



Financial Services Legislation

Introduction

On 20th December 2005 the Government of Gibraltar announced that it had concluded an agreement with the UK Government relating to passporting of investment services.

The purpose of this agreement was to enable investment services firms established in Gibraltar to passport their products and services into the UK market. At the time it was announced that this agreement would come into effect by March 2006 when Gibraltar had passed some necessary legislation.

The legislative measures that the Government has put in place are the following:

- i. The Financial Services (Miscellaneous Provisions) Ordinance. This includes important revisions to the Financial Services Ordinance 1989 and the Financial Services Ordinance 1998.
- ii. The Financial Services (Conduct of Business: Investment Firms and Insurance Intermediaries) Regulations. These replace and expand upon the existing Conduct of Business Regulations for investment firms and insurance intermediaries.
- iii. The Financial Services (Conduct of Business in the United Kingdom) Regulations. These set out the requirements that Gibraltar investment firms passporting into the UK must comply with.
- iv. Amendments to the Financial Services (Advertising) Regulations. These expand and reinforce the provisions relating to direct offer investment advertisements and also provide for fuller details of the products referred to in advertisements.
- v. The Financial Services (Collective Investment Scheme) Regulations. These replace the existing Collective Investment Scheme Regulations.
- vi. Amendments to the Financial Services (Fees) Regulations and the Financial Services (Licensing) Regulations. These are consequential amendments as a result of the Financial Services (Collective Investment Schemes) Ordinance and the new Collective Investment Scheme Regulations.



- vii. The Financial Services (Training & Competence) Ordinance. This sets up a training and competence skills council in respect of financial services.

In addition, the Financial Services Commission has also issued the Collective Investment Schemes Code of Practice under the provisions of the Financial Services (Collective Investment Schemes) Ordinance.

The contents of these measures are summarised in the rest of this newsletter.

Copies of the consolidated versions of the following pieces of legislation are available on the FSC's website via the links shown:

Financial Services Ordinance 1989 (as amended)

<http://www.fsc.gi/download/adobe/fso89.pdf>

Financial Services Ordinance 1998 (as amended)

<http://www.fsc.gi/download/adobe/fso98.pdf>

Financial Services (Conduct of Business: Investment Firms and Insurance Intermediaries) Regulations

<http://www.fsc.gi/download/adobe/cbifiiregs.pdf>

Financial Services (Conduct of Business in the United Kingdom) Regulations

<http://www.fsc.gi/download/adobe/cbukregs.pdf>

Financial Services (Advertising) Regulations (as amended)

<http://www.fsc.gi/download/adobe/regsadverts.pdf>

Financial Services (Collective Investment Scheme) Regulations

<http://www.fsc.gi/download/adobe/fsoregscis.pdf>

Financial Services (Fees) Regulations (as amended)

<http://www.fsc.gi/download/adobe/regsfees.pdf>

Financial Services (Licensing) Regulations (as amended)

<http://www.fsc.gi/download/adobe/regslicences.pdf>

Copies of the amending legislation can be obtained via the Government of Gibraltar's "Laws of Gibraltar" website:

<http://www.gibraltarlaws.gov.gi/>

The Financial Services (Training & Competence) Ordinance should be available via the Government of Gibraltar's "Laws of Gibraltar" website.

The Collective Investment Schemes Code of Practice is also available on the FSC's website via the following link:

<http://www.fsc.gi/download/adobe/codecis.pdf>



Financial Services (Miscellaneous Provisions) Ordinance 2006

1. This amends the provisions of the Financial Services Ordinance 1989 and Financial Services Ordinance 1998 as indicated in the following paragraphs.
2. Sections 1 and 2 are formal and relate to the Financial Services Ordinance 1989. Paragraphs 3 to 21 below also relate to the Financial Services Ordinance 1989.
3. Section 3 amends the definition of “relevant supervisory authority”.
4. Section 4 specifically excludes from the definition of carrying on investment business those activities excluded by the new Schedule 2A and also refers to the new Schedule 2B (see below).
5. Section 5 limits the type of applications for licences from European authorised institutions.
6. Section 6 deals with applicants that could be European subsidiary institutions.
7. Section 7 would allow the Commissioner to modify or waive regulations which would otherwise apply to regulated firms where he considers this would benefit the firm or firms concerned without prejudice to the need to safeguard customers. This should clarify and/or reduce the burden imposed on industry by regulation.
8. Section 8 would extend the control of the promotion of investments, investment business or fiduciary services as the existing wording restricts the control to promotion “by or on behalf of licensees”. It is proposed that these words should be deleted. In addition, the power to make regulations would be extended to allow for the control of the promotion by licensees of investment business as well as investments.
9. Section 9 allows the Authority to request skilled person’s reports.
10. Section 10 would extend the existing power to obtain information to persons who are holding themselves out as carrying on investment or fiduciary business. This should assist the Commission in taking action against persons who are using Gibraltar addresses or telephone numbers although they have no physical presence in Gibraltar.
11. Section 11 introduces a power allowing the Commissioner to direct that a person, either a corporation or an individual, that he judges not to be fit and proper shall not perform any function in connection with the carrying on of financial services business. The person who was to be made the subject of such a direction would have the usual rights to receive due notice of the Commissioner’s intention to issue a direction, to make representations against the making of the proposed direction, and to appeal to the Supreme Court against the direction once made.
12. Section 12 extends the categories of persons whom the Supreme Court may order to furnish information in relation to any contravention of the legislation.



13. Section 13 extends the circumstances in which representations and appeals can be made to the Authority to directions issued.
14. Section 14 makes a technical correction.
15. Section 15 provides that regulations are to be made by the Minister with responsibility for financial services rather than the Governor.
16. Section 16 clarifies the Commission's powers to levy fees i.e. provides that fees shall be paid out the Financial Services Commission as opposed to the Authority who is the Commissioner. It would create no change in existing practice.
17. Section 17 gives statutory backing to any guidance the Commissioner may issue from time to time on, for example, his interpretation of the meaning of regulations, or best practice that should be observed by regulated firms. Such guidance would not have the force of law although it might be taken into account by the Courts in determining whether a regulated firm has satisfied the regulatory obligations imposed by statute or subordinate legislation.
18. Section 18 amends Schedule 2.
19. Section 19 inserts two new schedules – Schedule 2A, setting out excluded activities, and Schedule 2B, which is an interpretation schedule.
20. Section 20 amends Schedule 3.
21. Section 21 amends Schedule 4 (exempted persons).
22. Sections 22 and 23 are formal, and relate to the Financial Services Ordinance 1998. The following paragraphs also relate to this piece of legislation.
23. Section 24 contains technical amendments to remove a provision which has been made redundant by the passage of time.
24. Section 25 provides for the Minister to make regulations setting out specific requirements for a Gibraltar investment firm passporting into the UK.

Financial Services (Conduct of Business: Investment Firms and Insurance Intermediaries) Regulations 2006

25. The regulations replace the existing Conduct of Business Regulation which were implemented in 1991 in so far as investment firms and insurance intermediaries are concerned.



26. The new regulations are intended to implement EU legislation and to reflect best practice as it has developed over the years.
27. As with the current regulations, there is a division between statements of principle and core rules. The purpose of the rules is to set out in more detail a firm's legal obligations. These should be seen as supplementing the statements of principle which are the over-riding obligations to which firms should have regard when carrying on regulated business.
28. The regulations should be read in full as there have been many detailed changes which it would be repetitive to set out in detail in this paper. However, the following paragraphs draw attention to the major changes that are proposed.
29. Regulation 7 introduces a new statement of principle requiring a firm to pay due regard to the interests of customers.
30. Regulation 15 extends the obligation to make clear to customers the extent of a firm's independence and any limitations on the products and services it can provide.
31. Regulation 18 amends and extends the provisions relating to dealing commission agreements to seek to ensure that customers' interests are not prejudiced by such arrangements.
32. Regulation 22 expands on the safeguards which must be observed with regard to a customer's understanding of risk.
33. Regulation 23 sets out in much more detail than previously the information that must be given to a customer about the firm.
34. Regulation 26 introduces different arrangements for private and professional customers.
35. Regulation 27 and schedule 2 set out in more detail the required content of the agreements between a firm and its customers.
36. Regulation 29 extends a firm's obligations to establish and explain why its advice or recommendation is suitable for a particular client.
37. Regulation 31 introduces a requirement that a firm should provide information on request about any commission or other income it will receive in respect of a transaction in a packaged product (e.g. an endowment policy or investment fund).
38. Regulation 40 introduces requirements which must be satisfied if a firm is to extend credit to a private customer.
39. Regulation 41 sets out a firm's obligations if it is arranging transactions in investments which involve an obligation on customers to meet margin payments in respect of trading obligations.



40. Regulation 44 introduces more detailed obligation where a firm has accepted a responsibility, either directly or indirectly, with regard to the safekeeping of a customer's assets.
41. Regulation 47 clarifies a firm's responsibility for the quality of the staff it employs.
42. Regulation 48 makes clear that a firm must satisfy itself about the status and reliability of persons with which it does regulated business, or from whom it accepts business.
43. Regulation 50 sets out a firm's continuing responsibility for any functions it outsources to other suppliers.
44. Regulation 51 spells out a firm's responsibilities to ensure that customers receive the service they have a right to expect in all circumstances.

Financial Services (Conduct of Business in the United Kingdom) Regulations 2006

45. These regulations set out the requirements that Gibraltar investment firms passporting into the United Kingdom must comply with.
46. Regulation 2 sets out the wording of the notice that must appear in agreements and advertisements.
47. Regulation 2 sets out the obligation to participate in the United Kingdom Financial Services Compensation Scheme where a Gibraltar investment firm establishes a branch in the United Kingdom.

Financial Services (Advertisements) (Amendments) Regulations 2006

48. These amending regulations reinforce provisions in the Financial Services (Advertising) Regulations regarding the contents of direct offer investment advertisements or advertisements for or in connection with financial services business. They also provide for fuller details of the investment and the characteristics of the transaction to be provided in the advertisements.
49. Regulation 3 extends the definition of advertisement by including electronic media or moving image material incorporated in a website and amends the definition of investment advertisement by explaining that the direct offer must also specify the manner of response to the advertisement or must include a form in which any response is to be made (for example by providing a tear-off slip).
50. Regulation 4 introduces a requirement that a firm who causes an investment advertisement to be issued, must approve that advertisement beforehand.



51. Regulation 5 amends the schedule to the Regulations.
52. Paragraph 2 of the schedule is amended to add further requirements on firms to provide information that is clear and not misleading so that an informed assessment can be made about the investment and to provide details of where investment advice should be obtained about the investment; how clients money is to be handled and details of any commission that may be payable by the advertiser to another person.
53. Paragraph 9 is amended to require advertisement to provide further information about the investment's taxation consequences for investors.
54. Paragraph 13 is amended to add further requirements about the risk warnings that advertisements must include, particularly about the adverse effects on the capital value of a fund from where an income is derived and about the risks associated with investing in capital-at-risk products.
55. Paragraph 15 is amended to add further requirements on the disclosure of key elements about the management of the investments in a life policy or a collective investment scheme which is a branded fund; about the charging structure of a collective investment scheme and the likely effect on capital and income; about the manner of execution of orders relating to an execution-only dealing service and about the suitability of broker funds, derivatives and warrants for investors.
56. Paragraph 17 is amended to require firms to provide further particulars about themselves in their advertisements.

Financial Services (Collective Investment Schemes) Regulations 2006

57. The regulations are made under section 53 of the Financial Services (Collective Investment Schemes) Ordinance, 2005 ["the CIS Ordinance"] which was enacted last year.
58. Significant amendments to the collective investment scheme (CIS) regime were required in order to ensure Gibraltar's compliance with the UCITS Product and Managements Directives (UCITS II & III). It was considered that this presented a good opportunity to undertake a thorough review of the CIS regime and to bring all the CIS provisions into a single statute, which would also enable the establishment of experienced investor funds.
59. The CIS Ordinance is designed as enabling legislation, so that the significant amount of detail contained in, and required to implement, the UCITS Directive can be dealt with by regulations and Codes of Practice.
60. The principal objective of the CIS Regulations is to implement the main provisions of the UCITS Product and Management Directives. However, the CIS Regulations



also contain important exceptions and exemptions from the regulatory provisions of the CIS Ordinance.

61. Part I contains the interpretation section.
62. Part II contains the permitted exceptions and exemptions to the CIS Ordinance.
63. Regulation 5 specifies that arrangements of the kind specified in Schedule 1 are deemed not to constitute a collective investment scheme. The arrangements in Schedule 1 include a body corporate that is not an open-ended investment company. This is an important provision that ensures that share offerings in companies are not caught by the CIS Ordinance.
64. Section 6(3) of the CIS Ordinance exempts the promotion of private schemes from the general prohibition on the promotion of private schemes, provided that they are promoted in accordance with the CIS Regulations.
65. Regulations 6 and 7 of the CIS Regulations specifies the characteristics of a private scheme and specifies how they may be promoted.
66. Part III covers authorised schemes.
67. Division 1 provides for the matters that must be contained in the constituting instrument of an authorised scheme (the details being set out in Schedule 2) and classes of unit.
68. Division 2 covers the publication of a prospectus and simplified prospectus by the manager of an authorised scheme. The publication of a simplified prospectus is a requirement of the UCITS Management Directive. The matters that must be included in a full prospectus and a simplified prospectus are specified in Schedules 3 and 4 respectively.
69. The simplified prospectus is intended to include the key features of a scheme set out in a readily understandable manner. It must always be offered, free of charge, to a person who may become a participant in a collective investment scheme. There is no requirement to offer a potential participant a full prospectus, although any person may request a copy of the full prospectus free of charge.
70. Division 3 provides for the investment and borrowing powers with respect to an authorised scheme.
71. The manager of an authorised scheme has an over-riding obligation to ensure a prudent spread of risk, taking into account the investment objectives and policy of the scheme. However, the Division contains detailed provisions concerning investment and borrowing powers to ensure that authorised schemes will comply with the UCITS Products Directive.
72. The Regulations provide, amongst other things, for:
 - The property that may be held by an authorised scheme;
 - Rules concerning the spread of investments;



- Investments in other collective investment schemes;
 - Investments in derivatives;
 - Rules designed to avoid over-concentration of investments;
 - Index tracking schemes;
 - Restrictions on borrowing and lending.
73. Division 4 requires that the Codes of Practice should provide participants with cancellation rights for a limited period after agreeing to become a participant in an authorised scheme.
74. Part IV specifies the manner in which notice with respect to a recognised UCITS scheme must be given to the Authority.
75. Part V specifies certain activities that are deemed to constitute restricted activities under the CIS Ordinance, and which will therefore require authorisation. These include acting as a depositary of a scheme other than an open-ended investment company or a unit trust scheme (which are covered by the CIS Ordinance) and acting as the depositary of an experienced investor fund and a private scheme.
76. However, an activity may be specified by the Authority as not constituting a restricted activity if the activity is carried on outside Gibraltar and is, in the opinion of the Authority, regulated under and in accordance with a legislative and regulatory regime which provides at least equivalent protection to that in place in Gibraltar.
77. Part VI enables Gibraltar to implement the UCITS Management Directive. It provides for the passporting of EEA UCITS management companies into Gibraltar, and for the exercise of EEA UCITS management rights in another EEA State by Gibraltar UCITS management companies.
78. This Part also sets out the restrictions on the business that may be carried on by a Gibraltar UCITS management company and the financial resource requirements applicable to Gibraltar UCITS management company, as provided for in each case in the Management Directive.
79. Part VII applies the regulations made under the Financial Services Ordinances 1989 and 1998, unless disapplied or modified by the Authority and provides for the issuance of detailed Codes of Practice.

Financial Services (Fees) (Amendments) Regulations 2006

80. The regulations provide for the fees payable under the Financial Services (Collective Investment Schemes) Ordinance 2005.

Financial Services (Licensing) (Amendments) Regulations 2006



81. These Regulations amend the Financial Services (Licensing) Regulations 1991 to take account of the Financial Services (Collection Investment Schemes) Ordinance 2005.

Collective Investment Schemes Code of Practice

82. The Code of Practice is issued under the provisions of Section 53 of the Financial Services (Collective Investment Schemes) Ordinance.
83. The Code applies to authorised schemes and persons authorised to undertake restricted activities under the Ordinance.
84. The Code sets out requirements, general obligations and responsibilities regarding valuation and pricing; rights of unitholders; dealing; titles and registers; functions and duties of managers and depositaries of authorised schemes; payments of out scheme property; accounting, allocation and distribution of income; investment powers of authorised non-UCITS retail schemes; cancellation rights; and, projections.

Financial Services (Training & Competence) Ordinance 2006

85. Sections 1 and 2 are formal.
86. Section 3 deals with the establishment of the Skills Council.
87. Section 4 sets out the duties of the Council.
88. Section 5 provides for fees to be charged in relation to the accreditation of training courses.
89. Section 6 deals with the Council's legal personality and immunity
90. Section 7 provides for the Minister to make regulations, inter alia, prescribing the Rules of Procedure of the Council and given legal effect to any decision of the Council.

Published by:

Financial Services Commission
Suite 943 Europort
Gibraltar

May 2006