

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

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LEGAL NOTICE NO. 484 OF 2020

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### FINANCIAL SERVICES (AUDIT REGULATION) (AMENDMENT) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred on the Minister by section 11 of the European Union (Withdrawal) Act 2019, the Minister has made these Regulations-

#### **Title.**

1. These Regulations may be cited as the Financial Services (Audit Regulation) (Amendment) (EU Exit) Regulations 2020.

#### **Commencement.**

2. These Regulations come into operation on 1st January 2021.

#### **Amendment of the Audit Regulation.**

3.(1) The Audit Regulation, is amended in accordance with regulation 4 to 7.

(2) In these regulations, the “Audit Regulation” means Regulation (EU) No. 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

#### **Amendment of Title I.**

4.(1) In Article 2–

(a) for paragraph 2 substitute–

“(2) This Regulation shall apply without limiting–

(a) Part 24 of the Financial Services Act 2019;

(b) Part 7 of the Companies Act 2014;

(c) any enactment which applies Part 7 of the Companies Act 2014 to entities other than companies; or

(d) any subsidiary legislation made under an enactment in sub-paragraphs (a) to (c).”; and

(b) omit paragraphs 3, 4 and 5.

(2) For Article 3 substitute–

“For the purposes of this Regulation, the definitions in the following enactments apply–

(a) section 2 and Part 24 of the Financial Services Act 2019;

(b) Part 7 of the Companies Act 2014;

(c) any enactment which applies Part 7 of the Companies Act 2014 to entities other than companies; and

(d) any subsidiary legislation made under an enactment in sub-paragraphs (a) to (c).”.

### **Amendment of Title II.**

5.(1) In Article 4–

(a) in paragraph 1, in the second sub-paragraph–

(i) omit “Without prejudice to Article 25 of Directive 2006/43/EC,”; and

(ii) for “a competent authority” substitute “ the competent authority”;

(b) in paragraph 2–

(i) in the second sub-paragraph, for “Union or national legislation” substitute “the law of Gibraltar”; and

(ii) in the third sub-paragraph, for “Member States may provide that a” substitute “The”; and

(c) omit paragraph 4.

(2) In Article 5–

(a) in paragraph 1, in the first sub-paragraph–

(i) after “parent undertaking” insert “(incorporated or formed in Gibraltar)”;

(ii) omit “within the Union”;

- (iii) in point (a), for “period audited” substitute “financial year of the accounts to be audited”;
  - (iv) in point (b), for “the period referred to in point (a)” substitute “that period”;
  - (b) omit paragraph 2;
  - (c) in paragraph 3,
    - (i) omit “Member States may allow”;
    - (ii) after “(a)(vii) and (f)” insert “is allowed”; and
    - (iii) for Directive “2006/43/EC” substitute “Part 24 of the Financial Services Act 2019”;
  - (d) in paragraph 4, in the first sub-paragraph–
    - (i) after “parent undertaking” insert “(incorporated or formed in Gibraltar)”; and
    - (ii) for “Article 22b of Directive 2006/43/EC” substitute “section 496 of the Financial Services Act 2019”; and
  - (e) in paragraph 4, omit the second sub-paragraph.
- (3) In Article 6, in paragraph 1–
- (a) for “Article 22b of Directive 2006/43/EC” substitute “section 496 of the Financial Services Act 2019”; and
  - (b) in point (c), for “Directive 2005/60/EC” substitute “the Proceeds of Crime Act 2015 and the Terrorism Act 2018”.
- (4) In Article 7, in the first sub-paragraph, for “Directive 2005/60/EC” substitute “the Proceeds of Crime Act 2015 and the Terrorism Act 2018”.
- (5) Omit Article 9.
- (6) In Article 10–
- (a) in paragraph 2–
    - (i) in the first sub-paragraph, for “provisions of Article 28 of Directive 2006/43/EC” substitute “section 505 of the Financial Services Act 2019”; and

- (ii) omit the second sub-paragraph; and
  - (b) in paragraph 4, for “any competent authority” substitute “the competent authority”.
- (7) In Article 11–
- (a) in paragraph 1–
    - (i) for the first sub-paragraph substitute–

“1. Statutory auditors or audit firms carrying out statutory audits of public-interest entities shall not later than the date of submission of the audit report referred to in Article 10 submit an additional report to–

      - (a) the audit committee of the audited entity; and
      - (b) the administrative or supervisory body of the audited entity.”;
    - (ii) in the second sub-paragraph, omit the second sentence;
  - (b) in paragraph 2, omit the second sub-paragraph; and
  - (c) in paragraph 5–
    - (i) omit “and in accordance with national law,”; and
    - (ii) for “competent authorities within the meaning of Article 20(1)” substitute “competent authority”.
- (8) In Article 12–
- (a) in paragraph 1–
    - (i) in the first sub-paragraph, for the opening words substitute–

“1. The statutory auditor or the audit firm carrying out the statutory audit of a public-interest entity shall have a duty to report promptly to the competent authority responsible for the oversight of the statutory auditor or audit firm, any information concerning that public-interest entity of which he, she or it has become aware while carrying out that statutory audit and which may bring about any of the following:”;
    - (ii) in the second sub-paragraph, for “point (38) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council” substitute “Article 4.1(38) of the Capital Requirements Regulation”.
    - (iii) for the third sub-paragraph substitute–

“This Article applies without limiting any duty imposed on a statutory auditor or audit firm by–

- (a) regulation 76 of the Financial Services (Investment Services) Regulations 2020;
- (b) regulation 99 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;
- (c) regulation 85(4) of the Financial Services (Payment Services) Regulations 2020;
- (d) regulation 124 of the Financial Services (UCITS) Regulations 2020;
- (e) regulation 39 of the Financial Services (Electronic Money) Regulations 2020; or
- (f) regulation 62 of the Financial Services (Insurance Companies) Regulations 2020.”;

(b) in paragraph 2–

- (i) in the first sub-paragraph, for the first sentence substitute–

“An effective dialogue shall be established between the competent authority and the statutory auditor(s) and the audit firm(s) carrying out the statutory audit of credit institutions and insurance undertakings.”; and

- (ii) omit the second and third sub-paragraphs; and

(c) in paragraph 3, for “competent authorities or to ESRB and the CEAOB” substitute “competent authority”.

(9) In Article 13, in paragraph 2, in the first sub-paragraph–

(a) in point (b)(ii), after “network” insert “who is eligible to undertake statutory audits or equivalent audits in the United Kingdom or EEA States”;

(b) for point (b)(iii) substitute–

“(iii) for each member of the network identified under paragraph (ii), the countries in which the member is eligible for appointment as an auditor or has his, her or its registered office, central administration or principal place of business;”;

(c) for point (b)(iv) substitute–

- “(iv) the total turnover of the members of the network identified under paragraph (ii) resulting from statutory audit work or equivalent work in the United Kingdom or EEA States;”;
  - (d) in point (h), for “Article 13 of Directive 2006/43/EC” substitute “section 486 of the Financial Services Act 2019”; and
  - (e) in point (k), for “financial statements within the meaning of Article 4(2) of Directive 2013/34/EU” substitute “accounts”.
- (10) In Article 14–
- (a) in the opening words, for “his, her or its” substitute “the”;
  - (b) in point (b), for “Union or national legislation” substitute “the law of Gibraltar”; and
  - (c) in point (c), for “Union or national legislation” substitute “the law of Gibraltar”.
- (11) In Article 15, omit the second sub-paragraph.

### **Amendment of Title III.**

#### 6.(1) In Article 16–

- (a) in paragraph 1–
  - (i) in the first sub-paragraph–
    - (aa) for “Article 37(1) of Directive 2006/43/EC” substitute “section 529(1) of the Financial Services Act 2019”; and
    - (bb) omit “but may be subject to paragraph 7”;
  - (ii) for the second sub-paragraph–

“Paragraphs 2 to 5 of this Article shall not apply to the appointment of statutory auditors or audit firms by public-interest entities by an alternative method provided for in regulations made under section 529(2) of the Financial Services Act 2019.”
- (b) in paragraph 3, in the first sub-paragraph–
  - (i) in point (a), omit “in the Member State concerned”;
  - (ii) in point (d), for “Union or national law, the competent authorities referred to in Article 20 require” substitute “the law of Gibraltar, the competent authority requires”;

- (iii) in point (f), omit “referred to in Article 20”;
  - (c) in paragraph 3, in the third sub-paragraph, omit “referred to in Article 20(1)”;
  - (d) for paragraph 4 substitute–

“4. A public-interest entity shall not be required to apply the selection procedure referred to in paragraph 3 if it is a small or medium sized enterprise within the meaning of Article 2(f) of the Prospectus Regulation.”;
  - (e) in paragraph 6–
    - (i) in the first sub-paragraph–
      - (aa) “for “Article 37 of Directive 2006/43/EC” substitute “section 529(3) of the Financial Services Act 2019”;
      - (bb) for “null and void” substitute “of no effect”;
    - (ii) in the second sub-paragraph, for “competent authorities referred to in Article 20” substitute “competent authority”;
  - (f) omit paragraph 7; and
  - (g) in paragraph 8–
    - (i) for “Member States may allow that nomination committee to” substitute “that committee may”;
    - (ii) for “require it to” substitute “shall”.
- (2) In Article 17–
- (a) omit paragraph 2;
  - (b) in paragraph 3–
    - (i) omit “, or in point (b) of paragraph 2,”; and
    - (ii) omit “within the Union”;
  - (c) in paragraph 4–
    - (i) for the opening words substitute–

“ The maximum duration referred to in the second sub-paragraph of paragraph 1 may be extended to a maximum of:”;

- (ii) in point (a), omit “and in point (b) of paragraph 2”; and
  - (iii) in point (b)–
    - (aa) omit “and in point (b) of paragraph 2”; and
    - (bb) for “Article 28 of Directive 2006/43/EC” substitute “section 505 of the Financial Services Act 2019”;
  - (d) in paragraph 5–
    - (i) omit “and in point (b) of paragraph 2”; and
    - (ii) omit “, in accordance with national law,”
  - (e) in paragraph 6–
    - (i) omit “, in point (b) of paragraph 2,”; and
    - (ii) omit “referred to in Article 20(1)”;
  - (f) in paragraph 7, omit the second sub-paragraph.
- (3) In Article 18–
- (a) in the first sub-paragraph, for “laid down in Article 23(3) of Directive 2006/43/EC” substitute “in section 498(3) of the Financial Services Act 2019”; and
  - (b) in the second sub-paragraph, for “competent authorities” substitute “the competent authority”.

(4) Omit Article 19.

#### **Amendments of Title IV.**

7.(1). Omit Article 20.

(2) In Article 21–

- (a) in the first sub-paragraph, for “competent authorities” substitute “competent authority”;
- (b) in the second sub-paragraph, for “competent authorities” substitute “competent authority”;



(c) in the third sub-paragraph, for “governing body, or responsible for the decision-making, of those authorities” substitute “the Auditors Regulatory Committee”;  
and

(d) in the fourth sub-paragraph, for “those authorities” substitute “the competent authority”.

(3) In Article 22, for “laws, regulations or administrative procedures of a Member State” substitute “law of Gibraltar”.

(4) In Article 23–

(a) in the heading, for “competent authorities” substitute “competent authority”;

(b) for paragraph 1 substitute–

“(1) Without prejudice to Article 26, in carrying out the competent authority’s tasks, neither the competent authority nor any other regulatory authority or body may interfere with the content of audit reports.”.

(c) for paragraph 2 substitute–

“2. The competent authority may exercise any of its supervisory and investigatory powers under the Financial Services Act 2019 including, in particular, the powers in sections 507 to 524 of that Act, for the purpose of discharging its functions under this Regulation.”;

(d) in paragraph 3–

(i) omit the first sub-paragraph; and

(ii) in the second sub-paragraph, for “The competent authorities may use the powers referred to in the first subparagraph only” substitute “The competent authority may exercise the powers referred to paragraph 2”;  
and

(e) omit paragraphs 4 to 6

(5) In Article 24–

(a) for paragraph 1, substitute–

“(1) The competent authority may, with the consent of the Minister, delegate to another body any of the competent authority’s tasks under this Regulation other than tasks related to–

(a) the quality assurance system referred to in Article 26;

- (b) investigations carried out under powers in Article 23 or Part 24 of the Financial Services Act 2019 arising from that quality assurance system or from a referral by another authority; and
    - (c) the imposition of sanctions or the taking of measures under that Part related to the quality assurance reviews or investigation of statutory audits of public interest entities.”;
  - (b) in paragraph 3, omit the second sub-paragraph; and
  - (c) omit paragraph 4.
- (6) In Article 25–
- (a) in the heading, for “competent authorities at national level” substitute “authorities”; and
  - (b) for the first sub-paragraph substitute–  
“The competent authority and, where appropriate, any body to which the competent authority has delegated tasks shall cooperate with the Gibraltar Financial Intelligence Unit and the supervisory authorities designated under the Proceeds of Crime Act 2015.”.
- (7) In Article 26–
- (a) in paragraph 1–
    - (i) in point (a), for “Article 32(5) of Directive 2006/43/EC” substitute “section 525(6) of the Financial Services Act 2019”;
    - (ii) in point (b)–
      - (aa) for “a reviewer” substitute “an individual”; and
      - (bb) for “a competent authority” substitute “the competent authority”; and
    - (iii) in point (c), for “a natural person” substitute “an individual”;
  - (b) in paragraph 2–
    - (i) in the first sub-paragraph, for “competent authorities designated under Article 20(1)” substitute “competent authority”;
    - (ii) in the second sub-paragraph–
      - (aa) in the opening words, for “They” substitute “The competent authority”;

(bb) for point (a), substitute–

“(a) in the case of statutory auditors and audit firms carrying out audits of public interest entities other than those which, but for being public interest entities would qualify as small or medium-sized under Schedule 9 to the Companies Act 2014 (or would so qualify if they were companies), at least every three years; and”;

(c) in paragraph 5, in the second sub-paragraph–

(i) for “a competent authority” substitute “the competent authority”;

(ii) for “the competent authorities” substitute “the competent authority”;

(d) after paragraph 5, insert–

“5A. In point (a) of paragraph 5, “relevant experience” means experience of–

(a) statutory audit work;

(b) equivalent work, in the case of a person appointed before IP completion day to conduct inspections on the audit of accounts under the law of the United Kingdom or an EEA State; or

(c) equivalent work, in the case of a person appointed to conduct inspections on the audit of accounts under the law of an equivalent third country.”; and

(e) in paragraph 7,

(i) in the first sub-paragraph–

(aa) in point (a), for “those set out in Chapter IV of Directive 2006/43/EC and Articles 4 and 5 of this Regulation, as well as relevant laws, regulations and administrative provisions of the Member State concerned” substitute “the requirements of sections 493 to 502 of the Financial Services Act 2019 and Articles 4 and 5 of this Regulation”;

(bb) in point (b), for “Article 13 of Directive 2006/43/EC” substitute “section 486 of the Financial Services Act 2019”;

(ii) in the third sub-paragraph, for “Competent authorities” substitute “The competent authority”; and

(iii) in the fourth sub-paragraph, for “competent authorities” substitute “the competent authority”.

(8) In Article 27–

- (a) in paragraph 1, for “competent authorities designated under Article 20(1) and the European Competition Network (ECN), as appropriate,” substitute “competent authority”;
- (b) in paragraph 2–
  - (i) for “By 17 June 2016, and at least every three years thereafter, each competent authority and the ECN,” substitute “At the Minister’s request, the competent authority”;
  - (ii) for “CEAOB, ESMA, EBA, EIOPA and the Commission” substitute “the Minister”; and
  - (iii) omit the second sub-paragraph.

(9) In Article 28–

- (a) in the heading, for “competent authorities” substitute “competent authority”;
- (b) in the opening words, for “Competent authorities” substitute “ The competent authority”;
- (c) in paragraph (a), for “their” substitute “its”;
- (d) in paragraph (b), for “their” substitute “its”; and
- (e) in paragraph (d), omit “Member States may require the publication of those findings and conclusions on individual inspections.”.

(10) Omit Articles 29 to 44.

Dated: 24<sup>th</sup> December 2020.

A J ISOLA,  
Minister with responsibility for financial services.

### **EXPLANATORY MEMORANDUM**

These Regulations are made in exercise of the powers in section 11 of the European Union (Withdrawal) Act 2019, in order to address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar's withdrawal from the European Union. They amend Regulation (EU) No. 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.