

**SECOND SUPPLEMENT TO THE  
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LEGAL NOTICE NO. 249 OF 2014.

**FINANCIAL SERVICES (INVESTMENT AND FIDUCIARY  
SERVICES) ACT**

**FINANCIAL SERVICES (ALTERNATIVE INVESTMENT FUND  
MANAGERS) (AMENDMENT) REGULATIONS 2014**

**ARRANGEMENT OF REGULATIONS**

Regulation

*Preliminary*

1. Title.
2. Commencement.
3. Interpretation – “the AIFM Regulations”.

*Amendments of AIFM Regulations*

4. Small AIFMs: National Private Placement Regime.
5. Minor and consequential amendments.

**SCHEDULE  
MINOR AND CONSEQUENTIAL AMENDMENTS**

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**FINANCIAL SERVICES (INVESTMENT AND FIDUCIARY SERVICES) ACT**

**FINANCIAL SERVICES (ALTERNATIVE INVESTMENT FUND MANAGERS) (AMENDMENT) REGULATIONS 2014**

In exercise of the powers conferred upon him by section 53 of the Financial Services (Investment and Fiduciary Services) Act as read with section 23(g)(i) and (ii) of the Interpretation and General Clauses Act, and in connection with the transposition into the law of Gibraltar provisions of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and related matters, the Minister has made the following Regulations—

*Preliminary*

**Title.**

1. These Regulations may be cited as the Financial Services (Alternative Investment Fund Managers) (Amendment) Regulations 2014.

**Commencement.**

2. These Regulations come into force on the day of publication; but—

- (a) provisions of these Regulations which amend provisions of the AIFM Regulations to which regulation 2(2) of those Regulations apply, come into force in accordance with that regulation; and
- (b) nothing in these Regulations affects the operation of the transitional provisions in regulation 68 of the AIFM Regulations.

**Interpretation – “the AIFM Regulations”.**

3. In these Regulations “the AIFM Regulations” means the Financial Services (Alternative Investment Fund Managers) Regulations 2013.

*Amendments of AIFM Regulations*

**Small AIFMs: National Private Placement Regime.**

4. After regulation 11 of the AIFM Regulations insert—

*“National Private Placement Regime*

**Conditions for the marketing in Gibraltar of AIFs managed by a small AIFM established in a Member State outside Gibraltar.**

- 11A.(1) A small AIFM established in a Member State outside Gibraltar may market to professional investors, in Gibraltar, the units or shares of AIFs it manages as soon as the conditions laid down in this regulation are met.
- (2) Before marketing an AIF in accordance with subregulation (1), a small AIFM must give written notification to the FSC, including confirmation that the small AIFM is responsible for the marketing of the AIF.
  - (3) The small AIFM must provide the FSC, in order to enable the FSC to monitor systematic risk effectively, with such information as the FSC 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 FSC may not give a direction under subregulation (3) that requires a small AIFM to provide information if the FSC is satisfied that there is no present or expected investment in an AIF as a result of marketing in reliance on subregulation (1).
  - (5) If there is a material change to the information provided in a notification under subregulation (1) the small AIFM must give written notification of the change to the FSC—

- (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.

**Conditions for the marketing in Gibraltar of AIFs managed by a small AIFM which is not established in a Member State.**

- 11B.(1) A small AIFM which is not established in a Member State may market to professional investors, in Gibraltar, the units or shares of AIFs it manages provided that the conditions laid down in this regulation are met.
- (2) Before marketing an AIF in accordance with subregulation (1), a small AIFM must submit a written application to the FSC, including confirmation that the small AIFM is responsible for the marketing of the AIF.
  - (3) The small AIFM must provide the FSC, in order to enable the FSC to monitor systematic risk effectively, with such information as the FSC 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 FSC may not give a direction under subregulation (3) that requires a small AIFM to provide information if the FSC is satisfied that there is no present or expected investment in an AIF as a result of marketing in reliance on subregulation (1).
  - (5) Following receipt of a complete application under subregulation (2), the FSC shall without unreasonable delay inform the small AIFM whether or not it may start marketing the AIF identified in the application in Gibraltar.

- (6) The FSC shall not authorise the marketing of the AIF if it considers it appropriate not to do so in order—
- (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 subregulation (1) the small AIFM must give written notification of the change to the FSC—
- (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.**

- 11C.(1) The FSC may revoke a small AIFM's entitlement to market an AIF following a notification under regulation 11A or 11B if it appears to the FSC that—
- (a) the small AIFM has contravened a provision which applies to it;
  - (b) the small AIFM has given the FSC 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 subregulation (1)(a) to (f), the FSC must give a warning notice to the small AIFM.
- (3) If the FSC decides to revoke a small AIFM's entitlement to market an AIF under subregulation (1)—
  - (a) it must give a decision notice to the small AIFM; and
  - (b) the small AIFM may appeal to the Supreme Court.

**Suspension of entitlement to market.**

11D.(1) The FSC may by notice (a "suspension notice") suspend a small AIFM's entitlement to market an AIF following a notification under regulation 11A or 11B, on any of the grounds in subregulation (2).

- (2) The grounds are that it appears to the FSC 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 FSC 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 provision of the suspension notice.
- (5) The FSC must be satisfied that the provision under subregulation (4) is necessary having regard to the grounds of suspension.
- (6) The small AIFM may appeal to the Supreme Court against the suspension notice.
- (7) A suspension notice must—
  - (a) give details of the suspension (including the provision made under subregulation (4));
  - (b) state the FSC's reasons for giving the suspension and for that provision;
  - (c) inform the small AIFM that it may make representations to the FSC within a specified period (which the FSC may extend);
  - (d) inform the small AIFM of the right to appeal to the Supreme Court.
- (8) Having considered representations by the small AIFM the FSC may withdraw or amend the suspension notice.

**Effect of permission to market.**

11E. Regulations 11, 11A and 11B have effect notwithstanding any provision of, or made under, the Financial Services (Collective Investment Schemes) Act 2011, or any other enactment.”

**Minor and consequential amendments.**

5. The amendments of the AIFM Regulations set out in the Schedule to these Regulations have effect.



**SCHEDULE**

Regulation 5

**MINOR AND CONSEQUENTIAL AMENDMENTS**

*Introduction*

1. The AIFM Regulations are amended as follows.

*Interpretation – “small AIFM”*

2. In regulation 4(1) (Interpretation) after the definition of “securitisation special purpose entities” insert—

““small AIFM” has the meaning given by regulation 8(5);”.

3. At the end of regulation 8 (Exemption for small AIFMs) add—

“(5) An AIFM to which this regulation applies is referred to in these Regulations as a small AIFM.”

4. Regulation 11 (duties of AIFMs: Small AIFMs) is amended as follows—

- (a) in subregulation (1) for “An AIFM which is exempt from the provisions of these Regulations by virtue of regulation 8” substitute “A small AIFM”;

- (b) after subregulation (1) insert—

“(1A) A small AIFM which complies with this regulation may market to professional investors, in Gibraltar, the units or shares of AIFs it manages.”; and

- (c) after subregulation (5) insert—

“(5A) If there is a material change to the information provided in accordance with subregulation (5) the small AIFM must give written notification of the change to the FSC—

- (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.”.

*Depositary*

5. In regulation 27(22) (depositary)—

- (a) leave out the words from “and in such a case” to the end (so the semicolon at the end of paragraph (b) becomes a full stop); and
- (b) at the end insert—

“(22A) The third party may, in turn, sub-delegate those functions, subject to the same requirements (and subregulation (25) shall apply, with any necessary modifications, to the relevant parties).”.

*Passporting, &c.*

6. In regulation 37 (Marketing of units or shares of EU AIFs in the home Member State of the AIFM) in subregulation (1) for “An authorised EU AIFM” substitute “An EU AIFM authorised by the FSC”.

7. In regulation 38 (Marketing of units or shares of EU AIFs in Member States outside Gibraltar)—

- (a) in the title omit the words “outside Gibraltar”;
- (b) in subregulation (1) for “An authorised EU AIFM” substitute “An EU AIFM authorised by the FSC”; and
- (c) at the end add—

“(20) Where the FSC receives notification from the competent authorities of the home Member State of an EU AIFM that it has met the conditions laid down in Article 32 of the AIFM Directive—

- (a) the FSC shall acknowledge receipt of the notification; and
- (b) nothing in or under the Financial Services (Collective Investment Schemes) Act 2011, or in any other enactment, prevents the EU AIFM from marketing to professional investors in Gibraltar in accordance with that Article.”.

8. In regulation 39 (Conditions for managing EU AIFs established in Member States outside Gibraltar)—

- (a) in the title omit the words “outside Gibraltar”;
- (b) in subregulation (1) for “An authorised EU AIFM” substitute “An EU AIFM authorised by the FSC”; and
- (c) at the end add—

“(15) Where the FSC receives notification from the competent authorities of the home Member State of an EU AIFM that it has met the conditions laid down in Article 33 of the AIFM Directive—

- (a) the FSC shall acknowledge receipt of the notification; and
- (b) nothing in or under the Financial Services (Collective Investment Schemes) Act 2011, or in any other enactment, prevents the EU AIFM from managing EU AIFs established in Gibraltar (either directly or by establishing a branch) in accordance with that Article.”.

9. In regulation 40(1) (Conditions for EU AIFMs which manage non-EU AIFs which are not marketed in Member States) for “An authorised EU AIFM” substitute “An EU AIFM authorised by the FSC”.

10. In regulation 41 (Conditions for the marketing in the European Union with a passport of a non-EU AIF managed by an EU AIFM)—

(a) in subregulation (1) for “An authorised EU AIFM” substitute “An EU AIFM authorised by the FSC”; and

(b) after subregulation (28) insert—

“(28A) Where the FSC receives notification from the competent authorities of the home Member State of an EU AIFM that it has met the conditions laid down in Article 35 of the AIFM Directive—

(a) the FSC shall acknowledge receipt of the notification; and

(b) nothing in or under the Financial Services (Collective Investment Schemes) Act 2011, or in any other enactment, prevents the EU AIFM from marketing to professional investors in Gibraltar the AIFs it manages in accordance with that Article.”.

11. In regulation 42 (Conditions for the marketing in Member States without a passport of non-EU AIFs managed by an EU AIFM) after subregulation (2) insert—

“(2A) The following provisions apply (with any modifications provided by regulations under subregulation (2) and with any other necessary modifications) to an AIFM in its reliance on this regulation as they apply to small AIFMs in their reliance on regulation 11A(1)—

(a) regulation 11A(2) (requirement to notify FSC);

(b) regulation 11A(3) (requirement to provide information to FSC);

(c) regulation 11A(5) (requirement to notify material changes);

(d) regulation 11C (FSCs power to revoke entitlement to market); and

- (e) regulation 11D (FSC's power to suspend entitlement to market).".

12. In regulation 45 (Conditions for the marketing in the European Union with a passport of EU AIFs managed by a non-EU AIFM), after subregulation (24) insert—

“(24A) Where the FSC receives notification from the competent authorities of the Member State of Reference of a non-EU AIFM that it has met the conditions laid down in Article 39 of the AIFM Directive—

- (a) the FSC shall acknowledge receipt of the notification; and
- (b) nothing in or under the Financial Services (Collective Investment Schemes) Act 2011, or in any other enactment, prevents the non-EU AIFM from marketing units or shares to professional investors in Gibraltar in accordance with that Article.”.

13. Regulation 46 (conditions for the marketing in the European Union with a passport of non-EU AIFs managed by a non-EU AIFM) is amended as follows—

- (a) in subregulation (1) after “A duly authorised non-EU AIFM” insert “(for which Gibraltar is the Member State of Reference)”; and
- (b) after subregulation (27) insert—

“(27A) In a case where Gibraltar is not the Member State of Reference of a non-EU AIFM and the FSC receives notification from the competent authorities of the Member State of Reference of the AIFM that it has met the conditions laid down in Article 40 of the AIFM Directive—

- (a) the FSC shall acknowledge receipt of the notification; and

- (b) nothing in or under the Financial Services (Collective Investment Schemes) Act 2011, or in any other enactment, prevents the non-EU AIFM from marketing units or shares to professional investors in Gibraltar in accordance with that Article.”.

14. In regulation 47 (Conditions for managing AIFs established in Member States other than the Member State of reference by non- EU AIFMs)—

- (a) in subregulation (1) for “An authorised non-EU AIFM” substitute “A non-EU AIFM for which Gibraltar is the Member State of Reference and which is authorised by the FSC as such”; and

- (b) after subregulation (15) insert—

“(15A) In a case where Gibraltar is not the Member State of Reference of a non-EU AIFM and the FSC receives notification from the competent authorities of the Member State of Reference of the AIFM that it has met the conditions laid down in Article 41 of the AIFM Directive—

- (a) the FSC shall acknowledge receipt of the notification; and
- (b) nothing in or under the Financial Services (Collective Investment Schemes) Act 2011, or in any other enactment, prevents the non-EU AIFM from managing EU AIFs (either directly or via the establishment of a branch) in accordance with that Article.”.

15. In regulation 48 (Conditions for the marketing in Member States without a passport of AIFs managed by a non-EU AIFM) after subregulation (3) insert—

- “(3A) The following provisions apply (with any modifications provided by regulations under subregulation (3) and with any other necessary modifications) to a non-

EU AIFM in its reliance on this regulation as they apply to small AIFMs in their reliance on regulation 11A(1)—

- (a) regulation 11A(2) (requirement to notify FSC);
- (b) regulation 11A(3) (requirement to provide information to FSC);
- (c) regulation 11A(5) (requirement to notify material changes);
- (d) regulation 11C (FSCs power to revoke entitlement to market); and
- (e) regulation 11D (FSC's power to suspend entitlement to market)."

*Notifications*

16. After regulation 53 (Information) insert—

**“Notifications.**

53A. A notification which is to be given to the FSC in accordance with these Regulations must—

- (a) be made in such manner as the FSC may direct; and
- (b) contain or be accompanied by such information as the FSC may direct.”.

*Retail investors*

17.(1) Regulation 49 (Marketing to retail investors) is amended as follows.

(2) In the heading, at the end insert “: experienced investors”.

(3) In subregulation (1) for “retail investors substitute “experienced investors”.

(4) After subregulation (1) insert—

“(1A) In this regulation “experienced investor” means an experienced investor within the meaning of the Financial Services (Experienced Investor Funds) Regulations 2012.”

(5) After subregulation (2) insert—

“(2A) The following provisions shall apply to an AIFM for the purposes of reliance on subregulation (1): regulations 11, 11A, 11B, 37, 38, 41, 42, 45, 46 and 48.

(2B) Those provisions shall apply—

- (a) as if references to professional investors were references to experienced investors; and
- (b) with any other necessary modifications.”.

18. After regulation 49 insert—

**“Marketing to other retail investors.**

49A.(1) AIFMs may, if they obtain approval from the FSC, market to retail investors in Gibraltar units or shares of AIFs that they manage in accordance with these Regulations (irrespective of whether the AIFs are marketed on a domestic or cross-border basis or whether they are EU or non-EU AIFs).

(2) The following provisions shall apply to an AIFM for the purposes of reliance on subregulation (1): regulations 11, 11A, 11B, 37, 38, 41, 42, 45, 46 and 48.

(3) Those provisions shall apply—

- (a) as if references to professional investors were references to retail investors; and
- (b) with any other necessary modifications.

(4) The FSC shall 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 49.
- (6) Subregulations (2) to (5) of regulation 49 apply for the purposes of this regulation with any necessary modifications.”.

Dated 11th December, 2014.

A ISOLA,  
Minister with responsibility for Financial Services.

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**EXPLANATORY MEMORANDUM**

These Regulations amend the law on Alternative Investment Fund Managers. In particular, they make provision for marketing in Gibraltar of small Alternative Investment Funds.

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