

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,005 of 30th October, 1997

LEGAL NOTICE NO. 123 OF 1997.

FINANCIAL SERVICES ORDINANCE 1989

**FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES)
(AMENDMENT) REGULATIONS 1997**

In exercise of the powers conferred on him by Section 17 of the Financial Services Ordinance 1989, and all other enabling powers and for the purpose of completing transposition into the law of Gibraltar of Council Directive 85/611, the Governor has made the following regulations -

Title.

1. These regulations may be cited as the Financial Services (Collective Investment Schemes) (Amendment) Regulations 1997.

Amendment to regulation 58.

2. Regulation 58 of the Financial Services (Collective Investment Schemes) Regulations 1991 (hereinafter called "the principal Regulations") is amended in paragraph (a) by inserting after the words "body corporate" the following words -

"incorporated under the Companies Ordinance and having its head office in Gibraltar which is".

New Regulation 58A.

3. The principal Regulations are amended by inserting after regulation 58 the following new regulation -

"Power to delegate by the Manager.

58A.(1) Notwithstanding regulation 58 (a) the manager will be permitted, subject to any restriction in the trust deed or the

memorandum and articles of association as the case may be, and to the approval of the Authority, to delegate any of its functions to an entity or entities in Gibraltar or any Member State or elsewhere.

(2) If -

- (a) the manager delegates any function concerning the management of the property of the scheme; or
- (b) the manager delegates any function to the trustee or to an entity with which it or the trustee is closely linked,

the manager remains responsible, even though it could have satisfied the conditions in sub-regulation (3), for the acts or omissions of the delegate as if they were the acts or omissions of the manager.

(3) In the case of any delegation by the manager to which sub-regulation (2) does not apply, the manager, is not responsible for any act or omission of the delegate if the manager can show-

- (a) that it was reasonable for an agent to be employed for the function in question; and
- (b) that the agent was and remained competent to undertake the function in question, and
- (c) that the manager had taken reasonable care to ensure that the function in question was undertaken by the agent in a competent manner."

Amendment to regulation 67.

4. Regulation 67 of the principal Regulations is amended as follows -

- (a) by omitting paragraph (a) in sub-regulation (1) and substituting therefor the following paragraph -

"(a) incorporated under the Companies Ordinance and having its head office in Gibraltar and which is licensed under the Banking Ordinance; or"

- (b) by inserting in sub-regulation (2) after the words "body corporate", in the first place where it appears, the following words -

"incorporated under the Companies Ordinance and having its head office in Gibraltar".

New regulation 67A.

5. The principal Regulations are amended by inserting after regulation 67 the following new regulation -

"Power to delegate by the trustee or custodian.

67A.(1) Notwithstanding sub-regulation (1) (a) and (2) of regulation 67, the trustee or custodian will be permitted to delegate any of its functions to an entity or entities in Gibraltar or any Member State or elsewhere subject to the provisions of sub-regulation (2).

(2)(a) Subject to paragraph (b) and (c), the trustee may delegate any function to any person, including the manager.

(b) The trustee may not delegate to the manager -

(i) any function of oversight in respect of the manager, or

(ii) any function of custody or control of the property of the scheme,

nor may the trustee delegate any function in (i) to an entity with which the manager is closely linked.

(c) The trustee may not delegate to anyone the function of being a custodian of documents of title or documents evidencing title to property of the scheme unless the arrangements with the custodian prevent the custodian from releasing the documents into the possession of a third party without the consent of the trustee.

(d) This sub-regulation is subject to any restriction in the trust deed.

(3) If the trustee or the custodian delegates any function to the manager or an entity with which the trustee, the custodian or the manager is closely linked, the trustee or as the case may be the custodian, remains responsible, even though it could have satisfied the conditions in sub-regulation (4), for the acts or omissions of the delegate as if they were the acts or omissions of the trustee, or as the case may be of the custodian.

(4) In the case of any delegation by the trustee or the custodian to which sub-regulation (3) does not apply, the trustee, or as the case may be the custodian, is not responsible for any act or omission of the delegate if the trustee (or custodian) can show -

- (a) that it was reasonable for an agent to be employed for the function in question; and
- (b) that the agent was and remained competent to undertake the function in question, and
- (c) that the trustee (or custodian) had taken reasonable care to ensure that the function in question was undertaken by the agent in a competent manner."

Dated this 30th day of October, 1997.

By Command,

M J ROBINSON,

Deputy Governor.

