

# Corporate Governance Code for Gibraltar Collective Investment Schemes



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## 1. DEFINITIONS AND INTERPRETATION

### Definitions

In this Code, the following words and expressions shall have the following meaning:

“Administrator”	means the fund administrator of the CIS appointed by the Board of Directors to carry out the fund administration function for the CIS in accordance with Gibraltar law;
“Board” or “Board of Directors”	means the collective of the Directors (as defined below) comprising the executive body of a CIS;
“CIS”	means a collective investment scheme or schemes, as the context may admit, established in Gibraltar as a company, a unit trust, a limited partnership or other legal entity in accordance with the laws of Gibraltar;
“Code”	means this code of conduct;
“Controller”	means the person or persons responsible for the management and control of a Gibraltar CIS, that is, the Board of Directors of a company, the trustees of a unit trust, the limited partner of a limited partnership or the executive officers or persons exercising executive authority over any other legal entity established as a CIS and where the Controller is a body corporate or legal entity, the term “Controller” shall include all natural persons who are a director, trustee, officer or executive of such body corporate or legal entity and “Controllers” shall have the corresponding meaning;
“Director”	means a Controller and “Directors” shall have the corresponding meaning;
“EIF”	means a CIS established in accordance with the Gibraltar Financial Services (Experienced Investor Funds) Regulations, 2012;
“FSC”	means the Gibraltar Financial Services Commission ( <a href="http://www.fsc.gi">www.fsc.gi</a> );
“GFIA”	means the Gibraltar Funds & Investments Association ( <a href="http://www.gfia.gi">www.gfia.gi</a> );
“Investment Director”	means the Director of a CIS who has the main investment duties and who makes the main investment decisions of a self-managed CIS;
“Investment Manager”	means the appointed Investment Manager of a CIS to which the main investment duties and decisions are delegated by the Board of Directors of the CIS;

“PCC” means a Gibraltar company established as a protected cell company under the Gibraltar Protected Cell Companies Act 2001;

“Private Fund” means a CIS established in Gibraltar with the characteristics defined under the Gibraltar Financial Services (Collective Investment Scheme) Regulations 2011;

## Interpretation

In this Code:

- A. words importing the singular shall be deemed to include the plural and vice versa, words importing the masculine gender shall include the feminine gender also and vice-versa, words importing the neuter gender shall include the masculine and feminine gender also and vice-versa; and
- B. references to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, foundations and trusts (in each case whether or not incorporated or having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists).

## 2. INTRODUCTION TO THIS CODE OF CONDUCT

This Code and the general guidance issued herein in respect of corporate governance and the role of the Director of any Collective Investment Scheme or Investment services business is strongly recommended by GFIA. This Code is not designed or intended to supersede applicable law and regulations. It is a voluntary Code that GFIA recommends all Gibraltar CISs and their Directors should meet in the interest of promoting strong and effective governance.

The Code is primarily geared towards the corporate governance of Gibraltar CISs as defined under Gibraltar Law. IOSCO (International Organization of Securities Commission) defines the governance of such schemes as a 'framework for the organisation and operation of CIS that seeks to ensure that CIS are organised and operated efficiently and exclusively in the interest of their investors, and not in the interest of CIS insiders.' The Code is intended to formalise and codify existing best practice. GFIA, in consultation with the FSC may issue subsequent guidelines on specific issues referred to within this Code that require practical guidance.

The FSC considers the role of CIS Directors to be of the utmost importance, and endorses and supports the adoption of this Code by the Directors to ensure the proper operation and governance of CIS. The Board of a corporate CIS is the focal point of the governance regime for that CIS and it is the Board that is responsible for compliance with this Code if adopted. It is acknowledged that the Board of a corporate CIS may delegate certain functions in accordance with relevant laws but the governance structure implemented by the Board must be sufficiently robust to ensure that there is effective oversight of the activities of the CIS taking into consideration the relevant factors such as the nature, scale, complexity and outsourcing arrangements of the activities being conducted.

Where the Board of an EIF adopts the Code but does not apply specific principles or provisions set out herein, each Director should record and set out his reasons for not doing so in his yearly Directors Return to the FSC. In respect of the Board of a Private Fund, it is expected that, as a matter of good practice, its compliance with this Code is documented at board meetings. It is expected that

the Board minutes of such meetings reflect the compliance or non-compliance with the relevant sections of this Code and the reasons for any non-compliance.

The guidance set out in this Code is not intended to be exhaustive and should not be followed in a check box approach. It is acknowledged that the Code is not immutable. Its fitness for purpose for every CIS, within a changing economic, regulatory and social business environment, requires its evaluation on a case by case basis, at appropriate intervals, or in relation to particular situations.

### **3. ROLE AND RESPONSIBILITIES OF A CIS DIRECTOR**

The Board of each CIS is responsible for the effective and prudent supervision and oversight of the CIS and any counterparty to which duties or responsibilities have been effectively delegated by the CIS in respect of that delegated function.

- 3.1. The Board should be in position to explain its decisions to the FSC if so required.
- 3.2. Directors owe duties to the CIS and to the investors in the CIS of skill, care and diligence in the exercise of their powers and duties in the conduct of the affairs of the CIS and must act as a reasonable person in his position with his subjective skill set would do.
- 3.3. Directors owe a fiduciary duty to act loyally, honestly and in good faith in what they consider to be in the best interests of the CIS. This test has objective and subjective elements. The objective test requires a Director to exercise the skill, care and diligence that would be exercised by a reasonably diligent person having the general knowledge, skill and experience reasonably expected of a person acting as a Director of a CIS. The subjective element requires a Director to exercise the skill, knowledge and experience which he actually possesses. A Director's actual experience, qualifications and background are relevant factors in determining what is considered 'reasonable' skill, care and diligence in each case.
- 3.4. A Director must also exercise the powers conferred on him for their correct purposes and not for personal, collateral or improper purposes.
- 3.5. A Director must not exercise his powers in accordance with the instructions of a third party. His discretion should remain unfettered.

### **4. ESTABLISHMENT OF THE CIS**

During the process of the establishment of the CIS, Directors should be guided by the following principles:



- 4.1. Directors should consider the adoption of this Code for the CIS and how it is to be adopted prior to accepting their appointment. Similarly, promoters, or holders of ordinary voting shares should also encourage compliance with this Code, and support its adoption by the Board of Directors.
- 4.2. At an engagement stage, Directors should be satisfied that appropriate background checks in relation to the principal or promoter of the CIS have taken place prior to accepting any appointment and prior to the submission of any application to FSC, including a request for name approval.
- 4.3. Directors must satisfy themselves that they understand the overall structure of the CIS and its operation. This should include understanding the main terms and roles agreed with any service providers and be comfortable that such terms are reasonable and consistent with industry standards and, to the extent which they are not, that there are reasonable reasons for the divergence. Directors should also understand the nature of the instruments and assets that the CIS is investing in. The Directors should understand the way that such assets are valued and they should also be able to articulate this understanding.
- 4.4. In relation to the establishment of a Private Fund in Gibraltar, Directors should be aware of the identifiable category of persons to whom the offer to invest in the Private Fund will be directly communicated after its establishment and should be aware of and understand the restrictions that exist in relation to such promotion and their implications. Directors should also understand that the offer to participate in such a Private Fund may only be communicated to 50 persons, and that such limit includes potential investors to whom the offer is communicated but who choose not to invest in the Private Fund.
- 4.5. In relation to the establishment of an EIF in Gibraltar, Directors should understand the proposed investor base of the CIS and be comfortable that any promotion to such investor base will comply with any applicable restrictions on promotion in Gibraltar or in any territory where it is intended to promote or offer participation in the CIS. They should also be comfortable that the proposed investor base is capable of qualifying for investment under Gibraltar law.
- 4.6. Directors should understand what service providers will and will not be doing for the CIS and ensure that delegation and the division of responsibilities is in accordance with the law and that it is appropriate. For example, the Directors should ensure that the responsibility for Anti-Money Laundering ('AML') and Combating the Financing of Terrorism ('CFT'), compliance, keeping accounts and preparing financial statements is appropriately delegated and subject to relevant supervision. In respect of the calculation of the Net Asset Value ("NAV") of the CIS, while in practice it is recognised that the Directors or Investment Manager placing the trades may be the initial reviewer and give formal approval of the NAV, all Directors should at least see and have the opportunity to comment on all NAVs produced .

- 4.7. Directors are responsible for the contents of the offering document of the CIS. As such, they should read and understand the offering document to ensure that it is accurate and not misleading at the time of the launch of the CIS and also on an ongoing basis. The Directors should be satisfied that all such information as is necessary for an investor to make an informed decision on whether or not to purchase the shares being offered is appropriately disclosed and that any unique factors relating to the CIS are specifically highlighted.
- 4.8. If the appointment of a service provider is approved in Board resolutions, for example the appointment of an auditor, Directors should make sure that the appointment actually takes place and ask to see a copy of the engagement letter. For example, an auditor will be appointed annually and if the making of this appointment has been delegated to the Investment Manager, the Directors should ensure that the terms are consistent with industry practice.
- 4.9. If an item has been delegated to a single Director to approve, for example, a final draft of an agreement or the final draft of the offering document, the Directors should ensure that there is a process in place to circulate final documents to all of the Board members and consider noting this as having been done at a subsequent meeting.
- 4.10. At the establishment stage, when considering their duties to act in the best interests of the CIS, the Directors should keep the interests of potential investors at the forefront of their minds.

## **5. ONGOING LIFE OF THE CIS**

During the ongoing life of the CIS, Directors should be guided by the following principles:

- 5.1. It is of utmost importance that the Board seeks to ensure that the CIS complies with its offering document on an ongoing basis and that adequate supervision occurs to ensure, as far as reasonably possible, that this is the case.
- 5.2. Another important function of the Board is to review and monitor investment performance. This is the key deliverable from an investor's perspective. Although the Board will typically rely on the CIS Administrator to report on performance to shareholders in terms of figures, the Board should understand how such performance has been achieved, what the ongoing risk profile of the CIS is and whether this is in keeping with the CIS's investment objectives.
- 5.3. The Board should periodically monitor and ensure adherence to the investment policy and restrictions of the CIS as stated in its offering document at Board meetings or otherwise.

- 5.4. The Directors should perform a high level supervisory role by supervising the discharge of any delegated functions. It is not enough for a Director to delegate and assume that the role is being carried out correctly, even when the role is being delegated to a regulated entity. The Board has ultimate responsibility for the valuation of the units in a CIS. Although this is typically delegated to an Administrator, the Director should ensure compliance with stated valuation provisions disclosed in the CIS's offering document.
- 5.5. Directors should understand and be aware of the plans that the Investment Manager or Investment Director of the CIS has in relation to distribution and promotion of the CIS. They should also have sight of, and be able to review and approve any distribution or marketing material in relation to the Fund. The Directors should be aware of the target client base of the CIS and of the restrictions that may apply on marketing, promoting or advertising that may exist in the jurisdictions in which it is intended to sell the units in the CIS. The Board should understand its' responsibility to ensure compliance with such restrictions. Directors should also be aware of and comply with the applicable laws and regulations on the advertising of a CIS which are in force in Gibraltar.
- 5.6. Directors should keep evidence and records of enquiries made to service providers such as emails or records of telephone conversations that take place outside of Board meetings. Any significant matters or issue that result from an enquiry or that come to the attention of a Board member should be reported to the Board as a whole.
- 5.7. Directors are responsible for ensuring that the financial statements of the CIS give a true and fair view of its state of affairs at the end of its financial year. This is not altered by any delegation of account preparation to the Administrator or to the Investment Manager.
- 5.8. Directors are responsible for ensuring that shareholders receive any information that is promised to them in the CIS's offering document. Directors should include themselves on any mailing lists maintained by the Investment Manager or Investment Director for updates that are provided to shareholders.
- 5.9. The Directors should ask questions of all service providers and require reports and documents to be provided regularly or in special circumstances. For example, the Directors should require the Administrator to regularly update the Directors either by report or attendance at Board meetings as to, amongst other things, AML/CFT compliance, changes in pricing sources, pricing problems and deviation from standard procedures.
- 5.10. In addition to regular management or other accounts and reports that may be requested, Directors should generally also ask for copies of all relevant documentation that is sent to investors or regulators by the Investment Manager and the Administrator. As an example, the Directors might request copies of any documentation that relates to a proposed material change, change in investment policy

or any issue relating to liquidity in the CIS but may not expect to receive shareholder statements on an ongoing basis.

- 5.11. If an audit is being carried out on the CIS, Directors should find out how the audit is carried out and the timing of the same. Directors should ensure that they are provided with the draft financial statements with enough time to review them and raise any relevant questions.
- 5.12. If the CIS is undertaking to carry out certain actions by way of side letter, the Directors should review them and be comfortable with their terms from a commercial perspective. If appropriate, Directors should ensure that terms of any side letters are explained to them by the CIS's lawyers prior to acceptance. The Directors should be made aware of all such arrangements. It is not enough to understand that side letters may legally be entered into by the CIS (if permitted by the offering document). If the Investment Manager has been given delegated authority to negotiate and execute side letters on behalf of the CIS, this should form part of the regular reporting to the Directors and the scope of such authority should be agreed.
- 5.13. In relation to governance in between formal Board meetings, it should be up to the Board to decide how executive authority should be exercised. It is not reasonable or practical to expect every governance decision to be made only at physical Board meetings but it is expected that such decisions are recorded and if necessary, ratified at subsequent Board meetings.
- 5.14. During the ongoing life of the CIS, in considering their duties to act in the best interests of the CIS, the Directors should keep the interests of investors at the forefront of their minds.

## **6. CRISIS MANAGEMENT**

Throughout the life of the CIS, Directors should be pro-active in ensuring that the Investment Manager, Investment Director or decision-maker is required to provide information on an ad hoc basis which might require urgent action by the Directors. In addition to standard regular reporting requirements the Directors should ask the Investment Manager or any other relevant service provider whether there is anything which should be brought to their attention. A non-exhaustive list of the type of matters that would fall under this heading are:

- 6.1. Whether there is any actual, pending or possible threatened litigation against the CIS.
- 6.2. Whether there is sufficient liquidity to meet the maximum redemptions permitted under the offering document on an on-going basis, the management of liquidity risk generally and any steps required to deal with the same. This should include

consideration of whether there are readily realisable assets to meet any obligations or commitments set out in the offering document.

- 6.3. Whether there are any disputes with investors or counterparties that would fall short of actual litigation.
- 6.4. Whether redemption requests are likely to have a considerable impact on any dealing day, or whether such requests could de-stabilise or affect the liquidity of the CIS.
- 6.5. Whether market or other conditions are having or are likely to have a material impact on the trading strategies of the CIS.
- 6.6. Whether there is any significant counterparty risk or risk of their failure.
- 6.7. Whether there is any move away from the investment strategy or restrictions set out in the relevant CIS offering document and the steps that may be required to be taken by the Directors to deal with this.
- 6.8. Where there is any reduction in the Investment Manager or decision-maker's holdings in the CIS and the reasons for this.
- 6.9. Whether there are any actual or impending material changes of staff at the Investment Manager (for example, triggering keyman events) with any other service provider.
- 6.10. Whether the FSC should be informed or updated in relation to any of the above or of any other crisis management scenario.

When a CIS finds itself in difficulties, the Directors cannot sit back and assume that other service providers, and in particular the Investment Manager, will rescue the CIS without action from the Directors.

## **7. BOARD OF DIRECTORS COMPOSITION**

- 7.1. The Board and its individual members should be able to demonstrate a collective skill set that allows them to fully understand the activity of the CIS and its operations.
- 7.2. The Board should be of sufficient size and have sufficient expertise to oversee the operations of the CIS and, although there shall be no minimum size (other than as prescribed by law in respect of certain CISs), it is recommended that the Board of a CIS comprise of at least 3 Directors.
- 7.3. The corporate governance of a CIS may reflect the basic principle of proportionality. While the principle of proportionality may not be said to be a substitute for good

corporate governance, it should be recognised and acknowledged that a CIS with greater resources or of a significantly larger size will be able to do more than a smaller start up CIS.

- 7.4. In relation to a Gibraltar EIF, 2 licensed Directors will be appointed to the Board of the CIS in order to comply with legal requirements. The licensed Directors along with any other individual or corporate directors appointed to the Board should understand the operation of the CIS and their skills should, at least to an extent, reflect the skills of the service providers in order that there is always sufficient understanding to be able to supervise, monitor and challenge such service providers where appropriate.
- 7.5. Directors should also be aware of their legal obligations, duties and liabilities to the CIS under the Gibraltar Companies Act and of their responsibilities as determined by relevant legislation, regulations, guidance notes and any other rules or directives including this Code.
- 7.6. Although it is not a legal requirement, it is considered to be good corporate governance to appoint a majority of Directors who are independent of the Investment Manager, Investment Director, sponsor, promoter or decision-maker/controller where possible, and unless there are exceptional circumstances.
- 7.7. It is considered normal and good practice for an executive of the Investment Manager, promoter, sponsor or decision-maker/controller to sit on the Board of the CIS. This is encouraged. Directors appointed by the Investment Manager, promoter or controller should always form a minority of the Board other than in exceptional circumstances.

## **8. SELF-MANAGED BOARD COMPOSITION AND ADDITIONAL RESPONSIBILITIES**

In relation to a self-managed CIS, where a third party Investment Manager is not appointed to manage the investments of the CIS, it is incumbent on each Director to ensure and be comfortable with the other Directors capacity, experience and knowledge to discharge any specific duties that such Directors intend to undertake in their capacities as a Director of the CIS.

Directors who sit on the Board of a self-managed CIS with no regulated Investment Manager, should carefully consider their appointment and should consider the following factors:

- 8.1. The relevant experience and/or legal structure and regulatory position of the Director charged with managing the assets or making investment decisions on behalf of the Board (typically the Investment Director) in managing the assets of the underlying investment type.
- 8.2. Where appropriate (for example, where the Directors do not possess the relevant investment management experience in the relevant asset class) that there is a separate

independent investment advisor appointed that has suitable experience (to the satisfaction of the Board).

- 8.3. The fitness and probity of the Investment Director.
- 8.4. That the activities of the Investment Director comply with all applicable laws and regulations and that the regulatory position of the Investment Director is understood and appropriately disclosed.
- 8.5. How the Investment Director intends to report to the Board and the method in place to review and monitor risk. For instance, this could include liquidity and compliance with the mandate set out in the offering document.

## **9. PROTECTED CELL COMPANIES (“PCC”) BOARD COMPOSITION AND ADDITIONAL RESPONSIBILITIES**

In relation to a CIS structured as a PCC, Directors should familiarize themselves with and be aware of the additional responsibilities placed on them by the Protected Cell Companies Act 2001.

Director of such EIFs should also consider the following factors.

- 9.1. The offering document of a PCC CIS and whether adequate notice is given to investors of any particular cell as to the investment strategy, objective or the intended asset class of any future cell.

For example, the Board should consider whether the wording in the Part A document of a PCC offering document is sufficiently well defined to capture the intended activity of the principal or promoter, but narrow enough to allow investors in the first cell to reasonably assume and understand the activity taking place within the PCC and any new potential cell of the PCC.

- 9.2. In the event that a new cell is established and created which could not have been reasonably foreseen by an investor in an existing cell, the manner in which such investor should be notified of the existence of such cell.

For example, the Board should decide whether the investor should be made aware of the existence of a new cell through the circulation of an updated appendix to the offering document of the CIS setting out the activity of the new cell, whether they should be notified by letter or by any other means decided at the discretion of the Board.

- 9.3. The extent to which the existing members of the Board will need to allocate additional time and resource to the oversight of any new cell and whether the collective skill set of

the Board is sufficient to adequately understand the activity and operations of the new cell.

More specifically the Board will need to determine whether there is sufficient experience and resource within the existing Board or whether the Board should consider options such as the appointment of a specialist advisor in respect of a particular cell, the appointment of new and specialised Directors (bearing in mind that the Director appointed to assist in respect of one cell will bear joint and several responsibility with the Board over all cells of the PCC), or the creation of a specialist investment committee.

- 9.4. The Directors should also ensure that all cell-specific issues are discussed separately and that distinguishable records are kept in respect of each active cell of a Protected Cell Company.
- 9.5. The Directors should also consider the most appropriate manner of reporting the assets and liabilities of each cell within the financial statements of the CIS and its audited accounts.

## **10. DIRECTORS' SKILLS, KNOWLEDGE AND CAPACITY**

- 10.1. Directors of a CIS should have experience that is relevant to the investment fund industry. They should have sufficient and relevant knowledge and experience to carry out their duties as a Director.
- 10.2. Directors should have an understanding of the trading strategies and strategy of the investment manager or investment director of the CIS. The Director must have an understanding of financial statements and be able to review balance sheets and reports produced by the Investment Manager, Investment Director, Administrator or otherwise.
- 10.3. It is up to each Director, even after having become approved as an EIF licensed Director, to acquire and maintain sufficient knowledge to enable him to fulfill his duties in relation to the CISs of which they are Directors.
- 10.4. A Director should be able to make a meaningful contribution and add value to the operations of the CIS. This should be achieved through preparation for Board meetings, seeking reports on areas of concern and through the Director undertaking his own assessment of risk and risk mitigation. For example, by the Director assessing and managing the perceived risk of delegation of any of any functions, controls or procedures. Delegation without oversight is not sufficient or effective corporate governance.



- 10.5. A Director should be able to devote sufficient time to carry out his duties and this should be reflected in his remuneration. A Director is encouraged to seek directors and officers insurance for each CIS where he is a director (at the expense of each CIS).
- 10.6. The capacity of a Director to fulfill his role, both in terms of experience and also the allocation of time and resource is important. Regardless of qualifications and/or experience, a Director should have sufficient time to discharge his duties as a CIS Director. It is not possible to determine a flat limit on the number of CIS directorships that any individual may hold as this will always be a question of the capacity and specific context. Factors such as whether the Director is a full time professional or not, his professional experience, the support provided to such Director, fund industry knowledge and the complexity of the CIS in question will all be relevant considerations. It will be incumbent on the Director to justify the number of directorships held by him at any given time, in the context of his own specific circumstances.

## **11. EFFECTIVE OVERSIGHT AND SUPERVISION**

As set out in this Code, the Board of Directors has a responsibility to ensure that procedures are in place to ensure adequate monitoring and oversight of service providers. Specific attention should be given to the following matters:

### **11.1. *Risk management***

The Board should effectively oversee the activity of the Investment Manager, Investment Director or any party to whom investment management decisions have been effectively delegated to ensure that there is ongoing compliance with the mandate defined in the offering document of the CIS. The Board should ensure that appropriate and proportional risk management systems are in place which cover the principle risks relating to the activity of the CIS including, but not limited to, investment risk.

The Board should also ensure that the risks associated with investing in any particular asset class are adequately identified and disclosed to investors as is required by law. The Board should ensure that any special risks are specifically highlighted to any potential investor.

### **11.2. *Audit and Accounting***

The Board is responsible for keeping proper up to date books of account which discloses the financial position of the CIS. The Board will typically delegate these duties to the Administrator provided that it reviews the performance by the Administrator of these functions.

The Board must ensure that all relevant accounting records are properly maintained and kept and that such records are readily available. The Board should also monitor and ensure

the production and filing of annual financial statements, audited statements (where applicable) and any other returns that the CIS is required to file.

### 11.3. *Compliance*

The Board is responsible for complying with all AML and CFT legislation and guidance notes. Notwithstanding any delegation of these responsibilities to the Administrator under the terms of any administration agreement, the Board will remain responsible for compliance with such legislation and guidance notes.

The Board should review and understand the customer due diligence process of the Administrator on any investor in the CIS and should seek ongoing comfort that AML and CFT obligations are being complied with.

### 11.4. *Control of CIS assets*

A CIS is charged with protection of its assets. Whereas the CIS Directors may not be able to ensure that the value of their investments increases or is indeed maintained, they should be able to ensure that the assets entrusted to them by the investors are always used for the purposes for which they were originally intended and as described in the CIS offering document (as may be amended from time to time in accordance with EIF regulations).

In order to achieve this:

- A. A CIS shall ensure that, to the extent possible, its assets are controlled by authorised persons who are regulated/authorised by a financial services authority or professional body, whether in Gibraltar or in a jurisdiction of the equivalent regulatory or professional standards. Control of assets refers to control to signatory authorities on the CIS bank and brokerage accounts. For the avoidance of doubt, control in this case does not refer to the ability to make investments or purchase securities within said accounts or to transfer assets or cash between accounts for the purpose of management of such investments.
- B. A CIS shall ensure that at least 2 signatories who are regulated/authorised as set out at 11.4A, are required to authorise the transfer of any of its assets or cash to third parties including to service providers and investors. A CIS should never allow a sole signatory to transfer its assets or cash to a third party even if that signatory is authorised by a regulatory authority.
- C. A CIS shall ensure that, when it is obligated for investment purposes to transfer CIS assets to a third party such as in the case of a property or private equity investment, it should take such steps as it deems proper to safeguard such assets. Examples of this may be to replace a Director on the Board of the company or special purpose vehicle into which the CIS is invested or having a Director of the CIS or close associate who has a duty of care to the CIS act as a co-signatory on the accounts of the investee company or special purpose vehicle.

## **12. CONFLICTS OF INTEREST**

- 12.1. CIS Directors should always be mindful of any actual, potential or apparent conflict of interest and appropriate disclosures should be made to the CIS's investors in the offering document and to the Board. Executives or employees of a service provider to a Gibraltar CIS may sit on the Board of the CIS. In such circumstances, individuals will owe a clear duty to the CIS. In the event of a conflict existing between the duty owed to the CIS and the duty owed to an employer/third party it is expected that the Director prefer the CIS or that in the alternative, the Director recuse himself from the relevant decision.
- 12.2. The Board should identify, disclose and manage fairly and effectively any actual, potential or apparent conflicts of interest. The Board should document its procedure for dealing with and resolving such conflicts and review compliance with these procedures at least once a year.
- 12.3. If there are conflicts of interest that are considered by the Board to have an ongoing impact on the ability of the Board to act in the best interests of the CIS then consideration should be given to the resolution of this conflict.
- 12.4. Conflicts of interest should be documented and managed by the Board as well as being detailed in the offering document. A CIS should generally not have both Directors being involved with or linked to any single service provider of the CIS.

## **13. BOARD MEETINGS OF A CIS**

- 13.1. The Board should meet as often as is necessary and is appropriate to allow it to fulfill its functions responsibly, effectively and prudently.
- 13.2. It is good practice for Board meetings to be held at least on a quarterly cycle to review performance and operations for the preceding quarter.
- 13.3. Board meetings may be held more frequently whenever a key strategic decision is required. The Board may also establish a formal schedule or list of matters, powers or decisions that are specifically reserved for approval at a relevant Board meeting.
- 13.4. An agenda of items to be considered at the Board meeting together with any relevant supporting documents or information should be circulated in advance of the Board meeting giving the Directors a reasonable amount of time to review and understand the information prior to the same. Notice of Board meetings should be provided in accordance with the Articles of Association of the CIS.

13.5. Although the scope and agenda of a Board meeting may vary significantly between CISs, there are some core features that should be addressed at each Board meeting. These include:

- A. A report from the Investment Manager or Investment Director either in writing or in person that permits the Board to review the activity of the CIS from a performance, risk, liquidity and compliance perspective and that informs the Board of any breach of investment or borrowing restrictions.
- B. A report from the Administrator either in writing or in person that permits the Board to review and understand the NAV of the CIS and the NAV per share of the CIS, that confirms that there has been ongoing compliance with the applicable AML and CFT requirements, and whether there have been any errors in valuation that are likely to have a material effect on investors in the CIS.

(Note that the above should be considered as guidance only and constitute a non-exhaustive list of matters that each Board may or may not deem to be relevant.)

13.6. Minutes of all Board meetings should be prepared and decisions made by the Board outside of those meetings should be ratified at such meetings where appropriate. The minutes of the meetings should specifically record decisions that have been made, points that have been subject to open discussion and actionable follow up points for the Board to consider.

13.7. Directors should ensure that they are familiar with and understand all matters dealt within Board minutes or in Directors' resolutions and the fundamental nature and purpose of all documents referred to therein.

13.8. It is acknowledged that it is not always possible for every individual to travel to every physical Board meeting and that participation by telephone or video conference may occur. Broader tax issues must also be taken into account, and Directors physically present at the meeting must have the relevant experience and ability to make the relevant decisions.

13.9. Where the Board of the CIS choose not to meet in Gibraltar, they should consider what steps will need to be taken to reduce the risk of the CIS becoming taxable in any other jurisdiction and whether such meetings may prejudice the interests of the investors in the CIS.

13.10. If an ongoing conflict of interest arises, such conflict and the steps taken to address and deal with it should be noted and recorded in the minutes of the relevant meeting.

#### **14. COMMITTEES**

Although there is no obligation to do so, provided that the CIS has the authority to create committees under its constitutional documents, the Board of a CIS may create specialist committees in respect of certain functions. For example, in respect of pricing/valuation, or in respect of allotments of shares in the CIS.

Committees should be formally created with documented terms of reference that set out the responsibilities, functions, the intended operations and the authorities delegated to that Committee.

The proceedings and decisions of the Committees should be minuted and formally reported to the Board, and thereafter, if appropriate, its decisions ratified by the Board.

#### **15. AMENDMENTS TO THIS CODE**

This Code may be updated and amended from time to time as may be decided by GFIA, in consultation with the FSC, acting through its technical committee and subject to the approval of the GFIA executive committee.