

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5059 GIBRALTAR Thursday 8th June 2023

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LEGAL NOTICE NO. 141 OF 2023

## FINANCIAL SERVICES ACT 2019

### FINANCIAL SERVICES ACT 2019 (AMENDMENT No. 2) REGULATIONS 2023

In exercise of the powers conferred on the Minister by section 627 of the Financial Services Act 2019, the Minister has made these Regulations-

#### **Title.**

1. These Regulations may be cited as the Financial Services Act 2019 (Amendment No. 2) Regulations 2023.

#### **Commencement.**

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

#### **Amendment of the Financial Services Act 2019.**

3.(1) The Financial Services Act 2019 is amended as follows.

(2) In section 38-

(a) in subsection (1), for “powers or functions conferred on the GFSC by this or any other Act” substitute “of its functions”;

(b) in subsection (2)-

(i) after “who is” insert “, or (when the act or omission occurred) was,”;

(ii) for “powers or functions conferred on the GFSC by this or any other Act” substitute “of the GFSC’s functions”;

(c) in subsection (3), for “Subsections (1) and (2) do” substitute “Subsection (1) does”;

(d) in subsection (5)-

(i) for “of its existing and former members, officers or employees” substitute “person to whom subsection (2) applies”;

(ii) for “they are” substitute “the person is”;

(iii) for “powers or functions conferred on the GFSC by this or any other Act” substitute “of the GFSC’s functions”;

(e) after subsection (5) insert–

“(6) In this section–

“delegate” means any person to whom the GFSC has delegated any of its functions or who it has authorised to perform any functions on its behalf, and includes an inspector appointed under Part 10 or 24; and

“functions” means the powers or duties of the GFSC conferred by or under this or any other Act.”.

(3) In section 286–

(a) in subsection (1)–

(i) omit “, its officers, employees or any person to whom any of its powers have been delegated,”;

(ii) for “functions conferred by or under this Part unless the act or omission is shown to have been in bad faith” substitute “of its functions”;

(b) after subsection (1), insert–

“(1A) Any person who is, or (when the act or omission occurred) was, a member, officer, employee or delegate of the Gibraltar Resolution Authority is not liable in damages for anything done or omitted in the discharge or purported discharge of any of the Authority’s functions.

(1B) Subsections (1) and (1A) do not apply to an act or omission which is shown to have been in bad faith.”;

(c) in subsection (2)–

(i) for “of its existing and former members, officers or employees” substitute “person to whom subsection (1A) applies”;

(ii) for “they are” substitute “the person is”;

(iii) for “functions conferred by or under this Part” substitute “of the Authority’s functions”;

(d) after subsection (2) insert–

“(3) In this section–

“delegate” means any person to whom the Authority has delegated any of its functions or who it has authorised to perform any functions on its behalf; and

“functions” means the powers or duties of the Authority conferred by or under this Act.”.

(4) In Schedule 6, in paragraph 7–

(a) in sub-paragraph (1)–

- (i) for “Any person who is a member of the” substitute “The”;
- (ii) for “powers or functions conferred on the DMC by this Act” substitute “of its functions”;

(b) after sub-paragraph (1), insert–

“(1A) Any person who is, or (when the act or omission occurred) was, a member, officer, employee or delegate of the DMC is not liable in damages for anything done or omitted in the discharge or purported discharge of any of the DMC’s functions.”;

(c) in sub-paragraph (2)–

- (i) for “Sub-paragraph (1) does” substitute “Sub-paragraphs (1) and (1A) do”;
- (ii) for “to be” substitute “to have been”;

(d) in sub-paragraph (3)–

- (i) for “existing and former members of the DMC” substitute “person to whom sub-paragraph (1A) applies”;
- (ii) for “they are” substitute “the person is”;
- (iii) for “powers or functions conferred on the DMC by this Act” substitute “of the DMC’s functions”;

(e) after sub-paragraph (3), insert–

“(4) In this paragraph–

“delegate” means any person to whom the DMC has delegated any of its functions or who it has authorised to perform any functions on its behalf; and

“functions” means the powers or duties of the DMC conferred by or under this Act.”.

(5) In Schedule 7, in paragraph 6–

(a) in sub-paragraph (1), for “powers or functions conferred on the FSRCC by this Act” substitute “of its functions”;

(b) in sub-paragraph (2)–

(i) after “who is” insert “, or (when the act or omission occurred) was,”;

(ii) for “powers or functions conferred on the FSRCC by this Act” substitute “of the FSRCC’s functions”;

(c) in sub-paragraph (3), for “to be” substitute “to have been”;

(d) in sub-paragraph (4)–

(i) for “definitely” substitute “definitively”;

(ii) for “of its existing and former members, officers or employees” substitute “person to whom sub-paragraph (2) applies”;

(iii) for “they are” substitute “the person is”;

(iv) for “powers or functions conferred on the FSRCC by this Act” substitute “of the FSRCC’s functions”;

(e) after sub-paragraph (4), insert–

“(5) In this paragraph–

“delegate” means any person to whom the FSRCCC has delegated any of its functions or who it has authorised to perform any functions on its behalf; and

“functions” means the powers or duties of the FSRCC conferred by or under this Act.”.

(6) In Schedule 21, in paragraph 3–

(a) in sub-paragraph (1), for “to be done in the direct exercise or purported direct exercise” substitute “in the discharge or purported discharge of any”;

(b) in sub-paragraph (2)–

- (i) for “or is acting as, a member, officer or employee” substitute “or (when the act or omission occurred) was, a member, officer, employee or delegate”;
- (ii) for “to be done in the direct exercise or purported direct exercise” substitute “discharge or purported discharge of any”;

(c) after sub-paragraph (2), insert–

“(2A) Sub-paragraphs (1) and (2) do not apply to an act or omission which is shown to have been in bad faith.”;

(d) in sub-paragraph (3)–

- (i) after “must” insert “(unless bad faith is definitively found to have existed)”;
- (ii) for “who is or was, or who is acting or has acted as, a member, officer or employee of the Board” substitute “to whom sub-paragraph (2) applies”;
- (iii) for “to do in the direct exercise or purported direct exercise” substitute “in the discharge or purported discharge of any”;

(e) for sub-paragraph (4), substitute–

“(4) In this paragraph–

“delegate” means any person to whom the Board has delegated any of its functions or who it has authorised to perform any functions on its behalf;  
and

“functions” means the powers or duties of the Board conferred by or under this Act.”.

Dated: 8<sup>th</sup> June 2023.

A J ISOLA,  
Minister with responsibility for Financial Services.

### **EXPLANATORY MEMORANDUM**

These Regulations amend sections 38 and 286 of, and Schedules 6, 7 and 21 to, the Financial Services Act 2019, in order to give full effect to the amended provisions. The Regulations amend those provisions, which relate to the immunity of the Gibraltar Financial Services Commission and its statutory committees, the Gibraltar Resolution Authority and the Board of the Gibraltar Investor Compensation Scheme, so that they are expressed in consistent terms.