

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**  
No. 3530 of 27 April, 2006

---

---

LEGAL NOTICE NO. 56 OF 2006.

**FINANCIAL SERVICES ORDINANCE 1989**

**FINANCIAL SERVICES (ADVERTISING) (AMENDMENT)  
REGULATIONS 2006**

In exercise of the powers conferred on him by section 53 of the Financial Services Ordinance, 1989 and all other enabling powers, the Minister has made the following regulations.

**Title.**

1. These regulations may be cited as the Financial Services (Advertising) (Amendment) Regulations 2006.

**Amendment of the Regulations.**

2. The Financial Services (Advertising) Regulations 1991 are amended in accordance with regulations 3 to 5.

**Amendment of regulation 2.**

3. Regulation 2 is amended as follows—

- (a) by inserting the words “or by any electronic media or moving image material incorporated in any website” after the word “recordings” in the definition of “advertisement”;
- (b) by omitting the definition of “investment advertisement” and substituting the following definition—

““investment advertisement” means any advertisement making a direct offer to persons to enter into an investment agreement or inviting persons to make an offer to enter into an investment agreement and which specifies the manner of response to the advertisement or includes a form in which any response is to be made;”;

- (c) by omitting the words “licensed under section 8 of the Ordinance” and substituting the words “licensed or authorised under the Financial Services Ordinance 1989 or 1998, as the case may be,” in the definition of “licensee”;
- (d) by omitting the definition of “member State”.

**Amendment of regulation 3.**

4. Regulation 3 is substituted by the following definition–

“3.(1) Subject to regulation 4, no person other than a licensee–

- (a) shall issue an investment advertisement or an advertisement for or in connection with financial services business in Gibraltar;
- (b) shall cause to be issued an investment advertisement or an advertisement for or in connection with financial services business in Gibraltar unless the contents of the advertisement have the prior approval of the licensee.”.

**Amendment of the Schedule.**

5.(1) Paragraph 2 is amended as follows–

- (a) by inserting the following sub-paragraph after sub-paragraph (1)–

“ (1A) An advertisement shall contain sufficient information to enable an informed assessment of the investment to which it relates, to be made.”;

- (b) by inserting the following three sub-paragraphs after sub-paragraph (4)–

“ (5) An advertisement that does not give any advice on investments shall contain a prominent statement that no advice on investments has been given and that if any person has any doubt about the suitability of the investment agreement which is the subject of the advertisement he should contact the licensee for advice on investments (or another appropriate

licensee if the licensee who has issued the advertisement does not offer advice on investments).

(6) An advertisement that is issued or caused to be issued by a licensee who is not authorised to hold client money, the advertisement shall contain the name of the person to whom payment (if any) should be made.

(7) An advertisement shall contain details of the basis or the amount of any commission or remuneration which might be payable by the licensee who has issued the advertisement, to any other person.”.

(2) Paragraph 9 is substituted by the following paragraph–

“9.(1) An advertisement shall contain a summary of the taxation of any investment to which it relates and the taxation consequences for investors generally and a warning that the levels and bases of taxation can change.

(2) An advertisement that contains any matter based on an assumed rate of taxation shall state what that rate is.

(3) An advertisement that refers to reliefs from taxation–

- (a) shall state that the reliefs are those that currently apply and that they can change;
- (b) shall contain a statement that the value of a relief from taxation depends upon the circumstances of the tax payer; and
- (c) shall distinguish between the reliefs that applies directly to investors and to any other person.

(4) An advertisement that describes the investment to which it relates as being free from tax liability shall state that this describes the benefits when paid to the investor and shall state (if that be the case) with equal prominence that the income is payable out of a fund which has already paid income tax, company tax or capital gains tax (whichever is applicable).”.

(3) Paragraph 13 is amended as follows—

(a) by inserting the following words and brackets “(set out with due prominence and in print size no smaller than that used in the main text of the advertisement)” after the word “statement” in sub-paragraph (2);

(b) by substituting sub-paragraph (4) with the following sub-paragraph—

“ (4) Where the advertisement relates to an investment that can fluctuate in value in money terms or which offers income distributions which may fluctuate, the statement shall draw attention to that fact in terms that are likely to be understood by the average investor to whom the advertisement is directed and to the fact that the investor may not get back the amount he has invested.”;

(c) by inserting the following two sub-paragraphs after sub-paragraph (9)—

“ (10) Where an advertisement relates to, or offers a facility for, income withdrawals in relation to a pension or annuity it shall clearly explain that—

- (a) taking withdrawals may erode the capital value of the fund, especially if investment returns are poor and a high level of income is taken; this could result in a lower income when the pension or annuity is eventually purchased;
- (b) the investment returns may be less than those shown in the illustrations;
- (c) the annuity rates may be at a worse level when annuity purchase eventually takes place; and
- (d) if the maximum withdrawals are to be taken, high income withdrawals may not be sustainable during the deferral period.

(11) Where an advertisement relating to a structured capital-at-risk product it shall include–

- (a) an explanation of the types of capital-at-risk products generally available and how they would typically work;
- (b) an explanation of the risks associated with investing in these capital-at-risk products;
- (c) details of the key issues that should be considered before investing in a capital-at-risk product; and
- (d) information about how to complain to the licensee and how complaints can subsequently be referred to the Consumer Protection Office or an ombudsman service (if any).”.

(4) Paragraph 15 is amended by inserting the following sub-paragraph after sub-paragraph (2)–

“ (3) An advertisement relating to a life policy which is a branded fund, available as an investment only to the clients of a particular licensee shall include a statement that the licensee does not manage the investments in the life fund, if that is the case, together with the name and address of the fund manager.”.

(5) The following three paragraphs are inserted after paragraph 15–

**“Collective investment schemes.**

15A.(1) An advertisement relating to an authorised or recognised collective investment scheme shall give an adequate explanation of the charging structure and shall make clear whether all or part of the scheme expenses will be taken out of capital or income and the likely long-term effect on capital or income.

(2) An advertisement relating to a collective investment scheme which is a branded fund, available as an investment only to the clients of a particular licensee shall include a

statement that the licensee does not manage the investments in any of the funds of the scheme, if that is the case, together with the name and address of the fund manager.

**Deals in investments.**

15B. An advertisement relating to an execution-only dealing service shall in particular, if that be the case, contain a clear statement that the licensee's procedures are such that there may be a delay in the execution of customers' orders, including the reason for and the normal maximum extent of any such delay and, if that is the case, that such orders may on occasions be aggregated (in which case the statement shall also make clear that the effect of aggregation may work on some occasions to its disadvantage).

**Broker funds, derivatives and warrants.**

15C. An advertisement shall not relate to a broker fund, a derivative or a warrant unless the licensee itself has adequate evidence to suggest that the investment may be suitable for the person to whom the advertisement is directed.”;

(6) Paragraph 17 is amended by substituting sub-paragraph (1) with the following sub-paragraph—

“ (1) An advertisement issued or caused to be issued by a licensee shall state—

- (a) the name of the licensee, its registered address and its main line of business;
- (b) the places of business at which it is licensed to carry on financial services business; and
- (c) that it is regulated and authorised by the Financial Services Commission, Gibraltar to carry on the financial services business to which the advertisement relates.”.

Dated this 27th day of April, 2006.

P R CARUANA,

Minister with responsibility for Financial Services.

---

### **EXPLANATORY MEMORANDUM**

These amending regulations reinforce provisions in the Financial Services (Advertising) Regulations regarding the contents of direct offer investment advertisements or advertisements for or in connection with financial services business. They also provide for fuller details of the investment and the characteristics of the transaction to be provided in the advertisements.

Regulation 3 extends the definition of advertisement by including electronic media or moving image material incorporated in a website and amends the definition of investment advertisement by explaining that the direct offer must also specify the manner of response to the advertisement or must include a form in which any response is to be made (for example by providing a tear-off slip).

Regulation 4 introduces a requirement that a licensee who causes an investment advertisement to be issued, must approve that advertisement beforehand.

Regulation 5 amends the schedule to the principal Regulations as explained in the following paragraphs.

Paragraph 2 is amended to add further requirements on advertisers to provide information that is clear and not misleading so that an informed assessment can be made about the investment and to provide details of where investment advice should be obtained about the investment; how clients money is to be handled and details of any commission that may be payable by the advertiser to another person.

Paragraph 9 is amended to require advertisement to provide further information about the investment's taxation consequences for investors.

Paragraph 13 is amended to add further requirements about the risk warnings that advertisements must include, particularly about the adverse

effects on the capital value of a fund from where an income is derived and about the risks associated with investing in capital-at-risk products.

Paragraph 15 is amended to add further requirements on the disclosure of key elements about the management of the investments in a life policy or a collective investment scheme which is a branded fund; about the charging structure of a collective investment scheme and the likely effect on capital and income; about the manner of execution of orders relating to an execution-only dealing service and about the suitability of broker funds, derivatives and warrants for investors.

Paragraph 17 is amended to require advertisers to provide further particulars about themselves in their advertisements.