Subsidiary Legislation made under ss.6(1), 24(3), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 130, 164(2), 150(1), 620(1), 621(1), 627 and paragraph 6 of Schedule 10.

Financial Services (Alternative Investment Fund Managers) Regulations 2020

LN.2020/020

Commencement **15.1.2020**

Amending enactments	Relevant current provisions	Commencement date
LN.2020/483	rr. 2(1)-(2), 4(1), (3), (5), 5(1), 6(1)(b)(i)-(ii), (c), 8(4)-(5), 9, 10(1), (3), (5), 12(4), (6), (7)(a)-(b), (8), 13(1)(b), (3)(a), (5), 14(2)-(3), (8), 15(5), (6)(a)-(b), (7), (9), 19, 20(1), 21(1), 22(1), 35(3), 36(1), (4)(a)-(b), (8)-(9), 37(1), (6)-(9), 38(1), (3), (5)-(6), 39(1)-(2), 40(2), 41(8), 42(8), 43(4), 44, 45(2), 46(16), 47(10), 48(3)(a)-(c), (4), (9)(a)-(c), (10)(a)-(b), (d), (11)-(12), (13)(c), (15)(a)(iii), (29)-(30), 50(3), (4)(a), (7)-(10), 51(2)-(3), (4)(b), (5)-(9), 52(2)(a), 56(3)(c), 57-59, 60(1)-(2), 61, 62(1)-(4), 63(1)-(15), (16)(a)-(g), (17)-(18), (19)(a)(i)-(iii), (b), (20)-(39), 64-67, 68(1), (a)-(c), (2)-(5), 69(1)(b), (5), (7), (9)-(10), 77(1)-(2), 78(2)-(3), 79(1)-(2), 81(1)-(2), (3)(a)-(b), (4)-(10), 82-90, Sch.	1.1.2021
2021/493	rr. 12(4), 15(5)	1.1.2022
2022/080	rr. 4(1), 8A-8B	30.3.2022
2022/153	rr. 3, 4(1), (5), 6(1)(b), 33(3), 35(2)(b), 36(2), 40(2), 42(2)(b), 46(1)(a), (2)(a), 48(3)(b)(i)-(ii), (13)(b)-(c), (15)(a)(iii), (15A), (24), 52(2)(a), (2A), (5)(c), (6)(a)-(b), 55(2)(c), 56(3)(c), 60(2)-(3), 62(1)(a), (4), 63(2)-(3), (4)(a)-(b), (16)(g), (19)(a)(ii), (37), 68(1)(b), (5), 69(1), (2)(d), (g), (9), 74(2), 77, 78(1), 79(1), 81(1), (3)(a), (c), (4), 87(1)(b), Sch.	23.6.2022
2023/259	r. 69(4)(b), (5)	7.9.2023
2025/077	r. 69(2)(f), (3), (5)	10.4.2025

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

2020/020 Financial Services (Alternative Investment Fund Managers) Regulations 2020

ARRANGEMENT OF REGULATIONS.

Regulation

PART 1
PRELIMINARY

1. Title.
2. Commencement.
3. Overview.
4. Interpretation.
5. Application.

Exemptions

6. Exemption for holding companies and public service entities.
7. Exemption for self-investment AIFMs.
8. Exemption for small AIFMs.
8A. Exempt internally managed EIFs.
8B. Exempt EIFs.

Principal duties of AIFMs and AIFs

9. General duty of compliance.
10. Requirement to have AIFM.

PART 2
AUTHORISATION CONDITIONS

11. Threshold conditions.
12. Conditions for taking up activities as AIFM.
13. Application for permission.
14. Conditions for granting Part 7 permission.
15. Initial capital and own funds.
16. Changes in scope of Part 7 permission.

PART 3
SMALL AIFMs AND SMALL SCHEME MANAGERS

CHAPTER 1
SMALL AIFMs

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

General

17. Interpretation.
18. Small AIFMs.

National private placement regime

19. *Omitted*.
20. Conditions for marketing in Gibraltar of AIFs managed by a small AIFM which is established in a third country.
21. Revocation of entitlement to market.
22. Suspension of entitlement to market.
23. Effect of permission to market.

CHAPTER 2
SMALL SCHEME MANAGERS

24. Scope of Chapter 2.
25. Threshold conditions.

Authorisation

26. Applications for Part 7 permission
27. Grant of Part 7 permission.

Operating conditions

28. Ongoing conditions of Part 7 permission.
29. Notifications.
30. General principles.
31. Record keeping.
32. Systems and controls.
33. Management, valuations, and accounts.

Information for potential investors

34. Information to potential investors.

PART 4
CONDUCT OF BUSINESS

35. General principles.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

36. Annual report.
37. Disclosure to investors.

Marketing to retail investors

38. Marketing to retail investors: experienced investors.
39. Marketing to other retail investors.

PART 5
CORPORATE GOVERNANCE AND RISK MANAGEMENT

General

40. Remuneration.
41. Conflicts of interest.
42. Risk management.
43. Liquidity management.
44. Investment in securitisation positions.

Organisational requirements

45. General principles.
46. Valuation.

Delegation of AIFM functions.

47. Delegation.

Depositary requirements

48. Depositary.
49. Capital requirement.

Reporting and notification

50. Reporting obligations to the GFSC.

PART 6
SPECIAL CASE AIFMS

AIFMs managing leveraged AIFs

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

51. Use of information by the GFSC and limits to leverage.

Obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers

52. Application of regulations 53 to 56.
53. Notification of acquisition of major holdings and control of non- listed companies.
54. Disclosure in case of acquisition of control.
55. Specific provisions regarding annual report of AIFs exercising control of non-listed companies.
56. Asset stripping.

PART 7
MARKETING AND MANAGING AIFS

CHAPTER 1
Omitted

57. *Omitted*.
58. *Omitted*.
59. *Omitted*.

CHAPTER 2

60. Conditions for Gibraltar AIFMs managing non-Gibraltar AIFs.
61. *Omitted*.
62. Conditions for marketing in Gibraltar of non-Gibraltar AIFs managed by a Gibraltar AIFM.
63. Authorisation of non-Gibraltar AIFMs intending to manage Gibraltar AIFs.
64. *Omitted*.
65. *Omitted*.
66. *Omitted*.
67. *Omitted*.
68. Conditions for marketing in Gibraltar of AIFs managed by a non-Gibraltar AIFM.

PART 8
REGULATORY POWERS

CHAPTER 1
INVESTIGATORY AND SUPERVISORY POWERS

69. Powers of GFSC.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

70. Directions.
71. Investigations.
72. Protection order.

CHAPTER 2
SANCTIONS FOR CONTRAVENTION

73. Sanctioning powers.
74. Maximum amounts of administrative penalty.

PART 9
MISCELLANEOUS AND FINAL PROVISIONS

General

75. Application of accounting and financial regulations.
76. The Register: AIFMs.

Administration

77. Duty to monitor compliance.
78. Responsibility for AIFMs.
79. Information.
80. Notifications.
81. Action in relation to breaches by non-Gibraltar AIFMs.
82. *Omitted*.
83. *Omitted*.
84. *Omitted*.
85. *Omitted*.

Information

86. Transfer and retention of personal data.
87. Disclosure of information to third countries.
88. *Omitted*.

Final provisions

89. *Omitted*.
90. *Omitted*.

SCHEDULE

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

TEXTS OF ANNEXES TO AIFM DIRECTIVE

In exercise of the powers conferred upon the Minister under sections 6(1), 24(3), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 130, 164(2), 150(1), 620(1), 621(1), 627 and paragraph 6 of Schedule 10 of the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and on the Government by section 23(g)(ii) of that Act and by all other enabling powers, the Minister and the Government have made the following Regulations.

PART 1
PRELIMINARY

Title.

1. These Regulations may be cited as the Financial Services (Alternative Investment Fund Managers) Regulations 2020.

Commencement.

2.(1) These Regulations, come into operation on the day of publication.

(2) *Omitted*

Overview.

3. These Regulations provide for the authorisation, ongoing operation and transparency of the managers of alternative investment funds ("AIFMs") which manage or market alternative investment funds ("AIFs") in or from Gibraltar.

Interpretation.

4.(1) In these Regulations, unless the context otherwise requires–

"the Act" means the Financial Services Act 2019;

"AIF" means a collective investment undertaking (including any investment compartments) which–

(a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

(b) does not require authorisation as a UCITS scheme under Part 18 of the Act;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

"AIFM" means a legal person whose regular business is managing one or more AIFs (that is to say, performing at least portfolio management or risk management for the AIF);

"branch", in relation to an AIFM, means a place of business, which is a part of an AIFM and has no separate legal personality, where the services for which the AIFM is authorised are provided;

"carried interest" means a share in the profits of an AIF accrued to its AIFM as payment for management of the AIF, excluding any share in the profits of the AIF accruing to the AIFM as a return on an investment by the AIFM in the AIF;

"close links" in relation to two or more persons means a situation where they are linked by–

(a) ownership or control of 20% or more of the voting rights or capital of an undertaking;

(b) one of them being controlled by the other, either as a subsidiary of a parent undertaking (or as one of a chain of subsidiaries) or by a similar relationship between an individual or legal person and an undertaking; or

(c) any other situation in which two or more individuals or legal persons are permanently linked to a third person by a relationship of control;

"control" means control within the meaning of Part 7 of the Companies Act 2014;

"credit rating agency" means a legal person whose occupation includes the issuing of credit ratings on a professional basis;

"EIF" means a Gibraltar AIF which is an experienced investor fund within the meaning of the Financial Services (Experienced Investor Funds) Regulations 2020;

"employees' representatives" means employees' representatives as defined in Article 2(e) of the Information and Consultation of Employees Directive;

"established" is to be construed in accordance with sub-regulation (4);

"external AIFM" has the meaning given by regulation 10(2)(a);

"FATF" means the Financial Action Task Force;

"feeder AIF" means an AIF which–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) invests at least 85% of its assets in units or shares of another AIF (the "master AIF");

(b) invests at least 85% of its assets in more than one master AIFs where those master AIFs have identical investment strategies; or

(c) has otherwise an exposure of at least 85% of its assets to such a master AIF;

"financial instrument" has the meaning given in paragraph 44(1) of Schedule 2 to the Act;

"Gibraltar AIF" means–

(a) an AIF which is authorised or registered in Gibraltar; or

(b) an AIF which is not authorised or registered in Gibraltar, but has its registered office, head office or both in Gibraltar;

"Gibraltar AIFM" means an AIFM which has its registered office in Gibraltar;

"holding company" means a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated companies or participations in order to contribute to their long-term value, and which is either a company–

(a) operating on its own account and whose shares are admitted to trading on a regulated market in Gibraltar; or

(b) not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated companies, as evidenced in its annual report or other official documents;

"initial capital" has the meaning within Article 4(51) of the Capital Requirements Regulation;

"IORP Regulations" means the Financial Services (Occupational Pensions Institutions) Regulations 2020;

"issuer" has the meaning given in section 356 of the Act;

"legal representative" means an individual domiciled in Gibraltar or a legal person with its registered office in Gibraltar, expressly designated by a non-Gibraltar AIFM to act on

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

its behalf in relation to the authorities, clients, bodies and counterparties to the non-Gibraltar AIFM in Gibraltar with regard to its obligations under these Regulations;

"leverage" means any method by which an AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means, in accordance with any technical standards specifying–

(a) the methods of leverage, including and financial or legal structures involving third parties controlled by the relevant AIF; and

(b) how leverage is to be calculated;

"managing AIFs" means performing at least the portfolio management or risk management functions referred to in paragraph 1(a) or (b) of Part 1 of the Schedule for one or more AIFs;

"marketing" means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in Gibraltar;

"master AIF" means an AIF in which another AIF invests or to which the other AIF has an exposure of at least 85% of its assets;

"non-Gibraltar AIF" means an AIF which is not a Gibraltar AIF;

"non-Gibraltar AIFM" means an AIFM which is not a Gibraltar AIFM;

"non-listed company" means a company which has its registered office in Gibraltar and the shares of which are not admitted to trading on a regulated market;

"own funds" means own funds within the meaning of Article 4(118) of the Capital Requirements Regulation;

"parent undertaking" means an undertaking that has one or more subsidiary undertakings;

"Part 7 permission" means permission under Part 7 of the Act;

"place of establishment" has the meaning given by sub-regulation (4);

"prime broker" means a credit institution, a regulated investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities;

"professional investor" means an investor which is a professional client or, on request, may be treated as a professional client, within the meaning of the Schedule to the Financial Services (Investment Services) Regulations 2020;

"qualifying holding" means a direct or indirect holding in an AIFM–

(a) which represents 10% or more of the capital or voting rights, in accordance with section 363 or 364 of the Act, taking into account the conditions regarding aggregation of holdings in section 366(7) to (10) of the Act; or

(b) which makes it possible to exercise a significant influence over the management of the AIFM in which that holding subsists;

"retail investor" means an investor who is not a professional investor;

"securitisation special purpose entities" has the meaning given in Article 2.2 of Regulation (EU) 2017/2402 as it forms part of the law of Gibraltar;

"the Register" means the register which is established and maintained by the GFSC in accordance with both Part 4 of the Act and, in relation to activities of AIFMs, regulation 76;

"small AIFM" has the meaning given by regulation 8(2);

"subsidiary" means an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking;

"supervisory authorities" means–

(a) in relation to a non-Gibraltar AIFs, the national authorities of a third country which are empowered by law or regulation to supervise AIFs;

(b) in relation to a non-Gibraltar AIFMs, the national authorities of a third country which are empowered by law or regulation to supervise AIFMs; or

(c) in relation to a depositary which falls within the category of institution referred to in regulation 48(3)(c), the GFSC; or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(d) in relation to a depositary not requiring Part 7 permission, the national authorities of a third country which are empowered by law or regulation to supervise that category of institution

"third country" means a country or territory outside Gibraltar;

"UCITS" means an undertaking for collective investment in transferable securities authorised in accordance with Part 18 of the Act.

(2) Where an AIFM whose registered office is outside Gibraltar has branches in Gibraltar, all those places of business must be treated as a single branch of the AIFM.

(3) *Omitted*.

(4) In these Regulations a reference to the place of establishment–

(a) in relation to AIFMs, is a reference to the place of the registered office;

(b) in relation to AIFs, is a reference to the place where the AIF is authorised or registered or, if there is no such place, to the place where the AIF has its registered office;

(c) in relation to a depositary, is a reference to the place where it has its registered office or branch;

(d) in relation to a legal representative which is a legal person, is a reference to the place where it has its registered office or branch; and

(e) in relation to a legal representative who is an individual, is a reference to the place of domicile.

Application.

5.(1) These Regulations apply to–

(a) Gibraltar AIFMs which manage one or more AIFs irrespective of whether such AIFs are Gibraltar AIFs or non-Gibraltar AIFs;

(b) non-Gibraltar AIFMs which manage one or more Gibraltar AIFs; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) non-Gibraltar AIFMs which market one or more AIFs in Gibraltar irrespective of whether such AIFs are Gibraltar AIFs or non-Gibraltar AIFs.

(2) Sub-regulation (1) is subject to the exemptions provided for in regulations 6 to 8.

(3) For the purposes of sub-regulation (1) the following are of no significance–

(a) whether an AIF belongs to the open-ended or closed-ended type;

(b) whether an AIF is constituted under the law of contract, under trust law, under statute, or has any other legal form;

(c) the legal structure of the AIFM.

Exemptions

Exemption for holding companies and public service entities.

6.(1) These Regulations do not apply to the following entities−

(a) holding companies;

(b) institutions for occupational retirement provision to which the IORP Regulations apply, including, where applicable−

(i) the authorised entities responsible for operating them and acting on their behalf, referred to in regulation 2(1) of the IORP Regulations; or

(ii) investment managers appointed under regulation 29 of the IORP Regulations,

in so far as they do not manage AIFs;

(c) supranational institutions, such as bilateral development banks, the World Bank, the International Monetary Fund, and other supranational institutions and similar international organisations, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest;

(d) the Government in its role as the national central bank of Gibraltar and other national central banks;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(e) the Government and any other national, regional or local governments and bodies or other institutions which manage funds supporting social security and public pension systems (whether in Gibraltar or elsewhere);

(f) employee participation schemes or employee savings schemes; or

(g) securitisation special purpose entities.

(2) An entity to which sub-regulation (1) applies is exempt from the general prohibition in respect of the regulated activity of managing an AIF (in-scope AIFM) in paragraph 95 of Schedule 2 to the Act or the regulated activity of managing an AIF (small scheme manager) in paragraph 97 of Schedule 2 to the Act.

Exemption for self-investment AIFMs.

7.(1) These Regulations do not apply to an AIFM in so far as it manages one or more AIFs whose only investors are the AIFM or the parent undertakings or the subsidiaries of the AIFM or other subsidiaries of those parent undertakings, where none of those investors is itself an AIF.

(2) An AIFM to which sub-regulation (1) applies is exempt from the general prohibition in respect of the regulated activity of managing an AIF (in-scope AIFM) in paragraph 95 of Schedule 2 to the Act or the regulated activity of managing an AIF (small scheme manager) in paragraph 97 of Schedule 2 to the Act.

Exemption for small AIFMs.

8.(1) This regulation applies to an AIFM which, either directly or indirectly, through a company to which the AIFM is linked by common management or control or by a substantive direct or indirect holding, manages portfolios of AIFs the value of whose assets under management–

(a) does not exceed €500 million in total in cases where the portfolios of AIFs consist of AIFs that–

(i) are unleveraged; and

(ii) have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF; or

(b) does not exceed €100 million in total in other cases, including any assets acquired through the use of leverage.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) An AIFM to which sub-regulation (1) applies is referred to in these Regulations as a "small AIFM".

(3) Where the conditions in sub-regulation (1) are no longer met, the AIFM concerned must apply for Part 7 permission in accordance with Part 2 of these Regulations within 30 days beginning with the day on which those conditions cease to apply.

(4) Where an AIFM to which this regulation would otherwise apply obtains Part 7 permission for the regulated activity of managing an AIF (in-scope AIFM) in paragraph 95 of Schedule 2 to the Act (in accordance with any technical standards specifying the procedures for obtaining such permission), this regulation does not apply to the AIFM.

(5) AIFMs to which this regulation applies are subject only to the provisions of regulation 18 and regulation 69; and rights under these Regulations do not apply to them.

Exempt internally managed EIFs.

8A.(1) Sub-regulation (2) applies to an EIF–

(a) the legal form of which permits an internal management and its governing body has chosen not to appoint an external AIFM; and

(b) which has obtained exemption from the requirement to be authorised as an in-scope AIFM, in accordance with sub-regulation (3).

(2) An EIF to which sub-regulation (1) applies–

(a) is exempt from the requirement to be authorised as an in-scope AIFM;

(b) for the purposes of its internal management, may act as an in-scope AIFM without contravening the general prohibition; and

(c) is not subject to the other provisions of these Regulations apart from Part 8.

(3) Where the GFSC receives an exemption notification from an EIF, the EIF obtains exemption under sub-regulation (2) at the end of the period for considering the notification unless during that period–

(a) the GFSC, by written notice, rejects the notification; or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) the EIF withdraws the notification.

(4) An exemption notification must be made to the GFSC–

(a) in the form and manner that the GFSC directs; and

(b) contain such information as the GFSC specifies.

(5) In sub-regulation (3), "the period for considering the notification" means the period of 28 days beginning with the day on which a completed exemption notification is received by the GFSC.

(6) A person aggrieved by a decision of the GFSC to reject a notification may appeal against the decision under section 615 of the Act as if a notice under sub-regulation (3)(a) were a decision notice.

(7) An exemption under this regulation ceases to apply if, after it is obtained, the EIF is given Part 7 permission to act as an in-scope AIFM.

(8) In this regulation, references to a person being authorised as an in-scope AIFM means a person who has Part 7 permission to carry on the regulated activity in paragraph 95 of Schedule 2 to the Act.

(9) An EIF to which sub-regulation (2) applies is not, by virtue of that sub-regulation, authorised to carry on a regulated activity in the United Kingdom.

Exempt EIFs.

8B.(1) An external AIFM is not required to comply with the specified requirements in respect of an EIF it manages if the AIFM has been exempted from doing so in respect of that EIF in accordance with sub-regulation (3).

(2) The "specified requirements" means the following provisions of these Regulations which would otherwise apply in respect of an EIF–

(a) regulation 36;

(b) regulation 37;

(c) regulation 42(3), (4), (6), (7) and (8)(a), (b) and (e);

(d) regulation 43;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(e) regulation 46;

(f) regulation 48; and

(g) Part 6.

(3) Where the GFSC receives an exemption notification from an external AIFM in respect of an EIF it manages, the AIFM obtains exemption under sub-regulation (1) in respect of that EIF at the end of the period for considering the notification unless during that period–

(a) the GFSC, by written notice, rejects the notification; or

(b) the AIFM withdraws the notification.

(4) An exemption notification must be made to the GFSC–

(a) in the form and manner that the GFSC directs; and

(b) contain such other information as the GFSC specifies.

(5) In sub-regulation (3), "the period for considering the notification" means the period of 28 days beginning with the day on which a completed exemption notification is received by the GFSC.

(6) A person aggrieved by a decision of the GFSC to reject a notification may appeal against the decision under section 615 of the Act as if a notice under sub-regulation (3)(a) were a decision notice.

(7) Nothing in sub-regulation (1) affects–

(a) the requirement for the AIFM to have Part 7 permission to carry on the regulated activity in paragraph 95 of Schedule 2 to the Act; or

(b) the AIFM's obligation to comply with all the other provisions of these Regulations,

and, for the purpose of determining an external AIFM's initial capital, own funds and assets under management, the value of the portfolio of any EIF which the AIFM manages that is exempt under sub-regulation (1) must be taken into account.

Principal duties of AIFMs and AIFs

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

General duty of compliance.

9. An AIFM must comply at all times with these Regulations.

Requirement to have AIFM.

10.(1) Each AIF to which these Regulations apply must have a single AIFM which is responsible for ensuring compliance with these Regulations.

(2) The AIFM must be either–

(a) an external manager, which is the legal person appointed by or on behalf of the AIF and which through the appointment is responsible for managing the AIF (an "external AIFM"); or

(b) where the legal form of the AIF permits an internal management and its governing body chooses not to appoint an external AIFM, the AIF itself, which must be authorised as an AIFM.

(3) Where an external AIFM is unable to ensure compliance with requirements of these Regulations for which an AIF or another entity on its behalf is responsible, the external AIFM must immediately inform the GFSC.

(4) On receipt of information under sub-regulation (3) the GFSC must require the AIFM to take the necessary steps to remedy the situation.

(5) If, despite the steps referred to in sub-regulation (4) being taken, the non-compliance persists, and in so far as it concerns a Gibraltar AIFM or a Gibraltar AIF, the GFSC must require the AIFM to resign as AIFM of the AIF, and in that event the AIF may no longer be marketed in Gibraltar.

PART 2
AUTHORISATION CONDITIONS

Threshold conditions.

11.(1) This Part includes provisions which supplement the threshold conditions as they apply to AIFMs.

(2) In giving or varying Part 7 permission to an applicant to manage one or more AIFs (in-scope AIFM), the GFSC must ensure that the applicant meets, and will continue to meet, the threshold conditions.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(3) An AIFM which has Part 7 permission must at all times comply with the threshold conditions and these Regulations.

(4) An applicant for a permission under Part 7 of the Act to manage one or more AIFs (in-scope AIFM) must satisfy the GFSC that it meets, or will meet, the conditions set out in this Part.

(5) This regulation applies in addition to any other requirement relating to Part 7 permission.

Conditions for taking up activities as AIFM.

12.(1) An AIFM must not manage an AIF unless–

(a) it has a Part 7 permission granted in accordance with the Act and these Regulations to carry on the regulated activity of managing an AIF (in-scope AIFM) within the meaning of paragraph 95 of Schedule 2 to the Act; and

(b) it meets at all times any requirements of its Part 7 permission and the conditions for authorisation established in the Act and these Regulations.

(2) Subject to sub-regulation (4), an external AIFM must not engage in activities other than those in Part 1 of the Schedule and, where it has Part 7 permission to manage a UCITS, the management of UCITS.

(3) An internally managed AIF must not engage in activities other than the internal management of that AIF in accordance with Part 1 of the Schedule.

(4) An external AIFM may provide the following services–

(a) management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with regulation 29 of the IORP Regulations, in accordance with mandates given by investors on a discretionary, client-by-client basis;

(b) non-core services comprising–

(i) investment advice;

(ii) safe-keeping and administration in relation to shares or units of collective investment undertakings; or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(iii) reception and transmission of orders in relation to financial instruments,

and regulations 4(7), 14(1), 29, 36, 40 and 52 of the Financial Services (Investment Services) Regulations 2020 and the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021 apply to the provision by AIFMs of the services referred to in this sub-regulation.

(5) An AIFM must not be granted Part 7 permission to provide–

(a) only the activities referred to in sub-regulation (4);

(b) the non-core services referred to in sub-regulation (4)(b) without also providing the services referred to in sub-regulation (4)(a);

(c) only the activities referred to in paragraph 2 of Part 1 of the Schedule; or

(d) the services referred to–

(i) in paragraph 1(a) of Part 1 of the Schedule without also providing the services in paragraph 1(b) of that Schedule; or

(i) in paragraph 1(b) of Part 1 of the Schedule without also providing the services in paragraph 1(a) of that Schedule.

(6) An AIFM must provide the GFSC with the information it requires to monitor compliance with the conditions referred to in these Regulations at all times.

(7) Part 7 permission to manage one or more AIFs is not required by-

(a) an authorised person which has Part 7 permission for the regulated activity of providing investment services and activities in paragraph 48 to 56 of Schedule 2 to the Act;

(b) an authorised person which has Part 7 permission for the regulated activity of accepting deposits in paragraph 3 of Schedule 2 to the Act,

in order to provide investment services, such as individual portfolio management, in respect of AIFs but an investment firm may, directly or indirectly, offer units or shares of AIFs to, or place such units or shares with, investors in Gibraltar only to the extent they can be marketed in accordance with these Regulations.

Application for permission.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

13.(1) An application for Part 7 permission under the Act–

(a) must be made to the GFSC; and

(b) may be made only by an AIFM which is a Gibraltar AIFM.

(2) An AIFM that applies for Part 7 permission must provide the GFSC with the following information relating to the AIFM–

(a) information on the persons effectively conducting the business of the AIFM;

(b) information on the identities of the AIFM's shareholders or members, whether direct or indirect, individuals or legal persons, that have qualifying holdings and on the amounts of those holdings;

(c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under these Regulations;

(d) information on the remuneration policies and practices under regulation 40; and

(e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in regulation 47.

(3) An AIFM that applies for Part 7 permission must provide to the GFSC the following information in relation to each AIF it intends to manage–

(a) information about the investment strategies including the types of underlying funds if the AIF is a fund of funds, and the AIFM's policy as regards the use of leverage, and the risk profiles and other characteristics of each AIF it manages or intends to manage, including information about the third countries in which each AIF is or is expected to be established;

(b) information on where the master AIF is established if the AIF is a feeder AIF;

(c) the rules or instruments of incorporation of each AIF the AIFM intends to manage;

(d) information on the arrangements made for the appointment of the depositary in accordance with regulation 48 for each AIF the AIFM intends to manage;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(e) any additional information referred to in regulation 37 for each AIF the AIFM manages or intends to manage.

(4) If a UCITS management company applies to vary its Part 7 permission to manage one or more AIFs (in-scope AIFM) under the Act and these Regulations, the GFSC may not require the company to provide information or documents which the company has already provided when applying for Part 7 permission as a UCITS management companyif that information or those documents remain up to date.

Conditions for granting Part 7 permission.

14.(1) The GFSC must not grant Part 7 permission to an AIFM unless–

(a) it is satisfied that the AIFM will be able to meet the conditions of these Regulations and the Act;

(b) the AIFM has sufficient initial capital and own funds in accordance with regulation 15;

(c) the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the AIFs managed by the AIFM, the names of those persons and of every person succeeding them in office being communicated forthwith to the GFSC and the conduct of the business of the AIFM being decided by at least two persons meeting such conditions; and

(d) the shareholders or members of the AIFM that have qualifying holdings are suitable taking into account the need to ensure the sound and prudent management of the AIFM.

(2) *Omitted*.

(3) *Omitted.*

(4) The GFSC must not grant Part 7 permission to an AIFM where the effective exercise of its supervisory functions is prevented by any of the following–

(a) close links between the AIFM and other individuals or legal persons;

(b) the laws, regulations or administrative provisions of a third country governing individuals or legal persons with which the AIFM has close links;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) difficulties involved in the enforcement of those laws, regulations and administrative provisions.

(5) The GFSC may exercise its powers under Part 7 of the Act or these Regulations to restrict an AIFM's Part 7 permission, in particular as regards the investment strategies of AIFs the AIFM is allowed to manage.

(6) For the purpose of this regulation an application is deemed complete if the AIFM has at least submitted the information referred to in regulation 13(2)(a) to (d) and (3)(a) and (b).

(7) AIFMs may start managing AIFs with investment strategies described in the application in accordance with regulation 13(3)(a) as soon as Part 7 permission is granted, but not earlier than one month after having submitted any missing information referred to in regulation 13(2)(e) and (3)(c) to (e).

(8) This regulation applies subject to any technical standards specifying–

(a) requirements applicable to the AIFMs under sub-regulation (4);

(b) requirements applicable to shareholders and members with qualifying holdings referred to in sub-regulation (1)(d);

(c) obstacles which may prevent effective exercise of the GFSC's supervisory functions.

Initial capital and own funds.

15.(1) An AIFM which is an internally managed AIF must have an initial capital of at least €300,000.

(2) Where an AIFM is appointed as external manager of AIFs, the AIFM must have an initial capital of at least €125,000.

(3) Where the value of the portfolios of AIFs managed by the AIFM exceeds €250 million, the AIFM must provide an additional amount of own funds; and−

(a) that additional amount of own funds must be equal to 0.02% of the amount by which the value of the portfolios of the AIFM exceeds €250 million; but

(b) the required total of the initial capital and the additional amount must not exceed €10 million.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(4) For the purpose of sub-regulation (3), AIFs managed by the AIFM, including AIFs for which the AIFM has delegated functions in accordance with regulation 47 but excluding AIF portfolios that the AIFM is managing under delegation, is deemed to be the portfolios of the AIFM.

(5) Irrespective of sub-regulation (3), the own funds of the AIFM may never be less than the amount required under regulation 16 of the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2020.

(6) The GFSC may authorise an AIFM not to provide up to 50% of the additional amount of own funds referred to in sub-regulation (3) if it benefits from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in–

(a) Gibraltar; or

(b) a third country where it is subject to prudential rules considered by the GFSC as equivalent to those laid down in Gibraltar law.

(7) To cover potential professional liability risks resulting from activities AIFMs may carry out pursuant to these Regulations, both internally managed AIFs and external AIFMs must either–

(a) have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or

(b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

(8) Own funds (including additional own funds under sub-regulation (7)(a))–

(a) must be invested in liquid assets or assets readily convertible to cash in the short term, and

(b) may not include speculative positions.

(9) This regulation applies subject to any technical standards specifying–

(a) the risks the additional own funds or the professional indemnity insurance must cover;

(b) the conditions for determining the appropriateness of additional own funds or the coverage of the professional indemnity insurance; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) the manner of determining ongoing adjustments of the additional own funds or of the coverage of the professional indemnity insurance.

(10) This regulation does not apply to AIFMs which are also UCITS management companies, except for sub-regulations (7) and (8) and any relevant measures referred to in sub-regulation (9).

Changes in scope of Part 7 permission.

16.(1) An AIFM, before implementation, must notify the GFSC of any material changes to the conditions for the initial granting of its Part 7 permission (including, in particular, material changes to the information provided in accordance with regulation 13).

(2) If the GFSC decides to impose restrictions or reject those changes, it must, within one month of receipt of that notification, inform the AIFM; and–

(a) the GFSC may prolong that period for up to one month where it considers it necessary because of the specific circumstances of the case and after having notified the AIFM; and

(b) the changes may be implemented if the GFSC does not oppose the changes within the relevant assessment period.

PART 3
SMALL AIFMs AND SMALL SCHEME MANAGERS

CHAPTER 1
SMALL AIFMs

General

Interpretation.

17. In this Part –

"managed scheme" means an AIF managed by a small scheme manager;

"small scheme manager" means a legal person which is–

(a) a small AIFM and an external AIFM; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) has Part 7 permission to carry on the regulated activity under paragraph 97 of Schedule 2 to the Act in respect of managing one or more AIFs (small scheme manager).

Small AIFMs.

18.(1) Subject to sub-regulations (10) and (11), a small AIFM must comply with this regulation.

(2) A small AIFM which complies with this regulation may market to professional investors, in Gibraltar, the units or shares of AIFs it manages.

(3) The small AIFM must register with the GFSC in writing, in accordance with any administrative directions given by the GFSC.

(4) The registration must identify the small AIFM and the AIFs that it manages at the time of registration.

(5) The registration must include information on the investment strategies of the AIFs that the small AIFM manages at the time of registration.

(6) The small AIFM must from time to time, in accordance with guidance issued by the GFSC, provide the GFSC with information on the main instruments in which the small AIFM is trading and on the principal exposures and most important concentrations of the AIFs that it manages; and the information must be sufficient to enable the GFSC to monitor systemic risk effectively.

(7) If there is a material change to the information provided in accordance with sub-regulation (6) the small AIFM must give written notification of the change to the GFSC–

(a) in the case of a change planned by the small AIFM, at least one month before implementing the change; and

(b) in any other case, immediately following the occurrence of the change.

(8) The small AIFM must notify the GFSC in writing if it no longer meets the conditions for exemption in regulation 8.

(9) Nothing in this regulation prevents a small AIFM from being required to comply with rules under any other enactment that supplement, or are more demanding than, the provisions of this regulation.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(10) This regulation does not apply to a small AIFM which is a small scheme manager.

(11) A small AIFM to which sub-regulation (10) applies, when undertaking any activity of a small scheme manager, is subject to regulations 69 and 74 and must act in accordance with–

(a) the Act; and

(b) Chapter 2 of this Part.

National private placement regime

19. *Omitted*.

Conditions for marketing in Gibraltar of AIFs managed by a small AIFM which is established in a third country.

20.(1) A small AIFM which is established in a third country may market to professional investors, in Gibraltar, the units or shares of AIFs it manages if the conditions in this regulation are met.

(2) Before marketing an AIF in accordance with sub-regulation (1), a small AIFM must submit a written application to the GFSC, including confirmation that the small AIFM is responsible for the marketing of the AIF.

(3) In order to enable the GFSC to monitor systematic risk effectively, the small AIFM must provide the GFSC with such information as it directs about–

(a) the instruments in which the small AIFM trades; and

(b) the exposures and concentrations of the AIFs that it manages.

(4) The GFSC may not give a direction under sub-regulation (3) that requires a small AIFM to provide information if the GFSC is satisfied that there is no present or expected investment in an AIF as a result of marketing in reliance on sub-regulation (1).

(5) Following receipt of a complete application under sub-regulation (2), the GFSC must without unreasonable delay inform the small AIFM whether or not it may start marketing the AIF identified in the application in Gibraltar.

(6) The GFSC must not authorise the marketing of the AIF if it considers it appropriate not to do so in order–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) to protect the public against financial loss; or

(b) to protect the reputation of Gibraltar as a financial services centre or otherwise.

(7) If there is a material change to the information provided in a notification under sub-regulation (1) the small AIFM must give written notification of the change to the GFSC–

(a) in the case of a change planned by the small AIFM, at least one month before implementing the change; and

(b) in any other case, immediately following the occurrence of the change.

Revocation of entitlement to market.

21.(1) The GFSC may revoke a small AIFM's entitlement to market an AIF following an authorisation under regulation 20 if it appears to the GFSC that–

(a) the small AIFM has contravened a provision which applies to it;

(b) the small AIFM has given the GFSC information which is false or misleading in a material particular;

(c) a condition confirmed in the notification as being met is no longer satisfied;

(d) the AIF is wound up;

(e) it is undesirable in the interests of investors or potential investors that the AIF should continue to be marketed; or

(f) it is necessary to protect the public against financial loss, or to protect the reputation of Gibraltar as a financial services centre or otherwise.

(2) Before revoking a small AIFM's entitlement to market an AIF under sub-regulation (1)(a) to (f), the GFSC must give a warning notice to the small AIFM.

(3) If the GFSC decides to revoke a small AIFM's entitlement to market an AIF under sub-regulation (1)–

(a) it must give a decision notice to the small AIFM; and

(b) the small AIFM may appeal to the Court under section 615 of the Act.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Suspension of entitlement to market.

22.(1) The GFSC may by notice (a "suspension notice") suspend a small AIFM's entitlement to market an AIF following an authorisation under regulation 20, on any of the grounds in sub-regulation (2).

(2) The grounds are that it appears to the GFSC that–

(a) the small AIFM has contravened, or is likely to contravene, a provision that applies to it;

(b) the small AIFM has given the GFSC information which is false or misleading in a material particular;

(c) one or more of the conditions confirmed in the notification as being met is no longer satisfied;

(d) it is undesirable in the interests of investors or potential investors that the AIF should continue to be marketed;

(e) it is necessary to protect the public against financial loss, or to protect the reputation of Gibraltar as a financial services centre or otherwise.

(3) A suspension under this regulation may be–

(a) for a specified period;

(b) until the occurrence of a specified event; or

(c) until specified conditions are complied with.

(4) A suspension takes effect–

(a) immediately, if the suspension notice so provides;

(b) on such date as may be specified in the suspension notice; or

(c) otherwise in accordance with the provisions of the suspension notice.

(5) The GFSC must be satisfied that the provision made under sub-regulation (4) is necessary having regard to the grounds of suspension.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(6) The small AIFM may appeal to the Court against the suspension notice.

(7) A suspension notice must–

(a) give details of the suspension (including the provision made under sub-regulation (4));

(b) state the GFSC's reasons for giving the suspension and for that provision;

(c) inform the small AIFM that it may make representations to the GFSC within a specified period (which the GFSC may extend);

(d) inform the small AIFM of the right to appeal to the Court.

(8) Having considered representations by the small AIFM the GFSC may withdraw or amend the suspension notice.

Effect of permission to market.

23. Regulations 18 to 20 have effect despite any provision of, or made under, the Act, these Regulations or any other enactment.

CHAPTER 2
SMALL SCHEME MANAGERS

Scope of Chapter 2.

24. This Chapter provides for the authorisation and conduct of small scheme managers.

Threshold conditions.

25.(1) This Chapter includes provisions which supplement the threshold conditions as they apply to small scheme managers.

(2) In giving or varying Part 7 permission to an applicant to manage one or more AIFs (small scheme manager), the GFSC must ensure that the applicant meets, and will continue to meet, the threshold conditions.

(3) A small scheme manager which has Part 7 permission must at all times comply with the threshold conditions and these Regulations.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(4) An applicant for a permission under Part 7 of the Act to manage one or more AIFs (small scheme manager) must satisfy the GFSC that it meets, or will meet, the conditions set out in this Chapter.

(5) This regulation applies in addition to any other requirement relating to Part 7 permission.

Authorisation

Applications for Part 7 permission.

26.(1) An application for Part 7 permission as a small scheme manager must–

(a) be made to the GFSC in the form and manner that it may direct; and

(b) contain or be supported by any information that the GFSC may require for the purpose of determining the application.

(2) Without limiting sub-regulation (1)(b), the information to be provided under that sub-regulation by an applicant must include the identity of any AIF managed by the applicant and its investment strategy.

(3) While the GFSC's decision in respect of an application is pending, the applicant must give prompt written notice to the GFSC–

(a) any alteration proposed by the applicant to the information it supplied to the GFSC in relation to the application; or

(b) the occurrence of any event which the applicant knows affects or may affect that information in any material respect.

Grant of Part 7 permission.

27.(1) The GFSC may grant Part 7 permission to a small scheme manager if the GFSC is satisfied that the following conditions are met–

(a) the small scheme manager will at all times be able to meet its liabilities as they fall due and will maintain sufficient financial resources to ensure that its business can be wound down in an orderly manner;

(b) at least two of the individuals who will conduct the business of the small scheme manager are ordinarily resident in Gibraltar;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) the individuals who will conduct the business of the small scheme manager are–

(i) fit and proper persons with respect to the activity of managing collective investment schemes; and

(ii) sufficiently experienced in relation to schemes of the type which the small scheme manager manages or proposes to manage and the assets in which those schemes are or will be invested; and

(d) the identity of any shareholders or members that have qualifying holdings in the small scheme manager, whether direct or indirect, have been disclosed to the GFSC and it is satisfied that those shareholders or members are suitable, having regard to the need to ensure the sound and prudent management of the small scheme manager.

(2) The minimum level of the financial resources required under sub-regulation (1)(a) is £15,000.

(3) In applying for Part 7 permission, an applicant must make an assessment of what its financial resources should be in order to satisfy the requirement in sub-regulation (1)(a) (subject to the minimum £15,000 requirement) and propose this amount to the GFSC during the application process.

(4) In granting Part 7 permission, the GFSC may require a small scheme manager to maintain financial resources at a level which is higher than–

(a) the minimum amount specified in sub-regulation (2); or

(b) the amount derived from the small scheme manager's assessment under sub-regulation (3).

(5) For the purposes of sub-regulation (1) "qualifying holding" means a direct or indirect holding in a small scheme manager representing 10% or more of the capital or of the voting rights or making it possible to exercise a significant influence over the management of the small scheme manager in which that holding subsists.

Operating conditions

Ongoing conditions of Part 7 permission.

28.(1) A small scheme manager must at all times comply with this regulation, regulations 29 to 34 and the authorisation conditions in regulation 27.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) A small scheme manager must from time to time, provide the GFSC with information on–

(a) the main instruments in which each of its managed schemes are trading; and

(b) the principal exposures and most important concentrations of the schemes that it manages.

(3) Any information provided under sub-regulation (2) must be sufficient to enable the GFSC to monitor systemic risk effectively and, in providing that information, a small scheme manager must comply with the requirements of Regulation (EU) No 231/2013 and have regard to any relevant guidance issued by the GFSC.

(4) If there is a material change to any information provided in accordance with sub-regulation (2), the small scheme manager must notify the GFSC in writing of that change–

(a) in the case of a change planned by the small scheme manager, at least one month before it is implemented; and

(b) in any other case, immediately after the change occurs.

(5) A small scheme manager must assess regularly (and at least every six months) whether it has the financial resources necessary to comply with regulation 27(1)(a) or (4) and, if at any time those resources fall below the level required, the small scheme manager must–

(a) notify the GFSC of that fact as soon as reasonably practicable; and

(b) before the end of the period of one month from the date on which the small scheme manager first becomes aware of that fact, submit a realistic recovery plan for the GFSC's approval.

(6) If a small scheme manager no longer falls within the definition of a small AIFM under regulation 8(2), it must–

(a) promptly notify the GFSC in writing; and

(b) within 30 days of ceasing to fall within that definition, apply to vary its Part 7 permission to carry on the regulated activity of managing an AIF (in-scope AIFM) within the meaning of paragraph 95 of Schedule 2 to the Act and to cease carrying on the regulated activity of managing an AIF (small scheme manager) within the meaning of paragraph 97 of Schedule 2 to the Act.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(7) A person who complies with sub-regulation (6) may continue to act as a small scheme manager until any application made in accordance with sub-regulation (7)(b) has been determined.

Notifications.

29.(1) A small scheme manager must give written notice to the GFSC of–

(a) any material changes to the conditions for the initial granting of its Part 7 permission (including, in particular, material changes to the information it was required to supply to the GFSC); or

(b) any event which it knows or suspects may affect such a matter to a material degree.

(2) Without limiting sub-regulation (1), the matters referred to in that sub- regulation include, in particular, any proposal by a small scheme manager to delegate to a third party any function which by virtue of these Regulations is to be undertaken by the small scheme manager.

(3) A small scheme manager must obtain the consent of the GFSC before–

(a) implementing any alteration of the kind referred to in sub- regulation (1)(a) or (2); or

(b) taking any action arising from an event of the kind referred to in sub-regulation (1)(b).

(4) If the GFSC decides to reject or impose restrictions on a proposed alteration, it must inform the small scheme manager within one month of receiving the proposal and, subject to sub-regulation (5), an alteration may be implemented if the GFSC does not oppose it within that period.

(5) The GFSC, by notice to the small scheme manager, may extend the period specified in sub-regulation (4) by up to one month where it considers that doing so is necessary because of the specific circumstances of the case.

(6) The GFSC may only authorise a small scheme manager to delegate functions to a third party where the GFSC is satisfied that–

(a) doing so will not–

(i) hinder the effective supervision of the small scheme manager; or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) prevent the small scheme manager from acting, or its scheme from being managed, in the best interests of investors;

(b) having regard to the nature of the functions to be delegated, the delegate–

(i) is qualified and capable of undertaking the functions in question;

(ii) if relevant, is subject to appropriate authorisation and regulation; and

(iii) does not have interests which may conflict with those of the small scheme manager or investors; and

(c) the small scheme manager will at any time be able to–

(i) monitor effectively the activity of the delegate; and

(ii) withdraw the delegation with immediate effect when doing so is in the interest of investors.

(7) The liability of a small scheme manager under these Regulations or the Act is not affected by the delegation of any functions to third parties.

General principles.

30. A small scheme manager must at all times–

(a) act honestly and fairly, and conduct its business activities with due skill, care and diligence;

(b) act in the best interests of its managed schemes, investors in those schemes and the integrity of the market;

(c) have the resources and procedures necessary for the proper performance of its business activities and use them effectively;

(d) ensure that relevant individuals are aware of the procedures to be followed for the proper discharge of their functions and responsibilities;

(e) have clear and documented decision-making procedures and an organisational structure which–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(i) allocate functions and responsibilities; and

(ii) specify reporting lines;

(f) have adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the small scheme manager; and

(g) have effective arrangements for–

(i) internal reporting of information at all levels of the small scheme manager; and

(ii) providing information to relevant third parties.

Record keeping.

31.(1) A small scheme manager must at all times maintain records of–

(a) its business and internal organisation (including, where relevant, any records provided by a scheme's administrator or any provider of safe-keeping functions) including–

(i) the main instruments in which its managed schemes are trading, including a breakdown of financial instruments and other assets, the schemes' investment strategies and their geographical and sectoral investment focus;

(ii) the markets of which each of its managed schemes is a member or where it actively trades;

(iii) the diversification of the portfolios of each of its managed schemes, including their principal exposures and most important concentrations;

(iv) for each portfolio transaction relating to its managed schemes, a record of information which is sufficient to reconstruct the details of the transaction;

(b) subscriptions and, where relevant, redemptions of its managed schemes, including information on–

(i) the relevant scheme (if there is more than one);

(ii) the person giving or transmitting the subscription or redemption;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(iii) the person receiving the subscription or redemption;

(iv) the type of subscription or redemption;

(v) the date and time of the subscription or redemption;

(vi) the terms and means of payment;

(vii) the date of execution of the subscription or redemption;

(viii) the number of units, shares or equivalent amounts subscribed or redeemed;

(ix) the subscription or redemption price for each unit, share or, where relevant, the amount of capital committed and paid;

(x) the total subscription or redemption value of the units or shares;

(xi) the gross value of the subscription or redemption including the charges for subscription or the net amount after charges for redemption.

(2) The records to be maintained under sub-regulation (1)(a)(iv) for each portfolio transaction on an execution venue must include–

(a) the name or other designation of the scheme and of the person acting for the account of the scheme;

(b) the asset and, where relevant, the quantity;

(c) the type of portfolio transaction;

(d) the price;

(e) the date and time of–

(i) any transaction and the name or other designation of the person to whom the transaction was transmitted;

(ii) any decision to deal and of the execution of any transaction and the name of the person transmitting or executing the order;

(f) for executed transactions, the counterparty and execution venue identification; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(g) for the revoked orders, the reasons for the revocation.

(3) The records to be maintained under sub-regulation (1)(a)(iv) for each portfolio transaction outside of an execution venue must include–

(a) the name or other designation of the scheme;

(b) the legal and other documents that form the basis of the portfolio transaction including, in particular, the agreement as executed; and

(c) the price.

(4) The records to be maintained under sub-regulation (1)(b) must be retained for a minimum of five years from the relevant subscription or redemption or for any longer period that the GFSC may require.

Systems and controls.

32. A small scheme manager must at all times–

(a) have systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking account of the nature of the information in question;

(b) have an adequate business continuity policy aimed at ensuring, in the event of an interruption to its systems and procedures, that–

(i) essential data and functions are preserved;

(ii) services and activities are maintained; and

(iii) where (i) or (ii) is not possible, data and functions are recovered, and services and activities are resumed, in a timely manner;

(c) have accounting policies and procedures which–

(i) comply with all applicable accounting standards and rules; and

(ii) enable it to deliver audited financial reports which reflect a true and fair value of its financial position in a timely manner to the GFSC, at the request of the GFSC;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(d) comply with all regulatory requirements applicable to the conduct of its business activities, so as to promote the best interests of its managed schemes, the investors in those schemes and the integrity of the market;

(e) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage, monitor and (where applicable) disclose them; in order to prevent them from adversely affecting the interests of managed schemes and their investors and to ensure that its managed schemes are treated fairly;

(f) treat investors fairly and, in particular, ensure that no investor in a scheme may obtain preferential treatment unless that preferential treatment is disclosed in the scheme's rules, offer document or instruments of incorporation;

(g) be ultimately responsible for the proper valuation of a managed scheme's assets, and the calculation and publication of their net asset value; and

(h) monitor and evaluate regularly the adequacy and effectiveness of its systems, internal control mechanisms and arrangements, and take appropriate measures to address any deficiencies.

Management, valuations and accounts.

33.(1). A small scheme manager must at all times ensure that, for each managed scheme–

(a) the investment strategy, liquidity profile and redemption policy are consistent;

(b) appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the scheme can be performed in accordance with any relevant law or the scheme's rules, offer document or instruments of incorporation;

(c) the net asset value per unit or share of the scheme is calculated and disclosed to investors in accordance with any relevant law and the scheme's rules, offer document or instruments of incorporation;

(d) the valuation procedures used provide–

(i) for assets to be valued and the net asset value per unit or share to be calculated at least once a year;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) in the case of an open-ended scheme, for additional valuations and calculations to be carried out at a frequency which is appropriate to the assets held by the scheme and its issuance and redemption frequency; and

(iii) in the case of a closed-ended scheme, for the carrying out of additional valuations and calculations to be considered when the scheme's capital increases or decreases and, if not carried out, for the small scheme manager to record the reasons for not having done so;

(e) the investors are informed of any valuations and calculations, as provided for in the scheme's rules, offer document or instruments of incorporation;

(f) appropriate due diligence is undertaken in the selection and appointment of counterparties and service providers, taking account of the full range and quality of their services, by–

(i) exercising due skill, care and diligence before entering into any agreement; and

(ii) by continuing to do so on an ongoing basis after entering into any agreement; and

(g) an audited annual report for each financial year is made available to the GFSC, and provided to investors on request, no later than six months after the end of each financial year.

(2) Sub-regulation (1)(g) does not apply to a managed scheme which by law is exempt from the requirement to prepare audited accounts.

(3) Where a managed scheme is required to make public an annual financial report in accordance with Chapter 4 of Part 19 of the Act only the following additional information needs to be provided to investors on request–

(a) a balance sheet or statement of assets and liabilities;

(b) an income and expenditure account for the financial year;

(c) a report on the activities of the financial year; and

(d) any material changes in the information listed in regulation 34(3) during the financial year covered by the report.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(4) The information provided in a report under sub-regulation (1)(g) or (3) must be–

(a) prepared in accordance with the accounting standards of the jurisdiction in which the managed scheme is established; and

(b) audited by one or more persons who are authorised under the law of that jurisdiction to audit accounts in that jurisdiction.

Information for potential investors

Information to potential investors.

34.(1) A small scheme manager must, for any scheme it manages or markets, ensure that a potential investor is provided with the information in sub-regulation (3) in respect of the scheme (and is informed of any material changes to that information) before the potential investor invests in the scheme.

(2) Information provided under sub-regulation (1) must be provided in accordance with the rules, offer document or instruments of incorporation of the relevant managed scheme.

(3) The information that must be provided to a potential investor in accordance with sub-regulation (1) is–

(a) a description of the investment strategy and objective of the scheme;

(b) if applicable, information on where–

(i) any master collective investment scheme is established; and

(ii) the underlying collective investment schemes are established;

(c) a description of the types of assets in which the scheme may invest;

(d) the techniques it may employ and all associated risks;

(e) any applicable investment restrictions;

(f) the circumstances in which the scheme may use leverage, including–

(i) the types and sources of leverage permitted and the associated risks;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) any restrictions on the use of leverage and any collateral and asset re-use arrangements; and

(iii) the maximum level of leverage which the small scheme manager is entitled to employ on behalf of the scheme;

(g) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, the applicable law and the existence or otherwise of any legal instruments providing for the recognition and enforcement of judgements in Gibraltar or the territory where the scheme is established;

(h) the identity of the small scheme manager, auditor and any other service provider and a description of–

(i) their respective duties and the investor's rights under the scheme's rules, offer document or instruments of incorporation; and

(ii) how the safeguarding of assets and monies is managed;

(i) a description of any delegated management function and of any safe-keeping function, the identity of the delegate and any conflicts of interest that may arise from such delegation;

(j) a description of the scheme's valuation procedure and, where relevant, the pricing methodology for valuing assets including the methods used in valuing hard-to-value assets;

(k) a description of the scheme's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;

(l) a description of all fees, charges and expenses which are directly or indirectly borne by investors;

(m) a description of how the small scheme manager ensures a fair treatment of investors and where a preferential right may be granted, fair disclosure of the nature of such rights and disclosure of any related potential conflicts of interest;

(n) a description of how the small scheme manager ensures the safe-keeping of the assets of its managed schemes and the identity of any entity providing safe-keeping functions;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(o) the latest audited annual report referred to in regulation 33(1)(g);

(p) the procedures and conditions for the issue and sale of units or shares;

(q) the latest net asset value of the scheme or the latest market price of the unit or share of the scheme or, if it is an initial offer, the initial offer price;

(r) the latest audited accounts of the scheme, where available; and

(s) details of how changes can be made to the matters in–

(i) paragraph (a);

(ii) paragraphs (c) to (f); and

(iii) paragraphs (k) and (l).

PART 4
CONDUCT OF BUSINESS

General principles.

35.(1) AIFMs must at all times –

(a) act honestly, with due skill, care and diligence and fairly in conducting their activities;

(b) act in the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market;

(c) have and employ effectively the resources and procedures that are necessary for the proper performance of their business activities;

(d) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors and to ensure that the AIFs they manage are fairly treated;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(e) comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market;

(f) treat all AIF investors fairly; in particular, no investor in an AIF may obtain preferential treatment, unless it is disclosed in the relevant AIF's rules or instruments of incorporation.

(2) In the case of an AIFM the Part 7 permission of which also covers the discretionary portfolio management service referred to in regulation 12(5)(a), the AIFM must–

(a) not be permitted to invest all or part of the client's portfolio in units or shares of the AIFs it manages, unless it receives prior general approval from the client, and

(b) with regard to the services referred to in regulation 12(5), be subject to Part 16 of the Act.

Annual report.

36.(1) An AIFM must, for each of the Gibraltar AIFs it manages and for each of the AIFs it markets in Gibraltar, make available an annual report for each financial year no later than six months following the end of the financial year; and–

(a) the annual report must be provided to investors on request;

(b) the annual report must be made available to the GFSC.

(2) Where the AIF is required to make public an annual financial report in accordance with Chapter 4 of Part 19 of the Act only the additional information referred to in sub-regulation (3) needs to be provided to investors on request, either–

(a) separately, or

(b) as an additional part of the annual financial report, in which case the annual financial report must be made public no later than four months following the end of the financial year.

(3) The annual report must at least contain the following–

(a) a balance-sheet or a statement of assets and liabilities;

(b) an income and expenditure account for the financial year;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) a report on the activities of the financial year;

(d) any material changes in the information listed in regulation 37 during the financial year covered by the report;

(e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF;

(f) the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.

(4) The accounting information given in the annual report must be prepared in accordance with the accounting standards of–

(a) Gibraltar; or

(b) *Omitted*

(c) the third country where the AIF is established.

(5) The accounting information given in the annual report must be prepared in accordance with the accounting rules laid down in the AIF rules or instruments of incorporation.

(6) The accounting information given in the annual report must be audited by one or more persons empowered by law to audit accounts in accordance with the Audit Directive.

(7) The auditor's report, including any qualifications, must be reproduced in full in the annual report.

(8) AIFMs marketing non-Gibraltar AIFs may subject the annual reports of those AIFs to an audit meeting international auditing standards in force in the country where the AIF has its registered office.

(9) This regulation applies subject to any technical standards specifying the content and format of the annual report.

Disclosure to investors.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

37.(1) AIFMs must for each of the Gibraltar AIFs that they manage, and for each of the AIFs that they market in Gibraltar, make available to AIF investors, in accordance with the AIF rules or instruments of incorporation, the following information–

(a) a description of the investment strategy and objectives of the AIF;

(b) information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds;

(c) a description of the types of assets in which the AIF may invest;

(d) the techniques it may employ and all associated risks;

(e) any applicable investment restrictions;

(f) the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF;

(g) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;

(h) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in Gibraltar or the territory where the AIF is established;

(i) the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;

(j) a description of how the AIFM is complying with the requirements of regulation 15(7);

(k) a description of any delegated management function as referred to in Part 1 of the Schedule by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(l) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with regulation 46;

(m) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;

(n) a description of all fees, charges and expenses and of the maximum amounts which are directly or indirectly borne by investors;

(o) a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;

(p) the latest annual report referred to in regulation 36;

(q) the procedure and conditions for the issue and sale of units or shares;

(r) the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with regulation 46;

(s) where available, the historical performance of the AIF;

(t) the identity of the prime broker and–

(i) a description of any material arrangements of the AIF with its prime brokers;

(ii) the way conflicts of interest in relation to the arrangements are managed;

(iii) the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets; and

(iv) information about any transfer of liability to the prime broker that may exist; and

(u) a description of how and when the other information required under sub-regulations (7) and (8) will be disclosed.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) Information must be made available under sub-regulation (1) to investors before they invest in the AIF.

(3) Investors must also be informed about any material changes to the information provided under sub-regulation (1).

(4) The AIFM must inform the investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with regulation 48(25).

(5) The AIFM must also inform investors of any changes with respect to depositary liability without delay.

(6) Where the AIF is required to publish a prospectus in accordance with the Prospectus Regulation or by or under the Act, only the information in sub-regulations (1), (4) and (5) that is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in the prospectus.

(7) AIFMs must, for each of the Gibraltar AIFs that they manage and for each of the AIFs that they market in Gibraltar, periodically disclose to investors–

(a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;

(b) any new arrangements for managing the liquidity of the AIF; and

(c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

(8) AIFMs managing Gibraltar AIF employing leverage or marketing in the Gibraltar AIF employing leverage must, for each such AIF disclose, on a regular basis–

(a) any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement; and

(b) the total amount of leverage employed by that AIF.

(9) This regulation applies subject to any technical standards specifying the disclosure obligations of AIFMs referred to sub-regulations (7) and (8), including the frequency of the disclosure referred to in sub-regulation (8).

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Marketing to retail investors

Marketing to retail investors: experienced investors.

38.(1) AIFMs may market to experienced investors in Gibraltar units or shares of AIFs that they manage in accordance with these Regulations.

(2) In this regulation "experienced investor" means an experienced investor within the meaning of the Financial Services (Experienced Investor Funds) Regulations 2020.

(3) The provisions of regulations 18, 20, 62 and 68 apply to an AIFM which relies on sub-regulation (1).

(4) Those provisions apply–

(a) as if references to professional investors were references to experienced investors; and

(b) with any other necessary modifications.

(5) *Omitted*.

(6) This regulation applies subject to any prescribed requirements imposed on AIFMs or AIFs which are stricter than those applicable to AIFs marketed to professional investors in Gibraltar in accordance with these Regulations.

Marketing to other retail investors.

39.(1) AIFMs may, if they obtain approval from the GFSC, market to retail investors in Gibraltar units or shares of AIFs that they manage in accordance with these Regulations.

(2) The provisions of regulations 18, 20, 62 and 68 apply to an AIFM which relies on sub-regulation (1).

(3) Those provisions apply–

(a) as if references to professional investors were references to retail investors; and

(b) with any other necessary modifications.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(4) The GFSC must refuse an application for approval under this regulation if it considers refusal appropriate on any grounds.

(5) This regulation applies to retail investors who are not experienced investors within the meaning of regulation 38.

(6) Sub-regulations (3) to (7) of regulation 38 apply for the purposes of this regulation with any necessary modifications.

PART 5
CORPORATE GOVERNANCE AND RISK MANAGEMENT

General

Remuneration.

40.(1) AIFMs must have remuneration policies and practices for those categories of staff whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage; and–

(a) for this purpose staff includes senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers;

(b) the policies and practices must be consistent with and promote sound and effective risk management and must not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage; and

(c) an AIFM must determine its remuneration policies and practices in accordance with Part 2 of the Schedule.

(2) AIFMs must have regard to any guidance issued by the GFSC on remuneration policies which comply with Part 2 of the Schedule.

Conflicts of interest.

41.(1) AIFMs must take all reasonable steps to identify conflicts of interest that arise in the course of managing AIFs between–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and the AIF managed by the AIFM or the investors in that AIF;

(b) the AIF or the investors in that AIF, and another AIF or the investors in that AIF;

(c) the AIF or the investors in that AIF, and another client of the AIFM;

(d) the AIF or the investors in that AIF, and a UCITS managed by the AIFM or the investors in that UCITS; or

(e) two clients of the AIFM.

(2) AIFMs must maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors.

(3) AIFMs must segregate, within their own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest.

(4) AIFMs must assess whether their operating conditions may involve any other material conflicts of interest and disclose them to the investors of the AIFs.

(5) Where organisational arrangements made by an AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the AIFM must clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf, and develop appropriate policies and procedures.

(6) Where the AIFM on behalf of an AIF uses the services of a prime broker, the terms must be set out in a written contract; and–

(a) in particular, any possibility of transfer and reuse of AIF assets must be provided for in that contract and must comply with the AIF rules or instruments of incorporation; and

(b) the contract must provide that the depositary be informed of the contract.

(7) AIFMs must exercise due skill, care and diligence in the selection and appointment of prime brokers with whom a contract is to be concluded.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(8) This regulation must be applied in accordance with any technical standards specifying–

(a) the types of conflicts of interest referred to in sub-regulation (1);

(b) the reasonable steps AIFMs are expected to take in terms of structures and organisational and administrative procedures in order to identify, prevent, manage, monitor and disclose conflicts of interest.

Risk management.

42.(1) AIFMs must functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management.

(2) The GFSC must review the functional and hierarchical separation of AIFMs in accordance with the principle of proportionality, on the understanding that an AIFM must, in any event, be able to demonstrate−

(a) that specific safeguards against conflicts of interest allow for the independent performance of risk management activities; and

(b) that the risk management process satisfies the requirements set out in this Regulation and is consistently effective.

(3) AIFMs must implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed; and an AIFM must review its risk management systems with appropriate frequency at least once a year and adapt them whenever necessary.

(4) AIFMs must not rely solely and mechanistically on credit ratings issued by credit rating agencies for assessing the creditworthiness of the AIF's assets.

(5) The GFSC must–

(a) monitor the adequacy of credit assessment processes of AIFMs;

(b) assess the use of references to credit ratings issued by credit rating agencies in the AIF's investment policies; and

(c) where appropriate, encourage mitigation of the impact of references referred to in paragraph (b);

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

taking into account the nature, scale and complexity of the AIF's activities, and with a view to reducing sole and mechanistic reliance on credit ratings.

(6) AIFMs must at least–

(a) implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, the objectives and risk profile of the AIF;

(b) ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;

(c) ensure that the risk profile of the AIF corresponds to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.

(7) AIFMs must set a maximum level of leverage which they may employ on behalf of each AIF they manage as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account, inter alia–

(a) the type of the AIF;

(b) the investment strategy of the AIF;

(c) the sources of leverage of the AIF;

(d) any other interlinkage or relevant relationships with other financial services institutions, which could pose systemic risk;

(e) the need to limit the exposure to any single counterparty;

(f) the extent to which the leverage is collateralised;

(g) the asset-liability ratio;

(h) the scale, nature and extent of the activity of the AIFM on the markets concerned.

(8) This regulation applies subject to technical standards specifying–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the risk management systems to be employed by AIFMs in relation to the risks which they incur on behalf of the AIFs that they manage;

(b) the appropriate frequency of review of the risk management system;

(c) how the risk management function is to be functionally and hierarchically separated from the operating units, including the portfolio management function;

(d) specific safeguards against conflicts of interest referred to in sub-regulation (2);

(e) the requirements under sub-regulation (6).

Liquidity management.

43.(1) AIFMs must, for each AIF that they manage which is not an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

(2) AIFMs must regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of the AIFs and monitor the liquidity risk of the AIFs accordingly.

(3) AIFMs must ensure that, for each AIF that they manage, the investment strategy, the liquidity profile and the redemption policy are consistent.

(4) This regulation applies subject to any technical standards specifying–

(a) the liquidity management systems and procedures; and

(b) the alignment of the investment strategy, liquidity profile and redemption policy set out in sub-regulation (3).

Investment in securitisation positions.

44. AIFMs must comply with any any technical standards concerning in relation to–

(a) the requirements that need to be met by the originator, the sponsor or the original lender, in order for an AIFM to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011 on behalf of AIFs, including requirements that ensure that the originator, the sponsor or the original lender retains a net economic interest of not less than 5%; or

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) qualitative requirements that must be met by AIFMs which invest in these securities or other financial instruments on behalf of one or more AIFs.

Organisational requirements

General principles.

45.(1) AIFMs must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs and–

(a) in particular, the GFSC must, in relation to each AIFM and having regard to the nature of the AIFs managed by it, require that the AIFM has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms;

(b) the mechanisms must include, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account;

(c) the mechanisms must ensure, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected; and

(d) the mechanisms must ensure that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF rules or instruments of incorporation and the legal provisions in force.

(2) This regulation applies subject to any technical standards specifying the procedures and arrangements under sub-regulation (1).

Valuation.

46.(1) AIFMs must ensure that, for each AIF that they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with–

(a) this Regulation;

(b) any relevant law of Gibraltar; and

(c) the AIF rules or instruments of incorporation.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) AIFMs must also ensure that the net asset value per unit or share of AIFs is calculated and disclosed to the investors in accordance with–

(a) this Regulation;

(b) any relevant law of Gibraltar; and

(c) the AIF rules or instruments of incorporation.

(3) The valuation procedures used must ensure that the assets are valued and the net asset value per unit or share is calculated at least once a year.

(4) If the AIF is of the open-ended type, such valuations and calculations must also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency.

(5) If the AIF is of the closed-ended type, such valuations and calculations must also be carried out in case of an increase or decrease of the capital by the relevant AIF.

(6) The investors must be informed of the valuations and calculations as set out in the relevant AIF rules or instruments of incorporation.

(7) Rules applicable to the valuation of assets and the calculation of the net asset value per unit or share of an AIF must be made–

(a) by the Minister by regulations under the Act; or

(b) subject to provision made in accordance with paragraph (a), in the AIF rules or instruments of incorporation.

(8) AIFMs must ensure that the valuation function is either performed by–

(a) an external valuer, being an individual or legal person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM; or

(b) the AIFM itself, where the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence on the employees is prevented.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(9) The depositary appointed for an AIF must not be appointed as external valuer of that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(10) Where an external valuer performs the valuation function, the AIFM must demonstrate that–

(a) the external valuer is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct;

(b) the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with this regulation; and

(c) the appointment of the external valuer complies with the requirements of regulation 47(1) to (4) and the delegated acts referred to in regulation 47(10).

(11) An appointed external valuer may not delegate the valuation function to a third party.

(12) AIFMs must notify the appointment of the external valuer to the GFSC, which may require that another external valuer be appointed instead, where the conditions laid down in sub-regulation (5) are not met.

(13) The valuation must be performed impartially and with all due skill, care and diligence.

(14) Where the valuation function is not performed by an independent external valuer, the GFSC may require the AIFM to have its valuation procedures or valuations (or both) verified by an external valuer or, where appropriate, by an auditor.

(15) AIFMs are responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value; and–

(a) an AIFM's liability towards the AIF and its investors must, therefore, not be affected by the fact that the AIFM has appointed an external valuer; and

(b) despite paragraph (a) and irrespective of any contractual arrangements providing otherwise, the external valuer is liable to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

(16) This regulation applies subject to any technical standards specifying–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the criteria concerning the procedures for the proper valuation of the assets and the calculation of the net asset value per unit or share;

(b) the professional guarantees the external valuer must be able to provide to effectively perform the valuation function;

(c) the frequency of valuation carried out by open-ended AIFs which is both appropriate to the assets held by the AIF and its issuance and redemption policy.

Delegation of AIFM functions

Delegation.

47.(1) AIFMs which intend to delegate to third parties the task of carrying out functions on their behalf must notify the GFSC before the delegation arrangements become effective.

(2) The following conditions must be met–

(a) the AIFM must be able to justify its entire delegation structure on objective grounds;

(b) the delegate must dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced;

(c) where the delegation concerns portfolio management or risk management, it must be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, only subject to prior approval by the GFSC;

(d) where the delegation concerns portfolio management or risk management and is conferred on a third-country undertaking, in addition to the requirements in paragraph (c), cooperation between the GFSC and the supervisory authority of the undertaking must be ensured;

(e) the delegation must not prevent the effectiveness of supervision of the AIFM, and, in particular, must not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors;

(f) the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.

(3) The AIFM must review the services provided by each delegate on an ongoing basis.

(4) The delegation of portfolio management or risk management must not be conferred on–

(a) the depositary or a delegate of the depositary; or

(b) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless that entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(5) The AIFM's liability towards the AIF and its investors is not affected by the fact that the AIFM has delegated functions to a third party, or by any further sub-delegation, nor may the AIFM delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF and to the extent that it becomes a letter-box entity.

(6) The third party may sub-delegate any of the functions delegated to it where the following conditions are met–

(a) the AIFM consented prior to the sub-delegation;

(b) the AIFM notified the GFSC before the sub-delegation arrangements became effective;

(c) the conditions set out in sub-regulation (2), on the understanding that all references to the 'delegate' are read as references to the 'sub-delegate'.

(7) The sub-delegation of portfolio management or risk management must not be conferred on–

(a) the depositary or a delegate of the depositary, or

(b) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

are properly identified, managed, monitored and disclosed to the investors of the AIF.

(8) The relevant delegate must review the services provided by each sub- delegate on an ongoing basis.

(9) Where the sub-delegate further delegates any of the functions delegated to it, the conditions set out in sub-regulation (6) must apply (with any necessary modifications).

(10) This regulation applies subject to any technical standards specifying–

(a) the conditions for fulfilling the requirements under sub-regulations (1) to (4) and (6) to (8);

(b) the conditions under which the AIFM shall be deemed to have delegated its functions to the extent that it becomes a letter-box entity and can no longer be considered to be the manager of the AIF as set out in sub-regulation (5).

Depositary requirements

Depositary

48.(1) For each AIF it manages, an AIFM must ensure that a single depositary is appointed in accordance with this regulation.

(2) The appointment of the depositary must be evidenced by a written contract which must, in particular, regulate the flow of information deemed necessary to allow the depositary to perform its functions for the AIF for which it has been appointed as depositary, as set out in these Regulations and in any other relevant laws, regulations or administrative provisions.

(3) The depositary must be−

(a) a credit institution which has Part 7 permission for the regulated activity of accepting deposits in paragraph 3 of Schedule 2 to the Act; or

(b) an investment firm which has Part 7 permission for the regulated activity of providing investment services and activities and the ancillary services in point 1 of paragraph 45(2) of Schedule 2 to the Act and which–

(i) is subject to the initial capital requirement in regulation 11(1)(a) of the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) has at all times own funds of not less than the amount determined in accordance with regulation 14(1) of those Regulations; or

(c) falls within the categories of institution determined to be eligible to be a depositary under regulation 65(2)(c) of the Financial Services (UCITS) Regulations 2020.

(4) For non-Gibraltar AIFs only the depositary may also be a credit institution or any other entity of the same nature as the entities referred to in sub-regulation (3)(a) and (b), where the prudential regulation and supervision conditions in sub-regulation (10)(b) are met.

(5) Sub-regulation (6) applies in relation to AIFs which–

(a) have no redemption rights exercisable during the period of five years from the date of the initial investments; and

(b) in accordance with their core investment policy, generally do not invest in assets that are required by sub-regulation 15(a) to be held in custody or generally invest in issuers or non- listed companies in order to potentially acquire control over such companies in accordance with regulation 51.

(6) In relation to AIFs to which this sub-regulation applies the depositary may be an entity which–

(a) carries out depositary functions as part of its professional or business activities in respect of which it is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct; and

(b) can provide sufficient financial and professional guarantees to enable it to perform effectively the relevant depositary functions and meet the commitments inherent in those functions.

(7) In order to avoid conflicts of interest between the depositary, the AIFM, the AIF or its investors (or any combination)–

(a) an AIFM must not act as depositary;

(b) a prime broker acting as counterparty to an AIF must not act as depositary for that AIF, unless–

(i) it has functionally and hierarchically separated the performance of its depositary functions from its tasks as prime broker; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(8) Delegation by the depositary to a prime broker of its custody tasks in accordance with sub-regulations (20) to (24)is allowed if the relevant conditions are met.

(9) The depositary must be established in one of the following locations–

(a) Gibraltar, in the case of a Gibraltar AIF;

(b) or non-Gibraltar AIFs managed by a Gibraltar AIFM, the third country where the AIF is established or Gibraltar.

(10) Without affecting the requirements set out in sub-regulations (3) to (6), the appointment of a depositary established in a third country must, at all times, be subject to the following conditions–

(a) the GFSC and the supervisory authorities of any third country where the AIF will be marketed have signed cooperation and exchange of information arrangements with the supervisory authorities of the depositary;

(b) the depositary is subject to effective prudential regulation, including minimum capital requirements, and supervision which have the same effect as Gibraltar law and are effectively enforced;

(c) the third country where the depositary is established is not listed as a Non-Cooperative Country and Territory by FATF;

(d) where the units or shares of the non-Gibraltar AIF are intended to be marketed in Gibraltar, Gibraltar and that third country where the depositary is established have signed an agreement which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matter including any multilateral tax agreements;

(e) the depositary must by contract be liable to the AIF or to the investors of the AIF, consistently with sub-regulations (25) and (26), and must expressly agree to comply with sub-regulations (20) to (24).

(11) *Omitted*

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(12) The provisions of this regulation relating to prudential regulation and supervision of a third country must be applied in accordance with any technical standards specifying that prudential regulation and supervision of a third country have the same effect as Gibraltar law and are effectively enforced.

(13) The depositary must in general ensure that the AIF's cash flows are properly monitored; in particular, it must–

(a) ensure that all payments made by or on behalf of investors on the subscription of units or shares of an AIF have been received;

(b) ensure that all cash of the AIF has been booked in cash accounts opened in the name of the AIF, the name of the AIFM acting on behalf of the AIF or the name of the depositary acting on behalf of the AIF at–

(i) a central bank;

(ii) an authorised credit institution;

(iii) a bank or credit institution authorised in a third country;

(iv) another entity of the same nature, in the relevant market where cash accounts are required, which is subject to effective prudential regulation and supervision which have the same effect as the law of Gibraltar, are effectively enforced and accord with the principles set out in Article 16 of Directive 2006/73/EC.

(14) Where the cash accounts are opened in the name of the depositary acting on behalf of the AIF, no cash of the entity referred to in sub-regulation (13)(b) and none of the depositary's own cash may be booked on such accounts.

(15) The assets of the AIF or the AIFM acting on behalf of the AIF must be entrusted to the depositary for safe-keeping, as follows–

(a) for financial instruments that can be held in custody–

(i) the depositary must hold in custody all financial instruments that can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) for that purpose, the depositary must ensure that all those financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the AIF or the AIFM acting on behalf of the AIF, so that they can be clearly identified as belonging to the AIF in accordance with the applicable law at all times;

(b) for other assets–

(i) the depositary must verify the ownership of the AIF or the AIFM acting on behalf of the AIF of such assets and must maintain a record of those assets for which it is satisfied that the AIF or the AIFM acting on behalf of the AIF holds the ownership of such assets;

(ii) the assessment whether the AIF or the AIFM acting on behalf of the AIF holds the ownership must be based on information or documents provided by the AIF or the AIFM and, where available, on external evidence;

(iii) the depositary must keep its record up to date.

(15A) For the purposes of this sub-regulations (13) and (15), "Directive 2006/73/EC" means Commission Directive 2006/73/EC of 10 August 2006 as that Directive had effect immediately before IP completion day.

(16) In addition to the tasks referred to in sub-regulations (13) to (15), the depositary must–

(a) ensure that the sale, issue, re-purchase, redemption and cancellation of units or shares of the AIF are carried out in accordance with the law of Gibraltar and the AIF rules or instruments of incorporation;

(b) ensure that the value of the units or shares of the AIF is calculated in accordance with the law of Gibraltar, the AIF rules or instruments of incorporation and the procedures laid down in regulation 46;

(c) carry out the instructions of the AIFM, unless they conflict with the law of Gibraltar, the AIF rules or the instruments of incorporation;

(d) ensure that in transactions involving the AIF's assets any consideration is remitted to the AIF within the usual time limits; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(e) ensure that an AIF's income is applied in accordance with the law of Gibraltar and the AIF rules or instruments of incorporation.

(17) In the context of their respective roles, the AIFM and the depositary must act honestly, fairly, professionally, independently and in the interest of the AIF and the investors of the AIF.

(18) A depositary may not carry out activities with regard to the AIF or the AIFM on behalf of the AIF that may create conflicts of interest between the AIF, the investors in the AIF, the AIFM and itself, unless–

(a) the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and

(b) the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(19) The assets referred to in sub-regulation (15) may not be reused by the depositary without the prior consent of the AIF or the AIFM acting on behalf of the AIF.

(20) The depositary must not delegate to third parties its functions as described in this regulation, save for those referred to in sub-regulation (15).

(21) The depositary may delegate to third parties the functions referred to in sub-regulation (15) subject to the following conditions–

(a) the tasks are not delegated with the intention of avoiding the requirements of these Regulations;

(b) the depositary can demonstrate that there is an objective reason for the delegation;

(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it; and

(d) the depositary ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(i) the third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF or the AIFM acting on behalf of the AIF which have been entrusted to it;

(ii) for custody tasks referred to in sub-regulation (15)(a), the third party is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession;

(iii) the third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;

(iv) the third party does not make use of the assets without the prior consent of the AIF or the AIFM acting on behalf of the AIF and prior notification to the depositary; and

(v) the third party complies with the general obligations and prohibitions set out in sub-regulations (15), (17), (18) and (19).

(22) Despite sub-regulation (21)(d)(ii), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that sub-regulation, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements–

(a) the investors of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment; and

(b) the AIF, or the AIFM on behalf of the AIF, must instruct the depositary to delegate the custody of such financial instruments to such local entity.

(23) The third party may, in turn, sub-delegate those functions, subject to the same requirements (and sub-regulation (26) applies, with any necessary modifications, to the relevant parties).

(24) For the purposes of this regulation, the provision of settlement services by a system designated under regulation 5 of the Financial Services (Financial Markets and Insolvency:

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Settlement Finality) Regulations 2020 or the provision of similar services by a third-country securities settlement system is not to be considered as a delegation of custody functions.

(25) The depositary is liable to the AIF or to the investors of the AIF, for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with sub-regulation (15)(a) has been delegated; and–

(a) in the case of such a loss of a financial instrument held in custody, the depositary must return a financial instrument of identical type or the corresponding amount to the AIF or the AIFM acting on behalf of the AIF without undue delay;

(b) the depositary is not liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary;

(c) the depositary is also liable to the AIF, or to the investors of the AIF, for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to these Regulations.

(26) The depositary's liability is not affected by any delegation referred to in sub-regulations (20) to (24); but in the case of a loss of financial instruments held in custody by a third party pursuant to those sub-regulations, the depositary may discharge itself of liability if it can prove that–

(a) all requirements for the delegation of its custody tasks set out in sub-regulation (21) are met;

(b) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf; and

(c) a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.

(27) In addition, where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements laid down in sub-regulation (21)(d)(ii), the depositary can discharge itself of liability where the following conditions are met–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the rules or instruments of incorporation of the AIF concerned expressly allow for such a discharge under the conditions set out in this sub-regulation;

(b) the investors of the relevant AIF have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;

(c) the AIF or the AIFM on behalf of the AIF instructed the depositary to delegate the custody of such financial instruments to a local entity;

(d) there is a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, which expressly allows such a discharge; and

(e) there is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

(28) Liability to the investors of the AIF may be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the depositary, the AIFM and the investors.

(29) The depositary must make available to the GFSC, on request, all information which it has obtained while performing its duties and that may be necessary for the GFSC or the other supervising authorities of the AIF or the AIFM.

(30) This regulation applies subject to any technical standards specifying–

(a) the particulars that need to be included in the written contract referred to in sub-regulation (2);

(b) general criteria for assessing whether the prudential regulation and supervision of third countries as referred to in sub-regulation (10)(b) have the same effect as Gibraltar law and are effectively enforced;

(c) the conditions for performing the depositary functions pursuant to sub-regulations (13) to (16), including–

(i) the type of financial instruments to be included in the scope of the depositary's custody duties in accordance with sub-regulation (15)(a);

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) the conditions subject to which the depositary is able to exercise its custody duties over financial instruments registered with a central depositary; and

(iii) the conditions subject to which the depositary is to safekeep the financial instruments issued in a nominative form and registered with an issuer or a registrar, in accordance with sub-regulation (15)(b);

(d) the due diligence duties of depositaries in pursuant to sub-regulation (21)(c);

(e) the segregation obligation pursuant to sub-regulation (21)(d)(iii);

(f) the conditions subject to which and circumstances in which financial instruments held in custody are to be considered as lost;

(g) what is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary pursuant to sub-regulation (25);

(h) the conditions subject to which and circumstances in which there is an objective reason to contract a discharge pursuant to sub-regulation (26).

Capital requirement.

49.(1) This regulation applies to an AIF depositary with Part 7 permission to carry on the regulated activity under paragraph 96 of Schedule 2 to the Act in respect of an AIF managed by an in-scope AIFM of the kind referred to in regulation 48(4) or (6).

(2) The Part 7 permission of an AIF depositary to which this regulation applies is subject to an automatic condition that the AIF depositary complies with the capital requirement under this regulation.

(3) The AIF depositary must maintain and be able to demonstrate sufficient financial resources commensurate with the nature and volume of its business.

(4) The AIF depositary is required to be solvent and to be able to meet the risks which it faces.

(5) The AIF depositary is expected to maintain a minimum level of financial resources equivalent to three months' worth of operating expenses and the measure of these financial resources must be the net asset figure in the AIF depositary's balance sheet.

(6) In this regulation–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

"AIF depositary" is a depositary appointed for an AIF in accordance with regulation 48(1);

"net assets" means the total assets of any type less the total liabilities of any type except for–

(a) intangible fixed assets; and

(b) related party balances (e.g. shareholders and directors and associated companies) unless in the ordinary course of business, outstanding balances are being settled under normal commercial terms.

(7) The AIF depositary must calculate the requirement in this regulation as appropriate to the business, at least once every three months.

(8) The AIF depositary must, unless previously agreed in writing by the GFSC, have a paid-up share capital of substance depending on its business which must not be less than £125,000.

Reporting and notification

Reporting obligations to the GFSC.

50.(1) An AIFM must regularly report to the GFSC on the principal markets and instruments in which it trades on behalf of the AIFs it manages.

(2) In particular, an AIFM must provide information on–

(a) the main instruments in which it is trading;

(b) markets of which it is a member or where it actively trades; and

(c) the principal exposures and most important concentrations of each of the AIFs it manages.

(3) An AIFM must, for each of the Gibraltar AIFs it manages and for each of the AIFs it markets in Gibraltar, provide the following to the GFSC–

(a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;

(b) any new arrangements for managing the liquidity of the AIF;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;

(d) information on the main categories of assets in which the AIF invested; and

(e) the results of the stress tests performed in accordance with regulations 42(4) and 43(2).

(4) The AIFM must, on request, provide the following documents to the GFSC–

(a) an annual report of each Gibraltar AIF managed by the AIFM and of each AIF marketed by it in Gibraltar, for each financial year, in accordance with regulation 36; and

(b) for the end of each quarter, a detailed list of all AIFs which the AIFM manages.

(5) An AIFM managing AIFs employing leverage on a substantial basis must make available to the GFSC–

(a) information about the overall level of leverage employed by each AIF it manages;

(b) a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives; and

(c) information about the extent to which the AIF's assets have been reused under leveraging arrangements.

(6) That information must include the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each of those sources for each of those AIFs.

(7) For non-Gibraltar AIFMs, the reporting obligations referred to in this regulation are limited to Gibraltar AIFs managed by them and non-Gibraltar AIFs marketed by them in Gibraltar.

(8) Where necessary for the effective monitoring of systemic risk, the GFSC may require information in addition to that described in this regulation, on a periodic as well as on an ad-hoc basis.

(9) *Omitted*.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(10) This regulation must be applied in accordance with any technical standards specifying–

(a) when leverage is to be considered to be employed on a substantial basis for the purposes of sub-regulation (5); and

(b) the obligations to report and provide information provided for in this regulation.

PART 6
SPECIAL CASE AIFMS

AIFMs managing leveraged AIFs

Use of information by the GFSC and limits to leverage.

51.(1) The GFSC must use the information to be gathered under regulation 50 for the purposes of identifying the extent to which the use of leverage contributes to–

(a) the build-up of systemic risk in the financial system;

(b) risks of disorderly markets; or

(c) risks to the long-term growth of the economy.

(2) *Omitted*.

(3) *Omitted*.

(4) An AIFM must demonstrate that the leverage limits set by it for each AIF it manages are reasonable and that it complies with those limits at all times; and–

(a) the GFSC must assess the risks that the use of leverage by an AIFM with respect to the AIFs it manages could entail; and

(b) where deemed necessary in order to ensure the stability and integrity of the financial system, the GFSC must impose limits to the level of leverage that an AIFM are entitled to employ or other restrictions on the management of the AIF with respect to the AIFs under its management to limit the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system or risks of disorderly markets.

(5) *Omitted*.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(6) *Omitted*.

(7) *Omitted*.

(8) *Omitted*.

(9) This regulation must be applied in accordance with any technical standards concerning principles specifying the circumstances in which the GFSC applies the provisions set out in sub-regulation (4), taking into account different strategies of AIFs, different market conditions in which AIFs operate and possible pro-cyclical effects of applying those provisions.

Obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers

Application of regulations 53 to 56.

52.(1) Regulations 53 to 56 apply to the following–

(a) AIFMs managing one or more AIFs which either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company in accordance with sub-regulation (5);

(b) AIFMs cooperating with one or more other AIFMs on the basis of an agreement pursuant to which the AIFs managed by those AIFMs jointly, acquire control of a non-listed company in accordance with sub-regulation (5).

(2) Regulations 53 to 56 do not apply where the non-listed companies concerned are–

(a) SMEs; or

(b) special purpose vehicles with the purpose of purchasing, holding or administrating real estate.

(2A) In sub-regulation (2), "SME" means a micro, small and medium-sized enterprise as defined in Articles 1 to 6 of the Annex to Commission Recommendation 2003/361/EC of 6th May 2003 with the following amendments–

(a) in Article 3.5, for "by national or Community rules" substitute "under the law of Gibraltar";

(b) in article 5(b), for "national law" substitute "the law of Gibraltar";

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(3) Without limiting sub-regulations (1) and (2), regulation 53(1) also applies to AIFMs managing AIFs that acquire a non-controlling participation in a non-listed company.

(4) Regulations 54(1) to (4) and 56 apply also to AIFMs managing AIFs that acquire control over issuers; and for that purpose sub-regulations (1) and (2) apply with any necessary modifications.

(5) For the purpose of regulations 53 to 56, for non-listed companies, control means more than 50% of the voting rights of the companies and–

(a) when calculating the percentage of voting rights held by the relevant AIF, in addition to the voting rights held directly by the relevant AIF, the voting rights of the following must be taken into account, subject to control as referred to above being established–

(i) an undertaking controlled by the AIF; and

(ii) an individual or legal person acting in its own name but on behalf of the AIF or on behalf of an undertaking controlled by the AIF;

(b) the percentage of voting rights must be calculated on the basis of all the shares to which voting rights are attached even if their exercise is suspended; and

(c) for the purpose of regulations 54(1) to (4) and 56, in regard to issuers, control must be determined in accordance with the law of the country or territory in which the company has its registered office.

(6) Regulations 53 to 56 apply–

(a) subject to the conditions and restrictions set out in Part 7 of the Employment (Information and Consultation of Employees) Regulations 2005; and

(b) without limiting any stricter rules adopted in Gibraltar with respect to the acquisition of holdings in issuers and non-listed companies.

Notification of acquisition of major holdings and control of non- listed companies.

53.(1) When an AIF acquires, disposes of or holds shares of a non-listed company, the AIFM managing such an AIF must notify the GFSC of the proportion of voting rights of the non-listed company held by the AIF any time when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) When an AIF acquires, individually or jointly, control over a non- listed company pursuant to regulation 33(1), the AIFM managing such an AIF must notify the following of the acquisition of control by the AIF–

(a) the non-listed company;

(b) the shareholders of which the identities and addresses are available to the AIFM or can be made available by the non- listed company or through a register to which the AIFM has or can obtain access; and

(c) the GFSC.

(3) The notification required under sub-regulation (2) must contain the following additional information–

(a) the resulting situation in terms of voting rights;

(b) the conditions subject to which control was acquired, including information about the identity of the different shareholders involved, any individual or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held;

(c) the date on which control was acquired.

(4) In its notification to the non-listed company, the AIFM must request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIF managed by the AIFM and of the information referred to in sub-regulation (3); and the AIFM must use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this regulation.

(5) The notifications referred to in this regulation must be made as soon as possible, but no later than 10 working days after the date on which the AIF has reached, exceeded or fallen below the relevant threshold or has acquired control over the non-listed company.

Disclosure in case of acquisition of control.

54.(1) When an AIF acquires, individually or jointly, control of a non-listed company or an issuer pursuant to regulation 52(1) and (5), the AIFM managing such AIF must make the information referred to in sub-regulation (2) available to–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the company concerned;

(b) the shareholders of the company of which the identities and addresses are available to the AIFM or can be made available by the company or through a register to which the AIFM has or can obtain access; and

(c) the GFSC.

(2) The AIFM must make available–

(a) the identity of the AIFMs which either individually or in agreement with other AIFMs manage the AIFs that have acquired control;

(b) the policy for preventing and managing conflicts of interest, in particular between the AIFM, the AIF and the company, including information about the specific safeguards established to ensure that any agreement between the AIFM and/or the AIF and the company is concluded at arm's length; and

(c) the policy for external and internal communication relating to the company in particular as regards employees.

(3) In its notification to the company under sub-regulation (1)(a) the AIFM must request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the information referred to in sub-regulation (2); and the AIFM must use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this regulation.

(4) When an AIF acquires, individually or jointly, control of a non-listed company under regulation 52(1) and (5) the AIFM managing the AIF must ensure that the AIF, or the AIFM acting on behalf of the AIF, disclose its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to–

(a) the non-listed company; and

(b) the shareholders of the non-listed company of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access;

and the AIFM managing the relevant AIF must request and use its best efforts to ensure that the board of directors of the non- listed company makes available the information set out in

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

this sub-regulation to the employees' representatives or, where there are none, the employees themselves, of the non-listed company.

(5) When an AIF acquires control of a non-listed company under regulation 52(1) and (5), the AIFM managing the AIF must provide the GFSC and the AIF's investors with information on the financing of the acquisition.

Specific provisions regarding the annual report of AIFs exercising control of non-listed companies.

55.(1) When an AIF acquires, individually or jointly, control of a non-listed company under regulation 52(1) and (5), the AIFM managing the AIF must either–

(a) request and use its best efforts to ensure that the annual report of the non-listed company drawn up in accordance with sub-regulation (2) is made available by the board of directors of the company to the employees' representatives or, where there are none, to the employees themselves within the period such annual report has to be drawn up in accordance with the law of Gibraltar; or

(b) for each such AIF, include in the annual report provided for in regulation 36 the information referred to in sub-regulation (2) relating to the relevant non-listed company.

(2) The additional information to be included in the annual report of the company or the AIF must include at least a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report; and the report must also give an indication of–

(a) any important events that have occurred since the end of the financial year;

(b) the company's likely future development; and

(c) the following information concerning any acquisitions of its own shares–

(i) the reasons for any acquisitions made during the financial year;

(ii) the number and nominal value or, in the absence of a nominal value, the accountable par of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;

(iii) in the case of acquisition or disposal for a value, the consideration for the shares; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(iv) the number and nominal value or, in the absence of a nominal value, the accountable par of all the shares acquired and held by the company and the proportion of the subscribed capital which they represent.

(3) The AIFM managing the relevant AIF must either–

(a) request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information referred to in sub-regulation (1)(b) relating to the company concerned to the employees' representatives of the company concerned or, where there are none, to the employees themselves within the period referred to in regulation 36(1); or

(b) make available the information referred to in sub-regulation (1)(a) to the investors of the AIF, in so far as already available, within the period referred to in regulation 36(1) and, in any event, no later than the date on which the annual report of the non-listed company is drawn up in accordance with the law of Gibraltar.

Asset stripping.

56.(1) When an AIF, individually or jointly, acquires control of a non-listed company or an issuer pursuant to regulation 52(1) and (5) the AIFM managing such an AIF, for a period of 24 months following the acquisition of control of the company by the AIF–

(a) may not facilitate, support or instruct any distribution, capital reduction, share redemption or acquisition of own shares by the company as described in sub-regulation (2);

(b) in so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing bodies of the company, may not vote in favour of a distribution, capital reduction, share redemption or acquisition of own shares by the company as described in sub-regulation (2); and

(c) must in any event use its best efforts to prevent distributions, capital reductions, share redemptions and the acquisition of own shares by the company as described in sub-regulation (2).

(2) The obligations imposed on AIFMs pursuant to sub-regulation (1) relate to the following–

(a) any distribution to shareholders made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

plus those reserves which may be not distributed under the law or the statutes, on the understanding that where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount must be deducted from the amount of subscribed capital;

(b) any distribution to shareholders the amount of which would exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes;

(c) to the extent that acquisitions of own shares are permitted, the acquisitions by the company, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in paragraph (a).

(3) For the purposes of sub-regulation (2)–

(a) the term "distribution" includes, in particular, the payment of dividends and of interest relating to shares;

(b) the provisions on capital reductions must not apply on a reduction in the subscribed capital, the purpose of which is to offset losses incurred or to include sums of money in a non- distributable reserve where, following that operation, the amount of such reserve is not more than 10% of the reduced subscribed capital; and

(c) the restriction referred to in sub-regulation (2)(c) is subject to section 106 of the Companies Act 2014.

PART 7
MARKETING AND MANAGING AIFS

CHAPTER 1
Omitted

57. *Omitted*.

58. *Omitted*.

59. *Omitted*.

CHAPTER 2

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

Conditions for Gibraltar AIFMs managing non-Gibraltar AIFs.

60.(1) A Gibraltar AIFM may manage non-Gibraltar AIFs if–

(a) the Gibraltar AIFM complies with all the requirements established in these Regulations except for regulations 36 and 48 in respect of those AIFs; and

(b) appropriate cooperation arrangements are in place between the GFSC and the supervisory authorities of the third country where the non-Gibraltar AIF is established in order to ensure at least an efficient exchange of information that allows the GFSC to carry out its duties in accordance with these Regulations.

(2) This regulation applies subject to any technical standards regarding the cooperation arrangements referred to in sub-regulation (1).

61. *Omitted*.

Conditions for marketing in Gibraltar of non-Gibraltar AIFs managed by a Gibraltar AIFM.

62.(1) A Gibraltar AIFM may market to professional investors in Gibraltar the units or shares of non-Gibraltar AIFs if –

(a) the Gibraltar AIFM complies with all the requirements established in these Regulations with the exception of regulation 48;

(b) the Gibraltar AIFM ensures that one or more entities are appointed to carry out the duties referred to in regulation 48(13) to (16);

(c) the Gibraltar AIFM does not perform those functions;

(d) the Gibraltar AIFM provides the GFSC with the information about the entity of those entities responsible for carrying out the duties referred to in regulation 48(13) to (16);

(e) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the GFSC and the supervisory authorities of the third country where the non-Gibraltar AIF is established in order to ensure an efficient exchange of information that allows the GFSC to carry out its duties in accordance with these Regulations; and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(f) the third country where the non-Gibraltar AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

(2) This regulation applies subject to any other regulations made under the Act which impose stricter requirements on AIFMs in respect of the marketing of units or shares of non-Gibraltar AIFs to investors in Gibraltar.

(3) The following provisions apply (with any necessary modifications) to an AIFM in its reliance on this regulation as they apply to small AIFMs in their reliance on regulation 20(1) –

(a) regulation 20(2) (requirement to apply to the GFSC for authorisation);

(b) regulation 20(3) (requirement to provide information to the GFSC);

(c) regulation 20(5) (requirement to obtain authorisation from the GFSC);

(d) regulation 20(7) (requirement to notify material changes);

(e) regulation 21 (GFSCs power to revoke entitlement to market); and

(f) regulation 22 (GFSC's power to suspend entitlement to market).

(4) This regulation applies subject to any technical standards regarding the cooperation arrangements referred to in sub-regulation (1)..

Authorisation of non-Gibraltar AIFMs intending to manage Gibraltar AIFs

63.(1) Non-Gibraltar AIFMs intending to manage Gibraltar AIFs must acquire prior authorisation by the GFSC in accordance with this regulation.

(2) A non-Gibraltar AIFM intending to obtain prior authorisation as referred to in sub-regulation (1) must comply with these Regulations, with the exception of regulations 57 to 59.

(3) If and to the extent that compliance with a provision of these Regulations is incompatible with compliance with the law to which the non-Gibraltar AIFM is subject, the AIFM need not comply with that provision of these Regulations if it can demonstrate that–

(a) it is impossible to combine such compliance with compliance with a mandatory provision in the law to which the non-Gibraltar AIFM is subject;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(b) the law to which the non-Gibraltar AIFM is subject provides for an equivalent rule having the same regulatory purpose and offering the same level of protection to the investors of the relevant AIF; and

(c) the non-Gibraltar AIFM complies with that equivalent rule.

(4) A non-Gibraltar AIFM intending to obtain prior authorisation must have a legal representative established in Gibraltar; and–

(a) the legal representative must be the contact point of the AIFM in Gibraltar and any official correspondence between the GFSC and the AIFM and between the Gibraltar investors of the relevant AIF and the AIFM for the purposes of these Regulations must take place through that legal representative;

(b) the legal representative must perform the compliance function relating to the management and marketing activities performed by the AIFM under these Regulations together with the AIFM.

(5) *Omitted*.

(6) *Omitted*.

(7) *Omitted*.

(8) *Omitted*.

(9) *Omitted*.

(10) *Omitted*.

(11) A non-Gibraltar AIFM intending to manage Gibraltar AIFs must submit a request for authorisation to the GFSC.

(12) *Omitted*.

(13) *Omitted*.

(14) *Omitted*.

(15) *Omitted*.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(16) Without limiting sub-regulation (19), no authorisation may be granted unless the following additional conditions are met–

(a) *Omitted*;

(b) the AIFM has appointed a legal representative established in Gibraltar;

(c) the legal representative must, together with the AIFM, be the contact person of the non-Gibraltar AIFM for the investors of the relevant AIFs, for the GFSC as regards the activities for which the AIFM is authorised in Gibraltar and must at least be sufficiently equipped to perform the compliance function pursuant to these Regulations;

(d) appropriate cooperation arrangements are in place between the GFSC and the supervisory authorities of the third country where the non-Gibraltar AIFM is established in order to ensure at least an efficient exchange of information that allows the GFSC to carry out its duties in accordance with these Regulations;

(e) the third country where the non-Gibraltar AIFM is established is not listed as a Non-Cooperative Country and Territory by FATF;

(f) the third country where the non-Gibraltar AIFM is established has signed an agreement with Gibraltar, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;

(g) the effective exercise by the GFSC of its supervisory functions is neither prevented by the laws, regulations or administrative provisions of a third country governing the AIFM, nor by limitations in the supervisory and investigatory powers of that third country's supervisory authorities.

(17) *Omitted*.

(18) *Omitted*.

(19) The authorisation must be given in accordance with Part 2 which applies (with any necessary modifications) subject to the following criteria−

(a) the information referred to in regulation 13(2) must be supplemented by–

(i) *Omitted*;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(ii) a list of the provisions of these Regulations for which compliance by the AIFM is impossible as compliance by the AIFM with those provisions is, in accordance with sub-regulation (3) incompatible with compliance with a mandatory provision in the law to which the non-Gibraltar AIFM is subject;

(iii) written evidence that the relevant third country law provides for a rule equivalent to the provisions for which compliance is impossible, which has the same regulatory purpose and offers the same level of protection to the investors of the relevant AIFs and that the AIFM complies with that equivalent rule; such written evidence being supported by a legal opinion on the existence of the relevant incompatible mandatory provision in the law of the third country and including a description of the regulatory purpose and the nature of the investor protection pursued by it; and

(iv) the name of the legal representative of the AIFM and the place where it is established;

(b) the information referred to in regulation 13(3) may be limited to the Gibraltar AIFs the AIFM intends to manage;

(c) regulation 14(1)(a) applies without limiting sub-regulations (2) and (3);

(d) regulation 14(1)(e) does not apply; and

(e) regulation 14(6) is read as including a reference to the information referred to in paragraph (a).

(20) *Omitted*.

(21) *Omitted*.

(22) *Omitted*.

(23) *Omitted*.

(24) *Omitted*.

(25) *Omitted*.

(26) *Omitted*.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(27) *Omitted*.

(28) *Omitted*.

(29) *Omitted*.

(30) *Omitted*.

(31) *Omitted*.

(32) *Omitted*.

(33) *Omitted*.

(34) *Omitted*.

(35) Any disputes arising between the GFSC and the AIFM must be settled in accordance with the law of and subject to the jurisdiction of Gibraltar.

(36) Any disputes between the AIFM or the AIF and Gibraltar investors of the relevant AIF may be settled in accordance with the law of and subject to the jurisdiction of Gibraltar.

(37) This regulation applies subject to any technical standards concerning–

(a) the cooperation arrangements referred to in sub-regulation (16)(d) and the minimum content of such arrangements;

(b) the manner in which an AIFM must comply with the requirements in these Regulations, taking into account that the AIFM is established in a third country and the presentation of the information required by regulations 36, 37 and 50; and

(c) the conditions under which the law to which a non-Gibraltar AIFM or a non-Gibraltar AIF is subject is considered to provide for an equivalent rule having the same regulatory purpose and offering the same level of protection to the relevant investors.

64. *Omitted*.

65. *Omitted*.

66. *Omitted*.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

67. *Omitted*.

Conditions for marketing in Gibraltar of AIFs managed by a non-Gibraltar AIFM.

68.(1) Without limiting regulation 63, non-Gibraltar AIFMs may market to professional investors, in Gibraltar, units or shares of AIFs they manage subject to the following conditions –

(a) the non-Gibraltar AIFM complies with regulation 36, 37 and 50 in respect of each AIF marketed by it pursuant to this regulation and with regulations 52 to 56 where an AIF marketed by it pursuant to this regulation falls within scope of regulation 52;

(b) appropriate cooperation arrangements for the purpose of systematic risk oversight and in line with international standards are in place between the GFSC, the supervisory authority of the third country where the non-Gibraltar AIFM is established and in so far as applicable, the supervisory authorities of the third country where the non-Gibraltar AIF is established in order to ensure an efficient exchange of information that allows the GFSC to carry out its duties in accordance with these Regulations;

(c) the third country where the non-Gibraltar AIFM or the non-Gibraltar AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

(2) *Omitted*.

(3) The Minister may by regulations made under the Act impose stricter rules on a non-Gibraltar AIFM in respect of the marketing of units or shares of AIFs to investors in Gibraltar for the purpose of this regulation.

(4) The following provisions apply (with any necessary modifications provided by regulations made by the Minister under the Act in connection with the subject matter of sub-regulation (3) and with any other necessary modifications) to a non-Gibraltar AIFM in its reliance on this regulation as they apply to small AIFMs in their reliance on regulation 20(1) –

(a) regulation 20(2) (requirement to apply to the GFSC for authorisation);

(b) regulation 20(3) (requirement to provide information to the GFSC);

(c) regulation 20(5) (requirement to obtain authorisation from the GFSC);

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(d) regulation 20(7) (requirement to notify material changes);

(e) regulation 21 (GFSC's power to revoke entitlement to market); and

(f) regulation 22 (GFSC's power to suspend entitlement to market).

(5) This regulation applies subject to any technical standards concerning the cooperation arrangements referred to in sub-regulation (1).

PART 8
REGULATORY POWERS

CHAPTER 1
INVESTIGATORY AND SUPERVISORY POWERS

Powers of GFSC.

69.(1) For the purpose of supervising or investigating compliance with the Act or these Regulations, the GFSC may−

(a) exercise any power that the GFSC has under the Act or these Regulations;

(b) act directly or in collaboration with other supervisory authorities;

(c) delegate tasks under its responsibility;

(d) institute legal proceedings.

(2) Without limiting any other powers the GFSC has under the Act or these Regulations, the GFSC may in discharging its functions–

(a) require information from any person related to the activities of an AIFM or AIF and, if necessary, to summon and question a person with a view to obtaining information;

(b) carry out on-site inspections with or without prior announcements;

(c) require existing telephone and existing data traffic records;

(d) require the cessation of any practice that is contrary to the provisions of the Act or these Regulations;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(e) request the freezing or the sequestration of assets;

(f) require the temporary prohibition of professional activity;

(g) adopt any type of measure to ensure that AIFMs or depositaries continue to comply with the requirements of the Act or these Regulations applicable to them;

(h) require the suspension of the issue, repurchase or redemption of units in the interest of the unit-holders or of the public;

(i) appoint a liquidator or make other provision for the winding down of an AIF;

(j) refer matters for criminal prosecution;

(k) request that auditors or experts carry out verifications or investigations;

(l) suspend or withdraw the registration of a small AIFM which is not an external AIFM.

(3) The GFSC must give the person concerned–

(a) a warning notice if it proposes–

(i) to require the temporary prohibition of professional activity in accordance with sub-regulation (2)(f);

(ii) to require the issue, repurchase or redemption of units to be suspended in accordance with sub-regulation (2)(h); or

(iii) to suspend or withdraw a small AIFM's registration (other than at its request), in accordance with sub-regulation (2)(l); or

(b) a decision notice if it decides to take the steps in paragraph (a)(i), (ii) or (iii) (as the case may be),

but paragraph (a) does not apply if the GFSC considers that professional activity must be prohibited, or registration suspended or withdrawn, as a matter of urgency and in such a case section 160 of the Act applies with any necessary modifications.

(4) A decision by the GFSC under sub-regulation (3)–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) to dispense with the requirement to issue a warning notice; or

(b) to issue a decision notice,

is a specified regulatory decision to which section 24(3) of the Act applies.

(5) A GFSC decision does not fall within sub-regulation (4)(b) if the person concerned–

(a) has agreed in writing to the steps proposed being taken by the GFSC; or

(b) where the proposed decision is set out in a warning notice, has not made any representations to the GFSC within the notice period specified in section 612(2)(a) of the Act (and in that event the GFSC may regard the facts and matters set out in the warning notice as undisputed).

(6) The GFSC may take any action it considers necessary in order to ensure the orderly functioning of markets in those cases where the activity of one or more AIFs in the market for a financial instrument could jeopardise the orderly functioning of that market.

(7) In particular the GFSC may take any of the following actions–

(a) prohibit the marketing of units or shares of AIFs managed by non-Gibraltar AIFMs or of non-Gibraltar AIFs managed by a Gibraltar AIFM without the authorisation required in regulation 62 or 68;

(b) impose restrictions on non-Gibraltar AIFMs relating to the management of an AIF in case of excessive concentration of risk in a specific market;

(c) impose restrictions on non-Gibraltar AIFMs relating to the management of an AIF where its activities potentially constitute an important source of counterparty risk to a credit institution or other systematically relevant institutions.

(8) The powers under sub-regulation (7) must be exercised so as to–

(a) effectively address the threat to the orderly functioning and the integrity of the financial market or to the stability of the whole or a part of the financial system in Gibraltar or significantly improve the ability of the GFSC to monitor the threat;

(b) avoid a risk of regulatory arbitrage;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(c) avoid a detrimental effect on the efficiency of the financial markets, including reducing liquidity in those markets or creating uncertainty for market participants, in a way that is disproportionate to the benefits of the measures.

(9) *Omitted*.

(10) *Omitted*.

(11) For the purposes of Part 10 of the Act, the definition of "relevant persons" in section 131 of the Act includes a small AIFM which is not an external AIFM.

Directions.

70.(1) If it appears to the GFSC that a person is not fit and proper to carry out any function in relation to an AIFM, the GFSC may direct that the person must not perform a specified function, any function falling within a specified description, or any function as stated in the direction.

(2) Where the GFSC–

(a) proposes to issue a direction under sub-regulation (1), it must give the AIFM and the person concerned a warning notice; or

(b) decides to issue a direction under sub-regulation (1), it must give the AIFM and the person concerned a decision notice.

(3) Sub-regulation (2)(a) does not apply if the GFSC is satisfied that a warning notice–

(a) cannot be given because of urgency;

(b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the direction; or

(c) is superfluous having regard to the need to give notice of legal proceedings, or for some other reason.

(4) A person aggrieved by a decision notice under sub-regulation (2)(b) may appeal against the decision under section 615 of the Act.

(5) For the purposes of sub-regulation (3)(a), the GFSC must not consider that urgency exists unless Conditions B and C in section 80(3) and (4) of the Act are met.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(6) If those conditions are met, the GFSC must give the AIFM and the person concerned a notice stating that the direction takes effect on the date of the notice or on any later date that may be specified in the notice.

(7) Sections 80(7) and (8) and 81 of the Act apply to a decision by the GFSC under sub-regulation (3)(a)–

(a) as if references in those sections to the varying of a permission or the imposing or varying of a requirement (however expressed) were references to the imposition of a direction under sub-regulation (1); and

(b) with such other modifications as may be required by the circumstances and context of sub-regulation (3).

(8) The issue of a decision notice imposing a direction under sub-regulation (1) is a specified regulatory decision to which section 24(3) of the Act applies.

Investigations.

71.(1) The power of the GFSC under section 137 of Part 10 of the Act to appoint an inspector includes the power to appoint an inspector under sub-regulation (2).

(2) The GFSC may appoint one or more persons (an "appointed person") to investigate and report on the affairs of an AIF in relation to business suspected of being carried out in or from within Gibraltar in contravention of the provisions of these Regulations.

Protection order.

72. The power of the GFSC under section 328(2) of Part 18 of the Act to apply to the Court for a protection order applies to an AIF under these Regulations as if an AIF was a scheme listed in section 328(1) (with any necessary modifications).

CHAPTER 2
SANCTIONS FOR CONTRAVENTION

Sanctioning powers.

73. For the purposes of section 150 of the Act, the sanctioning powers set out in Part 11 of the Act which are exercisable in relation to contravention of a regulatory requirement (within the meaning of that Part) are to be read together with the provisions of this Chapter.

Maximum amounts of administrative penalty.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

74.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement in connection with the regulated activity of managing an AIF (in-scope AIFM) within the meaning of paragraph 95 of Schedule 2 to the Act or the regulated activity of managing an AIF (small scheme manager) within the meaning of paragraph 97 of Schedule 2 to the Act must be of an amount which does not exceed the higher of the following–

(a) where the amount of the benefit derived as a result of the contravention can be determined, twice the amount of that benefit;

(b) in the case of a legal person–

(i) 5% of the total annual turnover according to the last available annual accounts approved by its management body;

(ii) £1,000,000; or

(ii) £250,000 in respect of a small scheme manager; or

(c) in the case of an individual–

(i) £250,000; or

(ii) £125,000 in respect of a small scheme manager.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Part 7 of the Companies Act 2014, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

PART 9
MISCELLANEOUS AND FINAL PROVISIONS

General

Application of accounting and financial regulations.

75. Subject to the other provisions of these Regulations, the following provisions of the Financial Services (Collective Investment Schemes Administrators) Regulations 2020 apply to AIFMs with any necessary modifications–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) regulation 2 (interpretation);

(b) regulations 24 to 42 of Part 4 (corporate governance and risk management);

(c) regulations 43 to 51 of Part 5 (prudential requirements);

(d) regulations 53 to 60 of Part 6 (reporting and notification); and

(e) the Schedule (form and content of financial statements), including Appendix 1 and Appendix 2.

The Register: AIFMs.

76.(1) This regulation makes provision as to the contents of the Register in connection with the activities of AIFMs.

(2) The Register must contain such information, as the GFSC considers appropriate and must include, at least, a list of AIFMs.

(3) The Register must identify the activities to which an AIFM's Part 7 permission relates.

(4) The Register must include details of any variation or cancellation of an AIFM's Part 7 permission.

(5) If it appears to the GFSC that a person in respect of whom there is an entry in the Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect to whom that provision applies, the GFSC may remove the entry from the Register.

Administration

Duty to monitor compliance.

77. The GFSC must establish appropriate methods to monitor that AIFMs comply with their obligations under these Regulations.

Responsibility for AIFMs.

78.(1) The prudential supervision of a Gibraltar AIFM in accordance with these Regulations is the responsibility of the GFSC.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(2) Sub-regulation (1) applies whether or not the AIFM manages or markets AIFs in third countries.

Information.

79.(1) The GFSC may require a non-Gibraltar AIFM managing or marketing AIFs in Gibraltar to provide the information necessary for the supervision of the AIFM's compliance with the applicable legal and regulatory provisions for which the GFSC is responsible.

(2) *Omitted*

Notifications.

80. A notification which is to be given to the GFSC in accordance with these Regulations must–

(a) be made in such manner as the GFSC may direct; and

(b) contain or be accompanied by such information as the GFSC may direct.

Action in relation to breaches by non-Gibraltar AIFMs.

81.(1) Where the GFSC ascertains that a non-Gibraltar AIFM managing or marketing AIFs in Gibraltar, is in breach of a legal or regulatory provision in relation to which the GFSC has responsibility for supervising compliance, the GFSC must require the AIFM to put an end to the breach.

(2) *Omitted*.

(3) The GFSC must, at the earliest opportunity–

(a) take all appropriate measures to ensure that an AIFM puts an end to the breach;

(b) *Omitted*

(c) request any necessary information from the relevant third country supervisory authorities.

(4) If, despite measures taken by the supervisory authorities of the non-Gibraltar AIFM or because such measures prove to be inadequate or are not available in that third country, the AIFM persists in breaching legal or regulatory provisions in force in Gibraltar, the GFSC may–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) take appropriate measures, including those laid down in the Act and in regulations 69 to 74, to prevent or penalise further irregularities and, in so far as necessary, to prevent that AIFM from initiating any further transactions in Gibraltar; and

(b) where the function carried out in Gibraltar is the management of AIFs, require the AIFM to cease managing those AIFs.

(5) *Omitted*.

(6) *Omitted*.

(7) If despite the measures taken by the supervisory authorities of a non-Gibraltar AIFM or because such measures prove to be inadequate, or because the supervisory authorities of a non-Gibraltar AIFM fail to act within a reasonable timeframe, the AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant AIF, the financial stability or the integrity of the market in Gibraltar, the GFSC may take all appropriate measures needed in order to protect the investors of the relevant AIF, the financial stability and the integrity of the market in Gibraltar, including the possibility of preventing the AIFM concerned to further market the units or shares of the relevant AIF in Gibraltar.

82. *Omitted*.

83. *Omitted*.

84. *Omitted*.

85. *Omitted*.

Information

Transfer and retention of personal data.

86.(1) The GFSC must apply the data protection legislation when transferring personal data between supervisory authorities.

(2) Data must be retained for a maximum period of five years.

Disclosure of information to third countries.

87.(1) The GFSC may transfer to a third country data and the analysis of data on a case-by-case basis where–

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(a) the conditions laid down in the data protection legislation are met; and

(b) the GFSC is satisfied that the transfer is necessary for the purpose of these Regulations (and the third country must not transfer the data to another third country without the express written authorisation of the GFSC).

88. *Omitted*.

Final provisions

89. *Omitted*.

90. *Omitted*.

SCHEDULE

PART 1
INVESTMENT MANAGEMENT AND OTHER FUNCTIONS

1. Investment management functions which an AIFM shall at least perform when managing an AIF–

(a) portfolio management;

(b) risk management.

2. Other functions that an AIFM may additionally perform in the course of the collective management of an AIF–

(a) Administration–

(i) legal and fund management accounting services;

(ii) customer inquiries;

(iii) valuation and pricing, including tax returns;

(iv) regulatory compliance monitoring;

(v) maintenance of unit-/shareholder register;

(vi) distribution of income;

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

(vii) unit/shares issues and redemptions;

(viii) contract settlements, including certificate dispatch;

(ix) record keeping;

(b) Marketing;

(c) Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

PART 2
REMUNERATION POLICY

1. When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of AIFs they manage, AIFMs shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities–

(a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk- taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage;

(b) the remuneration policy is in line with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages or the investors of such AIFs, and includes measures to avoid conflicts of interest;

(c) the management body of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;

(d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

procedures for remuneration adopted by the management body in its supervisory function;

(e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;

(f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee;

(g) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF concerned and of the overall results of the AIFM, and when assessing individual performance, financial as well as non-financial criteria are taken into account;

(h) the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the AIFs managed by the AIFM in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks;

(i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year;

(j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;

(k) payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;

(l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;

(m) subject to the legal structure of the AIF and its rules or instruments of incorporation, a substantial portion, and in any event at least 50% of any variable

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

remuneration consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments, unless the management of AIFs accounts for less than 50% of the total portfolio managed by the AIFM, in which case the minimum of 50% does not apply.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the AIFM and the AIFs it manages and the investors of such AIFs. The GFSC may exercise its powers under Part 7 of the Act to place restrictions on the types and designs of those instruments or ban certain instruments as appropriate. This point shall be applied to both the portion of the variable remuneration component deferred in line with point (n) and the portion of the variable remuneration component not deferred;

(n) a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question.

The period referred to in this point shall be at least three to five years unless the life cycle of the AIF concerned is shorter; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount is deferred;

(o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole, and justified according to the performance of the business unit, the AIF and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

(p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the AIFM and the AIFs it manages.

If the employee leaves the AIFM before retirement, discretionary pension benefits shall be held by the AIFM for a period of five years in the form of instruments defined in point (m). In the case of an employee reaching retirement, discretionary

© Government of Gibraltar (www.gibraltarlaws.gov.gi)

pension benefits shall be paid to the employee in the form of instruments defined in point (m), subject to a five year retention period;

(q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

(r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of these Regulations.

2. The principles set out in paragraph 1 shall apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself, including carried interest, and to any transfer of units or shares of the AIF, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profiles of the AIF that they manage.

3. AIFMs that are significant in terms of their size or the size of the AIFs they manage, their internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the AIFM concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the AIFM concerned.

© Government of Gibraltar (www.gibraltarlaws.gov.gi)