

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4815 GIBRALTAR Thursday 28th January 2021

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LEGAL NOTICE NO. 91 OF 2021.

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### FINANCIAL SERVICES (EXPERIENCED INVESTOR FUNDS) (AMENDMENT) (EU EXIT) REGULATIONS 2021

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 (Experienced Investor Funds) (Amendment) (EU Exit) Regulations 2021.

#### **Commencement.**

2. These Regulations are deemed to have come into operation on 1st January 2021.

#### **Amendment of the Financial Services (Experienced Investor Funds) Regulations 2020.**

3.(1) The Financial Services (Experienced Investor Funds) Regulations 2020 are amended as follows.

(2) In regulation 2—

(a) in the definition of “professional advisor”, for “the EEA” substitute “Gibraltar”;  
and

(b) after the definition of “protected cell company” insert—

““third country” means a country or territory outside Gibraltar; and”.

(3) In regulation 4(1)(b)(vi), for “EEA” substitute “United Kingdom”.

(4) In regulation 8—

(a) in sub-regulation (2)—

(i) in paragraph (a), for “Article 5.1(a) of the AIFM Directive” substitute  
“regulation 10(2)(a) of the Financial Services (Alternative Investment  
Fund Managers) Regulations 2020”; and

- (ii) in paragraph (b), for “Article 5.1(b) of the AIFM Directive” substitute “regulation 10(2)(b) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020”; and
- (b) in sub-regulation (4)–
  - (i) in the definition of “AIF”, for paragraph (b) substitute–

“(b) does not require authorisation as a UCITS scheme under Part 18 of the Act;”;
  - (ii) for the definition of “AIFM” substitute–

““AIFM” means a legal person whose regular business is managing one or more AIFs (irrespective of whether the person is within regulation 10(2)(a) or (b) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020);”;
  - (iii) for the definition of “in-scope AIFM” substitute–

““in scope AIFM” means an AIFM that has Part 7 permission for the regulated activity of managing an AIF (in-scope AIFM) in paragraph 95 of Schedule 2 to the Act.”.
- (5) In regulation 9(3)(b)(i), for “an EEA State or in another jurisdiction” substitute “a third country”.
- (6) In regulation 12(1)–
  - (a) for paragraphs (a) to (c) substitute–
    - “(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;
- (e) an authorised person with Part 7 permission for the regulated activity of providing one or more investment services and activities in paragraphs 48 to 56 of Schedule 2 to the Act and authorised to provide the ancillary service of safekeeping and administration of financial instruments for the account of clients as provided for in sub-paragraph 1 of paragraph 45(2) of Schedule 2 to the Act;
- (f) a UK investment firm; or
- (g) a body corporate which is established and authorised in another jurisdiction which the GFSC considers to be regulated under and in accordance with a legislative and regulatory regime with respect to the safekeeping of assets belonging to another which provides protection broadly equivalent to that in Gibraltar.”; and

(b) after sub-regulation (5) insert–

“(6) In this regulation–

“UK investment firm” means a firm which is established in the United Kingdom and authorised under the law of the United Kingdom as an investment firm to carry out the equivalent of the regulated activity and ancillary service specified in regulation 12(1)(e).”.

Dated: 28<sup>th</sup> January 2021.

A J ISOLA,  
Minister with responsibility for financial services.

## **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 (Experienced Investor Funds) Regulations 2020.