

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4947 GIBRALTAR Wednesday 30th March 2022

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LEGAL NOTICE NO. 80 OF 2022.

## FINANCIAL SERVICES ACT 2019

### FINANCIAL SERVICES (ALTERNATIVE INVESTMENT FUND MANAGERS) (AMENDMENT) REGULATIONS 2022

In exercise of the powers conferred on the Minister by section 61, 620 and 627 of the Financial Services Act 2019, the Minister has made these Regulations—

#### **Title.**

1. These Regulations may be cited as the Financial Services (Alternative Investment Fund Managers) (Amendment) Regulations 2022.

#### **Commencement.**

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

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

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

(2) In regulation 4(1), after the definition of “the Directive”, insert—

““EIF” means a Gibraltar AIF which is an experienced investor fund within the meaning of the Financial Services (Experienced Investor Funds) Regulations 2020;”.

(3) After regulation 8, insert—

#### **“Exempt internally managed EIFs.**

8A.(1) Sub-regulation (2) applies to an EIF—

- (a) the legal form of which permits an internal management and its governing body has chosen not to appoint an external AIFM; and
- (b) which has obtained exemption from the requirement to be authorised as an in-scope AIFM, in accordance with sub-regulation (3).

- (2) An EIF to which sub-regulation (1) applies—
  - (a) is exempt from the requirement to be authorised as an in-scope AIFM;
  - (b) for the purposes of its internal management, may act as an in-scope AIFM without contravening the general prohibition; and
  - (c) is not subject to the other provisions of these Regulations apart from Part 8.
- (3) Where the GFSC receives an exemption notification from an EIF, the EIF obtains exemption under sub-regulation (2) at the end of the period for considering the notification unless during that period—
  - (a) the GFSC, by written notice, rejects the notification; or
  - (b) the EIF withdraws the notification.
- (4) An exemption notification must be made to the GFSC—
  - (a) in the form and manner that the GFSC directs; and
  - (b) contain such information as the GFSC specifies.
- (5) In sub-regulation (3), “the period for considering the notification” means the period of 28 days beginning with the day on which a completed exemption notification is received by the GFSC.
- (6) A person aggrieved by a decision of the GFSC to reject a notification may appeal against the decision under section 615 of the Act as if a notice under sub-regulation (3)(a) were a decision notice.
- (7) An exemption under this regulation ceases to apply if, after it is obtained, the EIF is given Part 7 permission to act as an in-scope AIFM.
- (8) In this regulation, references to a person being authorised as an in-scope AIFM means a person who has Part 7 permission to carry on the regulated activity in paragraph 95 of Schedule 2 to the Act.
- (9) An EIF to which sub-regulation (2) applies is not, by virtue of that sub-regulation, authorised to carry on a regulated activity in the United Kingdom.

#### **Exempt EIFs.**

- 8B.(1) An external AIFM is not required to comply with the specified requirements in respect of an EIF it manages if the AIFM has been exempted from doing so in respect of that EIF in accordance with sub-regulation (3).

- (2) The “specified requirements” means the following provisions of these Regulations which would otherwise apply in respect of an EIF–
- (a) regulation 36;
  - (b) regulation 37;
  - (c) regulation 42(3), (4), (6), (7) and (8)(a), (b) and (e);
  - (d) regulation 43;
  - (e) regulation 46;
  - (f) regulation 48; and
  - (g) Part 6.
- (3) Where the GFSC receives an exemption notification from an external AIFM in respect of an EIF it manages, the AIFM obtains exemption under sub-regulation (1) in respect of that EIF at the end of the period for considering the notification unless during that period–
- (a) the GFSC, by written notice, rejects the notification; or
  - (b) the AIFM withdraws the notification.
- (4) An exemption notification must be made to the GFSC–
- (a) in the form and manner that the GFSC directs; and
  - (b) contain such other information as the GFSC specifies.
- (5) In sub-regulation (3), “the period for considering the notification” means the period of 28 days beginning with the day on which a completed exemption notification is received by the GFSC.
- (6) A person aggrieved by a decision of the GFSC to reject a notification may appeal against the decision under section 615 of the Act as if a notice under sub-regulation (3)(a) were a decision notice.
- (7) Nothing in sub-regulation (1) affects–
- (a) the requirement for the AIFM to have Part 7 permission to carry on the regulated activity in paragraph 95 of Schedule 2 to the Act; or
  - (b) the AIFM’s obligation to comply with all the other provisions of these Regulations,

and, for the purpose of determining an external AIFM's initial capital, own funds and assets under management, the value of the portfolio of any EIF which the AIFM manages that is exempt under sub-regulation (1) must be taken into account.”.

Dated: 30<sup>th</sup> March 2022.

A J ISOLA,  
Minister with responsibility for financial services.

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### **EXPLANATORY MEMORANDUM**

These Regulations amend the Financial Services (Alternative Investment Fund Managers) Regulations 2020. They provide for internally managed experienced investor funds, if they so choose, to be exempt from the need to be authorised as an in-scope AIFM and enable alternative investment fund managers to apply for experienced investor funds which they manage to be exempt from specified fund-related provisions of the 2020 Regulations.