

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5085 GIBRALTAR Thursday 7th September 2023

LEGAL NOTICE NO. 260 OF 2023

FINANCIAL SERVICES ACT 2019

FINANCIAL SERVICES ACT 2019 (AMENDMENT No. 5) REGULATIONS 2023

In exercise of the powers conferred on the Minister by sections 5, 620 and 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. 5) Regulations 2023.

Commencement.

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

Amendment of the Financial Services Act 2019.

3.(1) Schedule 2 to the Financial Services Act 2019 is amended as follows.

(2) After paragraph 24(2), insert—

“(3) A person with permission under Part 7 of this Act to carry on an activity of a kind specified by sub-paragraph (1) or (2) may also, in connection with or for the purposes of carrying on that activity, carry on activities of a kind specified by paragraphs 48 to 54B as if those activities were included in the activity specified by sub-paragraph (1) or (2).

(4) For the purposes of sub-paragraph (3), paragraphs 48 to 54B are to apply as if contracts of insurance were included in the kinds of financial instruments specified by paragraph 46.”.

(3) In paragraph 33, in the definition of “insurance distribution”, for sub-paragraph (a)(iii) substitute—

“(iii) assisting the parties to such contracts in the administration and performance of those contracts, in particular in the event of a claim, including (without limiting this paragraph)—

- (aa) assisting the parties to comply with obligations under such contracts, such as the obligations of policyholders to notify insurers of claims or other matters;
 - (bb) assisting the parties in negotiating the settlement of claims under such contracts;
 - (cc) arranging, on behalf of the parties to group contracts of insurance, for persons to be added to and acquire rights under, or be removed from, such a group contract; or
 - (dd) assisting the parties to unit-linked contracts of life insurance with the purchase or redemption of units under such contracts; and
- (iv) advising policyholders and other persons having rights under or interests in concluded contracts of insurance and assisting the parties to them with–
 - (aa) the sale, assignment, surrender or switching of rights or interests under such concluded contracts, or
 - (bb) the purchase or acquisition of further rights under or interests in such concluded contracts; and”.
- (4) In paragraph 45(2), omit paragraph 1.
- (5) After paragraph 54, insert–
 - “Arranging deals in investments.**
 - 54A.(1) Making arrangements with a view to a person who participates in them buying, selling, subscribing for or underwriting a financial instrument, structured deposit or contract of insurance is a specified kind of activity.
 - (2) In sub-paragraph (1)–
 - “contract of insurance” means a contract of insurance of any class in paragraph 22 or 23; and
 - “structured deposit” has the meaning given in paragraph 77(2).
 - (3) The exclusions in sub-paragraph (4)(b), (c) and (f) do not apply in respect of any arrangement relating to a contract of insurance.
 - (4) Subject to sub-paragraph (3), there are excluded from sub-paragraph (1)–
 - (a) the operation of a multilateral trading facility or an organised trading facility;

- (b) arrangements which a person makes with a view to entering into transactions as principal or as agent for some other person;
- (c) arrangements made by a person (“P”) who is not an authorised person with a view to another person (“the client”) entering into a transaction with or through an authorised person based on advice given to the client by the authorised person where—
 - (i) the client is not seeking and has not sought advice from P as to the merits of the transaction (or, if the client has done so, P has declined to give it but recommended that the client seek the advice from an authorised person); and
 - (ii) P does not receive from any person other than the client any pecuniary reward or other advantage for which P does not account to the client;
- (d) arrangements under which a person is to accept, as principal or agent, a debenture or similar instrument acknowledging indebtedness in respect of a loan or guarantee provided by that person or the person’s principal;
- (e) arrangements solely for the provision of finance to enable a person to buy, sell, subscribe for or underwrite financial instruments, structured deposits or contracts of insurance;
- (f) arrangements under which a person (“the client”) is to be introduced to an authorised person with a view to the authorised person giving independent advice to the client; or
- (g) arrangements made by a person for the purposes of issuing its own shares, share warrants, debentures or debenture warrants.

Safeguarding and administering financial instruments etc.

54B.(1) The activity consisting of both—

- (a) the safeguarding of relevant assets belonging to another; and
- (b) the administration of those relevant assets,

or arranging for one or more other persons to carry on that activity, is a specified kind of activity if the condition in sub-paragraph (a) or (b) of paragraph (2) is met.

(2) The conditions are that—

- (a) the assets consist of or include any investment which is a security or a contractually based investment; or

- (b) the arrangements for their safeguarding and administration are such that the assets may consist of or include such investments and the arrangements have at any time been held out as ones under which such investments would be safeguarded and administered.
- (3) In sub-paragraph (1), “relevant assets” means financial instruments or qualifying contracts of insurance.
- (4) A “qualifying contract of insurance” means a contract of life insurance which is not–
- (a) a reinsurance contract; nor
 - (b) a contract in respect of which the following conditions are met–
 - (i) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (ii) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and
 - (iii) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with sub-paragraph (i) or (ii).
- (5) The activity specified in sub-paragraph (1) includes custodianship and related services such as cash and collateral management but does not include providing or maintaining securities accounts at the top tier level (“central maintenance service”) referred to in point 2 of Section A of the Annex to the CSD Regulation.”
- (6) For paragraph 58, substitute–
- “58. An insurance undertaking or reinsurance undertaking to which paragraph 24(1) or (2) applies may carry on an activity of a kind specified by paragraphs 48 to 54B in accordance with paragraph 24(3).”
- (7) In paragraph 139, after “specified” insert “kind of”.
- (8) After paragraph 142, insert–

**“PART 17
OTHER SPECIFIED ACTIVITIES**

Agreeing to carry on specified kinds of activity.

143.(1) Subject to sub-paragraph (2), agreeing to carry on an activity of the kind specified by any other provision of this Schedule is a specified kind of activity.

(2) Sub-paragraph (1) does not apply in respect to the following provisions of this Schedule–

- (a) the paragraph 3 (accepting deposits);
- (b) paragraph 13 (issuing electronic money);
- (c) paragraph 24 (effecting or carrying out contracts of insurance);
- (d) paragraph 55 or 56 (operating a MTF or an OTF);
- (e) paragraph 82 (administering a benchmark);
- (f) paragraph 93 (managing a UCITS);
- (g) paragraph 94, 94A or 94B (acting as depositary, trustee or sole director of a UCITS);
- (h) paragraph 95 or 97 (managing an AIF);
- (i) paragraph 96 or 98 (acting as depositary of an AIF);
- (j) paragraph 99 (establishing, operating or winding up a collective investment scheme);
- (k) paragraph 106 (establishing, operating or winding up a pension scheme).”.

Saving for existing Part 7 permissions.

4.(1) A permission under Part 7 of the Financial Services Act 2019 which is in effect immediately before the appointed day has effect from that day as if–

- (a) in the case of a permission to carry on an activity of a kind specified by paragraph 24(1) or (2) of Schedule 2 to that Act, it included permission to carry on activities of a kind specified by paragraph 24(3) of that Schedule;
- (b) in the case of a permission to carry on an activity of a kind specified by any of paragraphs 48 to 54 of Schedule 2 to that Act, it included permission to carry on activities of a kind specified by paragraph 54A of that Schedule;

- (c) in the case of a permission which includes the carrying on of the ancillary activity which was set out in paragraph 45(2).1 of Schedule 2 to that Act, it included permission to carry on activities of a kind specified by paragraph 54B of that Schedule; or
 - (d) in the case of a permission to carry on an activity to which paragraph 143(1) of Schedule 2 to that Act applies (an “underlying activity”), it included permission to carry on an activity of a kind specified by that paragraph in respect of the underlying activity.
- (2) In sub-regulation (1), the “appointed day” means the day on which regulation 3 comes into operation.

Consequential amendment.

5. After regulation 12(1) of the Financial Services (Investment Services) Regulations 2020, insert–

“(1A) A permission may not be granted solely for the activity of safeguarding and administering financial instruments specified by paragraph 54B of Schedule 2 to the Act.”.

Dated: 7th September 2023.

A J ISOLA,
Minister with responsibility for Financial Services.

EXPLANATORY MEMORANDUM

These Regulations amend Schedule 2 to the Financial Services Act 2019. They make minor changes to clarify provisions relating to the carrying on of investment activities by insurers and reinsurers in connection with their insurance activities and the scope of post-contractual activities which may be carried on by insurance intermediaries. The Regulations also make the safeguarding and administering of financial instruments a specified activity rather than an ancillary activity, provide that arranging deals in investments and agreeing to carry on certain kinds of specified activity are to be treated as regulated activities in their own right and make a minor correction to paragraph 139 of Schedule 2. The Regulations also contain saving provisions for existing permissions under the Act which may be affected by those changes and make a consequential amendment to the Financial Services (Investment Services) Regulations 2020.