

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4835 GIBRALTAR Monday 22nd March 2021

LEGAL NOTICE NO. 191 OF 2021.

PROCEEDS OF CRIME ACT 2015

PROCEEDS OF CRIME ACT 2015 (AMENDMENT) REGULATIONS 2021

In exercise of the powers conferred on it by sections 184 and 184ZA of the Proceeds of Crime Act 2015, and in order to implement, in part, the Financial Action Task Force's (FATF) Recommendations on the International Standards on combatting money laundering and the financing of terrorism and proliferation, adopted by the Financial Action Task Force plenary in February 2012, as amended, the Government has made these Regulations-

Title.

1. These Regulations may be cited as the Proceeds of Crime Act 2015 (Amendment) Regulations 2021.

Commencement.

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

Amendment of Proceeds of Crime Act 2015.

3.(1) The Proceeds of Crime Act 2015 shall be amended in accordance with the provisions of this regulation.

(2) Section 7 is amended as follows-

(a) after the definition of "customs officer", insert-

““DLT” has the meaning given to it in paragraph 138 of Schedule 2 to the Financial Services Act 2019;”;

(b) in the definition of "tax advisor", for "." substitute "; and";

(c) after the definition of "tax advisor", insert-

“virtual asset” means a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes, but does not include-

(a) digital representations of fiat currencies; or

- (b) financial instruments specified in paragraph 46 of Schedule 2 to the Financial Services Act 2019.”.

(3) Section 9 is amended as follows–

- (a) in subsection (1)(oa) delete “or”;

- (b) in subsection (1)(p)–

- (i) for “distributed ledger technology” substitute “DLT”; and

- (ii) for “.” substitute “; or”;

- (c) after subsection (1)(p), insert–

- “(q) persons that, by way of business, use DLT to exchange units of value, or arrange or make arrangements with a view to the exchange of units of value using DLT.”; and

- (d) after subsection (1), insert–

- “(1A) For the purposes of paragraph (q) of subsection (1), “value” shall have the meaning given to it in paragraph 138 of Schedule 2 to the Financial Services Act 2019 and shall, for the avoidance of doubt, include virtual assets.”.

(4) Section 11(1) is amended as follows–

- (a) in paragraph (f), for “.”, substitute “;”; and

- (b) after paragraph (f), insert–

- “(g) carries out an occasional transaction involving a virtual asset or virtual assets with a value of 1,000 euro or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked.”.

(5) For section 13(1) substitute

- (a) for “the duty under section 11(1)(a) and (b)”, substitute “the duty under section 11(1)”; and

- (b) for “measures referred to in section 10(a) and (b)”, substitute “measures referred to in section 10”.

(6) In section 23(1A) after “high risk country”, insert “identified pursuant to section 17(1)(b)”.

(7) In section 25A(1), for “delivery channels,” substitute “delivery channels, delivery mechanisms and developing technologies (for both new and existing products and business practices) prior to the launch of these,”.

(8) In section 30(3), for “relevant financial businesses referred to in section 9(1)(g) to (i)” substitute “relevant financial businesses referred to in section 9(1)(g), (h), (i), (j), (p) and (q)”.

Amendment of Supervisory Bodies (Powers Etc.) Regulations 2017.

4.(1) The Supervisory Bodies (Powers Etc.) Regulations 2017 shall be amended in accordance with the provisions of this regulation.

(2) After regulation 9A(2), insert–

“(3) A supervisory body’s ability to exchange information or provide assistance to a supervisory authority or law enforcement authority under this regulation shall not be impeded on the ground that there are differences, in the nomenclature or status of relevant financial business, between Gibraltar law and the law of the State or territory where the supervisory authority or law enforcement authority is located, or where criminal conduct takes place.”.

Dated: 22nd March 2021.

A. J. ISOLA,
Minister with responsibility for Digital and Financial Services,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Proceeds of Crime Act 2015 (the Act) and the Supervisory Bodies (Powers Etc.) Regulations 2017 for the purposes of implementing, in part, the Financial Action Task Force's (FATF) Recommendations on the International Standards on combatting money laundering and the financing of terrorism and proliferation, adopted by the Financial Action Task Force plenary in February 2012, as amended.

The Regulations follow from the Proceeds of Crime (Miscellaneous Amendments) Act 2021, and make additional amendments in exercise of the powers conferred on the Government by sections 184 and 184ZA of the Proceeds of Crime Act 2015, which include amendments required in order to implement, in part, Recommendation 15 of the FATF Recommendations.

The Supervisory Bodies (Powers Etc.) Regulations 2017 are amended to ensure that exchanges of information and provision of assistance by supervisory bodies shall not be impeded on grounds of differences between the laws of Gibraltar and those of a State or territory where a supervisory authority or law enforcement authority to which a supervisory body is providing assistance is located.