of an authorised common fund, by the trustee; and
- (b) in the case of an open-ended investment company, by the depositary.

(2) The manager of an authorised scheme shall give the Authority written notice of any proposal to replace the trustee or, in the case of an open-ended investment company, the depositary of the scheme.

(3) The operator of an authorised open-ended investment company shall give the Authority written notice of any proposal to appoint a director of the company, whether as a replacement director or as an additional director, or to decrease the number of the company's directors.

Approval of proposal under section 21 and 22.

23.(1) Effect shall not be given to a proposal specified in section 21 or 22 unless the Authority has given its written approval to the proposal.

(2) The Authority shall not approve a proposal specified in section 22 unless it is satisfied that, if the change was to be made, the scheme will continue to comply with those requirements of sections 18 and 19 that are relevant to it.

Exclusion clauses.

24. Any provision in the constituting instrument of an authorised scheme or in any prospectus or other document that purports to exempt the manager, trustee or custodian from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme, is void and of no effect.

Provision for authorised schemes in CIS Regulations.

25.(1) The CIS Regulations may make provision with respect to authorised schemes, including as to—

- (a) applications for, and the form, content, issuance and validity of, authorisations granted under this Part;
- (b) the constitution, management, operation, winding up and dissolution of authorised schemes;
- (c) the matters to be contained in the constituting instrument of authorised schemes, including rules incorporating into the constituting instrument provisions overriding its express terms and rendering those terms void to the extent of any inconsistency with any overriding provisions incorporated;
- (d) the constitution, powers, duties, rights and liabilities of operators, managers, directors, trustees and depositaries of authorised schemes;
- (e) the rights and obligations of the participants in an authorised scheme;
- (f) different classes and types of authorised scheme;
- (g) the publication of such particulars as regards authorised schemes as may be prescribed;
- (h) restrictions on the names that may be used by authorised schemes;
- (i) the issue and redemption of the units in authorised schemes;
- (j) the expenses of authorised schemes and the means of meeting them;
- (k) the appointment, removal, powers and duties of auditors of authorised schemes;
- (l) the restriction or regulation of the investment and borrowing powers exercisable in relation to authorised schemes;
- (m) the keeping of records with respect to the transactions and financial position of authorised schemes and for the inspection of those records;
- (n) the preparation of periodical reports with respect to authorised schemes and the provision of those reports to the participants and to the Authority; and

- (o) the preparation, publication and submission to the Authority of the particulars of authorised schemes; and
- (p) the amendment of authorised schemes.

(2) Regulations made under paragraphs (b) to (e) of subsection (1) are binding on the manager, directors, trustee, depositary and participants of an authorised scheme independently of the contents of the constituting instrument of the scheme and, in the case of the participants, have effect as if contained in it.

PART IV

AUTHORISATION TO UNDERTAKE RESTRICTED ACTIVITIES

Application for authorisation to undertake a restricted activity.

26.(1) A person may apply to the Authority in the approved form for authorisation to undertake one or more restricted activities.

(2) An EEA UCITS management company may not apply for authorisation to undertake an activity which it is entitled to undertake because it is deemed under this Act or the CIS Regulations to be an authorised person with respect to that activity.

Granting of authorisation to undertake restricted activity.

27.(1) Subject to this section, the Authority may grant an application for authorisation to undertake a restricted activity if it is satisfied that the persons who effectively conduct the business of the applicant are fit and proper persons, with respect to the restricted activity or activities for which authorisation is sought.

(2) In considering whether to authorise a person under this section, the Authority shall have regard to the need to protect the public against financial loss and to protect the reputation of Gibraltar.

(3) Where the Authority authorises a person under this section, it shall issue a certificate of authorisation to the person concerned which shall state the date upon which the authorisation takes effect.

(4) Where the Authority grants authorisation to a person under this section, that person is an Authorised Person in respect of that activity.

Authorisation of Gibraltar UCITS management company.

28. A person shall not be authorised as a Gibraltar UCITS management company unless that person complies with the relevant provisions of the CIS Regulations.

Determination of application for authorisation.

29.(1) The Authority shall determine an application for the authorisation of a person under section 26 not later than six months after the date upon which it receives a complete application that complies with the CIS Regulations.

(2) If the Authority refuses an application for authorisation, it shall give each of the applicants written notice of its refusal and state the reasons for its decision.

Imposition of conditions.

30.(1) The Authority may on or at any time after granting authorisation under section 27, subject the authorisation to such conditions as it considers appropriate and may, at any time, vary or revoke any condition so imposed.

(2) Where the Authority imposes a condition under subsection (1), or varies or revokes a condition, the Authority shall send a written notice specifying the condition or the variation or revocation of the condition to the authorised person concerned.

(3) No condition contrary to the provisions of the Directive may be imposed under this section.

Financial resources to be maintained by authorised person.

31. An authorised person shall at all times ensure that—

- (a) its capital is maintained in such amount as may be specified in the CIS Regulations; and
- (b) it complies with such other financial resource requirements as may be specified in the CIS Regulations.

Approved persons.

32.(1) The CIS Regulations may specify as a “controlled function” any function—

- (a) which is likely to enable the person responsible for its performance to exercise a significant influence on the conduct

of an authorised person's affairs, so far as relating to a regulated activity;

- (b) which involves the person performing it in dealing with customers of an authorised person in a manner substantially connected with the carrying on of a regulated activity; or
- (c) involves the person performing it in dealing with property of customers of an authorised person in a manner substantially connected with the carrying on of a regulated activity.

(2) An authorised person must take reasonable care to ensure that no person performs any function specified in accordance with subsection (1) as a controlled function, under an arrangement entered into by the authorised person, or by one of its contractors, in relation to the carrying on by the authorised person of a regulated activity, unless the Authority approves the performance by that person of the controlled function to which the arrangement relates.

(3) For the purposes of subsection (2)–

- (a) “arrangement” means any kind of arrangement for the performance of a function of the authorised person which is entered into by the authorised person or any contractor of his with another person and includes, in particular, that other person's appointment to an office, his becoming a partner or his employment (whether under a contract of service or otherwise);
- (b) “customer”, in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person.

(4) The CIS Regulations may provide generally for the approval of persons under this section as approved persons, including providing for–

- (a) applications for, and the form, content, issuance and validity of, approvals granted under this section;
- (b) the criteria for determining whether a person may be approved under this section; and
- (c) the circumstances in which the Authority may withdraw an approval granted under this section and the procedures to be followed by the Authority when withdrawing an approval.

Enforcement action may be taken against persons authorised under section 28.

33.(1) The Authority may take enforcement action against a person authorised under section 28 if–

- (a) it appears to the Authority that the person–
 - (i) is in breach of, or has breached, any provision of this Act, the CIS Regulations or any regulations made under the Financial Services (Investment and Fiduciary Services) Act that are applicable to him;
 - (ii) has contravened or is in contravention of any Act or Regulations relating to money laundering or the combating of the financing of terrorism,
 - (iii) is carrying on business in a manner detrimental to the public interest or to the interest of any of its customers or creditors,
 - (iv) is or is likely to become insolvent,
 - (v) has failed to comply with a lawful directive given to it by the Authority,,
 - (vi) is in breach of any term or condition imposed by the Authority under section 30,
 - (vii) is not a fit and proper person to hold a licence, or
 - (viii) has provided the Authority with any false, inaccurate or misleading information, whether on making an application for authorisation or subsequent to the grant of the authorisation;
- (b) the person, being a body corporate, is compulsorily wound up, passes a resolution for voluntary winding up or is dissolved;
- (c) the person, being an individual, is adjudged bankrupt;
- (d) a receiver has been appointed in respect of the business carried on by the person or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge;

(2) If the Authority is entitled to take enforcement action under subsection (1) it may exercise one or more of the following powers–

- (a) revoke the person's authorisation;
- (b) appoint an examiner to conduct an investigation;
- (c) appoint a qualified person at the cost of the person authorised to advise him on the proper conduct of his business;
- (d) issue a directive.

(3) Sections 44 to 48 apply where the Authority is entitled to take enforcement action under this section with such modifications as are necessary.

PART V RECOGNISED COLLECTIVE INVESTMENT SCHEMES

Recognised schemes.

34. A collective investment scheme may be recognised—
- (a) as an EEA UCITS scheme under section 35; or
 - (b) as a foreign scheme under section 40.

Recognition of EEA UCITS Schemes.

35. For the purposes of this section, a collective investment scheme is constituted in an EEA State if it is a UCITS Scheme which complies with the requirements of the CIS Regulations for the recognition of such schemes in Gibraltar.

RECOGNISED EEA UCITS SCHEMES

36. *Repealed.*

Voluntary cessation of recognition.

37.(1) The operator of a recognised UCITS scheme may give written notice to the Authority stating that he desires the scheme to cease to be a recognised UCITS scheme.

(2) On the receipt by the Authority of a notice given under subsection (1) in respect of a scheme, the scheme ceases to be a recognised UCITS scheme.

Deemed authorisation of operator, trustee or depositary of recognised UCITS scheme.

38. Subject to the provisions of the CIS Regulations, a person who for the time being is an operator, trustee or depositary of a recognised UCITS scheme is deemed to be authorised under section 27 to carry on, so far as it is a restricted activity—

- (a) any activity appropriate to the capacity in which he acts in relation to the recognised UCITS scheme; and
- (b) any activity in connection with, or for the purposes of, the scheme.

RECOGNISED FOREIGN SCHEMES

Application for recognition as a foreign scheme.

39.(1) Application to the Authority may be made by the operator of a foreign collective investment scheme for the scheme to be a recognised foreign scheme.

(2) For the purposes of subsection (1), a scheme is a foreign collective investment scheme if—

- (a) it is managed in a jurisdiction outside Gibraltar; and
- (b) it does not satisfy the requirements for recognition as a UCITS scheme.

Recognition of foreign scheme.

40.(1) Subject to this section, the Authority may grant an application for the recognition of a foreign collective investment scheme if the Authority is satisfied that—

- (a) the scheme complies with the requirements of this Act and the CIS Regulations in respect of the application and will, upon being recognised, be in compliance with the requirements of this Act with respect to recognised foreign schemes;
- (b) the scheme is subject to an authorisation and supervisory regime in the jurisdiction in which it is constituted that, in the opinion of the Authority, provides to participants in Gibraltar protection at least equivalent to the protection provided under this Act for comparable authorised schemes;
- (c) adequate arrangements exist, or will exist, for co-operation between the authorities of the country or territory responsible

for the authorisation and supervision of the scheme and the Authority; and

- (d) the scheme is being operated and managed in compliance with the authorisation and supervisory regime to which it is subject.

(2) The Authority may, by notice published in the prescribed manner, designate jurisdictions—

- (a) that, in respect of the classes of scheme specified in the notice have an authorisation and supervisory regime that, in the opinion of the Authority, provides to participants in Gibraltar protection at least equivalent to the protection provided under this Act; and
- (b) with respect to which, adequate arrangements exist for co-operation between the authorities of that jurisdiction responsible for the authorisation and supervision of the classes of collective schemes specified in the notice and the Authority.

(3) Subsection (1), paragraphs (b) and (c) are deemed to be satisfied with respect to a scheme if the scheme is—

- (a) constituted in a jurisdiction designated under subsection (2); and
- (b) of a class specified in the designation.

Determination of application for recognition.

41.(1) The Authority shall determine an application for the recognition of a foreign collective investment scheme not later than six months after the date upon which it receives a complete application that complies with section 39 and the CIS Regulations.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so and, if it does, it shall determine the application not later than twelve months after the date upon which it first receives the application.

(3) If the Authority refuses an application for recognition, it shall give each of the applicants written notice of its refusal and state the reasons for its decision.

GENERAL

Provision for recognised schemes in CIS Regulations.

42.(1) The CIS Regulations may make provision with respect to recognised schemes, including as to—

- (a) the submission to the Authority and the publication of such particulars as regards recognised schemes as may be prescribed;
- (b) the notifications to be provided to the Authority with respect to recognised schemes, including as to the amendment of the constituting instruments of a scheme and changes of the operator, manager, trustee or depositary of a recognised scheme;
- (c) the maintenance in Gibraltar of deposits, property and facilities by and with respect to recognised foreign schemes,

PART VI
ENFORCEMENT ACTION - COLLECTIVE INVESTMENT
SCHEMES

Grounds for taking enforcement action.

43.(1) The Authority may take enforcement action under this Part against, or with respect to, an authorised scheme, a recognised foreign scheme or an experienced investment fund if, in its opinion—

- (a) the operator, manager, administrator, trustee, depositary, or other person undertaking any function with respect to the scheme or, where the scheme is established as a corporate body, the scheme or any director of the scheme—
 - (i) has contravened or is in contravention of this Act or any applicable regulations;
 - (ii) has contravened or is in contravention of any Act or applicable Regulations relating to money laundering or the combating of the financing of terrorism,
 - (iii) has failed to comply with a direction given to it by the Authority,
 - (iv) has provided the Authority with any false, inaccurate or misleading information, whether on making any application to the Authority or subsequent to the grant of any application;

- (b) the scheme is operating, or being operated—
 - (i) in a manner detrimental to the public interest or to the interest of any of its participants, or potential participants, or
 - (ii) in breach of any term or condition of its authorisation or recognition;
- (c) any director of the scheme or the operator, manager, administrator, depositary, or other person undertaking any function with respect to the scheme is not a fit and proper person to act as director or undertake that function with respect to the scheme;
- (d) the scheme—
 - (i) is or is likely to become insolvent;
 - (ii) is compulsorily wound up, passes a resolution for voluntary winding up or is dissolved; or
 - (iii) has a receiver appointed in respect of any of its property;
- (e) in the case of a recognised collective investment scheme, that one or more of the requirements for recognition are no longer satisfied;
- (f) in the case of an experienced investor fund, that one or more requirements for qualification as an experienced investor fund are no longer satisfied;
- (g) any fee or penalty payable by or with respect to the scheme under this or any other Act or under the CIS Regulations, Regulations made the Financial Services (Investment and Fiduciary Services) Act that are applicable to the scheme or the EIF Regulations has not been paid; or
- (h) the Authority is entitled to take enforcement action under a provision in another enactment.

(2) In this section and in sections 45, 46, 47 and 48, the protection of the reputation of Gibraltar as a financial services centre is in the “public interest”.

Revocation and suspension of authorisation or recognition.

44.(1) The Authority may by notice in writing revoke an authorisation granted under Part III or a recognition granted under Part V if–

- (a) in the opinion of the Authority–
 - (i) in the case of an authorised scheme, a recognised foreign scheme or an experienced investor fund, it is entitled to take enforcement action against or with respect to the scheme under section 43;
 - (ii) in the case of an authorised scheme or an authorised experienced investor fund, the scheme has not commenced operation within six months of the date of its authorisation, or has ceased to operate as a collective investment scheme for a period exceeding twelve months; or
 - (iii) in the case of a recognised foreign scheme, it is not in the interests of the participants or potential participants that the scheme should continue to be recognised; or
- (b) application is made in the approved form for the authorisation or recognition to be revoked.

(2) The Authority may by notice in writing suspend an authorisation granted under Part III or a recognition granted under Part V on any of the grounds set out in subsection (1)(a)–

- (a) for such period as may be specified in the notice;
- (b) until the occurrence of an event specified in the notice; or
- (c) until conditions specified in the notice are complied with.

(3) Before revoking an authorisation or recognition under subsection (1)(a) or suspending an authorisation or recognition under subsection (2), the Authority shall give separate written notices to the collective investment scheme and the manager, administrator, trustee or depositary of the scheme, stating–

- (a) the grounds upon which it intends to suspend or revoke the authorisation or recognition; and
- (b) that unless, by written notice filed with the Authority, good reason is shown why the authorisation or recognition should not be revoked, the authorisation or recognition will be revoked

or suspended with effect from a date specified in the notice that shall be not be less than 28 days after the date of the notice.

(4) The Authority shall not revoke an authorisation with respect to a scheme that is a company unless it is satisfied that such steps as are necessary and appropriate to secure its winding up have been taken.

Protection order.

45.(1) The Authority may apply to the Court for a protection order with respect to a collective investment scheme if–

- (a) in the case of an authorised scheme, a recognised foreign scheme, a qualifying experienced investment fund or an authorised experienced investment fund, the Authority is entitled to take enforcement action against or with respect to the scheme under section 43; or
- (b) in the case of any collective investment scheme, the Authority considers that it is desirable for a protection order to be made to protect the interests of participants or potential participants of the scheme or to protect the public interest.

(2) On an application made under subsection (1), the Court may make such order as it considers necessary to protect or preserve the business or property of the collective investment scheme, or the interests of its participants, or potential participants, or the public including–

- (a) an order preventing any person from transferring, disposing of or otherwise dealing with any scheme property in his custody or control;
- (b) an order removing any director of the scheme or the operator, manager, administrator, depositary, or any other person undertaking any function with respect to the scheme and replacing him with a person nominated by the Authority; and
- (c) an order appointing an administrator to take over and manage the collective investment scheme.

(3) Without limiting subsection (2)(c), an order made under that subsection shall specify the powers of an administrator which may include the powers of an authorised person or of a liquidator under the Companies Act and may–

- (a) require an administrator to provide security to the satisfaction of the Court;

- (b) fix and provide for the remuneration of the administrator;
- (c) require such persons as it considers necessary to appear before the Court for the purposes of giving information or producing records concerning the scheme.

(4) An order made under subsection (2)(b) shall make provision for reports to be submitted by the administrator to the Court and to the Authority.

(5) The Court may on its own motion or on the application of the Authority or, where appointed, the administrator—

- (a) rescind or vary an order made under this section;
- (b) give directions to the administrator concerning the exercise of his powers;
- (c) vary the powers of the administrator; or
- (d) terminate the appointment of the administrator.

(6) An application under subsection (1) may be made—

- (a) on an ex parte basis or upon such notice as the Court may require; and
- (b) before the Authority has given notice of intention to revoke an authorisation or recognition.

Directions.

46.(1) The Authority may issue a direction in writing under this section to, or with respect to, an authorised scheme, a recognised foreign scheme or an authorised or qualifying experienced investor fund, if—

- (a) it is entitled to take enforcement action against or with respect to the scheme under section 43; or
- (b) it considers that it is desirable for a direction to be issued to protect the interests of participants or potential participants of the scheme or to protect the public interest.

(2) A direction issued under this section may—

- (a) impose a prohibition, restriction or limitation on a collective investment scheme, including a prohibition on the issue or redemption, or on both the issue and redemption, of units under the scheme;
- (b) require that any manager, administrator, depositary, director, key employee or person having functions in relation to a scheme be removed and replaced by another person acceptable to the Authority;
- (c) where the collective investment scheme is a company, require that a director of the company present a petition to the Court for the winding up of the company or require that its affairs be wound up otherwise than by the Court;
- (d) require that such other action is taken with respect to the scheme as the Authority considers may be necessary to protect the scheme property, or to protect participants or potential participants of the scheme, including that the scheme be wound up.

(3) A direction under this section takes effect from the date of the direction or such later date as may be specified in the direction.

(4) The revocation of an authorisation or recognition under section 44 does not affect any direction issued under this section that is then in force.

(5) A direction may be issued under this section in relation to a collective investment scheme, the authorisation or recognition of which has been revoked, if a direction was already in force at the time of the revocation of the authorisation or recognition.

(6) The Authority may, at any time, revoke or vary a direction issued under this section.

Appointment of examiner.

47.(1) The Authority may appoint one or more competent persons as examiners to conduct an investigation on its behalf into the affairs of, or of any director, the operator, manager, administrator, trustee, depositary or other functionary of,–

- (a) an authorised scheme or a qualifying or authorised experienced investor fund;
- (b) a recognised UCITS scheme or a recognised foreign scheme, so far as relating to activities carried on in Gibraltar;

- (c) a private scheme; or
- (d) any collective investment scheme operating in or from within Gibraltar,

on any one or more of the grounds specified in subsection (2).

(2) The grounds referred to in subsection (1) are that—

- (a) in the case of an authorised scheme, a recognised foreign scheme, a qualifying experienced investment fund or an authorised experienced investment fund, the Authority is entitled to take enforcement action with respect to the scheme under section 43;
- (b) in the case of an authorised scheme, a recognised foreign scheme or an authorised experienced investment fund, the Authority has suspended or revoked the scheme's authorisation or recognition; or
- (c) in the case of any collective investment scheme, including a private scheme, the Authority considers that it is desirable for an investigation to be conducted to protect the interests of participants or potential participants of the scheme or to protect the public interest.

(3) An examiner appointed under subsection (1) may, if he considers it necessary for the purposes of his investigation, also investigate the business of any person who is, or at any relevant time has been a manager, administrator, depositary, trustee, director or other functionary of the scheme.

(4) In this section, “functionary” means a person undertaking any function with respect to a collective investment scheme.

Public statements.

48.(1) Where the Authority is entitled to take enforcement action under section 43 with respect to a scheme, the Authority may issue a public statement in such manner as it considers fit setting out the reasons for the enforcement action and the enforcement action that it intends to take, or has taken with respect to the scheme.

(2) Where it considers it in the public interest to do so, the Authority may issue a public statement in such manner as it considers fit relating to a

person who is promoting or operating a collective investment scheme contrary to this Act.

(3) Where a public statement is to be issued under this section in relation to a scheme, the Authority shall give the scheme seven days written notice of its intention to issue the public statement and the reasons for the issue of the statement.

(4) If, on the application of the Authority, the Court is satisfied that it is in the public interest or in the interests of any of the participants or creditors of a scheme that subsection (3) should not have effect or that the period referred to in that subsection should be reduced, it may so order.

(5) An application under subsection (4) may be made on an ex parte basis or upon such notice as the Court may require.

PART VII GENERAL

Applications.

49.(1) An application under this Act shall be made to the Authority in writing and shall—

- (a) contain such information, and be in such form, as may be prescribed;
- (b) be accompanied by such documentation as may be prescribed; and
- (c) be made in such manner as may be specified by the Authority.

(2) At any time before determining an application received under this Act, the Authority may require an applicant to provide the Authority with such other documentation and information as the Authority may reasonably require for the purpose of determining the application.

(3) The Authority may require an applicant to verify any information required to be provided under this Act or the CIS Regulations or the EIF Regulations in such manner as the Authority may direct.

(4) A person making an application under this Act shall, if the Regulations so require, advertise the application in accordance with the Regulations.

Appeals against decisions of Authority.

50.(1) Subject to the provisions of the CIS Regulations, a person aggrieved—

- (a) by a decision of the Authority under this Act; or
- (b) by the failure of the Authority to deal with an application within the times specified in this Act,

may appeal to the Supreme Court.

(2) An appeal under subsection (1)(a) shall be instituted with 28 days of the notification to the appellant of the matter complained of, or in the case of an appeal under paragraph (b) of that subsection, within 28 days of the expiration of the period specified.

(3) If by reason of any default on the part of the appellant an appeal under this section has not been determined by the Court within three months of the date of the notice of appeal or application by which it was instituted, the Authority may apply to the Court, by a summons served on the appellant to show cause why the appeal should not be dismissed for want of prosecution; and upon the making of such an application the Court may dismiss the appeal or make such other order as it considers just.

(4) On an appeal under this section the Court may quash or confirm the decision of the Authority against which the appeal is brought or may substitute any other decision which the Authority could have made.

(5) Subject to sub-section (6), from the time of the institution of an appeal under subsection (1) of this section against a decision of the Authority, the decision shall not operate so as to—

- (a) require the appellant to do anything which he would not otherwise have been required to do; or
- (b) prohibit the appellant from doing anything which he could otherwise have done, unless and until the decision is confirmed by the Court or the appeal is withdrawn or is dismissed for want of prosecution under sub-section (3).

(6) The Court may, upon the application of the Authority direct that the provisions of sub-section (5) shall not have effect in any particular case; and a direction under this sub-section may be given in such terms as the Court thinks just.

(7) A decision of the Court under this section shall be final as to any question of fact, but an appeal from such a decision of fact shall lie to the Court of Appeal on any question of law.

Offences.

51.(1) A person commits an offence if—

- (a) for the purposes of or in connection with any application under this Act; or
- (b) in purported compliance with any requirement imposed on him by or under this Act,

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

(2) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine up to level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

Experienced Investor Fund Regulations.

52.(1) The Minister may make Experienced Investor Fund Regulations permitting the establishment of experienced investor funds.

(2) The Experienced Investor Fund Regulations may provide for—

- (a) the circumstances in which an experienced investor fund may be formed without the prior authorisation of the Authority;
- (b) the circumstances in which an experienced investor fund may be established only with the prior authorisation of the Authority and applications for such authorisation;
- (c) the management, control and administration of experienced investor funds;
- (d) the persons who may act as the depositary of an experienced investor fund and the custody by such depositaries of the assets of experienced investor funds;
- (e) the custody arrangements for experienced investor funds that are not required to have a depositary;

- (f) names that may be used by experienced investor funds;
- (g) the issuance by experienced investor funds of an offer document and the information, explanations and other matters to be contained in the offer document;
- (h) the returns to be filed with the Authority by and in respect of, an experienced investors fund;
- (i) the fees payable by and in respect of experienced investor funds.

(3) The EIF Regulations–

- (a) may make different provision for different persons, circumstances or cases; and
- (b) may provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement prescribed in the Regulations.

Collective Investment Scheme Regulations.

53.(1) The Minister may make Regulations generally for giving effect to this Act and for giving effect to European Union legislation in any matter relating to collective investment schemes and specifically in respect of anything required or permitted to be prescribed by this Act and for giving effect to European Union legislation in any matter relating to collective investment schemes.

(2) The CIS Regulations–

- (a) may make different provision for different persons, circumstances or cases; and
- (b) may provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement prescribed in the Regulations.

(3) The CIS Regulations do not apply to an experienced investor fund except to the extent specified in the EIF Regulations.

Regulations made under the Financial Services (Investment and Fiduciary Services) Act.

54. Regulations made under section 53 of the Financial Services (Investment and Fiduciary Services) Act, including—

- (a) conduct of business regulations made in accordance with section 12;
- (b) accounting and financial regulations made in accordance with section 13;
- (c) advertising regulations made in accordance with section 14;
- (d) unsolicited calls regulations made in accordance with section 15;
- (e) compensation regulations made in accordance with section 54;
- (f) cancellation regulations made in accordance with section 55;
- (g) fees regulations made in accordance with section 56;
- (h) winding up regulations made in accordance with section 57,

apply to collective investment schemes and authorised persons to the extent provided in those regulations, in the CIS Regulations or in the EIF Regulations and to the extent that they are not inconsistent with this Act, the CIS Regulations or the EIF Regulations.

Codes of Practice and Guidance Notes.

55.(1) The Authority may issue Codes of Practice and Guidance Notes with respect to—

- (a) the procedures to be followed by authorised persons;
- (b) the operation of collective investment schemes;
- (c) the conduct expected of approved persons.

(2) Guidance issued under subsection (1) may cover the factors that the Authority will take into account in determining whether a person is fit and proper for the purposes of this Act.

(3) A Code of Practice or any Guidance issued under subsection (1) may make different provision in relation to different persons, circumstances or cases.

(4) The Authority must publish any Codes of Practice or Guidance issued, and any amendments thereto, in the prescribed manner.

(5) Without limiting subsection (1) the CIS Regulations may prescribe matters that shall be, or may be, provided for in Codes of Practice and Guidance issued under this section.

Approval of forms by Authority.

56.(1) The Authority may, by publication in the prescribed manner, approve forms to be used where specified in this Act or the CIS Regulations.

(2) Where a form is required to be in “approved form”, it shall

- (a) contain the information specified in; and
- (b) have attached to it such documents as may be required by,

the form approved by the Authority under subsection (1).

Application of Financial Services (Investment and Fiduciary Services) Act and Financial Services (Markets in Financial Instruments) Act 2006.

57. The CIS Regulations and the EIF Regulations may specify that provisions of the Financial Services (Investment and Fiduciary Services) Act and the Financial Services (Markets in Financial Instruments) Act 2006 apply to collective investment schemes and authorised persons to the extent provided in those regulations and to the extent that the specified provisions are not inconsistent with this Act.

Repeals and consequential amendments.

58. The repeals and consequential amendments in Schedule 2 have effect.

SCHEDULE 1**PERSONS EXEMPTED FROM SECTIONS 6 AND 7****PART I**

- (a) The Government of Gibraltar;
- (b) *Deleted.*
- (c) The Accountant General and the Director of Postal Services in the exercise of their functions;
- (d) The Registrar, Supreme Court when managing funds paid into court;
- (e) The Public Trustee in the exercise of his functions under the Public Trustee Act;
- (f) The Official Receiver;
- (g) A person acting in his capacity as manager of any fund established under the Charities Act, the Trustee Act or the Administration of Justice Act;
- (h) *Deleted.*

PART II

A person who provides the trading facilities constituting a market which—

- (a) appears on the list drawn up by a member State pursuant to Article 16 of the Investment Services Directive; and
- (b) operates without any requirement that a person dealing on the market should have a physical presence in the territory of the member State from which the trading facilities are provided or on any trading floor that the market may have, to the extent of anything done by that person in connection with or for the purposes of the provision of those trading facilities.

SCHEDULE 2
REPEALS AND CONSEQUENTIAL AMENDMENTS

Act	Extent of repeal or amendment
Financial Services Act, 1989	<ol style="list-style-type: none">1. In section 2(1), repeal the following definitions—<ol style="list-style-type: none">(a) “authorised scheme”;(b) “collective investment scheme”;(c) “custodian”;(d) “management agreement”;(e) “manager”;(f) “open-ended investment company”;(g) “operator”;(h) “participants”;(i) “public investment company”;(j) “recognised scheme”;(k) “trustee”;(l) “common fund”; and(m) units”.2. In section 2—<ol style="list-style-type: none">(a) amend the definition of “investor” by deleting “and includes a participant in a collective investment scheme”; and(b) repeal subsections (2), (3) and (4).3. Repeal Part III (Collective Investment Schemes).4. In Schedule 2, delete paragraph 5 (Establishing etc. collective investment schemes).

