

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

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LEGAL NOTICE NO. 490 OF 2020

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### FINANCIAL SERVICES (INSURANCE DISTRIBUTION) (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 (Insurance Distribution) (Amendment) (EU Exit) Regulations 2020.

#### **Commencement.**

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

#### **Amendment of the Financial Services (Insurance Distribution) Regulations 2020**

3.(1) The Financial Services (Insurance Distribution) Regulations 2020 are amended as follows.

(2) In regulation 2(1)-

- (a) omit the definition of “authorised credit institution”;
- (b) omit the definition of “branch”;
- (c) in the definition of “close links” for “Article 13(17) of the Solvency 2 Directive” substitute “section 3(1) of the Financial Services (Insurance Companies) Regulations 2020”;
- (d) omit the definition of “home State”;
- (e) omit the definition of “host State”;
- (f) in the definition of “insurance-based investment product” for “falling under the scope of Directive 2003/41/EC or the Solvency 2 Directive” substitute “authorised under Part 26 of the Act and subject to the Financial Services (Occupational

Pensions Institutions) Regulations 2020 or the Financial Services (Insurance Companies) Regulations 2020”;

(g) in the definition of “large risks” for “Article 13(27) of the Solvency 2 Directive” substitute “section 3(1) of the Financial Services (Insurance Companies) Regulations 2020”;

(h) in the definition of “non-life insurance products” for “Annex I to the Solvency 2 Directive” substitute “paragraph 22 of Schedule 2 to the Act”; and

(i) after the definition of “primary place of business” insert–

““recognised credit institution” means–

(a) a credit institution with Part 7 permission to carry on the regulated activity of accepting deposits;

(b) a central bank of a state that is a member of the Organisation for Economic Co-operation and Development (an “OECD state”);

(c) a credit institution that is supervised by the central bank or other banking regulator of an OECD state;

(d) any credit institution that–

(i) is subject to regulation by the banking regulator of a country or territory that is not an OECD state;

(ii) is required by the law of the country or territory in which it is established to provide audited accounts;

(iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time);

(iv) has a surplus of revenue over expenditure for the last two financial years; and

(v) has an annual report which is not materially qualified;”.

(3) In regulation 5(3)(a), for “the EEA” substitute “Gibraltar”.

(4) In regulation 10(1) omit paragraph (b).

(5) In regulation 13–

(a) in sub-regulation (9), for paragraph (d) substitute–

“(d) be written in English or, if agreed by the consumer and the distributor, in another language;”; and

(b) for sub-regulation (11) substitute–

“(11) This regulation applies subject to any technical standards concerning the format of the insurance product information document and specifying the details of the presentation of the information referred to in sub-regulation (10).

(6) In regulation 16(1), for paragraph (c) substitute–

“(c) in English or in any other language agreed upon by the parties; and”.

(7) For regulation 17(8) substitute–

“(8) This regulation must be applied having regard to any guidance on the assessment and supervision of cross-selling practices issued by the GFSC in accordance with Article 24.4 of the Insurance Distribution Directive.”.

(8) For regulation 18(8) substitute–

“(8) This regulation applies subject to any technical standards which further specify the principles set out in the regulation, taking into account in a proportionate way the activities performed, the nature of the insurance products sold and the nature of the distributor.”.

(9) For regulation 20(6) substitute–

“(6) This regulation applies subject to any technical standards which specify–

(a) the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer;

(b) the criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.”.

(10) In regulation 21–

(a) in sub-regulation (6)–

(i) in paragraph (b)–

(aa) in sub-paragraph (i), for “MiFID 2 Directive” substitute “Financial Services (Investment Services) Regulations 2020”; and

(b) for sub-regulation (13) substitute—

“(13) This regulation must be applied—

(a) subject to any technical standards which further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in this regulation when carrying out insurance distribution activities with their customers, taking into account—

(i) the nature of the services offered or provided to the customer or potential customer, having regard to the type, object, size and frequency of transactions;

(ii) the nature of the products being offered or considered including different types of insurance-based investment products;

(iii) the retail or professional nature of the customer or potential customer;  
and

(b) having regard to any guidance issued by the GFSC in accordance with Article 30.7 or 30.8 of the Insurance Distribution Directive.”.

(11) In regulation 30—

(a) omit sub-regulation (2); and

(b) omit sub-regulation (4).

(12) Omit regulation 31.

(13) For regulation 37(4) substitute—

“(4) This regulation applies subject to any technical standards which—

(a) define the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distribution activities;

(b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of customers or potential customers of the insurance intermediary or insurance undertaking.”.

(14) In regulation 38A, in both places it occurs, for “authorised credit institution” substitute “recognised credit institution”.

(15) In regulation 54–

- (a) in sub-regulation (1) omit “covering the whole of the EEA”; and
- (b) omit sub-regulation (4).

(16) In regulation 54D(2), for “an authorised credit institution” substitute “a recognised credit institution”.

(17) In regulation 54F–

- (a) in sub-regulation (1), for “an authorised credit institution” substitute “a recognised credit institution”; and
- (b) in sub-regulation (3)(c), for “authorised credit institution” substitute “recognised credit institution”.

(18) In regulation 54G(2), for “authorised credit institution” substitute “recognised credit institution”.

(19) In regulation 54J–

- (a) in the heading, for “authorised” substitute “recognised”; and
- (b) in sub-regulation (1), for “an authorised credit institution” substitute “a recognised credit institution”.

(20) Omit regulation 55(11).

(21) Omit regulation 57.

(22) Omit Part 7.

(23) In regulation 85–

(a) for sub-regulation (2) substitute–

“(2) The Register must specify the names of the individuals within the management of an insurance or reinsurance distributor who are responsible for insurance or reinsurance distribution.”;

(b) omit sub-regulation (5); and

(c) for sub-regulation (8) substitute–

“(8) Where an insurance, reinsurance or ancillary insurance intermediary ceases to meet the requirements of regulation 32, 33 or 54, the GFSC must–

- (a) revoke that person's Part 7 permission or registration; and
  - (b) remove the person's name from the Register.”.
- (24) Omit regulation 85A(2).
- (25) In Schedule 1–
- (a) in paragraph I., in the opening words, for “Part A of Annex I to the Solvency 2 Directive” substitute “paragraph 22 of Schedule 2 to the Act”; and
  - (b) in paragraph III.–
    - (i) in the opening words, for “Annex II to the Solvency 2 Directive” substitute “paragraph 23 of Schedule 2 to the Act”; and
    - (ii) in sub-paragraph (b), for “the relevant Member State” substitute “Gibraltar”.
- (26) In Appendix 1, in the Notes on the balance sheet format, in paragraph 3(i), for “an authorised credit institution” substitute “a recognised credit institution”.

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

A J ISOLA,  
Minister with responsibility for financial services.

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### EXPLANATORY MEMORANDUM

These regulations are made under the European Union (Withdrawal) Act 2019 and address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar's withdrawal from the European Union. The regulations amend the Financial Services (Insurance Distribution) Regulations 2020, which give effect in Gibraltar to Directive (EU) 2016/97.