

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5154 GIBRALTAR Thursday 13th June 2024

LEGAL NOTICE NO. 100 OF 2024

PROCEEDS OF CRIME ACT 2015

PROCEEDS OF CRIME ACT 2015 (RELEVANT FINANCIAL BUSINESS) (REGISTRATION) (AMENDMENT) REGULATIONS 2024

In exercise of the powers conferred on it by sections 184 and 184ZA of the Proceeds of Crime Act 2015, the Government has made these Regulations—

Title.

1. These Regulations may be cited as the Proceeds of Crime Act 2015 (Relevant Financial Business) (Registration) (Amendment) Regulations 2024.

Commencement.

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

Amendment of the Relevant Financial Business (Registration) Regulations.

3.(1) The Proceeds of Crime Act 2015 (Relevant Financial Business) (Registration) Regulations 2021 are amended as follows.

(2) In regulation 4(1)—

(a) in paragraph (d), re-number sub-paragraphs (a) to (c) as sub-paragraphs (i) to (iii);

(b) in the closing words, for “and” substitute “which carry on business in or from Gibraltar, or purport to do so, and”.

(3) In regulation 8, omit sub-regulations (6) and (7).

(4) In regulation 9—

(a) in sub-regulation (1)—

(i) after paragraph (a), omit “or”;

(ii) in paragraph (b), after “applies”, insert—

“; or

- (c) the person has failed to comply with regulation 9A(1)”.
 - (b) after sub-regulation (1), insert–

“(1A) The GFSC may cancel a person's registration if it appears to the GFSC that the person has failed, during a period of at least 12 months, to carry on the activity to which the registration relates.”;
 - (c) in sub-regulation (2), after “sub-regulation (1)” insert “or (1A)”;
 - (d) in sub-regulation (3), after “sub-regulation (1)” insert “or (1A)”;
 - (e) omit sub-regulation (6).
- (5) After regulation 9, insert–

“Material changes to a firm or its business.

9A.(1) A relevant financial business must–

 - (a) obtain the GFSC’s prior written consent before–
 - (i) appointing or changing any officer, MLRO or manager of the business; or
 - (ii) making any change to the beneficial ownership of the business; or
 - (b) inform the GFSC promptly of any other material change to the firm or its business which may affect its continuing satisfaction of the requirements for registration.
- (2) The GFSC may issue guidance on changes of the kind in sub-regulation (1)(b) which may affect a person’s continuing satisfaction of the requirements for registration.
- (3) An application for consent under sub-regulation (1)(a) must–
 - (a) be made in the form and manner the GFSC directs; and
 - (b) contain or be accompanied by such information as the GFSC reasonably requires.
- (4) The GFSC must decide an application within 30 days of receiving it unless, not more than 10 days after receiving the application, the GFSC notifies the business in writing of any delay in making a decision and the reasons for the delay.

(5) The GFSC must give the business a warning notice if it proposes to refuse an application under sub-regulation (1)(a).

(6) The GFSC must give the applicant a decision notice if it decides to refuse an application under sub-regulation (1)(a).

(7) The GFSC, acting in accordance with regulation 9, may suspend or cancel the registration of relevant financial business which fails to comply with sub-regulation (1).

Warning notice.

9B.(1) A warning notice must–

- (a) be in writing;
- (b) contain any information that the provision under which it is given requires to be included in a warning notice;
- (c) state the action which the GFSC proposes to take; and
- (d) give reasons for proposing to take it.

(2) A warning notice–

- (a) must give the recipient not less than 28 days to make representations to the GFSC; and
- (b) must specify a period of not less than 14 days within which the recipient may decide whether to make oral representations.

(3) The GFSC must also disclose to the person concerned the evidence on which the GFSC's decision to give the warning notice was based.

(4) Sub-regulation (3) does not require the GFSC to disclose to the person concerned (“P”) any material–

- (a) which P submitted to the GFSC in relation to the decision in question;
- (b) which is subject to legal privilege;
- (c) in respect of which the GFSC has a statutory obligation of confidentiality;
- (d) which relates to a case involving a person other than P and was taken into account by the GFSC in P's case only for purposes of comparison with other cases; or
- (e) the disclosure of which, in the opinion of the GFSC–

- (i) would not be in the public interest; or
- (ii) would not be fair, having regard to the likely significance of the material to P (in respect of the matter under consideration) and the potential prejudice to the commercial interests of any other person that would be caused by disclosing the material.

(5) If the GFSC has relied on any material in taking its decision in P's case but withholds its disclosure in accordance with sub-regulation(4)(e)(i) or (ii), the GFSC must give P written notice setting out a description of the material and its reasons for not disclosing it.

(6) The GFSC may extend the period specified in the notice for making representations.

Decision notices.

9C.(1) This regulation applies where the GFSC has issued a warning notice.

(2) After considering any representations made in accordance with regulation 9B, the GFSC must within a reasonable period issue–

- (a) a decision notice stating that the GFSC will take the proposed action;
- (b) a discontinuance notice stating that the GFSC will not take the proposed action; or
- (c) a notice comprising a combination of–
 - (i) a decision notice stating that the GFSC will take certain proposed action; and
 - (ii) a discontinuance notice in respect of the remaining proposed action.

(3) A decision notice or discontinuance notice must–

- (a) be in writing;
- (b) contain any information that the provision under which it is given requires to be included in such a notice;
- (c) state the proposed action and the reasons for taking or not taking it, as the case may be; and
- (d) inform the recipient of any right of appeal under regulation 10.

(4) There is no right of appeal against a decision notice refusing an application under regulation 7(1) or 8(1).

(5) The GFSC need not issue a discontinuance notice if–

(a) the proposed action was to refuse an application made to the GFSC; and

(b) the GFSC has decided to grant that application and has informed the applicant of that decision.”.

Dated: 13th June 2024.

N FEETHAM KC,
Minister with responsibility for Financial Services,
for the Government.

EXPLANATORY MEMORANDUM

These Regulations clarify that the Proceeds of Crime Act 2015 (Relevant Financial Business) (Registration) Regulations 2021 extend to conducting business in or from Gibraltar or purporting to do so, provide for registration to be cancelled if it has not been used for 12 months, require registered persons to seek the GFSC’s to certain appointments or ownership changes and to inform the GFSC of other material changes to their business, and correct minor