

# FSC Newsletter

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## Guidance Notes On The Marketing Of Collective Investment Schemes

### OVERSEAS SCHEMES

- INTRODUCTION

The Financial Services Ordinance 1989 ("FSO") and the Collective Investment Schemes Regulation (CISR) divide collective investment schemes into two categories:

authorised schemes;  
recognised overseas schemes;

The primary significance of this categorisation is that only the units or shares of authorised or recognised schemes can lawfully be promoted to the general public in Gibraltar, whether by operators of schemes or by intermediaries.

The purpose of these notes is to furnish operators of recognised overseas schemes with guidance on the constraints imposed by the FSO and CISR regime on the marketing of their schemes in Gibraltar. These notes do not purport to be exhaustive; their aim is merely to provide operators of such schemes with a foundation on the basis of which they can take steps to ensure that their marketing arrangements comply with the requirements of the regime. Operators should not regard these notes as a substitute for taking their own legal advice.

Part I of the notes is concerned with the position of schemes authorised in designated countries or territories and individually recognised schemes. Part 2 addresses the position of schemes constituted in other member States.

### PART 1.

- **Schemes authorised in designated countries or territories and individually recognised schemes**

A collective investment scheme from a designated country or territory or a scheme from other overseas countries does not become a recognised scheme under section 26 of the FSO until the operator has satisfied the requirement laid down in regulation 85 of the CISR. The requirement is that the operator must apply to the Financial Services Commission ("the Commission") for the recognition of the scheme. The scheme becomes recognised at the time when the order declaring the scheme to be a recognised scheme takes effect.

Under the FSO only licensed persons may lawfully carry on investment business in or from within Gibraltar. The recognition of a scheme under section 26 does not confer

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the status of "licensee" upon the operator of the scheme. Accordingly the operator of a scheme recognised under section 26 may engage in such marketing activities in Gibraltar as involve him in carrying on investment business in or from within Gibraltar only if he is a licensee.

The operator of a scheme recognised under Section 26 can become a licensee by virtue of a successful application to the Commission.

Subject to various exceptions, including one in favour of EC nationals, it is a criminal offence under the FSO for a person other than a licensee to issue in Gibraltar or cause to be issued there an advertisement for units in a collective investment scheme. Furthermore, the Ordinance requires the advertised scheme to be an authorised or recognised scheme. In advertising, the licensee must comply with the relevant Advertisements Regulations made under the FSO.

Any advertisement or other information promoting a scheme in Gibraltar has to indicate that scheme particulars exist and the places where those particulars may be obtained by members of the public.

It is a criminal offence for a scheme operator who is not a licensee to carry on investment business in or from within Gibraltar. Accordingly it is not open to such operators to market their units in Gibraltar by maintaining an employed sales force in Gibraltar or by appointing agents who are not licensed persons to recommend their purchase.

In general the Unsolicited Calls Regulations do not permit investments to be promoted in Gibraltar or elsewhere from Gibraltar by means of unsolicited calls (i.e a personal visit or oral communication made without express invitation). There is, however, an exception which permits the "cold-calling" of units in recognised schemes by operators or intermediaries who are licensees.

It is open to scheme operators, whether they are licensees or not, to accept outside Gibraltar orders generated in Gibraltar by the recommendations of independent intermediaries who are licensees under the FSO. It is also open to them to procure independent intermediaries who are licensees to recommend their units or shares

## **PART 2**

- **Schemes constituted in member states**

An operator planning to market his scheme in Gibraltar under section 24 of the FSO must, not less than two months before inviting persons to become participants in the scheme in Gibraltar, give written notice to the Commission of his intention to do so, specifying the manner in which the invitation is to be made. Only when the period of two months has elapsed from the date of the Commission receiving written notice may the scheme be marketed in or from within Gibraltar by virtue of being a recognised scheme. The scheme will not become a recognised scheme if within two months of receiving the operator's notice the Commission notifies the operator and the relevant home State authorities that the manner in which the invitation is to be made does not comply with the law in force in Gibraltar. Such notice will give the Commission's reasons for so acting and will give particulars of the operator's right to make representations.

Once an EC scheme is recognised, the operator (referred to as an "EC operator") if he carries on investment business in Gibraltar, requires to obtain a licence under the FSO for the class or classes of business carried on, particularly class V(a) - Collective

Investment Scheme Operator, for marketing matters i.e. procuring persons to become participants in the scheme and advising persons on the scheme and the exercise of the rights conferred by it, and matters incidental thereto.

Part II of Schedule 4 of the FSO confers exempted person status upon an EC operator who chooses to carry on investment business in Gibraltar without a permanent place of business in Gibraltar. An EC operator who elects to market his scheme in Gibraltar in a way that involves his carrying on investment business in Gibraltar, relying on the exemption granted by Part II of Schedule 4 of the FSO, must notify the Commission of his intention to do so in advance as required by that Part.

An EC operator who has become a licensee or is an exempted person is allowed to issue investment advertisements relating to his recognised schemes in Gibraltar. In doing so he must, of course, comply with the relevant Advertisements Regulations made under the FSO.

An EC operator who is a licensee or his licensed intermediary can promote a scheme by means of unsolicited calls in Gibraltar or elsewhere from Gibraltar.

It is open to EC operators, whether or not they are licensees or exempted persons, to accept outside Gibraltar orders generated in Gibraltar by the recommendations of independent intermediaries who are licensees under the FSO. It is also open to them to procure independent intermediaries who are licensees to recommend their units or shares.

Financial Services Commissioner  
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