



# GUIDANCE NOTE 31

## Collective Investment Schemes

Updated January 2020

### What is a Collective Investment Scheme?

A collective investment scheme ("CIS") is an arrangement that enables a number of investors to pool their assets and have these professionally managed by an independent manager, rather than buying securities directly as individuals. Investments usually include gilts, bonds and quoted equities, but depending on the type of scheme could cover a wider range of products. The wide range of investments in a collective investment scheme reduces the risks to investors, as the poor performance of any one investment will have less of an impact on the overall performance of the entire portfolio. Collective Investment Schemes are also known as "funds".

### The law governing Collective Investment Schemes

The legislation governing collective investment schemes / funds in Gibraltar may be found in:-

- The Companies Act;
- The Financial Services (Collective Investments Schemes) Act 2011;
- The Financial Services Act 2019; and
- The Financial Services (Experienced Investor Funds) Regulations 2018.

### Meaning of "collective investment scheme"

The Financial Services (Collective Investments Schemes) Act defines a "collective investment scheme" as "any arrangement with respect to property, the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

The arrangement referred to above must be such that the participants in the arrangement do not have day-to-day control over the management of the assets. Also, the investments and the profits/income arising from them must be pooled, and/ or the property managed as a whole.

An arrangement is not deemed to be a CIS unless all of the investors are entitled to rights in all of the parts, or investments, of the scheme.

Under the law of Gibraltar, the following funds, which are all collective investment schemes, may be established: -

- Private Fund
- Experienced Investor Fund
- UCITS fund
- Non-UCITS retail fund

### Private fund

A Private Fund is a CIS, which can be offered privately to any identifiable group. Private funds are set up as a company under the Companies Act but are not regulated or authorised by the Financial Services Commission ("FSC"). The directors are obliged to follow the investment objectives set out in the offering documents of the private fund. This allows private schemes to be established cost-effectively and quickly.

### Experienced Investor Funds ("EIFs")

The EIF Regulations, revised in 2012, allow experienced or high net worth investors the opportunity to set up funds quickly and with minimum regulatory intervention. Generally, EIFs are formed as limited companies or as Protected Cell Companies ("PCCs"), although they may also be unit trusts, limited partnerships, or any other vehicle acceptable to the FSC.

As the name suggests, investors in these funds should:-

- Be investment professionals; or
- Have assets in excess of €1,000,000; or
- Have investments of €1,000,000 invested in one or more experienced investor funds; or
- Fall under the classification of a professional investor.

An EIF can be set up very quickly, as it does not require prior regulatory approval. To achieve authorisation, all that is required is for the FSC to be notified of the launching of the fund within 14 days. The notification must be accompanied by the fund's prospectus, memorandum and articles of association, a legal opinion from Gibraltar counsel confirming that the fund has been set up in accordance with the law, a form completed by the administrator and the prescribed fee.

Two of the directors of an EIF must be authorised by the FSC and reside in Gibraltar. The fund must also appoint a qualified administrator, and must submit audited accounts signed off by a Gibraltar registered auditor. Gibraltar's EIF regime is designed with expectations of a high standard of corporate governance, and where the Directors do not have expertise in particular investments, they are expected to ensure that there are other directors or advisory bodies able to provide advice.

## UCITS funds

The Collective Investment Schemes Act 2011 (CIS Act 2011) came into force in Gibraltar in October 2013, giving effect to the UCITS IV Directive. The Directive consolidated all previous Directives on UCITS and its aim was to allow greater efficiency and transparency. UCITS funds are open-ended collective investment schemes, which may be offered to the general public across EU member states. There are controls over the types of investments that may be made, and these are in specified liquid securities. Since Gibraltar is within the European Union it has the right to passport its financial services throughout Europe. Gibraltar UCITS funds may therefore passport their services within the European Union on the basis of their Gibraltar licence. UCITS funds are regulated by the FSC.

In Gibraltar a UCITS fund can be established either as (1) a common fund constituted by a trust deed or a binding agreement between the manager and the Trustee or as (2) an open-ended investment company (OEIC) which would be a Gibraltar body corporate established by memorandum and articles (for example a protected cell company). A UCITS fund could also be created as an umbrella scheme with multiple sub-funds in a single structure.

## Non-UCITS retail funds

Non-UCITS retail funds are licensed by the FSC and can be distributed to retail investors. These funds can be structured as:

- Umbrella funds;
- Hedge funds;
- Feeder funds;
- Fund of funds; or
- Mutual funds.

Licensing of such funds may take up to six months.

## Duty of the company in relation to the Registrar

### Notification that company is a Collective Investment Scheme

Under section 18 (1) of the Companies Act, a company that is a collective investment scheme licensed, authorised or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2011 needs to notify the Registrar in writing within 30 days of the establishment of the scheme that it is a collective investment scheme in order to enjoy the benefits of such schemes.

The notification must confirm whether the company is a "private scheme" (as defined in section 2(1) of the Financial Services (Collective Investment Schemes) Act 2011); or any other type of collective investment scheme authorised under the Act.

### Existing Collective Investment Schemes

A company that was a collective investment scheme before the coming into force of the new Companies Act on the 1<sup>st</sup> November 2014 should also notify the Registrar in writing of the fact. The notification should state the date on which the scheme was established and that it continues to be a collective investment scheme, so that the exemptions available under the Act may apply.

### Notification that the Company has ceased to be a Collective Investment Scheme

When a company ceases to be such a scheme, the company must, within 30 days, send written notification to the Registrar requesting that it no longer be treated as such a scheme.

### Exemptions under the Companies Act applying to Collective Investment Schemes

A collective investment scheme authorised by the FSC is a private company, regardless of the fact that it need not restrict the transfer of shares or prohibit an invitation to the public to subscribe for shares in the company (see section 19 of the Companies Act).

The following sections of the Companies Act do not apply to Collective Investment Schemes licensed, authorised or otherwise regulated under the Financial Services (Collective Investment Schemes) Act 2011.

Sections 77 and 79 to 82 refer to the filing by a public limited company of a Prospectus with the Registrar, to the specific requirements that must be contained within the Prospectus, the liability for the contents and restrictions on alterations. A licensed CIS does not need to file a Prospectus.

Section 83 refers to the prohibition of allotment of shares unless the minimum subscription is received - a licensed CIS is exempt from the prohibition.

Section 84 refers to the statement in lieu of Prospectus - a licensed CIS does not need to file a Statement in lieu of Prospectus.

Section 85 refers to the effects of an irregular allotment, where shares have been allotted contrary to the requirements for a Prospectus or a statement in lieu of a Prospectus - a licensed CIS is exempt.

Section 86 - Return of Allotments: A CIS does not have to file a return of allotments with the Registrar within 30 days of the allotment: a licensed CIS is exempt from this provision, and a CIS which is a private scheme needs to file an annual statement together with its annual return, under section 189 of the Companies Act (see below).

Section 114 - Disclosure by company of purchase of own shares: A licensed CIS does not need to file with the Registrar a return of purchase of own shares within 30 days of the purchase.

Section 131 - A licensed CIS does not need to file with the Registrar notice of redemption of redeemable preference shares within 30 days of the redemption.

Section 154 - Transfer of shares: A licensed CIS does not have to make a return with respect to any changes in any member or any of the particulars in the Register of Members.

Section 188 - Annual Returns: A licensed CIS is not required to provide the information on members and shareholdings requested under subsection 4.

Section 192 - Certificates to be sent by private company with annual return: A licensed CIS is not required to send a certificate with the Annual Return stating that the company has not, since the date of the last return, issued any invitation to the public to subscribe for any shares or debentures of the company.

### **Filing Obligations of Collective Investment Schemes**

Under section 189 of the Companies Act, a CIS that is a "private scheme" within the meaning of the Financial Services (Collective Investments Schemes) Act 2011 (the "FSCIS Act") must file a Statement of Allotment, Redemption and Purchase of own shares. A company that is a CIS (excluding private schemes) which is licensed, authorised or otherwise regulated under the FSICS Act, is not required to comply with section 189 of the Companies Act.

Section 189 requires that a CIS which is a private scheme must deliver, with every Annual Return, a "Statement of Allotments, Redemptions and Purchase of Own Shares" for the period to which the Annual Return relates, to the Registrar. This statement is to be filed with the Annual Return regardless of whether there has been any movement in the shareholding of the CIS.

The statement must contain the following information:

- The number and nominal amount of the shares comprised in each allotment;
- The names and addresses of the allottees and the amount (if any) paid or due and payable on each allotted share; and
- in the case of shares allotted as fully or partly paid up otherwise than in cash–
  - (i) a contract in writing constituting title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made,
  - (ii) the number and nominal amount of shares so allotted,
  - (iii) the extent to which they are treated as paid up, and
  - (iv) the consideration for which they have been allotted.

When a company has made any redemption of its redeemable preference shares the statement shall

specify–

- the number and nominal amount of the shares redeemed;
- the names and addresses of the persons who have redeemed the shares; and
- the amount paid or due and payable on each redeemed share.

When a company has purchased its own shares under section 105 the statement shall specify–

- with respect to shares of each class purchased, the number and nominal value of those shares and the date on which they were delivered to the company; and
- in the case of a public company, the aggregate amount paid by the company for the shares and the maximum and minimum prices paid in respect of shares of each class purchased.

### Voluntary Statement of Allotments

A company may, in addition to the statement delivered in accordance with section 189, deliver to the Registrar at any time a voluntary statement containing the same information for the period specified in that statement and, in this case, the statement is referred to as a “Voluntary Statement of Allotments, Redemptions and Purchase of Own Shares”.

### Guidance only

These notes are intended for general guidance only. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem we recommend that you seek professional advice.

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