

Subsidiary Legislation made under ss.6(1), 44(4), 61(1), 63(3), 64(3), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627.

## **Financial Services (Depositaries) Regulations 2020**

### **LN.2020/011**

*Commencement* **15.1.2020**

<b>Amending enactments</b>	<b>Relevant current provisions</b>	<b>Commencement date</b>
LN.2020/486	rr. 2(1), (3), 23(1), (3)-(4), 32, 35(1)-(3), 36, 39, Sch.	1.1.2021
2022/188	Sch.	1.1.2021
2022/067	r. 60(2)	17.3.2022

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*In exercise of the powers conferred upon the Minister under sections 6(1), 44(4), 61(1), 63(3), 64(3), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of the Financial Services Act 2019, the Minister has made the following Regulations.*

**PART 1  
PRELIMINARY**

**Title and Commencement.**

1.(1) These Regulations may be cited as the Financial Services (Depositaries) Regulations 2020.

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

**Interpretation.**

2.(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Financial Services Act 2019;

“assets” means money and financial instruments;

“auditor” in relation to a depositary, means the person appointed by the depositary to be its auditor for the purpose of the Act and these Regulations and who is in office at that time;

“collective investment scheme” has the meaning given in section 290 of the Act;

“customer” means a collective investment scheme for which the depositary carries on or intends to carry on the activity of depositary business, and includes a potential customer;

“depositary” means a person with a Part 7 permission to carry out depositary business;

“depositary business” means a regulated activity that falls within paragraph 94, 96, 98, 100 or 101 of Schedule 2 to the Act;

“financial year”, in relation to a depositary, means—

- (a) the period beginning with the day on which the depositary commences to carry on depositary business and ending with the date as at which it prepares its first annual balance sheet; and

- (b) each subsequent period beginning with the day following the day as at which an annual balance sheet of the depositary is prepared for the purposes of these Regulations and ending with the day as at which the next annual balance sheet of the depositary is so prepared;

“financial instrument” has the meaning given in paragraph 46 of Chapter 2, Part 6 of Schedule 2 to the Act;

“money” includes any form of money, whether represented by a cheque, or other payable order, or otherwise;

“Part 7 permission” means permission under Part 7 of the Act;

“public interest” means the public interest of Gibraltar as determined by the Minister;

“recognised credit institution” means—

- (a) a credit institution with Part 7 permission to carry on the regulated activity of accepting deposits;
- (b) a central bank of a state that is a member of the Organisation for Economic Co-operation and Development (an “OECD state”);
- (c) a credit institution that is supervised by the central bank or other banking regulator of an OECD state;
- (d) any credit institution that—
  - (i) is subject to regulation by the banking regulator of a country or territory that is not an OECD state;
  - (ii) is required by the law of the country or territory in which it is established to provide audited accounts;
  - (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time);
  - (iv) has a surplus of revenue over expenditure for the last two financial years; and
  - (v) has an annual report which is not materially qualified;

“regulatory system” means the arrangements for regulating a depositary under the Act, these Regulations and subsidiary legislation made under the Act and any rules or directions made by the GFSC;

“the Register” means the register which is established and maintained by the GFSC in accordance with both Part 4 of the Act and, in relation to the provision of depositary business, regulation 61.

(2) In these Regulations, any reference to a balance sheet or to a profit and loss account includes any notes to the financial statement in question giving information which is required by any provision of these Regulations and required or allowed by that provision to be given in a note to the depositary’s financial statements.

(3) Nothing in these Regulations which requires a depositary to hold assets with a recognised credit institution is to be construed as requiring a depositary which is a recognised credit institution to hold the assets with another recognised credit institution.

#### **Application.**

3. These Regulations apply to and have effect in relation to every depositary in respect of its depositary business.

### **PART 2 AUTHORISATION CONDITIONS**

#### **Control over use of names.**

4.(1) No company may be incorporated, and no person may carry on depositary business, under a name that contains a restricted word or phrase, unless—

- (a) the company or person is an authorised person who is using the restricted word or phrase as permitted by the notice published by the GFSC under sub-regulation (2);  
or
- (b) the GFSC has given its prior written consent to the use of the word or phrase.

(2) For the purposes of sub-regulation (1), the GFSC may, by notice published in the prescribed manner, specify words or phrases as restricted words or phrases and may specify categories of depositaries or authorised persons who may use the restricted words or phrases, the circumstances in which they may be used and conditions attaching to their use.

### **PART 3 CONDUCT OF BUSINESS**



*Independence.***Independence.**

5. Where a depositary is acting for a customer–
- (a) it must not claim it is independent or impartial if it is not; and
  - (b) it must ensure that any claim it makes as to its independence or impartiality adequately includes any limitation that there may be on either.

**Material interest.**

6. Where a depositary has a material interest in a transaction to be entered into with or for a customer, or a relationship which gives rise to a conflict of interest in relation to such a transaction, the depositary must not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless it has–
- (a) fairly disclosed that material interest or relationship, as the case may be, to the customer; or
  - (b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affects the interests of the customer.

**Inducements.**

7. A depositary must take reasonable steps to ensure that neither it nor any of its employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to customers.

*Advertising and marketing.***Issue of advertisements.**

8. Where a depositary issues an advertisement concerning depositary business it must have appropriate expertise in relation to that depositary business concerned and take all reasonable steps to ensure that–
- (a) the contents and presentation of the advertisement are demonstrably fair and not misleading; and
  - (b) the advertisement discloses fairly the risks involved.

**Identification of issuer.**

9. Where a depositary issues an advertisement concerning depositary business, it must ensure that the advertisement identifies it as the issuer.

**Fair and clear communications.**

10.(1) A depositary may make a communication with another person which is designed to promote the activities of its depositary business only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.

(2) A depositary must take reasonable steps to ensure that any agreement, written communication, notification or information that it gives or sends to customers is presented fairly and clearly.

**Information about the depositary.**

11. A depositary must take reasonable steps to ensure that a customer is given adequate information about its identity and business address and the identity and status within the depositary of employees and other relevant representatives with whom the customer has contact.

**Representatives of the depositary.**

12.(1) A depositary must satisfy itself on reasonable grounds and on a continuing basis that any representative it appoints is fit and proper to act for it in that capacity.

(2) The depositary must also satisfy itself on reasonable grounds and on a continuing basis that it has adequate resources to monitor and enforce compliance by its representatives with high standards of business conduct.

*Customer relations.***Service agreements.**

13. Where a depositary enters into an agreement with a customer for depositary business, the agreement must set out in adequate detail the basis on which the depositary business is carried out in respect of that client.

**Customers' rights.**

14. A depositary must not, in any written communication or agreement, seek to exclude or restrict–

- (a) any duty or liability to a customer which it has under the Act, any subsidiary legislation made under the Act, including these Regulations;
- (b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the carrying on of depositary business for that customer; or
- (c) any liability owed to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in carrying on the depositary business.

**Duty to segregate.**

15. A depositary must keep all customer assets coming into its hands or from a customer into a specifically created customer bank account which is segregated from any account holding any assets belonging to the depositary.

**Charges.**

16.(1) A depositary's charges must not be unfair in their incidence or unreasonable in their amount having regard to all the relevant circumstances.

(2) Before a depositary carries on any depositary business for a customer it must disclose to the customer the basis or amount of its charges for the provision of that activity and the nature of and amount of any other remuneration receivable by it and attributable to them.

**Safeguarding of customer assets.**

17. A depositary which has custody of a customer's financial instruments in connection with or with a view to depositary business must–

- (a) keep safe, or arrange for the safekeeping of, any documents of title relating to them; and
- (b) ensure that any registrable financial instruments that it holds for a customer or that it has acquired for the account of a customer are properly registered in the customer's name or, with the consent of the customer, in the name of an appropriate nominee.

**Complaints.**

18. A depositary must have internal procedures to ensure the proper handling of complaints from customers and to ensure that any appropriate remedial action on those complaints is promptly taken.

**Compliance.**

19.(1) A depositary must take reasonable steps, including the establishment and maintenance of procedures, to ensure that—

- (a) its officers, employees and other representatives are aware of their obligations under the Act, subsidiary legislation made under the Act and under rules made by the GFSC, and that they act in conformity with them; and
- (b) sufficient information is recorded and retained about its depositary business and compliance with the regulatory system.

(2) Records required to be maintained by the regulatory system must be kept available, for a period of not less than 6 years, by the depositary for inspection by any person duly authorised by the GFSC.

**Supervision.**

20. A depositary must establish and maintain procedures—

- (a) for the supervision of each of its officers, employees and other representatives; and
- (b) for ensuring that each such person does not carry on any depositary business of such a nature as is beyond their competence to give or to provide.

**Cessation of business.**

21. Where a depositary decides to withdraw from depositary business it must ensure to the satisfaction of the GFSC that any such business which is outstanding is properly completed or transferred to another depositary.

**PART 4  
CORPORATE GOVERNANCE AND RISK MANAGEMENT**

*Accounting records.*

**Duty to keep accounting records.**

22.(1) A depositary must, in respect of its depositary business, keep accounting records which are sufficient to show and explain the depositary's transactions (whether effected on its own behalf or on behalf of others) and must be such as to—

- (a) disclose with reasonable accuracy, at any time, the financial position of the depositary at that time;
- (b) demonstrate whether or not the depositary is at that time complying with any financial resources requirements imposed by the GFSC; and
- (c) enable the depositary to prepare a balance sheet and a profit and loss account as at any time and which comply with the requirements of these Regulations.

(2) The accounting records must in particular contain—

- (a) entries from day to day of all sums of assets received and expended by the depositary, and the matters in respect of which the receipt and expenditure takes place;
- (b) a record of all assets and liabilities of the depositary including any commitments or contingent liabilities;
- (c) entries from day to day of all purchases and sales of financial instruments by the depositary distinguishing those which are made by the depositary on its own account and those which are made by the depositary on behalf of a customer;
- (d) entries from day to day of the receipt and dispatch of documents of title, or documents evidencing title, to financial instruments which are in the possession or control of the depositary;
- (e) a record of financial instruments the documents of title, or the documents evidencing title, to which are in the possession or control of the depositary identifying—
  - (i) where those documents are kept;
  - (ii) the beneficial owner of each of those financial instruments;
  - (iii) the purposes for which those documents are held; and
  - (iv) whether those financial instruments are subject to any charge;
- (f) entries from day to day of—

- (i) all assets which are paid into or out of a customer bank account maintained for the purposes of these Regulations; and
  - (ii) receipts and payments of customer assets not passed through such a customer bank account, identifying the persons to whom each such receipt or payment relates; and
- (g) a record of–
- (i) balances on individual customer bank accounts;
  - (ii) balances on individual customer accounts at intermediate brokers and exchanges;
  - (iii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and
  - (iv) reconciliations made pursuant to regulations 23 and 24.

**Reconciliation of customer assets.**

23.(1) A depositary must, at least once every 2 months, reconcile the balance on each customer bank account (as recorded by the depositary) with the balance on that account (as set out on the statement issued by the recognised credit institution).

(2) Where a customer bank account contains the assets of more than one customer a depositary must, in addition to the reconciliation made under sub-regulation (1), at least once every 2 months reconcile the balance on that account with the total of the credit balances in respect of each customer (both totals as recorded by the depositary).

(3) Where any difference arises on reconciliation under sub-regulation (1) or (2), the depositary must correct it immediately unless the difference arises solely as a result of timing differences between the accounting systems of the recognised credit institution and of the depositary.

(4) This regulation does not apply to a depositary which is a recognised credit institution in respect of customer bank accounts which it operates for its own customers, so long as those accounts are not maintained by another recognised credit institution.

**Reconciliation of customers' financial instruments held by depositary.**

24.(1) A depositary must at least twice in every financial year carry out a reconciliation in accordance with this regulation and correct any discrepancy revealed during that process.

(2) The first such reconciliation must be carried out at some time in the fifth and sixth months of the financial year and the second must be carried out at some time in the eleventh and twelfth months of the financial year.

(3) The requirements of this regulation in relation to each reconciliation are–

- (a) in relation to documents of title and documents evidencing title to financial instruments of the depositary's customers which are in the possession of the depositary or in the possession of the depositary's own custodian, the depositary must inspect and count all those documents and, in the case of registrable financial instruments, reconcile any results which show discrepancies with the books and records of the appropriate register;
- (b) in relation to documents of title or documents evidencing title to financial instruments of the depositary's own customers which are in the possession of a custodian other than the depositary's own custodian, the depositary must obtain from that custodian a statement specifying in relation to each description of financial instrument the documents of title or certificates of title to which were held by the custodian for the depositary, the amount of that financial instrument and, where the financial instrument is a registrable financial instrument, the amount so held in each different name, made up as at the date at which the reconciliation under paragraph (a) is carried out; and
- (c) the depositary must reconcile the results of each inspection under paragraph (a) and the contents of each statement referred to in paragraph (b) with the records maintained by the depositary under regulation 22(2)(e).

#### **Records to be kept up to date.**

25. The obligations under this Part 4 are continuing obligations and continuous performance of them is required so as to ensure that records are at all times up to date.

#### **Audit trail.**

26.(1) Information required by this Part 4 to be recorded must be recorded in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the depositary.

(2) All records must be arranged, filed, indexed and cross referenced so as to permit prompt access to any particular record.

**Conformity with accounting standards.**

27. The accounting records required to be kept by a depositary must conform with statements of standard accounting practice issued by such body or bodies as may be prescribed.

**Retention of records.**

28. A depositary must preserve the accounting records which it is required to keep under regulation 22 for 6 years from the date on which they are made.

**Inspection of records.**

29. Accounting records which are required to be kept under regulation 22 must, at any time during the period in which they are required to be preserved, be produced to the GFSC, or to any person with the authority of the GFSC, on demand at such reasonable time and place as may be specified by the GFSC or that person.

*Customer assets***Application.**

30. Regulations 31 to 39 apply to any customer assets held or received by a depositary in the course of carrying on depositary business.

**Customer assets.**

31.(1) For the purposes of Regulations 32 to 39 customer assets are assets of any currency which, in the course of carrying on depositary business, a depositary holds or receives under sub-regulation (2) or owes to a customer under sub-regulation (3).

(2) A depositary holds or receives assets for the purposes of sub-regulation (1) if it enters or expects to enter into a depositary business agreement with or for a customer and holds or receives in Gibraltar or elsewhere in respect of that agreement any assets—

- (a) which are not immediately due and payable on demand to the depositary for its own account; or
- (b) which, although so due and payable, are held or received in respect of any obligation of the depositary which has not yet been performed.

(3) A depositary owes assets to a customer for the purposes of sub-regulation (1) where assets owed to a customer are immediately due and payable whether demanded or not.



**Duty to keep customer assets safe.**

32. Customer assets, unless paid out to or for a customer, must be kept in an account at a recognised credit institution on trust for the customer.

**Customer assets are held on trust.**

33. Customer assets are held by the depositary on trust for the respective customers for whom that customer asset is received or held according to their respective shares in it.

**Accounting for and use of customer assets.**

34. A depositary must account properly and promptly for customer assets and, in particular, must ensure that–

- (a) customer assets and other assets do not become mixed;
- (b) the depositary can at all times be sure how much customer assets stands to the credit of each customer; and
- (c) assets belonging to one customer is not used for another customer.

**Customer bank accounts.**

35.(1) A depositary which receives or holds customer assets must open one or more customer bank accounts with a recognised credit institution.

(2) The depositary must give written notice to the recognised credit institution requiring it to acknowledge to the depositary in writing that–

- (a) all assets standing to the credit of the customer bank account are held by the depositary as trustee and that the recognised credit institution is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against assets in that account in respect of any debt owed to it by the depositary; and
- (b) interest payable to the account will be credited to the account.

(3) In the event that the recognised credit institution does not provide the acknowledgement referred to in sub-regulation (2) within 10 business days of the dispatch of the notice by the depositary, the depositary must–

- (a) withdraw all assets standing to the credit of the account;
- (b) close that account; and
- (c) deposit the assets in a customer bank account with another recognised credit institution.

**Interest on customer assets.**

36.(1) Except in so far as may be agreed in writing to the contrary between a depositary and each of its customers, a depositary must, at least once in every 6 months, credit interest to each customer on assets held for that customer and standing (or which should be standing) to its credit in a customer bank account.

(2) Subject to any written agreement to the contrary, the minimum rate of interest payable under sub-regulation (1) is the minimum deposit rate publicly offered by the recognised credit institution at which the account is held.

**Payment of other assets into the customer bank account.**

37. Assets which are not customer assets must not be paid into a customer bank account unless it is required to—

- (a) open or to maintain the account;
- (b) restore an amount withdrawn in error from the account; or
- (c) be paid in as part of the interest earned on the account.

**Payment out of customer bank account.**

38.(1) Subject to sub-regulation (2), assets may be withdrawn from a customer bank account only if—

- (a) it is not customer assets;
- (b) it is properly required for payment to or on behalf of a customer; or
- (c) it is properly transferred to another customer bank account or into a bank account in the customer's own name.

(2) A depositary may withdraw assets from a customer bank account for or towards payment of its own fees or commission only if—

- (a) it has given the customer 7 days' notice of its intention and adequate detail of the breakdown of the proposed payment, and the customer has not objected;
- (b) the fees or commission accord with the arrangements agreed with the customer; or
- (c) the amount is agreed by the customer.

**Depositary as recognised credit institution.**

39. Where the depositary is a recognised credit institution and is acting as both the depositary and credit institution in respect of a customer it may hold a customer bank account with itself provided that it observes normal banking practice relating to assets of that character and complies with these Regulations, it must not be liable to account to any customer for any profits it makes as recognised credit institution by using the assets in the customer bank account.

**PART 5  
PRUDENTIAL REQUIREMENTS**

*Financial statements*

**Duty to prepare annual financial statements.**

40. A depositary must, in respect of its depositary business, prepare for each of its financial years annual financial statements which must consist of—

- (a) a balance sheet as at the last day of the financial year; and
- (b) a profit and loss account for the financial year.

**Balance sheet to give true and fair view.**

41. The balance sheet must give a true and fair view of the state of affairs of the depositary as at the end of the financial year.

**Profit and loss account to give true and fair view.**

42. The profit and loss account must give a true and fair view of the profit or loss of the depositary for the financial year.

**Form and content of financial statements.**

43.(1) The financial statements of a depositary must comply with the provisions of the Schedule (so far as applicable) with respect to the form and content of the balance sheet, the profit and loss account and any additional information to be provided by way of notes to the financial statements.

(2) Where compliance with the provisions of the Schedule and the other provisions of these Regulations as to the matters to be included in the depositary's balance sheet or profit and loss account or in notes to them, would not be sufficient to give a true and fair view, the necessary additional information must be given in the balance sheet or profit and loss account or in a note to them.

(3) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the depositary must depart from that provision to the extent necessary to give a true and fair view.

(4) If the depositary departs under sub-regulation (3) from any such provision, particulars of the departure, the reasons for it and its effect must be given in a note to the financial statements.

**Annual financial statements to be submitted to meeting of partners, etc.**

44.(1) The annual financial statements of the depositary must be submitted to a meeting of the partners or, if the depositary is not a partnership, to a meeting of the directors or other governing body of the depositary and the meeting must be invited to pass a resolution approving those statements.

(2) Where sub-regulation (1) applies, the balance sheet must contain a statement, in a position immediately above the signatures, whether the annual financial statements were approved at a meeting of the partners, directors or governing body of the depositary and, if so, the date on which they were approved.

**Annual financial statements must be submitted to GFSC.**

45. Each financial year a depositary must submit its annual financial statements to the GFSC within 4 months after the end of the financial year to which the annual financial statements relate.

**Depositary must obtain auditor's report, etc.**

46.(1) A depositary must submit its annual financial statements to its auditor for audit and must obtain an auditor's report thereon which report must comply with the requirements of regulation 47.

(2) A depositary must submit its auditor's report to the GFSC together with—

- (a) the annual financial statements in accordance with regulation 45; and
- (b) confirmation in writing that it has complied with each and every one of the provisions of this Part 5 with which it is required to comply and such further information or confirmation as may be prescribed.

(3) Where the auditor's report is qualified on the grounds of the auditor's uncertainty as to the completeness or accuracy of the accounting records, that report must when submitted by the depositary to the GFSC be accompanied by a written document (signed by those who signed the balance sheet) stating—

- (a) whether all the accounting records of the depositary have been made available to the auditor for the purposes of the audit;
- (b) whether all transactions undertaken by the depositary have been properly reflected and recorded in the depositary's accounting records; and
- (c) whether all other records of the depositary and related information have been made available to the auditor.

#### **Contents of auditor's report.**

47.(1) The auditor's report must be addressed to the GFSC and must state whether the annual financial statements of the depositary have been audited in accordance with approved auditing standards.

(2) The auditor's report must also state whether in the opinion of the auditor—

- (a) the annual financial statements of the depositary have been properly prepared in accordance with these Regulations;
- (b) in the case of the balance sheet, a true and fair view is given of the state of affairs of the depositary as at the end of the financial year;
- (c) in the case of the profit and loss account, a true and fair view is given of the profit or loss of the depositary for the financial year;
- (d) the depositary has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Regulations;
- (e) the balance sheet and the profit and loss account are in agreement with the depositary's accounting records;

- (f) the auditor has obtained all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit;
- (g) the depositary has maintained throughout the financial year systems adequate to enable it to identify documents of title, or documents evidencing title, to financial instruments held in safekeeping for the depositary's customers in accordance with regulation 17; and
- (h) the depositary was in compliance with the requirements of regulation 17 as at the date on which the balance sheet was prepared.

**Qualified reports.**

48.(1) If the auditor is of the opinion that one or more of the requirements of regulation 47 have not been met, the auditor must state that fact in the auditor's report and must specify the relevant requirements and the respects in which they have not been met.

(2) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, the auditor must state that fact in the auditor's report.

(3) If the auditor is unable to form an opinion as to whether one or more of the requirements of regulation 47 have been met, the auditor must state that fact in the auditor's report and must specify those requirements and give the reasons why the auditor has been unable to form an opinion.

**PART 6**  
**REPORTING AND NOTIFICATION**

*Appointment of auditors*

**Auditor required.**

49. A depositary must not carry on, or hold itself out as carrying on, depositary business unless it has appointed an auditor in accordance with these Regulations.

**Qualification for appointment as auditor.**

50. A person is not qualified for appointment as the auditor of a depositary unless the person is or the firm is registered in accordance with section 487 to 492, Part 24 of the Act.

**Ineligibility on ground of lack of independence.**

51.(1) A person must not act as an auditor to a depositary if the person is ineligible for appointment to the office.

(2) A person is ineligible for appointment as auditor to a depositary if the person is–

- (a) a director, officer, employee, shareholder or partner of the depositary; or
- (b) a partner or employee of such a person.

(3) For the purposes of this regulation an auditor of a depositary is not regarded as an officer or employee of the depositary.

#### **Engagement letters.**

52. A depositary must ensure that the auditor appointed under these Regulations has the powers and duties specified in section 165 of the Act and regulation 53 and that –

- (a) those powers and duties are set out in an engagement letter;
- (b) the engagement letter is signed by the depositary and the auditor; and
- (c) the depositary retains a copy of the engagement letter.

#### *Reporting by auditors*

#### **Duties of auditors.**

53.(1) In the circumstances specified in sub-regulation (2) the auditor of a depositary must notify the GFSC of any matters which relate to the affairs of the depositary and of which he becomes aware in its capacity as auditor.

(2) The circumstances referred to in sub-regulation (1) are those in which the auditor has reasonable cause to believe that the matters are or are likely to be of material significance for determining either–

- (a) whether a person is a fit and proper person to carry on depositary business;
- (b) whether powers under section 69, 97(2), 102 or Part 11 of the Act should be exercised in order to protect investors or customers from a significant risk of loss.

#### **Reporting in respect of annual financial statements.**

54.(1) An auditor must submit a report to the GFSC on the annual financial statements of a depositary in accordance with these Regulations and the report must state the matters specified in regulation 47.

(2) In preparing an auditor's report for the purposes of these Regulations, the auditor must carry out such investigations as will enable it to form an opinion as to the matters required by regulation 47 to be stated in their report.

#### **Notification to the GFSC.**

55. A depositary must within 7 days, give written notice to the GFSC of the appointment, removal or resignation of an auditor.

#### **Resignation or removal of auditors.**

56.(1) Where an auditor resigns or is removed by a depositary, a notice to that effect sent to the GFSC under regulation 55 must contain either–

- (a) a statement signed by the auditor to the effect that there are no circumstances connected with their resignation or removal which the auditor considers should be brought to the attention of the GFSC; or
- (b) a statement signed by the auditors of such circumstances as are mentioned in (a).

(2) For the purposes of these Regulations, a failure to appoint an auditor at the end of their term of office must be deemed to be the removal of that auditor.

## **PART 7 REGULATORY POWERS**

### **Chapter 1 Investigatory and supervisory powers**

#### **Directions.**

57.(1) The GFSC may issue a direction in writing under this regulation to, or with respect to, a depositary if–

- (a) it is entitled to exercise a sanctioning power under Part 11 of the Act against the depositary or with respect to the depositary; or



- (b) it considers that it is desirable for a direction to be issued under Part 7 of the Act to protect the interests of participants or potential participants of a customer of the depositary or to protect the public interest.

(2) A direction issued under this regulation may–

- (a) impose a prohibition, restriction or limitation on a depositary;
- (b) require that any manager, administrator, director, key employee or person having functions in relation to the depositary be removed and replaced by another person acceptable to the GFSC;
- (c) where the depositary is a company, require that a director of the company present a petition to the Court for the winding up of the company or require that its affairs be wound up otherwise than by the Court;
- (d) require that such other action is taken with respect to the depositary as the GFSC considers may be necessary to protect assets or property held by the depositary, or to protect a fund or scheme for which the depositary acts, including that the depositary be wound up.

(3) The cancellation of a depositary's Part 7 permission does not affect any direction issued under this regulation that is then in force.

(4) A direction may be issued under this regulation in relation to a depositary whose permission has been revoked if a direction was already in force at the time of the revocation of the permission.

(5) The GFSC may, at any time, revoke or vary a direction issued under this regulation.

## **Chapter 2 Sanctions**

### **Sanctioning powers.**

58. Part 11 of the Act sets out sanctioning powers for contravention of a regulatory requirement (including a regulatory requirement contained in these Regulations).

### **Contravention of regulatory requirements: additional categories.**

59. For the purposes of applying Part 11 of the Act and this Part 7, contravention of a regulatory requirement by a depositary includes–

- (a) in the opinion of the GFSC, the depositary –
  - (i) carrying on business in a manner detrimental to the public interest or to the interest of any of its customers or creditors; or
  - (ii) is or is likely to become insolvent;
- (b) being a body corporate, the depositary is compulsorily wound up, passes a resolution for voluntary winding up or is dissolved;
- (c) a receiver has been appointed in respect of the business carried on by the depositary or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge.

**Maximum amounts of administrative penalty.**

60.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement by a person to whom these Regulations apply must be of an amount which does not exceed the higher of the following–

- (a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;
- (b) in the case of a legal person-
  - (i) £250,000; or
  - (ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of an individual, £125,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Part 7 of the Companies Act 2014, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

**PART 8  
MISCELLANEOUS**

**The Register: depositaries.**

61.(1) This regulation makes provision as to the contents of the Register in connection with depositary business.

(2) The Register must contain such information as the GFSC considers appropriate and must include, at least, a list of depositaries.

(3) The Register must identify the depositary business to which a depositary's Part 7 permission relates.

(4) The Register must include details of any variation or cancellation of a depositary's Part 7 permission.

(5) If it appears to the GFSC that a person in respect of whom there is an entry in the Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect to whom that provision applies, the GFSC may remove the entry from the Register.

**SCHEDULE****FORM AND CONTENT OF FINANCIAL STATEMENTS****PART 1.  
GENERAL RULES.**

1. Subject to the following provisions of this Schedule, the annual financial statements of a depositary must—

- (a) in the case of the balance sheet show the items listed in the balance sheet format set out in Appendix 1 to this Schedule; and
- (b) in the case of the profit and loss account show the items listed in the profit and loss account format set out in Appendix 2 to this Schedule.

2. Any item required in accordance with paragraph 1 to be shown in a financial statement of a depositary may be shown in greater detail than required by the appropriate format.

3. A financial statement of a depositary may include as a separately identified item any item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the appropriate format.

4.(1) In respect of every item shown in a depositary's balance sheet or profit and loss account or in notes thereto, the corresponding amount for the immediately preceding financial year must also be shown.

(2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount must be adjusted and particulars of the adjustment and the reasons for it must be disclosed in a note to the accounts.

5. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.

**PART 2.  
ACCOUNTING PRINCIPLES AND RULES.**

6.(1) The amounts to be included in respect of all items shown in the annual financial statements of a depositary must be determined in accordance with the Companies Act 2014 and either Gibraltar Financial Reporting Standards or UK-adopted international accounting standards within the meaning of section 237(1) of the Companies Act 2014.

(2) Subparagraph (1) is subject to regulation 27.

7. Subject to paragraph 6, items must be included in such a way as to reflect the substance and not merely the form of the underlying transactions and balances.

### **APPENDIX 1. BALANCE SHEET FORMAT**

#### **A. FIXED ASSETS**

##### I. Intangible Assets

1. Development costs
2. Goodwill
3. Other

##### II. Tangible Assets

1. Freehold land and buildings
2. Leasehold land and buildings
3. Motor vehicles
4. Office equipment and computers
5. Fixtures and fittings
6. Payments on account
7. Other tangible assets

##### III. Investments

1. Loans to and shares in group companies and connected companies
2. Other listed investments
3. Other unlisted investments

#### **B. CURRENT ASSETS**

##### I. Physical stocks

##### II. Debtors (1)

1. Trade debtors (2)
2. Other debtors
3. Amounts due from connected and group companies
4. Prepayments and accrued income

##### III. Investments (long positions) (3)

##### IV. Cash at bank and in hand

**C. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR**

1. Bank loans and overdrafts.
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors (4)
5. Investments (short positions) (5)
6. Income tax
7. Other taxation and social security
8. Amounts due to group and connected companies
9. Other creditors
10. Accruals and deferred income

**D. NET CURRENT ASSETS (LIABILITIES)****E. TOTAL ASSETS LESS CURRENT LIABILITIES****F. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR**

1. Bank loans and overdrafts
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors (4)
5. Income tax
6. Amounts due to group and connected companies
7. Other creditors
8. Accruals and deferred income

**G. PROVISIONS FOR LIABILITIES AND CHARGES**

1. Commissions on indemnity terms
2. Pension and similar obligations
3. Taxation including deferred taxation
4. Other provisions

**H. TOTAL ASSETS LESS TOTAL LIABILITIES****I. CAPITAL AND RESERVES**

1. Called up share capital (7)
2. Share premium account
3. Partners' or proprietors' capital accounts

- 4. Partners' or proprietors' current accounts
- 5. Revaluation reserve
- 6. Other reserves
- 7. Profit and loss account

Approved by the directors/partners/governing body on

\_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

#### NOTES ON THE BALANCE SHEET FORMAT

##### (1) Debtors

The amount falling due after more than one year must be shown separately for each item included under debtors.

##### (2) Trade debtors

###### (a) Fees

Outstanding for more than 30 days  
Outstanding for 30 days or less.

###### (b) Commissions

Outstanding for more than 30 days  
Outstanding for 30 days or less.

###### (c) Other

Amounts outstanding for more than 30 days  
Amounts outstanding for 30 days or less.

##### (3) Investments (long positions)

###### (i) Debt instruments

Residual Maturity

0- 90 days  
90 days- 12 Months  
12 months - 5 years  
more than 5 years  
Total

- UK Government, Government of Gibraltar and Local Authority debt
  - Accepted or issued by a recognised credit institution
  - Floating Rate Notes
  - Other debt instruments:
    - marketable investments
    - not marketable investments
- \_\_\_\_\_

**(ii) Shares (other than in group companies)**

- UK listed
- UK unlisted:
  - marketable investments
  - not marketable investments
- Overseas listed on an established investment exchange
- Overseas unlisted

**(iii) Collective investment schemes**

- Units in authorised and recognised unit trust schemes
- Other

**(iv) Futures, options, contracts for differences**

- Futures
- Purchased options
- Written options
- Contracts for differences

**(v) Shares in group companies**

**(vi) Other investments (specify)**

**(4) Trade Creditors**

- (a) Amounts due to be paid against delivery of securities



- (b) Amounts due to be paid in respect of securities transactions otherwise than against delivery of securities.
- (c) Others

**(5) Investments (short positions)**

The same detail should be given as that required by note (3) above

**(6) Eligible subordinated loans**

- (a) Eligible long term subordinated loans
- (b) Eligible short term subordinated loans
- (c) Committed undrawn subordinated loan facilities
- (d) Bank Undertakings

**(7) Called up share capital**

Any amount of share capital which has not been paid up must be shown separately.

**(8) Contingent liabilities and commitments**

- (a) Amounts subject to an investment position risk factor
- (b) Other amounts arising in the ordinary course of business
- (c) Other contingent liabilities not provided for
- (d) Capital commitments contracted for but not provided for
- (e) Capital commitments authorised but not contracted for
- (f) Pension commitments not provided for
- (g) Other financial commitments not provided for

The following additional information must be given, where relevant—

- (i) Whether any valuable security has been provided by the depositary in connection with a contingent liability or commitment
- (ii) The amounts which relate to undertakings on behalf of or for the benefit of group and connected companies

**APPENDIX 2.  
PROFIT AND LOSS ACCOUNT FORMAT**

**A. DEALING**

Gains/losses on principal dealings (trading)

1. equities
2. debt instruments
3. futures, options and contracts for differences
4. units in collective investment schemes
5. foreign exchange
6. other - specify

**B. REVENUE**

I. Commissions on transactions in collective investment schemes

1. authorised unit trust schemes and recognised schemes
2. other - specify

II. Commissions on transactions in life insurance policies

1. commission on indemnity terms
2. other initial commission
3. renewal commission
4. other specify

III. Commissions on securities transactions

1. equities
2. debt instruments
3. other– specify

IV. Commissions on transactions in futures, options, contracts for differences, etc.

1. futures
2. options
3. contracts for differences
4. other– specify (e.g. commodities)

V. Investment management fees

VI. Fee income in respect of financial advice

VII. Company management fees

VIII. Trustee fees

IX. Interest and dividends

1. investment positions
2. loan accounts and margin accounts
3. in respect of balances in client bank accounts
4. other specify

X. Dealing and settlement services

XI. Revenue from research and consulting services

XII Retained underwriting and placing commissions

XIII. Other revenue – specify if material

### **C. EXPENDITURE**

I. Commissions

1. paid to staff
2. paid to other investment businesses
3. other (specify)

II. Salaries and other employment costs (exclusive of commission)

III. Directors' emoluments

IV. Staff bonuses

V. Interest charges

1. payable to customer in respect of customer's money balances
2. other (specify)

VI. Establishment costs

VII. Communications and marketing

VIII. Office equipment and services

IX. Provisions for losses, bad and doubtful debts

X. Professional charges

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XI. Investment exchange and clearing house charges

XII. Regulatory fees and expenses

XIII. Audit fees (including expenses)

XIV. Miscellaneous office expenses

XV. Other expenditure - specify if material

**D. PROFIT OR LOSS BEFORE TAXATION**

**E. TAXATION**

**F. PROFIT OR LOSS AFTER TAXATION**

**G. EXTRAORDINARY ITEMS**

**H. PROFIT OR LOSS FOR THE FINANCIAL YEAR.**