

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 4528 of 13 December, 2018**

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LEGAL NOTICE NO.278 OF 2018.

**FINANCIAL SERVICES (BANKING) ACT**

**FINANCIAL SERVICES (MARKETS IN FINANCIAL  
INSTRUMENTS) ACT 2018**

**INTERPRETATION AND GENERAL CLAUSES ACT**

**FINANCIAL SERVICES (RECOVERY AND RESOLUTION)  
(AMENDMENT) REGULATIONS 2018**

In exercise of the powers conferred upon the Minister by section 79 of the Financial Services (Banking) Act and section 119 of the Financial Services (Markets in Financial Instruments) Act 2018, as read with section 23(g)(i) of the Interpretation and General Clauses Act and upon the Government by section 23(g)(ii) of that Act and of all other enabling powers, and in order to give effect to Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy, the Minister and the Government have made the following Regulations–

**PART 1  
PRELIMINARY**

**Title and commencement.**

1.(1) These Regulations may be cited as the Financial Services (Recovery and Resolution) (Amendment) Regulations 2018.

(2) These Regulations come into force on 29th December 2018.

**Amendment of 2014 Regulations.**

2.(1) The Financial Services (Recovery and Resolution) Regulations 2014 are amended as follows.

(2) In regulation 4(1), for the definition of “debt instruments” substitute–

““debt instruments”–

- (a) for the purpose of regulation 65(2)(g) and (j), means–
  - (i) bonds and other forms of transferrable debt;
  - (ii) instruments creating or acknowledging a debt; and
  - (iii) instruments giving rights to acquire debt instruments; and
- (b) for the purpose of regulation 107, means–
  - (i) bonds and other forms of transferrable debt; and
  - (ii) instruments creating or acknowledging a debt;”.

(3) For regulation 107 substitute–

**“Ranking of deposits in insolvency hierarchy.**

107.(1) In normal insolvency proceedings–

- (a) the following have the same priority ranking which is higher than the ranking provided for the claims of ordinary unsecured creditors–
  - (i) that part of eligible deposits from natural persons and micro, small and medium-sized enterprises which exceeds the coverage level provided for in Article 6 of Directive 2014/49/EU; and
  - (ii) deposits that would be eligible deposits from natural persons and micro, small and medium-sized enterprises were they not made through branches located outside the European Union of institutions established within the European Union; and
- (b) the following have the same priority ranking which is higher than the ranking provided for in paragraph (a)–

- (i) covered deposits; and
  - (ii) deposit guarantee schemes subrogating to the rights and obligations of covered depositors in insolvency.
- (2) In normal insolvency proceedings, for entities referred to in regulation 3(1)(a) to (d), ordinary unsecured claims have a higher priority ranking than that of unsecured claims resulting from debt instruments that meet the following conditions–
- (a) the original contractual maturity of the debt instruments is of at least one year;
  - (b) the debt instruments contain no embedded derivatives and are not derivatives themselves; and
  - (c) the relevant contractual documentation and, where applicable, the prospectus related to the issuance explicitly refer to the lower ranking under this sub-regulation.
- (3) In normal insolvency proceedings, unsecured claims resulting from debt instruments that meet the conditions set out in sub-regulation (2) have a higher priority ranking than the priority ranking of claims resulting from instruments referred to in regulation 50(1)(a) to (d).
- (4) The Insolvency Act 2011 as it applied on 31st December 2016 applies to the ranking in normal insolvency proceedings of unsecured claims resulting from debt instruments issued prior to 29th December 2018 by entities referred to in regulation 3(1)(a) to (d).
- (5) For the purposes of sub-regulation (2)(b), debt instruments with variable interest derived from a broadly used reference rate and debt instruments not denominated in the domestic currency of the issuer, where principal, repayment and interest are denominated in the same currency, shall not be considered to be debt instruments containing embedded derivatives solely because of those features.

Dated 13<sup>th</sup> December, 2018.

A J ISOLA,  
Minister with responsibility for financial services,  
and for the Government.

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**EXPLANATORY MEMORANDUM**

These Regulations amend the Financial Services (Recovery and Resolution) Regulations 2014, in order to give effect to Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017. That Directive amends the provisions of the Recovery and Resolution Directive (2014/59/EU) relating to the ranking of unsecured debt instruments in insolvency proceedings.

GIBRALTAR GAZETTE, No 4528, Thursday 13 December, 2018

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