

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4945 GIBRALTAR Thursday 17th March 2022

LEGAL NOTICE NO. 67 OF 2022.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2022

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 (Miscellaneous Amendments) (EU Exit) Regulations 2022.

Commencement.

2. These Regulations come into operation on the day of publication.

Financial Services (Institutional Investors, Asset Managers and Proxy Advisors) Regulations 2020.

3.(1) The Financial Services (Institutional Investors, Asset Managers and Proxy Advisors) Regulations 2020 are amended as follows.

(2) In regulation 2-

(a) in the definition of “proxy advisor”-

(i) in the opening words for “person who” substitute “legal person that”;

(ii) for paragraph (a) substitute-

“(a) on a professional and commercial basis, analyses the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors’ voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights;” and

(iii) in paragraph (b), for “proxy advisor services” substitute “the services in paragraph (a)”;

(b) in the definition of “proxy advisor services”, omit “within the meaning of Article 2(g) of the Shareholder Rights Directive”; and

(c) omit the definition of “Shareholder Rights Directive”.

(3) In regulation 12(2), for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

Financial Services (Insurance Companies) Regulations 2020.

4.(1) The Financial Services (Insurance Companies) Regulations 2020 are amended as follows.

(2) In regulation 3(1)–

(a) omit the definition of “CRA Regulation”;

(b) in the definition of “external credit assessment institution”, for “the CRA Regulation” substitute “Regulation (EC) No. 1060/2009 of the European Parliament and of the Council, as it forms part of the law of Gibraltar”; and

(c) in the definition of “large risks”–

(i) in paragraph (c)(ii), for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”; and

(ii) in the closing words, for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

(3) In regulation 61A(1), for “Financial Services (Insurance Companies: Accounts Directive) Regulations 2020” substitute “Financial Services (Insurance Companies) (Accounts) Regulations 2021”.

(4) In regulation 275(2), for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

(5) In Schedule 1, omit paragraph 1(4).

Financial Services (Payment Accounts) Regulations 2020.

5.(1) The Financial Services (Payment Accounts) Regulations 2020 are amended as follows.

(2) For regulation 6(3), substitute–

“(3) For the purposes of sub-regulations (1) and (2), the GFSC must have regard to the services that–

- (a) are most commonly used by consumers in relation to their payment account; and
- (b) generate the highest cost for consumers, both overall as well as per unit.”.

(3) In regulation 7(9), for “Chapter II of the Consumer Credit Directive as that Directive applied in Gibraltar immediately before IP completion day” substitute “sections 6 to 10 and 19 of the Financial Services (Consumer Credit) Act 2011”.

(4) In regulation 8(6), for “Article 12 of the Consumer Credit Directive as that Directive applied in Gibraltar immediately before IP completion day” substitute “section 12(6) and (7) of the Financial Services (Consumer Credit) Act 2011”.

(5) In regulation 26(3), for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

(6) Omit regulation 27.

Financial Services (Occupational Pensions Institutions) Regulations 2020.

6.(1) The Financial Services (Occupational Pensions Institutions) Regulations 2020 are amended as follows.

(2) In regulation 3(1), omit the definition of “the CRA Regulation”.

(3) In regulation 16(4), for “within the meaning of Article 3.1(b) of the CRA Regulation” substitute “and, for this purpose, “credit rating agency” means a legal person whose occupation includes the issuing of credit ratings on a professional basis”.

(4) In regulation 29(b), for “Solvency 2 Directive” substitute “Financial Services (Insurance Companies) Regulations 2020”.

Financial Services (Data Reporting Services Providers) Regulations 2020.

7.(1) The Financial Services (Data Reporting Services Providers) Regulations 2020 are amended as follows.

(2) In regulation 16(1), for “these Regulations, MiFIR and the MiFID 2 Directive” substitute “MiFIR and these Regulations”

(3) In regulation 19(2), for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

Financial Services (Official Listing) Rules 2020.

8.(1) The Financial Services (Official Listing) Rules 2020 are amended as follows.

(2) In rule 15–

- (a) in sub-rule (2), for “€1,000,000 or the sterling equivalent” substitute “the sterling equivalent of €1,000,000”;
 - (b) omit sub-rule (7).
- (3) In rule 22–
- (a) in sub-rule (1), for “€200,000 or the sterling equivalent” substitute “the sterling equivalent of €200,000”;
 - (b) omit sub-rule (5).

Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020.

9.(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), omit the definition of “Settlement Finality Directive”;
 - (b) in sub-regulation (4), for paragraph (b) substitute–
 - “(b) a participant is regarded as established in Gibraltar if its head office, registered office or place of residence is in Gibraltar or if it has a branch in Gibraltar.”.
- (3) In regulation 17(2), for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.
- (4) In regulation 17A, for “Settlement Finality Directive” substitute “Directive 98/26/EC (as it had effect immediately before IP completion day)”.

Financial Services (Fiduciary Services) Regulations 2020.

10. In regulation 76(2) of the Financial Services (Fiduciary Services) Regulations 2020, for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

Financial Services (Personal Pensions) Regulations 2020.

11. In regulation 125(2) of the Financial Services (Personal Pensions) Regulations 2020, for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

Financial Services (Packaged Retail and Insurance Based Investment Products) Regulations 2020.

12.(1) The Financial Services (Packaged Retail and Insurance Based Investment Products) Regulations 2020 are amended as follows.

(2) For regulation 3, substitute—

“Application of PRIIP Regulation.

3. The PRIIP Regulation, as it forms part of the law of Gibraltar, has effect subject to these Regulations.”.

(3) In regulation 10(3), for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

(4) Omit regulation 11(10).

Financial Services (Insurance Management) Regulations 2020.

13. In regulation 54(2) of the Financial Services (Insurance Management) Regulations 2020, for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

Financial Services (Transparency of Securities Financing Transactions and Reuse) Regulations 2020.

14.(1) The Financial Services (Transparency of Securities Financing Transactions and Reuse) Regulations 2020 are amended as follows.

(2) In regulation 3, for “has effect in Gibraltar” substitute “, as it forms part of the law of Gibraltar, has effect”.

(3) In regulation 7(2), for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

(4) Omit Part 3.

Financial Services (Interchange Fees: Card-Based Payment Transactions) Regulations 2020.

15.(1) The Financial Services (Interchange Fees: Card-Based Payment Transactions) Regulations 2020 are amended as follows.

(2) In regulation 3, for “has effect in Gibraltar” substitute “, as it forms part of the law of Gibraltar, has effect”.

(3) In regulation 7(2), for “Directive 2013/34/EU” substitute “Part 7 of the Companies Act 2014”.

Financial Services (Financial Conglomerates) Regulations 2020.

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

(2) In regulation 2–

(a) in the definition of “group”, for “within the meaning of Article 22(7) of the Accounting Directive” substitute “to which section 276 of the Companies Act 2014 applies”;

(b) for the definition of “participation”, substitute–

““participation” means having a participating interest within the meaning of section 278 of the Companies Act 2014;”;

(c) in the definition of “subsidiary undertaking”, for “Article 22(1) of the Accounting Directive” substitute “section 276 of the Companies Act 2014”.

(3) In regulation 5(2)(c), for “within the meaning of Article 22(7) of the Accounting Directive” substitute “to which section 276 of the Companies Act 2014 applies”.

(4) In regulation 21(2), for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

(5) In regulation 22–

(a) in sub-regulation (1), for “the Financial Conglomerates Directive” substitute “these Regulations”;

(b) in sub-regulation (6)(b)(ii), for “the Financial Conglomerates Directive” substitute “these Regulations”;

(c) in sub-regulation (7), for “the Financial Conglomerates Directive” substitute “these Regulations”.

(6) In Schedule 1, in Section II, for the third paragraph substitute–

“The sectoral rules referred to are, in particular, the law of Gibraltar that implemented Chapter 3 of Title V of Directive 2000/12/EC as regards credit institutions, Directive 98/78/EC as regards insurance undertakings, and Directive 93/6/EEC as regards credit institutions and investment firms.”.

Financial Services (Distributed Ledger Technology Providers) Regulations 2020.

17. In regulation 8(2) of the Financial Services (Distributed Ledger Technology Providers) Regulations 2020, for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

Financial Services (Depositaries) Regulations 2020.

18. In regulation 60(2) of the Financial Services (Depositaries) Regulations 2020, for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

Financial Services (Bureaux de Change) Regulations 2020.

19.(1) The Financial Services (Bureaux de Change) Regulations 2020 are amended as follows.

(2) In regulation 2–

(a) in sub-regulation (1)–

(i) omit the definition of “authorised credit institution”;

(ii) omit the definition of “Capital Requirements Directive”;

(iii) after the definition of “customer”, insert–

““financial instrument” has the meaning given in paragraph 46 of Schedule 2 to the Act;”;

(b) omit sub-regulation (3).

(3) In regulation 49(2), for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”.

Financial Services (Benchmarks) Regulations 2020.

20. In regulation 16(3) of the Financial Services (Benchmarks) Regulations 2020–

(a) for “the Accounting Directive” substitute “Part 7 of the Companies Act 2014”;

(b) for “in accordance with the Bank Accounts Directive for credit institutions, and the Insurance Accounts Directive for insurance or reinsurance undertakings” substitute “for credit institutions (in accordance with the Financial Services (Credit Institutions) (Accounts) Regulations 2021) or insurance or reinsurance undertakings (in accordance with the Financial Services (Insurance Companies) (Accounts) Regulations 2021),”.

Dated: 17th March 2022.

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 make minor amendments to various Regulations relating to financial services.