

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 483 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (ALTERNATIVE INVESTMENT FUND MANAGERS) (AMENDMENT) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred on the Minister by section 11 of the European Union (Withdrawal) Act 2019, the Minister has made these Regulations—

Title.

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

Commencement.

2. These Regulations come into operation on 1st January 2021.

Amendment of the Financial Services (Alternative Investment Fund Managers) Regulations 2020.

3. The Financial Services (Alternative Investment Fund Managers) Regulations 2020 are amended as follows.

Amendment of Part 1.

4.(1) In regulation 2—

(a) in sub-regulation (1) omit “other than regulations 60, 61 and 63 to 67,”; and

(b) omit sub-regulation (2).

(2) In regulation 4—

(a) in sub-regulation (1)—

(i) in the definition of “AIF”, for “(b) does not require authorisation under Article 5 of the UCITS Directive;” substitute—

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

- (ii) in the definition of “the Codified Company Law Directive”, for “as amended from time to time” substitute “as that Directive applied in Gibraltar immediately before IP completion day”;
- (iii) omit the definition of “competent authorities”
- (iv) in the definition of “the CRA Regulation” for “as amended from time to time” substitute “as it forms part of the law of Gibraltar after IP completion day”;
- (v) omit the definition of “EEA AIF”;
- (vi) omit the definition of “EEA AIFM”;
- (vii) after the definition of “financial instruments” insert–
 - ““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;”;
- (viii) for the definition of “Gibraltar AIFM” substitute–
 - ““Gibraltar AIFM” means an AIFM which has its registered office in Gibraltar;”;
- (ix) in the definition of “holding company” in paragraph (a) for “the EEA” substitute “Gibraltar”;
- (x) omit the definition of “home State”;
- (xi) omit the definition of “home State of the AIFM”;
- (xii) omit the definition of “host State of the AIFM”;
- (xiii) in the definition of “the Information and Consultation of Employees Directive” for “as amended from time to time” substitute “as that Directive applied in Gibraltar immediately before IP completion day”;
- (xiv) after the definition of “initial capital” insert–
 - ““IORP Regulations” means the Financial Services (Occupational Pensions Institutions) Regulations 2020;”;
- (xv) for the definition of “issuer” substitute–

““issuer” means an issuer within the meaning of Article 2.1(d) of the Transparency Directive, where that issuer has its registered office in Gibraltar and its shares are admitted to trading on a regulated market in Gibraltar;”;

- (xvi) for the definition of “legal representative” substitute–

““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 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;”;

- (xvii) in the definition of “leverage” for “measures adopted by the European Commission in accordance with Article 4.3 of the Directive” substitute “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;”;

- (xviii) in the definition of “marketing” for “the EEA” substitute “Gibraltar”;

- (xix) omit the definition of “EEA State of reference”;

- (xx) omit the definition of “non-EEA AIF” and after the definition of “Master AIF” insert –

““non-Gibraltar AIF” means an AIF which is not a Gibraltar AIF;”;

- (xxi) omit the definition of “non-EEA AIFM”;

- (xxii) in the definition of “non-Gibraltar AIFM” for “of which Gibraltar is a host State but not the home State” substitute “which is not a Gibraltar AIFM”;

- (xxiii) in the definition of “non-listed company” for “the EEA” substitute “Gibraltar”;

- (xxiv) in the definition of “securitisation special purpose entities” after “18 October 2013” insert “as that Regulation forms part of the law of Gibraltar after IP completion day”;

- (xxv) in the definition of “the Settlement Finality Directive” for “as amended from time to time” substitute “as that Directive applied in Gibraltar immediately before IP completion day”;

(xxvi) for the definition of “supervisory authorities” substitute–

““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, 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;”

(xxvii) after the definition of “supervisory authorities” insert–

““third country” means a country or territory outside Gibraltar;”; and

(xxviii) in the definition of “UCITS” for “Article 5 of the UCITS Directive” substitute “Part 18 of the Act”.

(b) omit sub-regulation (3); and

(c) for sub-regulation (5) substitute–

“(5) Any question arising as to the determination of types of AIFM or the application of the Regulations must be resolved in accordance with any technical standards concerning these topics.”.

(3) For sub-regulation 5(1) substitute–

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

(4) In regulation 6(1)–

- (a) in sub-regulation (b)(i), for “Article 2(1) of that Directive” substitute “regulation 2(1) of the IORP Regulations”;
- (b) in sub-regulation (ii) for “Article 32 of that Directive” substitute “regulation 29 of the IORP Regulations”; and
- (c) in sub-regulation (c) omit “the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and”.

(5) In regulation 8–

- (a) in sub-regulation (4), for “opts in to the Directive (in accordance with Article 3(4) and (5) and the implementing acts adopted by the European Commission for the purposes of Article 3(5))” substitute “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)”; and
- (b) in sub-regulation (5) omit “the AIFM Directive or”.

(6) In regulation 9 omit “and the Directive”.

(7) In regulation 10–

- (a) in sub-regulation (1) omit “and the Directive”;
- (b) for sub-regulation (3) substitute–

“(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.”;

- (c) for sub-regulation (5) substitute–

“(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”.

Amendment of Part 2.

5.(1) In regulation 12–

- (a) in sub-regulation (4), for “Article 32 of the IORP Directive” substitute “regulation 29 of the IORP Regulations”;
 - (b) in sub-regulation (6) omit “and the Directive”;
 - (c) in sub-regulation (7)–
 - (i) for paragraph (a) substitute–

“(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;”;
 - (ii) for paragraph (b) substitute–

“(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;”;
 - (iii) for “the EEA” substitute “Gibraltar”; and
 - (d) omit sub-regulation (8).
- (2) In regulation 13–
- (a) in sub-regulation (1)(b), for “for which Gibraltar is the home State” substitute “which is a Gibraltar AIFM”;
 - (b) in sub-regulation (3)(a) omit “EEA States or”; and
 - (c) omit sub-regulation (5).
- (3) In regulation 14–
- (a) omit sub-regulations (2) and (3); and
 - (b) for sub-regulation (8) substitute–

“(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.”.

(4) In regulation 15–

- (a) in sub-regulation (5), after “Directive 2006/49/EC” insert “as that Directive applied in Gibraltar immediately before IP completion day”;
- (b) in sub-regulation (6), in paragraph (a) omit “or another EEA State” and in paragraph (b), for “European Union” substitute “Gibraltar”;
- (c) in sub-regulation (7) omit “and the Directive”; and
- (d) for sub-regulation (9) substitute–

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

Amendment of Part 3.

6.(1) Omit regulation 19.

(2) In regulation 20–

- (a) for the heading, substitute–

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

- (b) in sub-regulation (1), for “not established in an EEA State” substitute “established in a third country”.

(3) In regulation 21(1), for “a notification under regulation 19 or 20” substitute “following an authorisation under regulation 20”.

(4) In regulation 22(1), for “a notification under regulation 19 or 20” substitute “following an authorisation under regulation 20”.

Amendment of Part 4.

7.(1) Omit regulation 35(3).

(2) In regulation 36–

(a) for sub-regulation (1) substitute–

“(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.”;

(b) in sub-regulation (4)–

(i) in paragraph (a) after “Gibraltar;” insert “or”; and

(ii) omit paragraph (b);

(c) in sub-regulation (8), for “non-EEA AIFs” substitute “non-Gibraltar AIFs”; and

(d) in sub-regulation (9), for “measures adopted by the European Commission in accordance with Article 22.4 of the Directive” substitute “technical standards specifying the content and format of the annual report.”.

(3) In regulation 37–

(a) in sub-regulation (1), for “EEA AIFs” substitute “Gibraltar AIFs” and for “in the EEA” substitute “in Gibraltar”;

(b) in sub-regulation (6), omit “EU”;

(c) in sub-regulation (7), for “EEA AIFs” substitute “Gibraltar AIFs” and for “the EEA” substitute “Gibraltar”;

(d) in sub-regulation (8), in both places it occurs, for “EEA AIFs” substitute “Gibraltar AIF”; and

(e) in sub-regulation (9), for “measures adopted by the European Commission in accordance with Article 23.6 of the Directive” substitute “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).”.

(4) In regulation 38–

- (a) for sub-regulation (1) substitute–

“(1) AIFMs may market to experienced investors in Gibraltar units or shares of AIFs that they manage in accordance with these Regulations.”;
 - (b) in sub-regulation (3), for “18 to 20, 57, 58, 61, 62, 65, 66 and 68” substitute “18, 20, 62 and 68”;
 - (c) omit sub-regulation (5); and
 - (d) in sub-regulation (6) omit “(but prescribed requirements imposed on EEA AIFs established in another EEA State and marketed on a cross-border basis may not be stricter than or additional to those imposed on AIFs marketed in Gibraltar)”.
- (5) In regulation 39–
- (a) for sub-regulation (1) substitute–

“(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.”; and
 - (b) in sub-regulation (2), for “18 to 20, 57, 58, 61, 62, 65, 66 and 68” substitute “18, 20, 62 and 68”.

Amendment of Part 5.

- 8.(1) For regulation 40(2) substitute–

“(2) AIFMs must have regard to any guidance issued by the GFSC in accordance with Article 13.2 of the Directive.”.

- (2) In regulation 41(8), for “measures adopted by the European Commission in accordance with Article 14.4 of the Directive” substitute “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.”.

- (3) For regulation 42(8) substitute–

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

- (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).”.

(4) For regulation 43(4) substitute—

“(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).”.

(5) In regulation 44, for “measures adopted by the European Commission under Article 17 of the Directive (investment in securitisation positions)” substitute “any technical standards concerning”.

(6) For regulation 45(2) for substitute—

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

(7) For regulation 46(16) substitute—

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

- (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.”.

(8) For regulation 47(10) substitute—

“(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).”.
- (9) In regulation 48–
- (a) for sub-regulation (3)(a) substitute–
“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) for sub-regulation (3)(b) substitute–
“(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 capital adequacy requirements in accordance with Article 20(1) of Directive 2006/49/EC, as that Directive applied in Gibraltar immediately before IP completion day, including capital requirements for operational risks; and
 - (ii) has own funds not less than the amount of initial capital referred to regulation 19(2) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020; or”;
 - (c) for in sub-regulation (3)(c) substitute–
“(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.”;
 - (d) in sub-regulation (4), for “non-EEA AIFs” substitute for “non-Gibraltar AIFs” and omit “(and without limiting sub-regulation (9)(b))”;
 - (e) in sub-regulation (9)–
 - (a) in paragraph (a), for “an EEA AIF for which Gibraltar is its home State” substitute “a Gibraltar AIF”;
 - (b) for paragraph (b) substitute “(b) or non-Gibraltar AIFs managed by a Gibraltar AIFM, the third country where the AIF is established or Gibraltar.”; and
 - (c) omit sub-regulation 9(c);

- (f) in sub-regulation (10)–
 - (a) for paragraph (a) substitute “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) in sub-regulation (10)(b), for “European Union” substitute “Gibraltar”; and
 - (c) for sub-regulation (10)(d) substitute–
 - “(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;”;
- (g) omit sub-regulation (11);
- (h) in sub-regulation (12), for “implementing acts adopted under Article 21.6 of the Directive” substitute “technical standards specifying that prudential regulation and supervision of a third country have the same effect as Gibraltar law and are effectively enforced.”;
- (i) in sub-regulation (13), after paragraph (b) insert–
 - “(c) in sub-regulation (b) references to “Directive 2006/73/EC” shall mean references to that Directive as it applied in Gibraltar immediately before IP completion day.”;
- (j) after sub-regulation (15)(a)(ii) insert–
 - “(iii) in sub-regulation (15)(a)(ii) references to “Directive 2006/73/EC” shall mean references to that Directive as it applied in Gibraltar immediately before IP completion day.”;
- (k) in sub-regulation (29) omit “; where the GFSC is not the competent authority of the AIF or the AIFM, the GFSC must share the information received without delay with the competent authorities of the AIF and the AIFM”; and
- (l) for sub-regulation (30) substitute–
 - “(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);
 - (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).”.

(10) In regulation 50—

- (a) for the heading substitute—

“Reporting obligations to the GFSC”;
- (b) in sub-regulation (3), for “EEA AIFs” substitute “Gibraltar AIFs” and for “the EEA” substitute “Gibraltar”;
- (c) for sub-regulation (4)(a) substitute—

“(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”;

(d) for sub-regulation (7) substitute—

“(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.”;

(e) in sub-regulation (8) omit “; and the GFSC must inform ESMA about the additional information requirements”;

(f) omit sub-regulation (9); and

(g) for sub-regulation (10) substitute—

“(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.”.

Amendment of Part 6.

9.(1) In regulation 51—

(a) for the heading substitute—

“Use of information by the GFSC and limits to leverage.”;

(b) omit sub-regulation (2);

(c) omit sub-regulation (3);

(d) in sub-regulation (4)(b) omit “, after having notified ESMA, the ESRB and the competent authorities of the relevant AIF,”;

(e) omit sub-regulations (5) to (8); and

(f) for sub-regulation (9) substitute—

“(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.”.

(2) In regulation 52(2)(a) after “6 May 2003” insert “as that Recommendation applied in Gibraltar immediately before IP completion day.”.

(3) In regulation 56(3)(c) after “Directive 77/91/EEC” insert “as that Directive applied in Gibraltar immediately before IP completion day.”.

Amendment of Part 7.

10.(1) For the heading substitute–

“MARKETING AND MANAGING AIFS”.

(2) Omit Chapter 1 of Part 7.

(3) Omit the cross-heading before regulation 60.

(4) In regulation 60–

(a) in the heading, for “EEA AIFMs managing non-EEA AIFs not marketed in EEA States” substitute–

“Gibraltar AIFMs managing non-Gibraltar AIFs”;

(b) for sub-regulation (1) substitute–

“(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.”; and

(c) for sub-regulation (2) substitute–

“(2) This regulation applies–

(a) subject to any technical standards concerning the cooperation arrangements referred to in sub-regulation (1); and

- (b) having regard to any guidance issued by the GFSC in accordance with Article 34.3 of the Directive.”.

(5) Omit regulation 61.

(6) In regulation 62–

- (a) in the heading, for “EEA States without passport of non-EEA AIFs managed by EEA AIFM” substitute “Gibraltar of non-Gibraltar AIFs managed by a Gibraltar AIFM”;

(b) for sub-regulation (1) substitute–

“(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 (and the Directive) 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
- (f) the third country where the non-Gibraltar AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.”;

(c) in sub-regulation (2), for “non-EEA” substitute “non-Gibraltar”;

(d) for sub-regulation (3) substitute–

“(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)."; and

(e) for sub-regulation (4) substitute–

“(4) This regulation applies–

- (a) subject to any technical standards concerning the cooperation arrangements referred to in sub-regulation (1); and
- (b) having regard to any guidance issued by the GFSC in accordance with Article 36.4 of the Directive.”.

(7) In regulation 63–

(a) for the heading substitute “Authorisation of non-Gibraltar AIFMs intending to manage Gibraltar AIFs”;

(b) for sub-regulation (1) substitute–

“(1) Non-Gibraltar AIFMs intending to manage Gibraltar AIFs must acquire prior authorisation by the GFSC in accordance with this regulation.”;

(c) in sub-regulation (2), for “non-EEA” substitute “non-Gibraltar”;

(d) for sub-regulation (3) substitute–

“(3) If and to the extent that compliance with a provision of these Regulations (or the Directive) 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 (or the Directive) 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;
- (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.”;
- (e) in sub-regulation (4), for “non-EEA” substitute “non-Gibraltar”, for “the EEA” substitute “Gibraltar”, for “competent authorities” substitute “GFSC” and for “EU” substitute “Gibraltar”;
- (f) omit sub-regulations (5) to (10);
- (g) for sub-regulation (11) substitute—

“(11) A non-Gibraltar AIFM intending to manage Gibraltar AIFs must submit a request for authorisation to the GFSC.”;
- (h) omit sub-regulations (12) to (15);
- (i) in sub-regulation (16)—
 - (i) omit paragraph (a);
 - (ii) in paragraph (b), for “the EEA State of reference” substitute “Gibraltar”;
 - (iii) for paragraph (c) substitute—

“(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;”;
 - (iv) for paragraph (d) substitute—

“(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;”;
 - (v) in paragraph (e), for “non-EEA” substitute “non-Gibraltar”;
 - (vi) in paragraph (f), for “non-EEA AIFM is established has signed an agreement with the EEA State of reference” substitute “non-Gibraltar AIFM is established has signed an agreement with Gibraltar”; and
 - (vii) in paragraph (g) for “competent authorities” substitute “GFSC”;
- (j) omit sub-regulations (17) and (18);
- (k) in sub-regulation (19)—

- (i) in paragraph (a)–
 - (aa) omit sub-paragraph (i);
 - (bb) in sub-paragraph (ii), for “non-EEA AIFM or the non-EEA AIF marketed in the EEA” substitute “non-Gibraltar AIFM”; and
 - (cc) in sub-paragraph (iii) omit “based on the regulatory technical standards developed by ESMA”; and
 - (ii) for paragraph (b) substitute–
 - “(b) the information referred to in regulation 13(3) may be limited to the Gibraltar AIFs the AIFM intends to manage;”;
 - (l) omit sub-regulations (20) to (34);
 - (m) in sub-regulation (35) omit “(if the EEA State of reference)”;
 - (n) in sub-regulation (36) for “EU” substitute “Gibraltar”;
 - (o) for sub-regulation (37) substitute–
 - “(4) This regulation applies–
 - (a) subject to any technical standards concerning–
 - (i) the cooperation arrangements referred to in sub-regulation (16)(d) and the minimum content of such arrangements;
 - (ii) 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 in regulations (36), (37) and (50); and
 - (iii) 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; and
 - (b) having regard to any guidance issued by the GFSC in accordance with Article 37.16 of the Directive.”; and
 - (q) omit sub-regulations (38) and (39).
- (8) Omit regulations 64 to 67.

(9) In regulation 68–

(a) in the heading, for “EEA States without passport of AIFs managed by non-EEA AIFM.” substitute “Gibraltar of AIFs managed by a non-Gibraltar AIFM.”;

(b) in sub-regulation (1)–

(i) for the opening words substitute–

“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–”;

(ii) for paragraph (a) substitute–

“(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;”;

(iii) for paragraph (b) substitute–

“(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 (and the Directive);”;

(iv) in sub-regulation 1(c), in both places it occurs for “non-EEA” substitute “non-Gibraltar”;

(c) omit sub-regulation (2);

(d) in sub-regulation (3), for “non-EEA” substitute “non-Gibraltar”;

(e) for sub-regulation (4) substitute–

“(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);
 - (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)."; and
- (f) for sub-regulation (5) substitute–
- “(5) This regulation applies–
- (a) subject to any technical standards concerning the cooperation arrangements referred to in sub-regulation (1); and
 - (b) having regard to any guidance issued by the GFSC in accordance with Article 42.4 of the Directive.”.

Amendment of Part 8.

11. In regulation 69–

- (a) in sub-regulation (1)(b), for “competent” substitute “supervisory”;
 - (b) omit sub-regulation (5);
 - (c) for sub-regulation (7) substitute–
- “(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.”;
- (d) in sub-regulation (9), for “European Commission” substitute “Minister”; and

- (e) omit sub-regulation (10).

Amendment of Part 9.

12.(1) In regulation 77–

- (a) re-number sub-regulation (1) as regulation 77; and
- (b) omit sub-regulation (2).

(2) In regulation 78–

- (a) for sub-regulation (2) substitute–

“Sub-regulation (1) applies whether or not the AIFM manages or markets AIFs in third countries.”; and

- (b) omit sub-regulation (3).

(3) In regulation 79–

- (a) in sub-regulation (1) omit “, whether or not through a branch,”; and
- (b) omit sub-regulation (2).

(4) In regulation 81 –

- (a) for sub-regulation (1) substitute–

“(1) Where the GFSC ascertains that a non-Gibraltar AIFM managing or marketing AIFs in Gibraltar, is in breach of one of the rules in relation to which the GFSC has responsibility for supervising compliance, the GFSC must require the AIFM to put an end to the breach.”;

- (b) omit sub-regulation (2);

- (c) in sub-regulation (3)(a) omit “provides information requested by the competent authorities of its host State pursuant to Article 45 of the Directive or”;

- (d) omit sub-regulation (3)(b);

- (e) for sub-regulation (4) substitute–

“(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 continues to refuse to provide information requested by the GFSC under Article 45.3 of the Directive, or

persists in breaching legal or regulatory provisions in force in Gibraltar pursuant to Article 45.4 of the Directive, the GFSC may–

- (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.”;
- (f) omit sub-regulations (5) and (6);
- (g) for sub-regulation (7) substitute–

“(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.”; and
- (h) omit sub-regulations (8) to (10).

(5) Omit regulations 82 to 85.

(6) In regulation 86, for “competent” substitute “supervisory”.

(7) For regulation 87 substitute–

“87. The GFSC may transfer to a third country data and the analysis of data on a case-by-case basis where–

- (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 or the Directive (and the third country must not transfer the data to another third country without the express written authorisation of the GFSC).”
- (8) Omit regulation 88 to 90.

Amendment of Schedule.

13.(1) In paragraph 1. (m) of Part 2 of the Schedule, for “EEA States or their competent authorities may” substitute “The GFSC may exercise its powers under Part 7 of the Act to”.

(2) Omit Parts 3 and 4 of the Schedule.

Dated: 24th December 2020.

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These regulations are made under the European Union (Withdrawal) Act 2019 and address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar’s withdrawal from the European Union. The regulations amend the Financial Services (Alternative Investment Fund Managers) Regulations 2020, which give effect in Gibraltar to Directive 2011/61/EU.