

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4784 GIBRALTAR Thursday 26th November 2020

LEGAL NOTICE NO. 421 OF 2020

FINANCIAL SERVICES ACT 2019

INTERPRETATION AND GENERAL CLAUSES ACT

FINANCIAL SERVICES (INSURANCE) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2020

In exercise of the powers conferred on the Minister by sections 5(3), 6(1), 620, 621, and 627 of the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, the Minister has made these Regulations.

Title.

1. These Regulations may be cited as the Financial Services (Insurance) (Miscellaneous Amendments) Regulations 2020.

Commencement.

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

Amendment of Financial Services Act 2019.

3.(1) In Schedule 2 to the Financial Services Act 2019—

(a) for paragraph 28 substitute—

“28. In this Chapter—

“direct insurance or reinsurance firm” means a regulated firm which carries on an activity of a kind specified by paragraph 24(1) or (2); and

“intermediary” means an insurance intermediary, reinsurance intermediary or ancillary insurance intermediary, within the meaning of Chapter 4.”;

(b) for paragraph 29 substitute—

“29.(1) Insurance management is a specified kind of activity.

(2) “Insurance management” means exercising managerial functions in relation to the business of—

- (a) a direct insurance or reinsurance firm; or
- (b) an intermediary.”;
- (c) for paragraph 31 substitute–

“Employees of firms or intermediaries.

31. There is excluded from paragraph 29 any managerial functions exercised in relation to the business of–
- (a) a direct insurance or reinsurance firm by a person who is an employee of that firm; or
 - (b) an intermediary by a person who is an employee of that intermediary.”; and
- (d) in paragraph 33, for the definition of “ancillary insurance intermediary” substitute–

““ancillary insurance intermediary” means any natural or legal person (“P”), other than a credit institution or investment firm (within the meaning of the Capital Requirements Regulation), which carries on the activity specified by paragraph 34 on an ancillary basis where–

- (a) the principal professional activity which P carries on does not otherwise consist of the carrying on of insurance distribution;
- (b) P distributes certain insurance products that are complementary to a good or service; and
- (c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which P provides as its principal professional activity;”.

Amendment of Financial Services (Insurance Companies) Regulations 2020.

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

- (2) After regulation 61, insert–

“Accounts and statements

Preparation, submission and publication of accounts, etc.

- 61A.(1) An insurance undertaking must, in respect of each financial year, prepare Insurance Regulations accounts in accordance with the Financial Services (Insurance Companies: Accounts Directive) Regulations 2020.
- (2) An insurance undertaking must submit to the GFSC, within six months of the end of the period to which they relate, a copy of each of the following documents–
- (a) every account and balance sheet prepared in accordance with sub-regulation (1);
 - (b) any report of the insurer’s auditor on any such account or balance sheet;
 - (c) every published annual account and balance sheet and the auditor’s report on them; and
 - (d) every report, if any, on the insurer’s affairs submitted to its shareholders or policyholders.
- (3) An insurance undertaking must publish any balance sheet or profit and loss account which, in accordance with section 240 of the Companies Act 2014, is required to be laid before a company in general meeting.

Change of financial year.

- 61B.(1) An insurance undertaking must not change its financial year without the prior consent of the GFSC.
- (2) The GFSC may at any time require an insurance undertaking to change the date for the end of its financial year to an earlier or later date.

Copies of accounts etc.

- 61C.(1) An insurance undertaking must provide to any shareholder or policy holder, on request, a copy of any of the documents it last submitted to the GFSC under regulation 61A(2).
- (2) Sub-regulation (1) does not apply where, in the GFSC’s opinion, the disclosure by an insurance undertaking of information in a document submitted under regulation 61A(2) would be harmful to the business of the insurance undertaking or any of its subsidiaries.”.

Amendment of Financial Services (Insurance Distribution) Regulations 2020.

5.(1) The Financial Services (Insurance Distribution) Regulations 2020 are amended as follows.

- (2) After regulation 37 insert–

“Outsourcing.

37A.(1) An insurance, reinsurance or ancillary insurance intermediary which outsources a function or activity to another person (a “service provider”) must not outsource critical or important operational functions or activities in such a way as to–

- (a) impair materially the quality of its system of governance;
- (b) unduly increase operational risk;
- (c) impair the GFSC’s ability to monitor the intermediary’s compliance with its obligations; or
- (d) undermine continuous and satisfactory service to customers.

(2) An intermediary must–

- (a) obtain the GFSC’s approval before outsourcing any critical or important function or activity; and
- (b) notify the GFSC, in a timely manner, of any subsequent material developments with respect to that function or activity.

(3) An intermediary which outsources any function or activity remains fully responsible for discharging all of its obligations under the Act and these Regulations and, in particular, must ensure that–

- (a) the service provider has the ability, capacity and any authorisation required by law to perform the outsourced function or activity effectively;
- (b) the intermediary properly supervises the service provider’s performance of the outsourced function or activity;
- (c) the intermediary, its auditors and the GFSC have effective access to documents, data and accounting records related to the outsourced function or activity;
- (d) the service provider cooperates with the GFSC in connection with the outsourced function or activity; and
- (e) the GFSC has effective access to the service provider’s business premises and is able to exercise that right of access.

(4) In this regulation “outsourcing” means an arrangement of any form between an intermediary and a service provider, whether a supervised entity or not, by which that service provider performs a process, service or activity, whether directly or by sub-outsourcing, which would otherwise be performed by the intermediary itself.”.

(3) After regulation 54J insert–

“Money held as agent of insurer.

54K.(1) An insurance, reinsurance or ancillary insurance intermediary which holds money in accordance with an agency agreement–

- (a) is not required to hold the money as customer money and keep it in a customer bank account in accordance with the other provisions of this Chapter; and
- (b) may hold the money as customer money and keep it in a customer bank account only if the agency agreement expressly provides for it to be held and kept in that manner.

(2) In this regulation, an “agency agreement” means a written agreement with an insurance undertaking which expressly provides for the intermediary to hold money as agent of the insurance undertaking–

- (a) for the purpose of receiving premiums;
- (b) for the purpose of–
 - (i) settling claims; or
 - (ii) handling premium refunds; or
- (c) for any other purpose which is specified in the agreement and connected to the intermediary’s insurance distribution activities on behalf of the insurance undertaking.

(3) An agency agreement must–

- (a) where sub-regulation (2)(a) applies–
 - (i) authorise the intermediary to act as agent of the insurance undertaking for the purpose of receiving premiums from the intermediary’s customers; and
 - (ii) provide that any premium which the intermediary receives is to be treated as being received by the insurance undertaking when it is received by the intermediary;

- (b) where sub-regulation (2)(b) applies–
 - (i) authorise the intermediary to act as agent of the insurance undertaking for the purpose of receiving and holding (as the case may be)–
 - (aa) claims money prior to its transmission to the customer making the claim; or
 - (bb) a premium refund prior to its transmission to the customer entitled to the refund; and
 - (ii) provide that the claims money or premium refund (as the case may be) is to be treated as received by the customer only when it is paid to the customer; or
- (c) where sub-regulation (2)(c) applies–
 - (i) authorise the intermediary to act as agent of the insurance undertaking for the purpose specified;
 - (ii) specify that purpose; and
 - (iii) provide that any money held by the intermediary for that purpose is to be treated as being held by the insurance undertaking and that any payment made from that money to any person is to be treated as paid only when the money is received by the person entitled to it.
- (4) Before entering into an agency agreement an intermediary must be satisfied, on reasonable grounds, that the terms of any policies issued by the insurance undertaking to the intermediary's customers are likely to be compatible with that agency agreement.
- (5) An intermediary which holds or is to hold money in accordance with an agency agreement must give written notice to any customer who may be affected by the agreement–
 - (a) that the intermediary hold the customer's money as agent of the insurance undertaking; and
 - (b) of the nature of that agency and, in particular, of the purposes in sub-regulation (2) to which the agreement extends.
- (6) Notice under sub-regulation (5) may be given in a customer agreement, the intermediary's terms of business, or by any other appropriate means.
- (7) An intermediary may carry on business–

- (a) on the basis of an agency agreement for some of its customers and by complying with the requirements of the other provisions of this Chapter for other customers; or
- (b) on either basis for the same customer but in relation to different transactions,

but an intermediary that does so must have adequate administrative systems and controls in place which ensure that money held for customers and in respect of transactions conducted on either basis is kept separate.

- (8) An agency agreement may provide for client money which is received by an intermediary's appointed representative to be held as agent for the insurance undertaking and, in that event, the appointed representative must give notice, in accordance with sub-regulation (5), to any client who may be affected that agreement.
- (9) An intermediary must retain a copy of any agency agreement for at least six years from the date of its termination.”.

Amendment of Financial Services (Insurance Management) Regulations 2020.

6.(1) The Financial Services (Insurance Management) Regulations 2020 are amended as follows.

- (2) In regulation 2(1), for the definition of “customer” substitute–

““customer” means any of the following with which an insurance manager has entered into or intends to enter into a management agreement–

- (a) an insurance undertaking or reinsurance undertaking with a Part 7 Permission to carry on an activity of a kind specified by paragraph 24(1) or (2) of Schedule 2 to the Act;
- (b) an insurance intermediary or ancillary insurance intermediary with a Part 7 permission to carry on the activity specified by paragraph 34 of that Schedule; or
- (c) a reinsurance intermediary with a Part 7 permission to carry on the activity specified by paragraph 35 of that Schedule;”.

- (3) After regulation 4, insert–

“Scope of authorisation.

- 4A.(1) An insurance manager must obtain the GFSC's consent before entering into a management agreement with or otherwise acting for an insurance, reinsurance or ancillary insurance intermediary.
- (2) Part 7 permission to act as an insurance manager does not authorise the insurance manager to perform specified insurance distribution functions, whether for a customer or on the insurance manager's own account.
- (3) A "specified insurance distribution function" means any of the functions in paragraphs (a)(i) or (ii) or (b) of the definition of "insurance distribution" in paragraph 33 of Schedule 2 to the Act."

Dated: 26th November 2020

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These Regulations amend the Financial Services Act 2019 and regulations made under that Act in respect of insurance-related activities. The Regulations make provision in respect of the scope of the regulated activity of insurance management and the holding of customer money by intermediaries when acting as an insurer's agent and make other minor amendments to the Act and those regulations, including revising the definition of "ancillary insurance intermediary" to give further effect to the Insurance Distribution Directive ((EU) 2016/97).