

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5013 GIBRALTAR Thursday 24th November 2022

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LEGAL NOTICE NO. 322 OF 2022

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### FINANCIAL SERVICES ACT 2019

#### FINANCIAL SERVICES (INSURANCE COMPANIES) (AMENDMENT) (EU EXIT) REGULATIONS 2022

In exercise of the powers conferred on the Minister by section 11 of the European Union (Withdrawal) Act 2019 and sections 620, 626 and 627 of the Financial Services Act 2019, the Minister has made these Regulations-

#### **Title.**

1. These Regulations may be cited as the Financial Services (Insurance Companies) (Amendment) (EU Exit) Regulations 2022.

#### **Commencement.**

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

#### **Amendment of the Insurance Companies Regulations.**

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

(2) In regulation 14(8), for “with” substitute “which”.

(3) In regulation 192-

(a) for sub-regulation (3), substitute-

“(3) Supervision at the level of the group applies to-

(a) an insurance or reinsurance undertaking-

(i) which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking; or

(ii) the parent undertaking of which is a UK insurer or reinsurer;

- (b) an insurance or reinsurance undertaking, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in Gibraltar or the United Kingdom;
  - (c) an insurance or reinsurance undertaking, the parent undertaking of which is—
    - (i) an insurance holding company or a mixed financial holding company which has its head office in a third country other than the United Kingdom; or
    - (ii) a third-country insurance or reinsurance undertaking other than a UK insurer or reinsurer; or
  - (d) an insurance or reinsurance undertaking, the parent undertaking of which is a mixed-activity insurance holding company.
- (3A) In sub-regulation (3), a “UK insurer or reinsurer” means an insurance or reinsurance undertaking which—
- (a) has its head office in the United Kingdom; and
  - (b) would require authorisation as an insurance or reinsurance undertaking in accordance with these Regulations if its head office were in Gibraltar.”;
- (b) in sub-regulation (4), in the closing words—
- (i) in both places it appears, after “Gibraltar” insert “or the United Kingdom”;
  - (ii) for “this Part only applies” substitute “regulations 197 to 236 only apply”.
- (4) In regulation 197(1), for “The GFSC” substitute “Subject to regulation 225A, the GFSC”.
- (5) In regulation 198(1), for “The GFSC” substitute “Subject to regulation 225A, the GFSC”.
- (6) In regulation 200(5), in the opening words, after “The GFSC” insert “must determine,”.
- (7) In regulation 221(1), for “The supervision” substitute “Subject to regulation 225A, the supervision”.
- (8) In regulation 222(1), for “The supervision” substitute “Subject to regulation 225A, the supervision”.
- (9) In regulation 223(6), for “Where” substitute “Subject to regulation 225A, where”.

(10) In regulation 224–

- (a) re-number regulation 224 as sub-regulation (1);
- (b) in sub-regulation (1), for “Where” substitute “Subject to sub-regulation (2), where”;
- (c) after sub-regulation (1), insert–

“(2) Nothing in sub-regulation (1) requires the GFSC to conduct group supervision in respect of requirements which do not apply, as may be determined by the GFSC under regulation 225A.”.

(11) In regulation 225(1), for “Sub-regulation (2)” substitute “Subject to regulation 225A, sub-regulation (2)”.

(12) After regulation 225, insert–

**“Disapplication or modification of Regulations 197, 198, 221 to 223 and 225.**

225A.(1) Where the GFSC relies on equivalent third country supervision, the GFSC may determine that one or more of the provisions in sub-regulation (2)–

- (a) does not apply; or
- (b) applies with such modifications as may be specified in the determination.

(2) The provisions are–

- (a) regulation 197(1);
- (b) regulation 198(1);
- (c) regulation 221(1);
- (d) regulation 222(1);
- (e) regulation 223(6); and
- (f) regulation 225.

(3) In sub-regulation (1), “equivalent third country supervision” means group supervision exercised by–

- (a) the Prudential Regulation Authority of the United Kingdom; or

(b) a third country supervisory authority which has a group supervision regime determined as equivalent in accordance with regulation 237.

(4) The GFSC may not give a determination under sub-regulation (1) unless it is satisfied that–

(a) compliance by insurance or reinsurance undertakings in the group with requirements imposed by the GFSC under the provision to which the determination relates would be unduly burdensome; and

(b) the determination would not adversely affect the advancement of any of the GFSC’s regulatory objectives.

(5) The GFSC may vary or revoke a determination given under sub-regulation (1).”.

(13) For Regulation 240(3), substitute–

“(3) Where sub-regulation (2) applies–

(a) regulation 237 applies with any necessary modifications at that lower level; and

(b) the GFSC must explain its decision to the group to which the insurance undertaking or reinsurance undertaking belongs.”.

Dated: 24<sup>th</sup> November 2022

A J ISOLA  
Minister with responsibility for Financial Services

### **EXPLANATORY MEMORANDUM**

These Regulations amend the Financial Services (Insurance Companies) Regulations 2020, principally to address deficiencies in the group solvency provisions in Part 11 of those regulations (which transposed Title 3 of the EU Solvency 2 Directive) arising from Gibraltar's withdrawal from the European Union. In particular, the Regulations amend provisions relating to the supervision of cross-border groups where EU-derived cooperation obligations may longer be reciprocated.