

Subsidiary Legislation made under ss.6(1), 64(3), 150(1), 620(1), and 627.

Financial Services (Benchmarks) Regulations 2020**LN.2020/007***Commencement***15.1.2020**

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In exercise of the powers conferred upon the Minister under section 6(1), 64(3), 150(1), 620(1), and 627 of the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and on the Government by section 23(g)(ii) of that Act and by all other enabling powers, the Minister and the Government have made the following Regulations.

PART 1 PRELIMINARY

Title and commencement.

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

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

Interpretation.

2.(1) In these Regulations “the Act” means the Financial Services Act 2019.

(2) Expressions used in these Regulations that are also used in the Benchmarks Regulation have the same meaning in these Regulations as they have in the Benchmarks Regulation.

Application of Benchmarks Regulation.

3. The Benchmarks Regulation has effect in Gibraltar subject to these Regulations.

Determination of an application

4. For the purposes of Section 77 of the Act, an application for authorisation of a benchmark’s administrator should be determined in accordance with Article 34(6) of the Benchmarks Regulation.

PART 2 SUPERVISORY AND INVESTIGATORY POWERS

Exercise of supervisory and investigatory powers.

5. The GFSC may exercise the powers under this Part in respect of its functions under the Benchmarks Regulation.

Access to documents and data.

6.(1) The GFSC may require a person to give it any document or other data in any form, which relates to the provision of, or contribution to, a benchmark.

(2) The power under this regulation includes a power to take a copy of the document or other data.

Access to telephone and electronic records.

7.(1) Without limiting regulation 5, this regulation applies in respect of supervised entities.

(2) The GFSC may require a supervised entity to give it existing records of–

- (a) telephone conversations;
- (b) electronic communications; and
- (c) other data traffic records,

held by the supervised entity.

Access to information and right to ask questions.

8.(1) This regulation applies in respect of–

- (a) a person involved in the provision of, or contribution to, a benchmark;
- (b) a service provider to which functions, services or activities in the provision of a benchmark have been outsourced;
- (c) a principal of such a service provider.

(2) The GFSC may require a person to whom this regulation applies to–

- (a) supply information to it;
- (b) attend before it in order to be questioned.

Access to information on spot markets.

9.(1) This regulation applies in respect of contributors to commodity benchmarks.

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- (2) The GFSC may require a person to whom this regulation applies to—
- (a) supply information on related spot markets (where applicable in standardised formats);
 - (b) supply reports on transactions;
 - (c) provide direct access to traders' systems.

Temporary cessation order.

10.(1) The GFSC may order a person to temporarily cease any conduct which, in the opinion of the GFSC, constitutes an infringement.

- (2) The order must specify the date upon which it expires.
- (3) This action may be taken against the administrator or supervised entity responsible for the infringement.

Temporary prohibition on person carrying out professional activity.

11.(1) The GFSC may temporarily prohibit an individual from carrying out professional activity in relation to benchmarks if it is of the opinion that the grounds set out in sub-regulation (4) are satisfied.

- (2) The prohibition must specify the date upon which it expires.
- (3) The GFSC may—
- (a) withdraw a prohibition; or
 - (b) vary a prohibition so as to reduce the period for which it has effect.
- (4) Those grounds are that the order is necessary for the GFSC to effectively fulfil its functions under these Regulations or the Benchmarks Regulation, and—
- (a) failure to do so would jeopardise the stability or security of financial markets;
 - (b) the assets are being used for an infringement;
 - (c) failure to do so may result in evidence of an infringement being disposed of; or

- (d) it is necessary for the protection of consumers.

Power to keep public informed about benchmarks.

12.(1) The GFSC may take all necessary measures to ensure that the public are correctly informed about the provision of a benchmark.

- (2) Without limiting sub-regulation (1), the GFSC may require—

- (a) an administrator;
- (b) a person who has published or disseminated a benchmark;

to publish a corrective statement about past contributions to, or figures of, the benchmark.

**PART 3
ENFORCEMENT AND SANCTIONS**

Enforcement powers

Sanctions for infringements.

13.(1) Part 11 of the Act and this Part set out sanctioning powers for contravention of a regulatory requirement (including a regulatory requirement contained in these regulations and the Benchmarks Regulation).

- (2) Sections 158 to 162 of the Act apply to any sanctioning action taken by the GFSC in exercise of the following powers.

(3) Section 158 of the Act applies to the exercise of any of the powers under regulations 14 to 16, but as if in section 158, the applicable criteria included the criticality of the benchmark to financial stability and the real economy.

Disgorgement of profits.

14.(1) The GFSC may order a person—

- (a) to account for the profits gained or losses avoided, where those can be determined, by the infringement; and
- (b) to make restitution payments to those who have suffered loss, where this can be determined, as a result of the infringement.

(2) This action may be taken against the person responsible for the infringement.

Temporary prohibition on person exercising management functions.

15.(1) The GFSC may temporarily prohibit an individual from exercising management functions in administrators or supervised contributors.

(2) The prohibition must not exceed 12 months.

(3) The GFSC may—

- (a) withdraw a prohibition; or
- (b) vary a prohibition so as to reduce the period for which it has effect.

(4) This action may be taken against the individual responsible for the infringement.

Administrative penalty.

16.(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 that does not exceed the higher of the following—

- (a) where the profits gained or losses avoided by the contravention can be determined, three times the amount of those profits or avoided losses;
- (b) in the case of a legal person, who infringes Article 11(1)(d) or Article 11(4) of the Benchmarks Regulation, €250,000 or 2% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of a legal person, who infringes any other provision of the Benchmarks Regulation, €1,000,000 or 10% of the total annual turnover according to the last available annual accounts approved by its management body; or
- (d) in the case of an individual—
 - (i) €100,000 in respect of an infringement of Article 11(1)(d) or Article 11(4) of the Benchmarks Regulation; or

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(ii) €500,000 in respect of any other infringement.

(2) A penalty under sub-regulation (1) may be imposed as an equivalent amount expressed in Sterling, based upon the exchange rate as at 30 June 2016.

(3) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to the Accounting Directive the relevant total turnover for the purpose of sub-regulation (1)(b) or (c) is the total annual turnover, or the corresponding type of income in accordance with the Bank Accounts Directive for credit institutions, and the Insurance Accounts Directive for insurance or re-insurance undertakings according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking or if the person is an association, 10% of the aggregate turnovers of its members.

Publication

Publication.

17.(1) This regulation applies—

- (a) where the GFSC has taken any sanctioning action under the Act or these Regulations in respect of a contravention of a regulatory requirement (other than measures of an investigatory nature); and
- (b) instead of sections 616 to 618 of the Act.

(2) The GFSC must publish on its website only details of any sanctioning action taken in respect of a person without undue delay after that person is informed of that action.

(3) The information published must be limited to—

- (a) the identity of the individual or legal person responsible for it;
- (b) the type and nature of the contravention; and
- (c) the details of the sanctioning action taken.

(4) The GFSC must take one of the steps in sub-regulation (5) where—

- (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with sub-regulation (2)—

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- (i) the identity of the legal person involved; or
 - (ii) the personal data of the individual involved; or
 - (b) it considers that publication would jeopardise the stability of financial markets or an ongoing investigation.
- (5) Those steps are–
- (a) to defer publication until the reasons for non-publication cease to exist;
 - (b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or
 - (c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure–
 - (i) that the stability of the financial markets would not be put in jeopardy; or
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.
- (6) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.
- (7) Where a decision to which this regulation applies is subject to an appeal, the GFSC must publish information to that effect on its website and, without undue delay, revise that information to reflect the status and outcome of any appeal or any decision annulling a previous decision to impose a sanction.
- (8) The GFSC must ensure that any publication in accordance with this regulation is of proportionate duration and remains on its website for a minimum of five years, but that personal data is only retained on the website for so long as is necessary, in accordance with the data protection legislation.