

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 545 OF 2020.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (UCITS) (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 (UCITS) (Amendment) (EU Exit) Regulations 2020.

Commencement.

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

Amendment of the Financial Services (UCITS) Regulations 2020.

3.(1) The Financial Services (UCITS) Regulations 2020 are amended as follows.

(2) In regulation 3(1)—

- (a) in the definition of “branch” omit “in the same EEA State” and “with its head office in another EEA State”;
- (b) in the definition of “Commission Regulation (EU) No 583/2010” for “as amended from time to time” substitute “as it forms part of the law of Gibraltar after IP completion day”;
- (c) in the definition of “Commission Regulation (EU) No 584/2010” for “as amended from time to time” substitute “as it forms part of the law of Gibraltar after IP completion day”;
- (d) for the definition of “competent authority” substitute—

““competent authority” means—

- (a) in Gibraltar, the GFSC; and

- (b) in a third country, the competent authority in that third country and where appropriate, designed as such under Article 97 of the UCITS Directive.”;
- (e) in the definition “credit rating agency” for “as amended from time to time” substitute “as it forms part of the law of Gibraltar after IP completion day”;
- (f) omit the definition of “cross-border merger”;
- (g) in the definition of “Directive 98/26/EC” for “as amended from time to time” substitute “as that Directive applied in Gibraltar immediately before IP completion day”;
- (h) in the definition of “Directive 2006/73/EC” for “as amended from time to time” substitute “as that Directive applied in Gibraltar immediately before IP completion day”;
- (i) in the definition of “Directive 2010/43/EU” for “as amended from time to time” substitute “as that Directive applied in Gibraltar immediately before IP completion day”;
- (j) omit the definition of “domestic merger”;
- (k) omit the definition of “EEA UCITS management company”;
- (l) in the definition of “home State” for “EEA State” substitute “third country”;
- (m) in the definition of “host State” for “an EEA State” substitute “a third country”;
- (n) in the definition of “management company’s home State” for “EEA State” substitute “third country”;
- (o) for the definition of “management company’s host State” substitute–
 - ““management company’s host State” means–
 - (a) Gibraltar, in the case of a management company which has a branch in Gibraltar and has its registered office in a third country; or
 - (b) a third country in which a management company has a branch;”;
- (p) after the definition of “money market instrument” insert–
 - ““non-Gibraltar UCITS management company” means a management company that is not a Gibraltar UCITS management company;”;
- (q) after the definition of “rebalancing of the portfolio” insert–

““recognised credit institution” means–

- (a) a credit institution with Part 7 permission to carry on the regulated activity of accepting deposits;
- (b) a central bank of a state that is a member of the Organisation for Economic Co-operation and Development (an “OECD state”);
- (c) a credit institution that is supervised by the central bank or other banking regulator of an OECD state;
- (d) any credit institution that–
 - (i) is subject to regulation by the banking regulator of a country or territory that is not an OECD state;
 - (ii) is required by the law of the country or territory in which it is established to provide audited accounts;
 - (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time);
 - (iv) has a surplus of revenue over expenditure for the last two financial years; and
 - (v) has an annual report which is not materially disqualified;”;
- (r) after the definition of “synthetic risk and reward indicators” insert–

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

(3) In regulation 3(7), for “Articles 9 and 10 of the Transparency Directive” substitute “sections 363 and 364 of the Act”.

(4) In regulation 4, after “Directive 2010/43/EU” insert “as that Directive applied in Gibraltar immediately before IP completion day”.

(5) In regulation 7(3)–

- (a) in paragraph (a), after “;” insert “and”;
- (b) in paragraph (b), for “; and” substitute “.”; and
- (c) omit paragraph (3)(c).

(6) In regulation 9–

(a) in sub-regulation (1), for paragraph (b) substitute–

“(b) subject to the provisions of these Regulations, a non-Gibraltar UCITS management company that has a place of business in Gibraltar and has Part 7 permission to carry on the regulated activity in paragraph 93 of Schedule 2 to the Act, of managing a UCITS.”;

(b) in sub-regulation (4)(a), for “another EEA State” substitute “a third country”; and

(c) in sub-regulation 6–

(i) in paragraph (a), for “another EEA State” substitute “a third country”; and

(ii) in paragraph (b), for “EEA State” substitute “third country”.

(7) In regulation 12(4)–

(a) in the opening words, for “credit institution” substitute “recognised credit institution”; and

(b) for paragraphs (a) and (b) substitute–

“(a) in Gibraltar; or

(b) in a third country where it is subject to prudential rules considered by the GFSC to be equivalent to those in force in Gibraltar.”.

(8) In regulation 14–

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

“(2) Where the GFSC is evaluating whether or not to give Part 7 permission to a management company, it may consult the competent authority of any third country where the management company–

(a) is a subsidiary of another management company, an investment firm, a recognised credit institution or an insurance undertaking authorised in that third country;

(b) is a subsidiary of the parent undertaking of another management company, an investment firm, a recognised credit institution or an insurance undertaking authorised in that third country; or

- (c) is a company controlled by the same persons controlling another management company, investment firm, recognised credit institution or insurance undertaking authorised in that third country.”; and
 - (b) omit sub-regulation (3).
- (9) In regulation 17(2)–
 - (a) in the opening words, omit “or elsewhere in the EEA”; and
 - (b) in paragraph (d)(i), for “non-EEA State” substitute “third country”.
- (10) In regulation 20–
 - (a) in paragraph (b), omit “where the management company is authorised elsewhere in the EEA”; and
 - (b) omit paragraph (c).
- (11) Omit regulation 21(2).
- (12) In regulation 30(2)(b), omit “, in each EEA State in which the units are marketed,”.
- (13) For regulation 33 substitute–

“33. A UCITS must send its prospectus and any amendments to it, as well as its annual and half-yearly reports, to the GFSC.”.
- (14) In regulation 37(7) omit “, in all EEA States where the UCITS is notified to market units in accordance with regulation 137”.
- (15) In regulation 41(1) omit “that has Gibraltar as its home State”.
- (16) In regulation 43–
 - (a) in sub-regulation (2)(b), omit “, where Gibraltar is the UCITS’ home state,”; and
 - (b) in sub-regulation (4), for “EEA States” substitute “third countries”.
- (17) In regulation 59(1)–
 - (a) in paragraph (a) omit “and the GFSC must, without delay, transmit the information to the competent authority of home State of any UCITS managed by that management company”; and
 - (b) in paragraph (d), for “non-EEA” substitute “third country” and for “State” substitute “third country”.

(18) For regulation 62(3) substitute–

“(3) A remuneration committee that is set up having regard to any guidance issued by the GFSC in accordance with Article 14a(4) of the UCITS Directive must be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function.”.

(19) In regulation 63–

(a) in sub-regulation (4), for paragraphs (b) and (c) substitute–

“(b) opened at a recognised credit institution; and

(c) maintained in accordance with the principles set out in regulation 30 of the Financial Services (Investment Services) Regulations 2020.”;

(b) in sub-regulation (6)(a)(ii), for “Article 16 of Directive 2006/73/EC” substitute “regulation 30 of the Financial Services (Investment Services) Regulations 2020”; and

(c) in sub-regulation (11) omit “located within the EEA”.

(20) In regulation 65–

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

“(1) A depositary may only offer services in Gibraltar to a UCITS where the depositary has Part 7 permission to carry on the regulated activity in paragraph 94 of Schedule 2 to the Act.”;

(b) in sub-regulation (2)–

(i) for paragraph (b) substitute –

“(b) a credit institution with Part 7 permission to carry on the regulated activity of accepting deposits in paragraph 3 of Schedule 2 to the Act; or”; and

(ii) in paragraph (c)–

(iia) in the opening words, for “authorised by the GFSC to carry out depositary activities under these Regulations” substitute “with Part 7 permission to carry on the regulated activity in paragraph 94 of Schedule 2 to the Act”; and

- (iib) in sub-paragraph (ii), for “Article 28.2 of the Capital Requirements Directive” substitute “regulation 19(2) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”.

(21) In regulation 69–

- (a) in the heading, for “EEA Authorities” substitute “the GFSC”;

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

“(1) The depository 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.”; and

- (c) omit sub-regulation (2).

(22) In regulation 71(2), for “either the competent authority of a management company’s home State or the competent authority of the UCITS’ home state” substitute “the GFSC”.

(23) In regulation 81(1)–

- (a) in paragraph (a), at the end insert “in Gibraltar”;

- (b) omit paragraph (b);

- (c) in paragraph (c), in both places it occurs, for “non-EEA country” substitute “third country”;

- (d) in paragraph (d)(i)(aa), for “competent authority” substitute “GFSC”;

- (e) in paragraph (e)–

- (i) in the opening words, omit “authorised according to the UCITS Directive”

- (ii) in the opening words, for “290(2) and (3)” substitute “292(1)(a) to (c)”;

- (iii) in the opening words, omit “whether or not established in an EEA State,”; and

- (iv) in paragraph (ii), for “of the UCITS Directive” substitute “set out in these Regulations.”;

- (f) for paragraph (f) substitute–

“(f) deposits with recognised credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months.”;

- (g) in paragraph (g), for “paragraphs (a), (b) and (c)” substitute “paragraphs (a) or (c); and
- (h) in paragraph (h)–
 - (i) for sub-paragraph (i) substitute–
 - “(i) issued or guaranteed by–
 - (aa) the government of Gibraltar or the government of a country or territory outside Gibraltar;
 - (bb) a central, regional or local authority or central bank of a country or territory outside Gibraltar;
 - (cc) the European Union, the European Central Bank or the European Investment Bank; or
 - (dd) a public international body to which Gibraltar, the United Kingdom or one or more EEA States belongs;”;
 - (ii) in sub-paragraph (ii), for “paragraphs (a), (b) or (c)” substitute “paragraphs (a) or (c)”; and
 - (iii) for sub-paragraph (iii) substitute–
 - “(iii) issued or guaranteed by an establishment which is subject to and complies with prudential rules considered by the GFSC to be at least as stringent as those laid down by or under the Act; or”.
- (24) In regulation 83–
 - (a) in the opening words, for “European Union law” substitute “or under the Act”; and
 - (b) in paragraph (d), for “European Union law” substitute “or under the Act”.
- (25) Omit regulation 86(2).
- (26) In regulation 89–
 - (a) in sub-regulation (2)(a), for “credit institution” substitute “recognised credit institution”;
 - (b) in sub-regulation (4), for “non-EEA country” substitute “third country”; and
 - (c) in sub-regulation (5)–

- (i) in paragraph (a), in both places it occurs, before “credit institution” insert “recognised”; and
 - (ii) omit paragraph (d).
- (27) In regulation 92–
 - (a) in sub-regulation (1), in paragraph (a) for “an EEA State, one or more of an EEA State’s local authorities, a non-EEA country, or a public international body to which one or more EEA States belong” substitute “Gibraltar, an EEA State, one or more Gibraltar or EEA State local authorities, a third country, or a public international body to which Gibraltar or one or more EEA State belongs”;
 - (b) in sub-regulation (2), in paragraph (a) for “EEA States” substitute “countries or territories”; and
 - (c) in sub-regulation (3), for “the EEA States” substitute “the countries or territories”.
- (28) In regulation 94–
 - (a) in sub-regulation (2), for “other EEA States” substitute “third countries”;
 - (b) in sub-regulation (4)–
 - (i) in paragraph (a), for “an EEA State” substitute “Gibraltar”;
 - (ii) in paragraph (b), for “non-EEA country” substitute “third country”;
 - (iii) in paragraph (c) omit “to which one or more EEA States belong”; and
 - (iv) in paragraph (d), for “non-EEA” substitute “third”; and
 - (c) in sub-regulation (5), for “non-EEA” substitute “third”.
- (29) In regulation 100(2) omit “EEA”.
- (30) In regulation 105–
 - (a) in sub-regulation (1), for “EUMAR” substitute “the Market Abuse Regulation”;
and
 - (b) in sub-regulation (3), in paragraph (b), for “a EEA State” substitute “Gibraltar”.
- (31) In regulation 106(2), in paragraph (i), for “non-EEA state” substitute “third country”.

(32) In regulation 115(2), for “where Gibraltar is the management company’s home State, the management company” substitute “in the case of a Gibraltar UCITS management company, it”.

(33) In regulation 120(1) after “Directive 2007/16/EC” insert “as that Directive applied in Gibraltar immediately before IP completion day”.

(34) In Part 6, for the heading substitute “**THIRD COUNTRY PROVISIONS**”.

(35) Omit regulations 127 and 128.

(36) In regulation 129–

(a) in the title for “**Cross-border notifications: management companies**” substitute “**Management company notifications**”;

(b) in sub-regulation (1), for “another EEA State” substitute “a third country”;

(c) in sub-regulation (2)–

(i) in the opening words, for “another EEA State” substitute “a third country”;
and

(ii) in paragraph (a), for “another EEA State” substitute “a third country”;

(d) omit sub-regulations (3) to (6);

(e) in sub-regulation (7) omit “and to the competent authority of its host State at least one month before implementing the change”; and

(f) omit sub-regulation (8).

(37) In regulation 130–

(a) in sub-regulation (1)(a), for “EEA State” substitute “third country”;

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

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

“(4) Where the content of the information communicated in accordance with sub-regulation (1) is amended, the management company must give notice of the amendment in writing to the GFSC before implementing the change.”.

(38) In regulation 131–

- (a) in sub-regulation (1), for “another EEA State on a cross border basis by establishing a branch or under regulation 129” substitute “a third country”;
 - (b) in sub-regulation (3), for “another EEA State on a cross border basis by establishing a branch or under regulation 129” substitute “a third country”; and
 - (c) omit sub-regulation (8).
- (39) Omit regulations 132 to 135.
- (40) In regulation 137–
- (a) in sub-regulation (1)–
 - (i) in the opening words, for “another EEA State” substitute “a third country”; and
 - (ii) in paragraph (a), for “host State” substitute “third country”; and
 - (b) omit sub-regulations (3) to (8).
- (41) In regulation 138–
- (a) in the title, for “**Host State access to documents**” substitute “**Access to documents**”; and
 - (b) omit sub-regulation (2).
- (42) In regulation 139(1) omit “, and (7)”.
- (43) Omit regulations 140 to 146.
- (44) In regulation 148–
- (a) for sub-regulation (2) substitute–
 - “(2) The GFSC may take enforcement action against a UCITS where it contravenes the Act, these Regulations, the fund rules or any provision of its statutes.”;
 - (b) omit sub-regulation (3);
 - (c) in sub-regulation (4) omit “if Gibraltar is the home State of the management company or a UCITS managed by that company”; and
 - (d) omit sub-regulations (5) to (7).
- (45) Omit regulation 153(10).

- (46) In regulation 155 omit “cross-border and domestic”.
- (47) In regulation 156–
- (a) in sub-regulation (1), for “competent authority of the merging UCITS’ home State” substitute “GFSC”;
 - (b) in sub-regulation (2)–
 - (i) in the opening words, for “Where Gibraltar is the home State of the merging UCITS, the” substitute “The”; and
 - (ii) in paragraph (b) omit “if established in another EEA State”;
 - (c) for sub-regulation (3) substitute “(3) The information in sub-regulation (2) must be provided in a manner that enables the GFSC to read them in English.”;
 - (d) omit sub-regulations (4) to (7);
 - (e) in sub-regulation (8)–
 - (i) in the opening words, for “Where Gibraltar is the merging UCITS’ home State, the” substitute “The”;
 - (ii) omit paragraph (b); and
 - (iii) for paragraph (c) substitute–
 - “(c) the GFSC is satisfied with the proposed information to be provided to unitholders.”; and
 - (f) omit sub-regulation (9).
- (48) In regulation 159–
- (a) in sub-regulation (1), for “Where Gibraltar is the merging UCITS’ home State, the” substitute “The”; and
 - (b) in sub-regulation (3) omit “and to their respective EEA Authorities”.
- (49) In regulation 160–
- (a) in sub-regulation (2)(a) omit “competent authority of the merging UCITS’s home State has authorised the proposed merger, and where Gibraltar is the merging UCITS’ home State, where the”; and
 - (b) for sub-regulation (4) substitute–

“(4) Where the merging or receiving UCITS has been notified in accordance with regulation 137, the information referred to in sub-regulation (3) must be provided in the English language.”.

(50) In regulation 164–

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

“(1) The date on which a merger takes effect, and the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash payments, must be determined in accordance with the law of Gibraltar.”;

(b) in sub-regulation (2), for “Where Gibraltar is the receiving UCITS’ home State, the” substitute “The”; and

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

“(3) The GFSC must ensure that the entry into effect of the merger is made public through all appropriate means.”.

(51) For regulation 166(1) substitute–

“(1) Information to be provided to unitholders in accordance with regulation 160(1) must be written in a concise manner and in non-technical language that enables unitholders to make an informed judgement of the impact of the proposed merger on their investment.”.

(52) In regulation 172(2)(b), for “does not raise capital from the public in an EEA State, other than Gibraltar” substitute “only raises capital from the public in Gibraltar”.

(53) In regulation 173–

(a) in sub-regulation (1), for “Where Gibraltar is the home State of a feeder UCITS, the” substitute “The”; and

(b) omit sub-regulation (4).

(54) In regulation 174–

(a) in sub-regulation (6), for “Where Gibraltar is the home State of the feeder UCITS, the” substitute “The”;

(b) in sub-regulation (7), for “competent authority of the feeder UCITS’ home State” substitute “GFSC”;

- (c) in sub-regulation (8), for “competent authority of its feeder UCITS’ home State” substitute “GFSC”; and
 - (d) in sub-regulation (9), for “competent authority of the feeder UCITS’ home State” substitute “GFSC”.
- (55) In regulation 177(3) omit “, where Gibraltar is its home State,”.
- (56) In regulation 181–
- (a) for sub-regulation (1) substitute–
 - “(1) The master UCITS must immediately inform the GFSC of the identity of each feeder UCITS which invests in its units.”; and
 - (b) in sub-regulation (3), for “competent authority” substitute “GFSC”.
- (57) In regulation 182–
- (a) in sub-regulation (1), for “Where a master UCITS and the feeder UCITS are established in Gibraltar, the” substitute “The”; and
 - (b) omit sub-regulations (2) and (3).
- (58) In regulation 189–
- (a) in sub-regulation (1) for “Where a feeder UCITS and a master UCITS are established in Gibraltar, the” substitute “The”; and
 - (b) omit sub-regulation (2).
- (59) In regulation 196(4) omit “, where it is the competent authority of the feeder UCITS,”.
- (60) In regulation 198(6) omit “, where it is the competent authority of the feeder UCITS,”.
- (61) In regulation 200–
- (a) in sub-regulation (1)–
 - (i) omit “of the EEA State”; and
 - (ii) for “that EEA State” substitute “Gibraltar”; and
 - (b) in sub-regulation (2)–
 - (i) in paragraph (a), for “either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established” substitute “that of Gibraltar”; and

- (ii) in paragraph (b), for “the EEA State whose law is applicable to the information-sharing agreement” substitute “Gibraltar”.

(62) In regulation 203–

(a) in sub-regulation (1)–

- (i) in paragraph (a) omit “of the EEA State”; and
- (ii) in paragraph (b) for “that EEA State” substitute “Gibraltar”; and

(b) in sub-regulation (2)–

- (i) in paragraph (a), for “either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established” substitute “that of Gibraltar”; and
- (ii) in paragraph (b), for “the EEA State whose law is applicable to the information-sharing agreement” substitute “Gibraltar”.

(63) In regulation 206–

(a) omit sub-regulations (1) and (2);

(b) in sub-regulation (3)–

- (i) after “purpose” insert “of”; and
- (ii) for “another EEA State” substitute “a third country”;

(c) omit sub-regulation (4);

(d) in sub-regulation (5), for “another EEA State” substitute “a third country”; and

(e) omit sub-regulations (9) and (10).

(64) In regulation 207–

(a) in sub-regulation (2), in paragraph (c) for “another EEA State” substitute “a third country”;

(b) in sub-regulation (4), in paragraph (c) for “another EEA State” substitute “a third country”; and

(c) omit sub-regulation (6).

(65) In regulation 209(2), for “or the UCITS Directive” substitute “, the Act or equivalent laws in a country or territory outside of Gibraltar”.

(66) Omit regulations 211 and 212.

(67) In the Schedule—

(a) in Part A, in the table entry under row 1, in the second column, for “a EEA State other than the UCITS’ home State” substitute “in Gibraltar or in a third country”;
and

(b) in Part A, in paragraph 4, for “another EEA State” substitute “a third country”
and for “that EEA State” substitute “that third country”.

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 (UCITS) Regulations 2020, which give effect in Gibraltar to Directive 2009/65/EC.