

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE
No. 4060 of 20 February, 2014**

LEGAL NOTICE NO. 15 OF 2014.

**FINANCIAL SERVICES (INVESTMENT AND FIDUCIARY
SERVICES) ACT**

**FINANCIAL SERVICES (ACCOUNTING AND FINANCIAL)
(AMENDMENT) REGULATIONS 2014**

In exercise of the powers conferred upon him by section 53 of the Financial Services (Investment and Fiduciary Services) Act, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Financial Services (Accounting and Financial) (Amendment) Regulations 2014 and come into operation on the date of publication.

Amendment of the Financial Services (Accounting and Financial) Regulations, 1991.

2. (1) In regulation 30, after the words “shall ensure that” insert the words “subject to the provisions of regulation 35A with respect to mixed payments”.

(2) Insert the following after regulation 35—

“Customer safeguard accounts.

35A.(1) The provisions of this regulation apply where—

- (a) for any financial year of a qualifying licensee, the licensee maintains a customer safeguard account; and
- (b) for any such financial year, the licensee expects to receive from customers specified mixed payments, that is to say, payments representing in part designated customer monies which are disbursements (of which no individual disbursement shall exceed £500) and in part other monies;

and in the following provision of this regulation “relevant financial year” means a financial year for which the qualifying licensee has such an approved account.

(2) In this Part—

- (a) a “customer safeguard account” means an account approved by the Commission into which a qualifying licensee pays, out of its own funds, one or more sums of money representing, as at the beginning of a relevant financial year, 110 per cent of the licensee’s best estimate of that portion of the mixed payments expected to be received during or in respect of that year which will be represented by designated customer monies;
- (b) “Commission” means the Financial Services Commission;
- (c) in relation to a financial year of a licensee, customer monies are “designated” if they are designated by the licensee for the purposes of these Regulations before the beginning of, and in relation to, that year;
- (d) “qualifying licensee” means a licensee who carries on a controlled activity falling within either paragraph 1 (company management) or paragraph 2 (professional trusteeship) of Schedule 3 to the Financial Services (Investment and Fiduciary Services) Act;

and a customer safeguard account shall be under dual signatory control consistent with the four eyes requirement in the conduct of business.

(3)(a) In this regulation “disbursement” and “disbursements” mean monies which are not immediately payable on demand to the licensee for its own account in respect of company registry filing fees, notary fees, apostille fees, overseas agent fees, yacht and ship registry filing fees and licences, annual tax in overseas jurisdictions, courier and postage costs, and any fees ancillary to any of the aforesaid; or

- (b) although so due and payable to the licensee, are held or received in respect of an obligation of the licensee which has not yet been performed; or
- (c) represent other disbursements which have not yet fallen due but which are the responsibility of the customer

provided that no single disbursement shall exceed £500.

- (4) A qualifying licensee who opens a customer safeguard account—
 - (a) shall give written notice in clear terms to the licensed or authorised institution of the nature of the account;
 - (b) shall require the licensed or authorised institution to designate it as such and to acknowledge in writing that it accepts the terms of the account;
 - (c) shall at all times maintain records so as to show clearly the monies which the licensee has paid in and the monies which have been withdrawn as permitted by paragraph (8);

and, in the event that the licensee defaults on any of its commitments, no liquidator, banker or other creditor shall have access to any monies in the account except in so far as they exceed the amount representing designated customer monies.

- (5) The Commission shall not approve an account as a customer safeguard account unless—
 - (a) the application for the Commission's approval is made at least 30 days before the beginning of that financial year;
 - (b) the account is with an institution that is licensed or authorised in accordance with section 7 of the Financial Services (Banking) Act;
 - (c) the Commission is satisfied that the calculation of the best estimate referred to in subregulation (2) is

certified by the licensee's auditor as a fair calculation;
and

- (d) the licensee's auditor certifies that the balance in the account at the date of the application is an amount equal to not less than 110 percent of that best estimate.
- (6) A qualifying licensee approved by the Commission under subregulation (5) to operate a customer safeguard account on an ongoing basis must, thereafter, submit evidence to the Commission of its compliance with subregulation (5) (b), (c) and (d) no later than 30 days before the beginning of that qualifying licensee's financial year.
- (7) Any mixed payments as defined in subregulation (1)(b) above received by a licensee in or in respect of a relevant financial year shall be paid by the licensee into the licensee's own account.
- (8) A customer safeguard account shall be regarded as a "customer bank account" for the purposes of regulations 5 and 31 and no withdrawal shall be made from such an account unless it is towards the payment of fees or commissions payable to the licensee; and—
 - (a) the customer has been notified in writing that the monies will be applied against those fees or commissions and the customer has not disagreed; and
 - (b) a director of the licensee or staff member who has been granted executive powers has expressly authorised the withdrawal; and
 - (c) either an appropriate time has elapsed since the date of delivery to the customer of the notification or the precise amount to be withdrawn has been agreed with the customer.
- (9) If, at any time in a financial year, the licensee or the licensee's auditor becomes aware that the balance in a customer safeguard account has fallen below the required minimum, that is to say, 110 per cent of that portion of the mixed payments

received during or in respect of that year which at that time represents designated customer monies—

- (a) the licensee or, as the case may be, the auditor shall within seven days of that time notify the Commission of that fact; and
- (b) immediately on becoming aware of that fact, the licensee shall take steps to pay into the account so much as is necessary to restore the balance to at least the required minimum;
- (c) the Commission may require the licensee to suspend or end the operation of the customer safeguard account,

and at the end of each financial year of a customer safeguard account, the licensee's auditor shall certify to the Commission whether, throughout that financial year, the balance in the account was at all times equal to not less than the required minimum.

- (10) Paragraph 10 (customer monies) of the Schedule to the Financial Services (Conduct of Fiduciary Services Business) Regulations 2006 shall not apply in relation to a customer safeguard account nor to any designated customer monies.”.

Dated 20th February, 2014.

A J ISOLA,
Minister with responsibility for Financial Services.

EXPLANATORY MEMORANDUM

These Regulations allow (but do not require) mixed payments to be treated as office money when certain conditions - including that no individual disbursement exceed £500 and that licensees keep at least 110 per cent of the total estimated disbursements figure in a separate account (the customer safeguard account). The Regulations are designed to ease the operational and accounting burden on licensees of tracking relatively minor but frequent disbursements.

