

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4823 GIBRALTAR Thursday 18th February 2021

LEGAL NOTICE NO. 134 OF 2021.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (FINANCIAL CONGLOMERATES) (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 Conglomerates) (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 Conglomerates) Regulations 2020.

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

(2) In regulation 2—

(a) for the definition of “authorised person” substitute—

““ancillary services undertaking” has the meaning given in regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;”;

(b) after the definition of “balance sheet total” insert—

““captive insurer” has the meaning given in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020;

““captive reinsurer” has the meaning given in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020;”;

(c) omit the definition of “the Commission”;

- (d) omit the definition of “competent authorities”;
- (e) in the definition of “control”, for “Article 22 of the Accounting Directive” substitute “section 276 of the Companies Act 2014”;
- (f) omit the definition of “coordinator”;
- (g) for the definition of “credit institution” substitute—

““credit institution” has the meaning given in Article 4.1(1) of the Capital Requirements Regulation”;
- (h) in the definition of “financial conglomerate”, in paragraph (a)(i), for “Article 22(7) of the Accounting Directive” substitute “section 276(4) of the Companies Act 2014”;
- (i) after the definition of “financial conglomerate” insert—

““financial institution” has the meaning given in regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;”;
- (j) omit the definition of “Financial Conglomerates Committee”;
- (k) for the definition of “financial sector” substitute—

““financial sector” means a sector composed of one or more of the following entities—

 - (a) a credit institution, a financial institution or an ancillary services undertaking, (“the banking sector”);
 - (b) an insurance undertaking, a captive insurer, a reinsurance undertaking, a captive reinsurer or an insurance holding company, (“the insurance sector”); and
 - (c) an investment firm as defined in the regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, (“the investment services sector”);”;
- (l) for the definition of “insurance undertaking” substitute—

““insurance undertaking” has the meaning given in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020;”;
- (m) after the definition “insurance undertaking” insert—

““insurance holding company” has the meaning given in regulation 191(1) of the Financial Services (Insurance Companies) Regulations 2020;”;

(n) for the definition of “investment firm” substitute–

““investment firm” includes a third-country firm that would be an investment firms if its head office or registered office were in Gibraltar;”;

(o) omit the definition of “Joint Committee”;

(p) in the definition of “mixed financial holding company”, for “the EEA” substitute “Gibraltar”;

(q) in the definition of “parent undertaking”–

(i) for “Article 22(1) of the Accounting Directive” substitute “section 276 of the Companies Act 2014”; and

(ii) for “competent authorities” substitute “GFSC”;

(r) for the definition of “reinsurance undertaking” substitute–

““reinsurance undertaking” has the same meaning as in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020 and includes a captive reinsurer, a third-country reinsurance undertaking or a special purpose vehicle;”;

(s) omit the definition of “relevant competent authorities”;

(t) for the definition of “sectoral rules” substitute–

““sectoral rules” means the laws of Gibraltar relating to the prudential supervision of regulated entities, in particular the Act, the Financial Services (Investment Services) Regulations 2020, the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 and the Financial Services (Insurance Companies) Regulations 2020;”;

(u) in the definition of “subsidiary undertaking”, for “competent authorities” substitute “GFSC”;

(v) after the definition of “subsidiary undertaking” insert–

““special purpose vehicle” has the same meaning as in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020;

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

“third-country firm” has the same meaning as in regulation 2(1) of the Financial Services (Investment Services) Regulations 2020;

“third-country reinsurance undertaking” has the same meaning as in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020; and”;
and

(w) for the definition of “UCITS management company” substitute–

““UCITS management company” means a regulated entity which has Part 7 permission to carry on the regulated activity of managing a UCITS or an undertaking the registered office of which is outside Gibraltar and which would require Part 7 permission under the Act if it had its registered office in Gibraltar;”.

(3) In regulation 3–

(a) in sub-regulation (6)–

- (i) omit “, in agreement with the other relevant competent authorities,”; and
- (ii) for “they are” substitute “it is”;

(b) for sub-regulation (7), substitute–

“(7) Decisions taken in accordance with sub-regulation (6) must, save in exceptional circumstances, be made by public by the GFSC.”;

(c) in sub-regulation (8)–

- (i) omit “, in agreement with the other relevant competent authorities”; and
- (ii) for “they are” substitute “it is”;

(d) for sub-regulation (9), substitute–

“(9) Decisions taken in accordance with sub-regulation (8) must, save in exceptional circumstances, be made by public by the GFSC.”;

(e) in sub-regulation (10)–

- (i) in the opening words omit “, in agreement with the other relevant competent authorities,”; and
- (ii) in paragraph (a), for “a Member State” substitute “Gibraltar”;

(f) in sub-regulation (11), for “on the basis of a proposal made by the coordinator of that financial conglomerate” substitute “by the GFSC”;

- (g) in sub-regulation (12)–
 - (i) omit “in agreement with the other relevant competent authorities and”;
and
 - (ii) for “and the other relevant competent authorities are” substitute “is; and
 - (h) in sub-regulation (15), for “coordinator may, with the agreement of the other relevant competent authorities,” substitute “GFSC may”.
- (4) In regulation 4, omit sub-regulations (2) and (3).
- (5) In regulation 5–
- (a) in sub-regulation (2)(b), for “the EEA” substitute “Gibraltar”;
 - (b) in sub-regulation (4), for “outside the EEA” substitute “in a third country”;
 - (c) in sub-regulation (5) omit “, in agreement with the other relevant competent authorities,”;
 - (d) in sub-regulation (6), for “relevant competent authorities must take their” substitute “GFSC must take its”;
 - (e) in sub-regulation (7) omit “in agreement with the other relevant competent authorities”; and
 - (f) in sub-regulation (8) omit “or another coordinator”.
- (6) In regulation 6–
- (a) in sub-regulation (4), for “coordinator” substitute “GFSC”;
 - (b) in sub-regulation (5), for “Where the GFSC is the coordinator, it” substitute “The GFSC”;
 - (c) in sub-regulation (6)–
 - (i) in both places it occurs, for “coordinator” substitute “GFSC”; and
 - (ii) omit “with the other relevant competent authorities and”;
 - (d) in sub-regulation (8), for “Articles 133 and 134 of Directive 2006/48/EC and Article 221 of the Solvency 2 Directive” substitute “Article 18 of the Capital Requirements Regulation and regulation 200 of the Financial Services (Insurance Companies) Regulations 2020”;

- (e) in sub-regulation (10)–
 - (i) in the opening words, for “coordinator” substitute “GFSC; and
 - (ii) in paragraph (a), for “competent authorities” substitute “the GFSC”; and
- (f) in sub-regulation (11)–
 - (i) in paragraph (a), for “coordinator” substitute “GFSC”;
 - (ii) omit paragraph (b); and
 - (iii) in paragraph (c), for “coordinator” substitute “GFSC”.
- (7) In regulation 7–
 - (a) in sub-regulation (2), for “coordinator” substitute “GFSC”;
 - (b) in sub-regulation (3)–
 - (i) in the opening words, for “coordinator” substitute “GFSC”; and
 - (ii) in paragraph (b), for “coordinator, after consultation with the other relevant competent authorities and” substitute “GFSC, after consultation”; and
 - (c) in sub-regulation (4), for “coordinator” substitute “GFSC”.
- (8) In regulation 8–
 - (a) in sub-regulation (2), for “coordinator” substitute “GFSC”;
 - (b) in sub-regulation (4)–
 - (i) in the opening words, for “coordinator” substitute “GFSC”; and
 - (ii) in paragraph (b), for “coordinator, after consultation with the other relevant competent authorities and” substitute “GFSC, after consultation”; and
 - (c) in sub-regulation (5), for “coordinator” substitute “GFSC”.
- (9) In regulation 9–
 - (a) in sub-regulation (6), for “coordinator” substitute “GFSC”; and
 - (b) in sub-regulation (7), for “Articles 124 of Directive 2006/48/EC and Article 248 of the Solvency 2 Directive” substitute “regulation 54 of the Financial Services

(Credit Institutions and Capital Requirements) Regulations 2020 and regulation 225 of the Financial Services (Insurance Companies) Regulations 2020”.

(10) For regulation 10 substitute–

“10. The GFSC must ensure appropriate and regular stress testing of financial conglomerates.”.

(11) Omit regulation 11.

(12) In regulation 12–

(a) for the heading substitute “**Supplementary supervision functions.**”;

(b) re-number sub-regulation (1) as regulation 12;

(c) in that re-numbered regulation–

(i) for paragraph (a) substitute–

“(a) the gathering and dissemination of relevant or essential information in going concern and emergency situations;”

(ii) for paragraph (e) substitute–

“(e) planning and coordination of supervisory activities in going concern as well as in emergency situations;” and

(iii) omit paragraph (f), omit; and

(d) omit sub-regulations (2) to (9).

(13) Omit regulation 13.

(14) In regulation 15–

(a) in sub-regulation (1), omit “and from exchanging information in accordance with the Financial Conglomerates Directive and with the relevant European Supervisory GFSC in accordance with Article 35 of the EBA Regulations, of the EIOPA Regulation and of the ESMA Regulation respectively, and where necessary, through the Joint Committee”;

(b) in sub-regulation (3), omit “or coordinator”; and

(c) in sub-regulation (4), in both places it occurs, omit “or coordinator”.

(15) Omit regulation 16.

(16) For regulation 17 substitute–

17.(1) The GFSC must take any measures necessary under these Regulations or the relevant sectoral rules where–

- (a) regulated entities in a financial conglomerate–
 - (i) do not comply with a requirement in regulations 6 to 9; or
 - (ii) comply with those requirements but solvency may nevertheless be jeopardised; or
- (b) intra-group transactions or risk concentrations are a threat to the financial position of such regulated entities.

(2) Without prejudice to the sectoral rules, the GFSC may take a decision in respect of a mixed financial holding company in relation to any matter covered by these Regulations and must notify the mixed financial holding company in writing of the decision.

(3) A mixed financial holding company must comply with a decision of the GFSC made under sub-regulation (2).”.

(17) In regulation 18–

- (a) in sub-regulation (3)–
 - (i) in paragraph (b), for “competent authorities” substitute “GFSC”;
 - (ii) in paragraph (c), in both places it occurs, for “coordinator” substitute “GFSC”; and
 - (iii) in the closing words–
 - (aa) in both places it occurs, omit “or the coordinator”; and
 - (bb) omit “as the case may be”.
- (b) omit sub-regulations (7) and (8); and
- (c) in sub-regulation (9), omit “or the coordinator, as the case may be”.

(18) In regulation 21(2), for “Directive 2013/34/EU” substitute “the Accounting Directive”.

(19) In regulation 22–

(a) in sub-regulation (1), for “outside the European Union” substitute “in a third country”;

(b) in sub-regulation (2), omit “if it would be the coordinator”;

(c) in sub-regulation (3)(b), for “authorized in the EEA” substitute “authorised in Gibraltar”;

(d) omit sub-regulations (4) and (5);

(e) in sub-regulation (6)–

(i) in the opening words, for “article 18(1)” substitute “regulation 22(1)”;
and

(ii) for paragraph (b) substitute–

“(b) the GFSC may apply other methods which ensure appropriate supplementary supervision of the regulated entities in a financial conglomerate, including–

(i) requiring the establishment of a mixed financial holding company which has its office in Gibraltar; and

(ii) applying the provisions of the Financial Conglomerates Directive to the regulated entities in the financial conglomerate by that holding company.”; and

(f) in sub-regulation (7), omit “and must be notified to the other competent authorities involved and to the European Commission”.

(20) Omit regulations 23 and 24.

(21) In Schedule 1–

(a) for the second paragraph substitute–

“ Without prejudice to the provisions (A) and (B), the GFSC, must decide, after consultation with the financial conglomerate itself, which method must be applied by that financial conglomerate.”;

(b) in Part I. Technical principles–

- (i) in paragraph 1 (Extent and form of the supplementary capital adequacy requirements calculation)–
 - (aa) omit “when appointed coordinator”;
 - (bb) for “the coordinator” substitute “the GFSC”; and
 - (cc) for “coordinator, after consultation with the other relevant authorities” substitute “GFSC”; and
 - (ii) in paragraph 2 (Other technical principles)–
 - (aa) in the opening words, for “coordinator, and where necessary other competent authorities” substitute “GFSC”;
 - (bb) in sub-paragraph (i), for “competent authorities” substitute “the GFSC”;
 - (cc) in sub-paragraph (ii), for “competent authorities” substitute “the GFSC”;
 - (dd) in sub-paragraph (ii), for “Article 5a(1)(a) of Directive 85/611/EEC” substitute “regulation 12(2) of the Financial Services (UCITS) Regulations 2020”; and
 - (c) in Part II. Technical calculation methods, after “investment firm” insert “as those Directives applied in Gibraltar immediately before IP completion day”.
- (22) In Schedule 2–
- (a) in paragraph 1, for “coordinator, after consultation with the other relevant competent authorities,” substitute “GFSC”;
 - (b) in paragraph 2, for “coordinator and the relevant competent authorities” substitute “GFSC”;
 - (c) in paragraph 3, for “coordinator, after consultation with the other relevant competent authorities,” substitute “GFSC”; and
 - (d) in paragraph 4, for “coordinator” substitute “GFSC”.

Dated: 18th 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. These regulations amend the Financial Services (Financial Conglomerates) Regulations 2020, which gave effect in Gibraltar to Directive 2002/87/EC.