

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4359 of 11 April, 2017

LEGAL NOTICE NO. 67 OF 2017.

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

**FINANCIAL SERVICES (INVESTMENT AND FIDUCIARY
SERVICES) ACT (AMENDMENT) REGULATIONS 2017**

In exercise of the powers conferred upon the Minister by sections 5 and 53 of the Financial Services (Investment and Fiduciary Services) Act, and of all other enabling powers, the Minister has made the following Regulations—

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Investment and Fiduciary Services) Act (Amendment) Regulations 2017.

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

Amendment of the Financial Services (Investment and Fiduciary Services) Act.

2.(1) Schedule 3 to the Financial (Investment and Fiduciary Services) Act is amended as follows.

(2) In paragraph 1—

- (a) in sub-paragraph (1)(a) after “companies,” insert “foundations,”;
- (b) in sub-paragraph (1)(b) for “companies, partnerships or” substitute “companies, foundations, partnerships or”;
- (c) in sub-paragraph (1)(b)(ii) for “officer of a company, partnership” substitute “officer of a company, foundation, partnership”;
- (d) after sub-paragraph (1) insert—

“(1A) The activities in sub-paragraphs (1)(a) and (b) may only be undertaken in respect of a foundation by a person who is licensed as a professional trustee and professional foundation councillor in accordance with paragraph 2(2)(b).”;

(e) in sub-paragraph (3), omit paragraph (d).

(3) For paragraph 2 substitute–

“2 Professional Trustee.

(1) Holding out, or soliciting for or undertaking business, for profit or reward, in or from Gibraltar as–

(a) a professional trustee; or

(b) a professional foundation councillor.

(2) A professional trustee licence issued under this Act may authorise the holder to act as–

(a) a professional trustee; or

(b) a professional trustee and professional foundation councillor.

(3) A professional trustee licence may not be issued which authorises the holder only to act as a professional foundation councillor.

(4) The holder of a professional trustee licence may also perform the controlled activities in paragraph 1 without the need to hold a separate licence, but subject to complying with any requirement that applies to a person licensed to undertake those activities.

(5) References in this paragraph to a professional foundation councillor are to–

(a) a member of the council of a foundation registered under the Private Foundations Act 2017; or

- (b) a person performing the corresponding role within a foundation (however described) established under the law of another jurisdiction.
- (6) This paragraph does not apply to the following persons when performing duties within the ambit of their respective professions and which are carried out other than in connection with an activity regulated by this Act—
 - (a) barristers or solicitors admitted and enrolled under the Supreme Court Act; or
 - (b) statutory auditors or audit firms who are registered under Part III of the Financial Services (Auditors) Act 2009.
- (7) This paragraph does not apply to any activity carried on by a person who acts as trustee of one or more personal pension schemes.
- (8) In sub-paragraph (7), “personal pension scheme” has the same meaning as in the Financial Services (Pensions) Regulations 2017.”.

Amendment of the Financial Services (Licensing) Regulations 1991.

3.(1) The Financial Services (Licensing) Regulations 1991 are amended as follows.

- (2) In Schedule 1, in the entry relating to Class VII—
 - (a) in the first column, after “trustee” insert “or foundation councillor”; and
 - (b) in the third column, after “Trustee” insert “(a Class VII licence also authorises the holder to conduct business within Class VIII)”.

Amendment of the Financial Services (Conduct of Fiduciary Services Business) Regulations 2006.

4.(1) The Financial Services (Conduct of Fiduciary Services Business) Regulations 2006 are amended as follows.

(2) In the Schedule—

- (a) in paragraph 3(3) for “trusts and companies” substitute “trusts, foundations and companies”;
- (b) in paragraph 11(4) for “trusts” substitute “trusts or foundations”;
- (c) in paragraph 16(5) after “trusts” insert “or foundations”;
- (d) in paragraph 17(1) for “companies and trusts” substitute “companies, trusts and foundations”; and
- (e) in paragraph 19(6)(a) for “trusts and companies” substitute “trusts, foundations, partnerships and companies”.

Transitional arrangements.

5.(1) This regulation applies to a person who, immediately before the day on which these Regulations come into operation was engaged in—

- (a) any activity in paragraph 1(1)(a) or (b) of Schedule 3 to the Financial (Investment and Fiduciary Services) Act in respect of a foundation; or
- (b) the activity of acting as a professional foundation councillor within the meaning of paragraph 2 of that Schedule.

(2) A person to whom sub-regulation (1) applies, who intends to continue to engage in an activity referred to in that sub-regulation, must apply for a licence to do so under the Financial (Investment and Fiduciary Services) Act within three months of the day on which these Regulations come into operation.

(3) A person who makes an application in accordance with sub-regulation (2) may continue to engage in the activity to which the application relates until it has been determined and, in so doing, is not to be regarded as carrying on that activity in contravention of that Act.

(4) Sub-regulation (2) does not apply to a person who—

- (a) holds an existing Class VII licence; and
- (b) informs the FSC in writing, within three months of the day on which these Regulations come into operation, that the person intends to continue to engage in an activity specified in sub-regulation (1)(a) or (b).

(5) An existing Class VII licence held by a person who complies with sub-regulation (4)(b) is to have effect for the remainder of its validity as if it was a Class VII licence issued after these Regulations came into operation and which authorises the holder to act as a professional trustee and professional foundation councillor.

(6) In this Regulation—

“Class VII licence” means a Class VII licence issued under the Financial Services (Licensing) Regulations 1991;

“existing Class VII licence” means a Class VII licence which was issued before these Regulations came into operation; and

“FSC” means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007.

Dated 11th April, 2017.

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These Regulations amend the Financial Services (Investment and Fiduciary Services) Act and make consequential amendments to the Financial Services (Licensing) Regulations 1991 and the Financial Services (Conduct of Fiduciary Services Business) Regulations 2006, to provide for the licensing of professional foundation councillors and the provision of services to foundations.