

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4947 GIBRALTAR Wednesday 30th March 2022

LEGAL NOTICE NO. 81 OF 2022.

FINANCIAL SERVICES ACT 2019

FINANCIAL SERVICES (EXPERIENCED INVESTOR FUNDS) (AMENDMENT) REGULATIONS 2022

In exercise of the powers conferred on the Minister by sections 339, 620, 621 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 (Experienced Investor Funds) (Amendment) Regulations 2022.

Commencement.

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

Amendment of the Principal Regulations.

3.(1) The Financial Services (Experienced Investor Funds) Regulations 2020 are amended as follows.

(2) In regulation 3-

(a) in sub-regulation (1)-

(i) in paragraph (e), in the second place it occurs, after “individual’s” insert “pension fund assets and”;

(ii) omit paragraph (f);

(iii) for paragraph (g), substitute-

“(g) a participant who invests, or in aggregate has investments of, at least €100,000 in one or more experienced investor funds and-

(i) is a certified high net worth investor, certified sophisticated investor or self-certified sophisticated investor; or

(ii) does so on the basis of solicited advice;”.

(b) after sub-regulation (1), insert–

“(1A) Despite falling within one of the categories in sub-regulation (1), a pension fund (or its trustees) only qualifies as an experienced investor if, at the time of the investment–

- (a) each beneficiary of the pension fund qualifies as an experienced investor under regulation 3(1)(a) or (e); or
- (b) the investment, when aggregated with the pension fund’s other investments in experienced investor funds (if any), does not exceed 10% of the total assets of the pension fund.

(1B) For the purposes of sub-regulation (1A), “trustee” includes a director of a company which is a trustee of a pension fund or the manager of a pension fund which is not established under trust.”.

(3) After regulation 3, insert–

“High net worth and sophisticated investors.

3A.(1) For the purposes of regulation 3(1)(g)(i)–

- (a) a “certified high net worth investor” is an individual who has signed, within the period of twelve months ending with the day on which the investment is made, a statement in the form specified in Part 1 of Schedule 2;
- (b) a “certified sophisticated investor” is an individual–
 - (i) who has a written certificate signed within the last 36 months by a professional adviser confirming the individual has been assessed by that professional adviser as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in experienced investor funds; and
 - (ii) who has signed, within the period of twelve months ending with the day on which the investment is made, a statement in the form specified in Part 2 of Schedule 2; and
- (c) a “self-certified sophisticated investor” is an individual who has signed, within the period of twelve months ending with the day on which the investment is made, a statement in the form specified in Part 3 of Schedule 2.

(2) An experienced investor fund which seeks to rely on a statement provided by an investor in accordance with sub-regulation (1)(a), (b) or (c) must take reasonable steps to ascertain that the investor meets the criteria set out in the statement.

Solicited advice.

3B.(1) For the purposes of regulation 3(1)(g)(ii), an investment in an experienced investor fund is made by a person (“P”) on the basis of solicited advice if–

- (a) P made a specific request to a professional adviser for advice on the merits of investing in the experienced investor fund;
- (b) the professional adviser, in response to that request; made a personal recommendation to P in respect of the experienced investor fund; and
- (c) P has not previously received a financial promotion or any other communication from the professional adviser (or any person connected to the professional adviser) which is intended to influence P in respect to that experienced investor fund.

(2) In sub-regulation (1), “personal recommendation” has the meaning given in paragraph 52(3) and (4) of Schedule 2 to the Act.”.

(4) Before regulation 9, insert–

“Conduct of business

General principles.

8A.(1) The controller and administrator of an experienced investor fund and any other person concerned in its promotion, management or control must at all times–

- (a) act honestly, with due skill, care and diligence and fairly in conducting their activities;
- (b) act in the best interests of the experienced investor fund, its investors and the integrity of the market;
- (c) have and employ effectively the resources and procedures that are necessary for the proper performance of their business activities;
- (d) take all reasonable steps to avoid conflicts of interest or, when they cannot be avoided, to identify, manage, monitor and (where applicable) disclose them, in order to prevent them from adversely affecting the interests of the experienced investor fund and its investors and to ensure that investors are fairly treated;
- (e) comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of the experienced investor fund, its investors and the integrity of the market; and

- (f) treat all investors fairly; in particular, no investor in the experienced investor fund may obtain preferential treatment, unless it is disclosed appropriately.
- (2) For the purposes of assessing compliance with sub-regulation (1), the GFSC may apply the criteria in Articles 17 to 29 of Commission Delegated Regulation (EU) No 231/2013–
- (a) as if references in those criteria–
 - (i) to AIFs were references to experienced investor funds; and
 - (ii) to AIFMs were references to controllers, administrators and other persons concerned in the promotion, management or control of experienced investor funds; and
 - (b) with any other necessary modifications.”.
- (5) In regulation 17(2), for “the Schedule to these Regulations” substitute “Schedule 1”.
- (6) Before regulation 18, insert–

“Obligation to provide information.

- 17A.(1) The controller of an experienced investor fund must provide the GFSC with information on–
- (a) the experienced investor fund’s investment strategies;
 - (b) the main instruments in which the experienced investor fund is trading; and
 - (c) the experienced investor fund’s principal exposures and most important concentrations.
- (2) The information in sub-regulation (1) must be provided from time to time, in accordance with guidance issued by the GFSC, and must be sufficient to enable the GFSC to monitor systemic risk effectively.
- (3) The controller of an experienced investor fund must notify the GFSC of any material change to any information provided in accordance with sub-regulation (1)–
- (a) in the case of a change planned by the experienced investor fund, at least one month before implementing the change; and
 - (b) in any other case, immediately after the change occurs.

(4) Schedule 3 makes further provision in respect of the reporting obligations under this regulation.”.

(7) After regulation 23, insert–

“Regulatory powers

Powers of GFSC.

23A.(1) Without limiting any of its other powers, for the purpose of supervising or investigating compliance with the Act and these Regulations, the GFSC may–

- (a) require information from any person related to the activities of an experienced investor fund and, if necessary, summon and question a person with a view to obtaining information;
- (b) carry out on-site inspections with or without prior announcements;
- (c) require existing telephone and existing data traffic records;
- (d) require the cessation of any practice that is contrary to the Act or these Regulations;
- (e) request the freezing or the sequestration of assets;
- (f) request the temporary prohibition of professional activity;
- (g) adopt any type of measure to ensure that an experienced investor fund continues to comply with the Act and these Regulations;
- (h) require the suspension of the issue, repurchase or redemption of units in the fund in the interest of investors or the public;
- (i) appoint a liquidator or make other provision for the winding down of an experienced investor fund;
- (j) refer matters for criminal prosecution;
- (k) request that auditors or experts carry out verifications or investigations.

(2) The GFSC may take any action it considers necessary in order to ensure the orderly functioning of a market in any cases where the activity of one or more experienced investor funds could jeopardise the orderly functioning of that market.”.

(8) Re-number the Schedule as “Schedule 1” and, after that Schedule, insert–

“SCHEDULE 2

Regulation 3A.

**PART 1
STATEMENT BY CERTIFIED HIGH NET WORTH INVESTOR**

“HIGH NET WORTH INVESTOR STATEMENT

1. I make this statement so that, in accordance with regulation 3(1)(g)(i) of the Financial Services (Experienced Investor Funds) Regulations 2020, I can invest in an experienced investor fund.

2. I declare that I am a certified high net worth investor and qualify as such because at least one of the following applies to me:

- (a) I had, throughout the financial year immediately preceding the date below, an annual income to the value of £100,000 or more, excluding money withdrawn from my pension savings (other than withdrawals used directly for income in retirement);
- (b) I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more, excluding all of the following—
 - (i) the property which is my primary residence or any money raised through a loan secured on that property;
 - (ii) any rights of mine under a contract of life insurance falling within a class listed in paragraph 23 of Schedule 2 to the Financial Services Act 2019;
 - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled; and
 - (iv) any withdrawals from my pension savings (other than withdrawals used directly for income in retirement).

3. I accept that investing in an experienced investor fund may expose me to a significant risk of losing all of the money or other property invested.

4. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on experienced investor funds.

Signature:

Date: ”.

PART 2
STATEMENT BY CERTIFIED SOPHISTICATED INVESTOR

“SOPHISTICATED INVESTOR STATEMENT

1. I make this statement so that, in accordance with regulation 3(1)(g)(i) of the Financial Services (Experienced Investor Funds) Regulations 2020, I can invest in an experienced investor fund.
2. I declare that I am a certified sophisticated investor.
3. I accept that investing in an experienced investor fund may expose me to a significant risk of losing all of the money or other property invested.
4. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on experienced investor funds.

Signature:

Date: ”.

PART 3
STATEMENT BY SELF-CERTIFIED SOPHISTICATED INVESTOR

“SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT

1. I make this statement so that, in accordance with regulation 3(1)(g)(i) of the Financial Services (Experienced Investor Funds) Regulations 2020, I can invest in an experienced investor fund.
2. I declare that I am a self-certified sophisticated investor and qualify as such because at least one of the following applies to me:
 - (a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;
 - (b) I have made more than one investment in an unlisted company in the two years prior to the date below;
 - (c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;
 - (d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.
3. I accept that investing in an experienced investor fund may expose me to a significant risk of losing all of the money or other property invested.

4. I am aware that it is open to me to seek advice from someone who specialises in advising on experienced investor funds.

Signature:

Date: ”.

SCHEDULE 3

Regulation 17A.

REPORTING TO GFSC

1. In order to comply with regulation 17A, the controller of an experienced investor fund must provide the following information when reporting to the GFSC–

- (a) the main instruments in which it is trading, including a break-down of financial instruments and other assets, including the fund’s investment strategies and their geographical and sectoral investment focus;
- (b) the markets of which it is a member or where it actively trades;
- (c) the diversification of the fund’s portfolio, including, but not limited to, its principal exposures and most important concentrations.

The information must be provided as soon as possible and not later than one month after the end of the period specified in paragraph 2.

2. The information in paragraph 1 must be reported –

- (a) on a half-yearly basis by experienced investor funds whose assets under management in total exceed the relevant threshold but do not exceed €1 billion;
- (b) on a quarterly basis by experienced investor funds whose assets under management in total exceed €1 billion;
- (c) on a quarterly basis by experienced investor funds which are subject to the requirements in sub-paragraph (a), for each fund whose assets under management, including any assets acquired through use of leverage, in total exceed €500 million, in respect of that fund;
- (d) on an annual basis by experienced investor funds in respect of each unleveraged fund under their management which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control.

3. For the purposes of paragraph 2–

- (a) an experienced investor fund’s assets under management are to be calculated in accordance with Article 2 of Commission Delegated Regulation (EU) No 231/2013, which is to apply with any necessary modifications; and
- (b) the “relevant threshold” means an experienced investor fund which either directly or indirectly, through a company with which the fund is linked by common management or control, or by a substantive direct or indirect holding, manages portfolios of funds whose assets under management–

- (i) including any assets acquired through use of leverage, in total do not exceed a threshold of €100 million; or
- (ii) in total do not exceed a threshold of €500 million when the portfolios consist of funds that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each fund.

4. Despite paragraph 2, the GFSC may require an experienced investor fund to report the information specified under paragraph 1 on a more frequent basis, where the GFSC considers it is appropriate and necessary for the exercise of its functions.

5. The controller of an experienced investor fund must provide the information specified under paragraph 1 in the form and manner that the GFSC may require.”.

Saving for existing investors.

4. Nothing in regulation 3 affects the right of a person who qualified as an experienced investor before the date on which that regulation came into operation to continue to be treated as an experienced investor in respect of investments in experienced investor funds made by that person before that date.

Dated: 30th March 2022.

A J ISOLA,
Minister with responsibility for financial services

EXPLANATORY MEMORANDUM

These Regulations amend the Financial Services (Experienced Investor Funds) Regulations 2020. They amend the definition of experienced investor in those Regulations and add further provisions relating to supervisory powers and reporting requirements.