

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4673 GIBRALTAR Thursday 12th March 2020

LEGAL NOTICE NO. 107 OF 2020

FINANCIAL SERVICES ACT 2019

FINANCIAL SERVICES (INSURANCE DISTRIBUTION) (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred on the Minister by sections 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 (Insurance Distribution) (Amendment) Regulations 2020.

Commencement.

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

Amendment of Financial Services (Insurance Distribution) Regulations 2020.

- 3.(1) The Financial Services (Insurance Distribution) Regulations 2020 are amended as follows.

- (2) In regulation 2(1), after the definition of “insurance-based investment product” insert—

““insurance distribution business” means carrying on the regulated activity of insurance or reinsurance distribution within the meaning of paragraph 34 or 35 of Schedule 2 to the Act;”.

- (3) In regulation 9, after “prohibition” insert “and the other provisions of these Regulations”.

- (4) In regulation 38(2), for paragraphs (c) and (d) substitute—

- (c) entries from day to day of all purchases and sales of financial instruments made by the intermediary, distinguishing those which are made on its own account and those which are made on behalf of others;
- (d) entries from day to day of the receipt and despatch of documents of title, or documents evidencing title, to financial instruments which are in the possession or control of the intermediary;

- (e) a record of financial instruments, the documents of title, or the documents evidencing title, to which are in the possession or control of the intermediary identifying–
 - (i) where those documents are kept;
 - (ii) the beneficial owner of each of those financial instruments;
 - (iii) the purposes for which those documents are held; and
 - (iv) whether those financial instruments are subject to any charge;
 - (f) entries from day to day of–
 - (i) all money which is paid into or out of a customer bank account maintained for the purposes of these Regulations;
 - (ii) receipts and payments of customer money not passed through such a customer bank account, identifying the persons to whom each such receipt or payment relates; and
 - (g) a record of–
 - (i) balances on individual customer bank accounts;
 - (ii) balances on individual customer accounts at intermediate brokers and exchanges;
 - (iii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and
 - (iv) reconciliations made in accordance with regulations 38A and 38B.”.
- (5) After regulation 38 insert–

“Reconciliation of customer money.

38A.(1) An insurance, reinsurance or ancillary insurance intermediary must, in respect of its regulated activity, at least once every two months reconcile the balance on each customer bank account (as recorded by the intermediary) with the balance on that account (as set out on the statement issued by the authorised credit institution).

(2) Where a customer bank account contains the money of more than one customer an intermediary must, in addition to the reconciliation made under sub-regulation (1), at least once every two months reconcile the balance on that account with the total of the credit balances in respect of each customer (both totals as recorded by the intermediary).

(3) Where any difference arises on reconciliation under sub-regulations (1) or (2), the intermediary must promptly correct it unless the difference arises solely as a result of timing differences between the accounting systems of the authorised credit institution and the intermediary.

Reconciliation of customers' instruments held by intermediary.

38B.(1) An insurance, reinsurance or ancillary insurance intermediary must, in respect of its regulated activity, carry out a reconciliation in accordance with this regulation at least twice in every financial year and correct any discrepancy revealed.

(2) The first such reconciliation must be carried out at some time in the fifth and sixth months of the financial year and the second must be carried out at some time in the eleventh and twelfth months of the financial year.

(3) The requirements of this regulation in relation to each reconciliation are—

- (a) in relation to documents of title and documents evidencing title to financial instruments of the intermediary's customers which are in the possession of the intermediary or in the possession of the intermediary's own custodian, the intermediary must inspect and count all those documents and, in the case of registrable instruments, reconcile any results which show discrepancies with the books and records of the appropriate register;
- (b) in relation to documents of title or documents evidencing title to financial instruments of the intermediary's own customers which are in the possession of a custodian other than the intermediary's own custodian, the intermediary must obtain from that custodian a statement specifying in relation to each description of instrument the documents of title or certificates of title to which were held by that custodian for the intermediary, the amount of that instrument and, where the instrument is a registrable instrument, the amount so held in each different name, made up as at the date at which the reconciliation under (a) is carried out; and
- (c) the intermediary must reconcile the results of each inspection under (a) and the contents of each statement referred to in (b) with the records maintained by the intermediary under regulation 38(2)(e)."

(6) Before regulation 54 insert the heading—

**“Chapter 1
Indemnity Arrangements”.**

(7) After regulation 54 insert–

**“Chapter 2
Customer Money.**

Application.

54A. This Chapter applies to any customer money held or received by an insurance, reinsurance or ancillary insurance intermediary in the course of carrying on insurance distribution business.

Customer money.

54B.(1) For the purposes of this Chapter “customer money” is money of any currency which, in the course of carrying on insurance distribution business, an intermediary–

(a) holds or receives under sub-regulation (2); or

(b) owes to a customer under sub-regulation (3).

(2) An intermediary holds or receives money for the purposes of sub-regulation (1) if it enters or expects to enter into an agreement with or for a customer and holds or receives in Gibraltar or elsewhere in respect of that agreement any money–

(a) which is not immediately due and payable on demand to the intermediary for its own account; or

(b) which, although so due and payable, is held or received in respect of any obligation of the intermediary which has not yet been performed.

(3) An intermediary owes money to a customer for the purposes of sub-regulation (1) where money owed to a customer is immediately due and payable whether demanded or not.

Duty to segregate.

54C. An intermediary must pay all customer money coming into its hands for or from a customer into a specially created customer bank account which is segregated from any account holding money belonging to the intermediary.

Customer money to be held on trust and kept safe.

54D.(1) Customer money is held by the intermediary on trust for the respective customers for whom that customer money is received or held according to their respective shares in it.

(2) Customer money, unless paid out to or for a customer, must be kept in an account at an authorised credit institution on trust for the customer.

Accounting for and use of customer money.

54E. An intermediary must account properly and promptly for customer money and, in particular, must ensure that—

- (a) customer money and other money do not become mixed;
- (b) the intermediary can at all times be sure how much customer money stands to the credit of each customer; and
- (c) money belonging to one customer is not used for another customer.

Customer bank accounts.

54F.(1) An intermediary which receives or holds customer money must open one or more customer bank accounts with an authorised credit institution.

(2) The intermediary must give written notice to the credit institution, requiring it to acknowledge to the intermediary in writing that—

- (a) all money standing to the credit of the customer bank account is held by the intermediary as trustee and that the credit institution is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any debt owed to it by the intermediary; and
- (b) interest payable to the account will be credited to the account.

(3) If the credit institution does not provide the acknowledgement referred to in sub-regulation (2) within 10 business days of the dispatch of the notice by the intermediary, the intermediary must—

- (a) withdraw all money standing to the credit of the account;
- (b) close that account; and
- (c) deposit the money in a customer bank account with another authorised credit institution.

Interest on customer money.

54G.(1) Except in so far as may be agreed in writing to the contrary between an intermediary and each of its customers, an intermediary must, at least once in every six months, credit interest to each customer on money held for that customer and standing (or which should be standing) to the customer's credit in a customer bank account.

(2) Subject to any written agreement to the contrary, the minimum rate of interest payable is the minimum deposit rate publicly offered by the authorised credit institution at which the account is held.

Payment of other money into a customer bank account.

54H. Money which is not customer money must not be paid into a customer bank account unless it is required–

- (a) to open or to maintain the account;
- (b) to restore an amount withdrawn in error from the account; or
- (c) to be paid in as part of the interest earned on the account.

Payment out of a customer bank account.

54I.(1) Subject to sub-regulation (2), money may be withdrawn from a customer bank account only if–

- (a) it is not customer money;
- (b) it is properly required for payment to or on behalf of a customer; or
- (c) it is properly transferred to another customer bank account or into a bank account in the customer's own name.

(2) An intermediary may withdraw money from a customer bank account for or towards payment of its own fees or commission only if–

- (a) it has given the customer seven days' notice of its intention and adequate detail of the breakdown of the proposed payment, and the customer has not objected;
- (b) the fees or commission accord with the arrangements agreed with the customer; or
- (c) the amount is agreed by the customer.

Intermediary as authorised credit institution.

54J.(1) Where the intermediary is an authorised credit institution it may hold a customer bank account with itself.

(2) An intermediary is not liable to account to the customer for any profits it makes as a credit institution by using the funds in a customer bank account to which sub-regulation (1) applies if it–

- (a) observes normal banking practice relating to money of that kind; and
- (b) complies with these Regulations.”.

Dated: 12th March 2020.

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These Regulations amend the Financial Services (Insurance Distribution) Regulations 2020. The Regulations amend the accounting records which must be maintained by insurance intermediaries and impose safeguarding obligations which they must meet in respect to customer money.