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Financial Services

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Subsidiary Legislation made under ss.6(1), 63(3), 64(3), 83(1), 150(1), 620(1), 621(1) and 627.

**Financial Services (Packaged Retail and Insurance Based
Investment Products) Regulations 2020**

LN.2020/025

		<i>Commencement</i>	15.1.2020
Amending enactments	Relevant current provisions	Commencement date	
LN.2022/067	rr. 3, 10(3), 11(10)		17.3.2022

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In exercise of the powers conferred on the Minister by sections 6(1), 63(3), 64(3), 83(1), 150(1), 620(1), 621(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 (Packaged Retail and Insurance Based Investment Products) 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 PRIIP Regulation have the same meaning in these Regulations as they have in that Regulation.

Application of PRIIP Regulation.

3. The PRIIP Regulation, as it forms part of the law of Gibraltar, has effect subject to these Regulations.

PART 2 EU PRIIP REGULATION

Reporting procedures for contraventions.

4. A PRIIP manufacturer or person advising on or selling a PRIIP must establish and maintain appropriate internal procedures which enable its employees to report, through a specific, independent and autonomous channel, actual or potential contraventions of the PRIIP Regulation.

PART 3 SUPERVISION, ENFORCEMENT AND SANCTIONS

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GFSC's powers.

5.(1) The GFSC, for the purposes of supervising and investigating compliance with and enforcing the PRIIP Regulation and these Regulations, may exercise the powers in Parts 7 and 10 of the Act as if a PRIIP manufacturer or person advising on, or selling a PRIIP were a regulated firm for the purposes of Part 7 of the Act or a relevant person for the purposes of Part 10 of the Act.

(2) In exercising its powers under the PRIIP Regulation or these Regulations, the GFSC may—

- (a) act directly or in collaboration with other statutory or competent authorities;
- (b) delegate tasks under its responsibility; or
- (c) institute legal proceedings.

Enforcement.

6.(1) Part 11 of the Act and this Part set out sanctioning powers for contraventions of a regulatory requirement (including a regulatory requirement contained in these Regulations and the PRIIP Regulation).

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

Additional Persons subject to sanctioning powers.

7. In addition to the persons specified in section 147 and 148 of the Act, the GFSC may exercise the sanctioning powers in Part 11 of the Act and in these Regulations—

- (a) against a PRIIP manufacturer;
- (b) against a person advising on or selling a PRIIP.

Sanctions for contravention.

8. In taking any action in respect of a contravention the GFSC must take account of all relevant circumstances including, where appropriate, the matters specified in Article 25 of the PRIIP Regulation.

Additional power: suspension and prohibition orders.

9.(1) This regulation supplements Part 11 of the Act.

(2) The GFSC may by order–

- (a) suspend the marketing of a PRIIP;
- (b) prohibit the marketing of a PRIIP; or
- (c) prohibit the provision of a key information document which does not comply with Article 6, 7, 8 or 10 of the PRIIP Regulation and require a new version of the document to be published.

(3) An order under this regulation–

- (a) must specify a period during which it has effect; and
- (b) in the case of a prohibition order, may specify an indefinite period.

Administrative penalties.

10.(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, twice the amount of those profits or avoided losses;
- (b) in the case of a legal person, €5,000,000 or 3% of the total annual turnover according to the last available annual accounts approved by its management body; or
- (c) in the case of an individual, €700,000.

(2) A penalty under sub-regulation (1) may be imposed as an equivalent amount expressed in Sterling, based on the exchange rate as at 30 December 2014.

(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 Part 7 of the Companies Act 2014, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual

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turnover, or the corresponding type of income in accordance with the relevant European Union law in the area of accounting according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(4) Where the GFSC has imposed one or more sanctions on a PRIIP manufacturer or person advising on or selling a PRIIP, the GFSC may–

- (a) require the PRIIP manufacturer or person to provide the retail investor concerned with information about the sanction and where to submit any complaint or claim for redress; or
- (b) provide that information to that retail investor.

Publication of sanctions.

11.(1) This regulation applies –

- (a) where the GFSC has taken any sanctioning action under the Act, these Regulations or the PRIIP Regulation 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) Subject to sub-regulation (4), the GFSC must publish on its website only details of any sanction imposed under this Part in respect of a relevant contravention without undue delay after the person concerned is informed of the decision.

(3) The information published under sub-regulation (2) must be limited to–

- (a) the identity of the person against whom the action has been taken;
- (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 (1)–
 - (i) the identity of the legal person involved; or

- (ii) the personal data of the individual involved; or
 - (b) it considers that publication in accordance with that sub-regulation 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) Sub-regulation (2) does not apply while an appeal could be brought or is pending.
- (8) Despite sub-regulation (1) and (7), the GFSC may apply to the Supreme Court for permission to publish a decision which is or may be subject to an appeal in accordance with section 618 of the Act.
- (9) Any decision published under this regulation must remain on the GFSC’s website for at least five years but any personal data within a decision must only remain on the website for so long as the GFSC considers necessary, having regard to the Data Protection Act 2004.

Data protection.

12. The Data Protection Act 2004 applies to the processing of personal data for the purposes of the PRIIP Regulation.

PART 4

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REVOCATION

Revocation of 2017 Regulations.

13. The Financial Services (Packaged Retail and Insurance Based Investment Products) Regulations 2017 are revoked.