

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4817 GIBRALTAR Thursday 4th February 2021

LEGAL NOTICE NO. 106 OF 2021.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (FINANCIAL MARKETS AND INSOLVENCY: SETTLEMENT FINALITY) (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 (Financial Markets and Insolvency: Settlement Finality) (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 (Financial Markets and Insolvency Finality) Regulations 2020.

3.(1) The Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020 are amended as follows.

(2) In regulation 2-

(a) in sub-regulation (1)-

(i) for the definition of “central bank” substitute-

““central bank” means-

(a) a national central bank (if such a bank is established in Gibraltar) or other monetary authority (if any) in Gibraltar;

(b) the Bank of England; or

(c) any central bank (or other monetary authority) of a country or territory outside Gibraltar that is-

(aa) a central bank (or other monetary authority) of an EEA state (including the European Central Bank); or

(bb) a member of the Bank for International Settlements (including the Bank for International Settlements),

as may be designated by the Minister by notice in the Gazette;”;

(ii) in the definition of “collateral security” for “financial collateral referred to in Article 1(4)(a) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements” substitute “cash or financial instruments”;

(iii) after the definition of “Court” insert a new definition of “credit institution” as follows–

““credit institution” means a credit institution with Part 7 permission to carry on the regulated activity of accepting deposits in paragraph 3 of Schedule 2 to the Act;”;

(iv) for the definition of “designated system” substitute–

““designated system” means a system designated under regulation 5, but does not include an arrangement entered into between interoperable systems;”;

(v) in the definition of “insolvency proceedings” for paragraph (c) substitute–

“(c) if under the law of a third country, means any collective measure provided for in the law of that third country to wind up or reorganise a person if the measure involves suspending or imposing limitations on relevant transfers or payments;”;

(vi) for the definition of “institution” substitute–

““institution” means–

(a) a credit institution;

(b) an investment firm as defined in Article 2.1A of the MiFIR;

(c) a public authority or publicly guaranteed undertaking;

or

(d) any undertaking whose head office, registered office or place of residence is outside Gibraltar and whose functions correspond to those of a credit institution or investment firm as referred to in paragraphs (a) and (b) respectively above,

which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders which are effected through the system;”;

(vii) in the definition of “Settlement Finality Directive” for “as amended from time to time” substitute “as it applied in Gibraltar immediately before IP completion day”;

(viii) for the definition of “system” substitute—

““system” means a formal arrangement—

(a) between two or more participants, without counting a settlement agent, a central counterparty, a clearing house or an indirect participant, with common rules and standardised arrangements for the clearing, whether or not through a central counterparty, or execution of transfer orders between the participants; and

(b) governed by the law of a country or territory chosen by the participants; the participants may, however, only choose the law of a country or territory in which at least one of them has its head office;”;

(ix) in the definition of “third country” for “that is not within the EEA” substitute “other than Gibraltar;”;

(b) omit sub-regulation (2);

(c) insert a new sub-regulation (4) as follows—

“(4) For the purposes of these Regulations—

(a) a reference to a system being designated in the United Kingdom means designated under the law of the United Kingdom corresponding to these Regulations;

(b) a participant is regarded as established in Gibraltar if its head office, registered office or place of residence is Gibraltar or if it has a branch in Gibraltar (within the meaning of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), as that Directive applied in Gibraltar immediately before IP completion day).”;

(d) after new sub-regulation (4) insert—

“(5) For the purposes of paragraph (c) of the definition of “central bank”, the GFSC must publish on its website a list of central banks.”.

(3) In regulation 3–

(a) for sub-regulation (4) substitute–

“(4) Commencement of insolvency proceedings, namely whether under the law of Gibraltar or a third country and whether in relation to a body corporate or a natural person, means the opening of insolvency proceedings against the body or person.”; and

(b) omit sub-regulation (5).

(4) In regulation 4(1)(a) omit “that is subject to the law of Gibraltar”.

(5) For regulation 5, substitute–

“Designation of designated systems.

5. The GFSC may designate a system as a designated system if it is satisfied that the rules of the system comply with regulation 8.”.

(6) In regulation 6, for “taken” substitute “treated by the GFSC”.

(7) In regulation 9–

(a) omit sub-regulation (1); and

(b) omit sub-regulation (5).

(8) In regulation 11–

(a) in sub-regulation (1)–

(i) for “in a designated system” substitute “in a system designated for the purposes of these Regulations or designated in the United Kingdom”; and

(ii) in the text following paragraph (b) for “the designated” substitute “that”; and

(b) for sub-regulation (4) substitute–

“(4) In this regulation–

“equivalent overseas order” means an order having the like effect as a transfer order which is effected through a system designated in the United Kingdom and which is governed by the law of the United Kingdom; and

“equivalent overseas security” means any realisable assets provided under a charge or a repurchase or similar agreement, or otherwise (including credit claims and money provided under a charge) for the purpose of securing rights and obligations potentially arising in connection with such a system.”.

(9) In regulation 12(3)–

(a) in paragraph (a), for the words “a system operator”, to the end, substitute “or a system operator, in each case in a system designated for the purposes of these Regulations or designated in the United Kingdom, or a central bank (including any nominee, agent or third party acting on behalf of the participant, the system operator or the central bank), and”;

(b) in paragraph (b) omit “in Gibraltar or an EEA State”; and

(c) for the text following paragraph (b), substitute–

“the rights of that person as a holder of collateral security in relation to those financial instruments are governed by the domestic law of the country or territory or, where appropriate, the law of the part of the country or territory, where the register, account, or centralised deposit system is maintained.”.

(10) For regulation 13 substitute–

“Provision of information by designated systems.

13.(1) The system operator of a designated system governed by the law of Gibraltar must, when that system is designated as a designated system, provide to the GFSC in writing a list of the participants (including any possible or actual indirect participants) in the designated system and shall give written notice to the GFSC of any amendment to the list immediately.

(2) The system operator of a designated system governed by the law of a third country must, when that system is designated as a designated system–

(a) provide to the GFSC in writing a list of any participants in the designated system that are established in Gibraltar (including any indirect participants that are established in Gibraltar); and

(b) give written notice to the GFSC of any amendment to that list immediately.

(3) The GFSC may, in writing, require the system operator of a designated system to furnish to it such further information relating to that designated system as it reasonably requires for the exercise of its functions under these Regulations, within such time, in such form, at such intervals and verified in such manner as the GFSC may specify.

(4) When the system operator of a designated system amends, revokes or adds to its rules or its guidance, it shall within 14 days, give written notice to the GFSC of the amendment, revocation or addition.

(5) The system operator of a designated system governed by the law of Gibraltar shall give the GFSC at least three months' written notice of any proposal to amend, revoke or add to its default arrangements.

(6) The GFSC may, if it considers it appropriate, agree a shorter period of notice in connection with sub-regulation (5).

(7) When the system operator of a designated system governed by the law of a third country amends, revokes or adds to its default arrangements, it must within 7 days give written notice to the GFSC of the amendment, revocation or addition.

(8) Nothing in this regulation shall require the system operator of a designated system governed by the law of Gibraltar to give any notice or furnish any information to the GFSC where the notice or information has already been given or furnished to the GFSC pursuant to any requirement imposed by or under any other enactment.

(9) In addition to the requirement to notify set out in sub-regulation (1), the GFSC may impose supervision or authorisation requirements on designated systems governed by the law of Gibraltar.”.

(11) Omit regulation 16.

(12) After regulation 17 insert—

“Applicable law for orders made and collateral provided before IP completion day.

17A. After IP completion day the provisions of these Regulations as they were in force immediately before IP completion day continue to apply to—

- (a) transfer orders entered into a designated system and collateral security provided, prior to IP completion day;
- (b) equivalent overseas orders entered, prior to IP completion day, into a system designated for the purposes of the Settlement Finality Directive in an EEA state or designated in the United Kingdom; and
- (c) equivalent overseas security provided prior to IP completion day.”.

Dated: 4th February 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 (Financial Markets and Insolvency: Settlement Finality) Regulations 2020.