

FINANCIAL SERVICES (ALTERNATIVE INVESTMENT FUND MANAGERS) (EUROPEAN LONG-TERM INVESTMENT FUNDS) REGULATIONS 2015Subsidiary
2015/220

Subsidiary Legislation made under s. 53 of the Financial Services (Investment and Fiduciary Services) Act as read with section 23(g)(i) of the Interpretation and General Clauses Act, in accordance with regulations 60 and 62 of the Financial Services (Alternative Investment Fund Managers) Regulations 2013.

FINANCIAL SERVICES (ALTERNATIVE INVESTMENT FUND MANAGERS) (EUROPEAN LONG-TERM INVESTMENT FUNDS) REGULATIONS 2015**(LN. 2015/220)***Commencement* **9.12.2015**

Amending enactments	Relevant current provisions	Commencement date
LN. 2016/071 r.4		1.4.2016

Transposing:

Directive 2011/61/EU
Regulation (EU) 2015/760

EU Legislation/International Agreements involved:

In exercise of the powers conferred by section 53 of the Financial Services (Investment and Fiduciary Services) Act as read with section 23(g)(i) of the Interpretation and General Clauses Act, in accordance with regulations 60 and 62 of the Financial Services (Alternative Investment Fund Managers) Regulations 2013, and in order to further transpose into the law of Gibraltar Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and to implement Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds and related matters, the Minister has made the following Regulations—

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Alternative Investment Fund Managers) (European Long-term Investment Fund) Regulations 2015.

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

Overview.

2. These Regulations—

- (a) make provision in connection with Regulation (EU) No 760/2015 on European long-term investment funds which lays down uniform rules on the authorisation, investment policies and operating conditions of EU alternative investment funds or compartments of EU alternative investment funds that are marketed in the European union as European long-term investment funds; and
- (b) make provision about appeals in respect of a decision of the FSC taken under or by virtue of the AIFM Regulations or the ELTIF Regulation.

Interpretation.

3. In these Regulations—

“the ELTIF Regulation” means Regulation (EU) No 760/2015 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds;

“the AIFM Regulations” means the Financial Services (Alternative Investment Fund Managers) Regulations 2013;

“the AIFM Directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;

“the FSC” means the Financial Services Commission established under the Financial Services Commission Act 2007; and

expressions used in these Regulations have the same meaning as in the ELTIF Regulation.

4. *Repealed*

Enforcement.

5.(1) The FSC is the competent authority of Gibraltar for the purposes of the ELTIF Regulation.

(2) In particular—

- (a) supervision and enforcement obligations imposed on competent authorities are obligations of the FSC;
- (b) the FSC shall have the powers and obligations specified in Articles 31, 32 and 33 of the ELTIF Regulation, and
- (c) the powers conferred on the FSC by regulation 55 of the AIFM Regulations apply in relation to compliance with the ELTIF Regulation as they apply in relation to compliance with the AIFM Regulations and the AIFM Directive; and any supplemental regulations conferring powers on the FSC for the purpose of monitoring and enforcing compliance with the AIFM Regulations and the AIFM Directive shall apply in relation to compliance with the ELTIF Regulation with any necessary modifications.

Appeals against decisions of the FSC.

6.(1) A person aggrieved—

- (a) by a decision of the FSC taken under or by virtue of the AIFM Regulations; or
- (b) by a decision of the FSC taken in its capacity as competent authority for the purposes of the ELTIF Regulation; or
- (c) by a decision of the FSC taken under or by virtue of these Regulations,

may appeal to the Supreme Court.

(2) Subject to subregulation (3), an appeal under subregulation (1) shall be brought within 28 days of the notification to the appellant of the matter complained of.

(3) In the case of an appeal in relation to the failure of the FSC to deal with an application for authorisation—

- (a) under regulation 13 of the AIFM Regulations, within the time prescribed by regulation 14 of the AIFM Regulations; or

- (b) under article 5 of the ELTIF Regulation, within the time prescribed by that article,

an appeal must be brought within 28 days of the expiration of the time period referred to in paragraph (a) or (b), whichever one is applicable.

(4) On an appeal under this regulation the Court may quash or confirm the decision of the FSC against which the appeal is brought or may substitute any other decision which the FSC could have made.

(5) Subject to subregulation (6), from the time of the institution of an appeal under subregulation (1) of this regulation against a decision of the FSC, the decision shall not operate so as to—

- (a) require the appellant to do anything which he would not otherwise have been required to do; or
- (b) prohibit the appellant from doing anything which he could otherwise have done,

unless and until the decision is confirmed by the Court or the appeal is withdrawn.

(6) The Court may, upon the application of the FSC, direct that the provisions of subregulation (5) shall not have effect in any particular case; and a direction under this subregulation may be given in such terms as the Court thinks just.

(7) A decision of the Court under this regulation shall be final as to any question of fact, but an appeal from such a decision of fact shall lie to the Court of Appeal on any question of law.

Manager fees.

7.(1) The Financial Services (Alternative Investment Fund Managers) (Fees) Regulations 2013 are amended as follows.

(2) In Regulation 4, in subregulation (1), after the definition of “the AIFM Regulations”, insert—

““ELTIF” means a European long-term investment fund authorised under Regulation (EU) 760/2015.”.

(3) In part 1 of the Schedule, in the table—

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- (a) for “*AIF fee (non-EIF)*” substitute “*AIF fee (non-EIF, including ELTIF)*”; and
- (b) for “Self-managed AIFM (non-EIF)”, substitute “Self-managed AIFM (non-EIF, including ELTIF)”.

(4) In part 3 of the Schedule, after paragraph 6 (Designation as EuSEF), insert—

“Approval to manage an ELTIF

- 7.(1) This paragraph applies where an EU AIFM makes an application to the FSC for approval to manage an ELTIF in accordance with Regulation (EU) 760/2015.
- (2) The EU AIFM must pay an approval fee of £400.”.