

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4974 GIBRALTAR Thursday 30th June 2022

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LEGAL NOTICE NO. 160 OF 2022

## PROCEEDS OF CRIME ACT 2015

### EUROPEAN UNION (WITHDRAWAL) ACT 2019

#### SUPERVISORY BODIES (POWERS ETC.) (AMENDMENT) REGULATIONS 2022

In exercise of the powers conferred on the Government by section 184 of the Proceeds of Crime Act 2015 and on the Minister by section 11 of the European Union (Withdrawal) Act 2019, the Government and the Minister have made these Regulations-

#### **Title.**

1. These Regulations may be cited as the Supervisory Bodies (Powers etc.) (Amendment) Regulations 2022.

#### **Commencement.**

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

#### **Amendment of the Supervisory Bodies (Powers etc.) Regulations 2017.**

3.(1) The Supervisory Bodies (Powers etc.) Regulations 2017 are amended as follows.

(2) In regulation 3-

(a) in the definition of “applicable law”, for “any relevant Gibraltar law on” substitute “any provision of the Act, these Regulations or any other law concerning or related to”;

(b) omit the following definitions-

(i) “default”;

(ii) “guidance”;

(iii) “EEA State”;

(c) in the definition of “relevant person”, in paragraph (f), for “the Act, these Regulations or any applicable law or guidance” substitute “any applicable law”.

(3) In regulation 9-

- (a) in sub-regulation (1)–
  - (i) for “must” substitute “may”;
  - (ii) for “EEA State” substitute “country or territory outside Gibraltar”;
- (b) in sub-regulation (2)–
  - (i) in paragraph (a), for “must cooperate with the competent authorities of the EEA States” substitute “may cooperate with the competent authorities of the countries or territories outside Gibraltar”;
  - (ii) in paragraph (b), for “must cooperate with the competent authorities of the EEA State” substitute “may cooperate with the competent authorities of the country or territory”;
- (c) in sub-regulation (3)(b), for “an EEA State” substitute “a country or territory outside Gibraltar”;
- (d) in sub-regulation (4)–
  - (i) for “must not” substitute “is not obliged to”;
  - (ii) for “an EEA State” substitute “a country or territory outside Gibraltar”.
- (4) In regulation 9A–
  - (a) in sub-regulation (2)–
    - (i) for “obligations pursuant to” substitute “functions under”;
    - (ii) for “must act within” substitute “may exercise”;
  - (b) in sub-regulation (3), for “State” substitute “country”.
- (5) Omit regulation 10.
- (6) In regulation 10A(4)–
  - (a) in paragraph (a), for “any relevant authority” substitute “relevant authorities”;
  - (b) in paragraph (b), for “the European Central Bank or a relevant authority in an EEA state” substitute “the relevant authority (including the central bank) in a country or territory outside Gibraltar”.
- (7) In regulation 11(3), omit “rules.”.
- (8) In regulation 12(1)–

- (a) in paragraph (a), for “the Act, these Regulations or any applicable law or guidance” substitute “any applicable law”;
  - (b) in paragraph (b), for “the Act, these Regulations or any applicable law or guidance” substitute “any applicable law”;
- (9) In regulation 13–
- (a) in sub-regulation (1), for “the Act, these Regulations or any applicable law or guidance” substitute “any applicable law”;
  - (b) in sub-regulation (5), for “the Act, these Regulations or any applicable law or guidance” substitute “any applicable law”;
  - (c) in sub-regulation (6), for “the Act, these Regulations or any applicable law or guidance” substitute “any applicable law”.
- (10) In regulation 14, for “the Act and any applicable law or guidance” substitute “any applicable law”.
- (11) In regulation 16(2)(a), for “competent authorities in EEA States” substitute “, where relevant, in countries or territories outside Gibraltar”.
- (12) After regulation 17, insert–
- “Admissibility of statements.**
- 17A.(1) A statement made by a person in response to a requirement imposed under regulation 12 or 15 may only be used in evidence in criminal proceedings against the person if–
- (a) the person has introduced the statement in evidence; or
  - (b) the proceedings concern the prosecution of the person–
    - (i) for an offence under regulation 33; or
    - (ii) for an offence where, in giving evidence, the person makes a statement inconsistent with the statement to which this sub-regulation applies.
- (2) Sub-regulation (1) does not apply in the case of confiscation proceedings under Part 4 of the Act.”.
- (13) In regulation 18–
- (a) in sub-regulation (1)–

- (i) for “benefit derived from a default or breach of the applicable law or guidance” substitute “the benefit derived from the contravention,”;
  - (ii) for “the relevant person under its supervision has defaulted or breached his obligations under the Act or any applicable law or guidance” substitute “a relevant person has contravened an applicable law”;
- (b) in sub-regulation (2), for “the relevant person under its supervision has defaulted or breached his obligations under the Act or any applicable law or guidance” substitute “a relevant person has contravened an applicable law”;
- (c) after sub-regulation (4), insert–
- “(5) A penalty under this regulation may not be imposed on a person who for the same contravention has been convicted of an offence.”.
- (14) In regulation 19(1), for “defaulted or breached the Act or any applicable law or guidance as the case may be” substitute “contravened an applicable law”.
- (15) In regulation 20(1), for “a default or breach of a relevant person’s obligations under the Act or any applicable law or guidance” substitute “a relevant person’s contravention of an applicable law”.
- (16) In regulation 21(1)–
- (a) in paragraph (a), for “there is a default or breach of the Act or any applicable law or guidance” substitute “a relevant person is contravening or has contravened an applicable law”;
  - (b) in the closing words, for “the Act, these Regulations or any applicable law or guidance” substitute “the applicable law”.
- (17) In regulation 22(1)–
- (a) in paragraph (a), for “defaults or breaches the Act, or other applicable law or guidance” substitute “contravenes an applicable law”;
  - (b) in paragraph (b), for “default or breach the Act or other applicable law or guidance” substitute “contravene an applicable law”.
- (18) In regulation 23–
- (a) for “the Act or any applicable law or guidance” substitute “the applicable law”;
  - (b) for “default or breach” substitute “contravention”.
- (19) In regulation 24–

- (a) in sub-regulation (1)–
    - (i) in paragraph (a), for “default or breach” substitute “contravention of the applicable law”;
    - (ii) in paragraph (d), for “default or breach” substitute “contravention”;
    - (iii) in paragraph (e), for “default or breach” substitute “contravention”;
    - (iv) in paragraph (g), for “defaults or breaches” substitute “contraventions”;
  - (b) in sub-regulation (2), for “default or a breach of the Act or other applicable law or guidance” substitute “contravention of the applicable law”.
- (20) In regulation 25–
- (a) in sub-regulation (1)–
    - (i) for “must” substitute “may”;
    - (ii) for “EEA States” substitute “countries or territories outside Gibraltar”;
  - (b) omit sub-regulation (2);
  - (c) in sub-regulation (3), in both places it occurs, for “EEA States” substitute “countries or territories outside Gibraltar”.
- (21) In regulation 31–
- (a) in sub-regulation (1), in both places it occurs, for “default or breach” substitute “contravention”;
  - (b) in sub-regulation (3)(a), for “default or breach” substitute “contravention”;
  - (c) in sub-regulation (4)(c)(ii), for “breaches or defaults” substitute “contraventions”.
- (22) Omit regulation 32.
- (23) For regulation 32A, substitute–

**“Reporting offences to law enforcement authorities.**

32A. Where a supervisory body has reasonable grounds to suspect that a person has committed an offence, whether under Part 5 or otherwise, it must promptly refer the matter to the GFIU, the Royal Gibraltar Police, HM Customs or the Income Tax Office, as appropriate.”.

Dated: 30<sup>th</sup> June 2022.

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

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**EXPLANATORY MEMORANDUM**

The Regulations amend the Supervisory Bodies (Powers etc.) Regulations 2017. They correct deficiencies arising from Gibraltar's withdrawal from the European Union, principally by removing unilateral cooperation obligations which may no longer be reciprocated, and clarify the scope of the enforcement and sanctioning provisions, including by adding safeguards in relation to self-incrimination and the imposition of financial penalties.