

Subsidiary Legislation made under ss.184 and 184ZA.

Proceeds of Crime Act 2015 (Relevant Financial Business) (Registration) Regulations 2021

LN.2021/193

Commencement

22.3.2021

ARRANGEMENT OF REGULATIONS.

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(Registration) Regulations 2021**

This version is out of date

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, Recommendation 15 of 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 (Relevant Financial Business) (Registration) Regulations 2021.

Commencement.

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

Interpretation.

3.(1) In these Regulations—

“the Act” mean the Proceeds of Crime Act 2015;

“the GFSC” means the Gibraltar Financial Services Commission, within the meaning of section 21 of the Financial Services Act 2019;

“MLRO” means Money Laundering Reporting Officer;

“the register” means the register maintained by the GFSC under regulation 4;

“relevant offence” means an offence, conviction of which is a relevant criminal conviction for the purposes of section 30C(1) of the Act; and

“relevant supervisory authority” means a supervisory body specified in paragraphs (a) to (d) or (h) of Schedule 2 to the Act.

(2) Without limiting section 21 of the Interpretation and General Clauses Act, other expressions used in these Regulations which are used in Part III of the Act have the same meaning as in that Part.

(3) In these Regulations, “supervision by a relevant supervisory authority” shall not be construed as including registration under these Regulations.

Duty to maintain register.

4.(1) The GFSC must maintain a register of relevant financial businesses that are–

- (a) external accountants;
- (b) tax advisors;
- (c) undertakings that receive, whether on their own account or on behalf of another person, proceeds in any form from the sale of tokenised digital assets involving the use of DLT or a similar means of recording a digital representation of an asset; or
- (d) persons who, 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 are not subject to supervision by a relevant supervisory authority.

(2) The GFSC may maintain the register in the form and manner it considers appropriate.

(3) The GFSC may publish the register in the manner it considers appropriate.

Requirement to be registered.

5.(1) A person must not carry on the business of a relevant financial business referred to in regulation 4(1) unless that person is included in the register or is subject to supervision by a relevant supervisory authority.

(2) A person who contravenes sub-regulation (1) commits an offence and is liable–

- (a) on summary conviction, to a fine at level 5 on the standard scale; or
- (b) on conviction on indictment, to imprisonment for two years, to a fine or to both.

Registration applications.

6.(1) An application for registration must–

- (a) be made in the form and manner the GFSC directs;
- (b) contain such information as the GFSC specifies; and
- (c) be accompanied by the specified application fee (see regulation 11).

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(2) Without limiting sub-regulation (1)(b), the information which the GFSC may specify includes—

- (a) the applicant's full name and, where different, the name of the business;
- (b) where the applicant is an individual, the applicant's date of birth and residential address;
- (c) where the applicant is a company or other registered entity, its company or any other registration number;
- (d) the nature of the business;
- (e) the address of the head office, registered office or any place of business in Gibraltar;
- (e) whether the applicant, or any person named in the application, has been convicted of a relevant offence; and
- (f) a risk assessment which satisfies the requirements in section 25A of the Act.

(3) The GFSC may require the applicant to provide it with any further information that the GFSC reasonably requires to enable it to determine the application.

Fit and proper test.

7.(1) The GFSC must refuse to register an applicant if it is satisfied that the applicant, or an officer, MLRO, manager or beneficial owner of the applicant, is not a fit and proper person.

(2) The GFSC, in determining that question, must have regard to the following factors—

- (a) whether the applicant, and any officer, MLRO, manager or beneficial owner of the applicant has been convicted of a relevant offence;
- (b) whether the applicant has consistently failed to comply with the requirements of the Act;
- (c) the risk that the applicant's business may be used for money laundering, terrorist financing or proliferation financing; and
- (d) whether the applicant, and any officer, MLRO, manager or beneficial owner of the applicant,

- (i) has adequate skills and experience; and
- (ii) has acted and may be expected to act with probity.

Determination of applications.

8.(1) The GFSC may refuse to register an applicant if—

- (a) any requirement of, or imposed under, regulation 6 has not been complied with;
- (b) it appears to the GFSC that any information provided under regulation 6 is false or misleading in a material particular;
- (c) the GFSC suspects, on reasonable grounds—
 - (i) that the applicant will fail to comply with any of its obligations under the Act; or
 - (ii) that a person whom the applicant has identified as an officer, MLRO, manager or beneficial owner will fail to comply with any of those obligations.

(2) The GFSC must, within a reasonable period, give the applicant notice of its decision to register the applicant.

(3) The GFSC must, as soon as practicable after deciding to register a person, include that person in the register.

(4) The GFSC must give the applicant a warning notice if it proposes to refuse the application under sub-regulation (1) or regulation 7(1).

(5) The GFSC must give the applicant a decision notice if it decides to refuse the application under sub-regulation (1) or regulation 7(1).

(6) Section 612 of the Financial Services Act 2019 shall apply to a warning notice given under sub-regulation (4) and section 613 of the Financial Services Act 2019 shall apply to a decision notice given under sub-regulation (5).

(7) There is no right of appeal against a decision to refuse an application under sub-regulation (1) or regulation 7(1).

Suspension or cancellation of registration.

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9.(1) The GFSC may suspend or cancel a person's registration if, at any time after registration, the GFSC is satisfied that—

- (a) the person, or an officer, MLRO, manager or beneficial owner of the person, is not fit and proper for the purposes of regulation 7; or
- (b) in respect of any of those persons, a provision of regulation 8(1) applies.

(2) Except in any case to which sub-regulation (5) applies, the GFSC must give a registered person a warning notice if the GFSC proposes to suspend or cancel a person's registration under sub-regulation (1).

(3) The GFSC must give a registered person a decision notice if it decides to suspend or cancel a person's registration under sub-regulation (1).

(4) A decision notice given under sub-regulation (3) must include—

- (a) subject to sub-regulation (5), the date from which it takes effect;
- (b) if appropriate, the period of the suspension; and
- (d) the person's right to appeal under regulation 10.

(5) If the GFSC—

- (a) considers that it is necessary to suspend or cancel a person's registration with immediate effect in order to avoid the risk of substantial damage to—
 - (i) the interests of consumers;
 - (ii) the interests of the public; or
 - (iii) the reputation of Gibraltar; and
- (b) includes a statement to that effect and the reasons for it in the decision notice given under sub-regulation (3),

the suspension or cancellation takes effect when the decision notice is given to the person.

(6) Section 612 of the Financial Services Act 2019 shall apply to a warning notice given under sub-regulation (2) and section 613 of the Financial Services Act 2019 shall apply to a decision notice given under sub-regulation (3).

(7) Where the GFSC decides to suspend or cancel a person's registration, the GFSC may, if it considers it proportionate to do so, publish such information about that decision as it considers appropriate.

(8) Where the GFSC publishes information under sub-regulation (7) and the person whose registration is suspended or cancelled appeals against that decision, the GFSC must, without delay, publish information about the status of the appeal and its outcome in the same manner as that in which the information was published under sub-regulation (7).

Appeals.

10.(1) A person may appeal to the Supreme Court against a decision of the GFSC—

- (a) to suspend or cancel registration; or
- (b) to suspend or cancel registration with immediate effect.

(2) An appeal must be made within 28 days of the date on which the decision notice given under regulation 9(3) is served on the recipient by the GFSC.

(3) The court may allow an appeal to be made outside the time set out in subsection (2) in exceptional circumstances, if the court considers that it would be unjust not to do so.

(4) The court may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against; or
- (c) remit the matter to the GFSC for further consideration, in accordance with any directions of the court.

(5) The court may make any order as to the costs of an appeal as it considers appropriate.

(6) An appeal does not have the effect of staying a decision which takes effect immediately, but the court may in its discretion grant a stay or other relief in respect of such a notice until the appeal has been determined.

Application and retention fees.

11.(1) The Minister may by notice in the Gazette specify the fee to be paid to the GFSC—

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- (a) by an applicant in respect of an application for registration (the “application fee”); and
 - (b) each year by a person in respect of the retention of the person’s name in the register in that year (the “retention fee”).
- (2) The GFSC may–
- (a) refuse to consider an application for registration if the applicant has not paid the application fee; and
 - (b) cancel the registration of a person who has not paid the retention fee.
- (3) No appeal may be made under regulation 10 where a person’s registration is cancelled solely because the person has failed to pay the retention fee.
- (4) Any fee payable under these Regulations may be enforced as a civil debt owed to the GFSC.

Transitional arrangements.

- 12.(1) This regulation applies to a person who, immediately before these Regulations came into operation, was carrying on business as a relevant financial business specified in regulation 4(1) and is not subject to supervision by a relevant supervisory authority.
- (2) A person to whom sub-regulation (1) applies, who intends to continue carrying on business as a relevant financial business referred to in regulation 4(1), must apply for registration within three months of the day on which these Regulations come into operation.
- (3) A person who makes an application in accordance with sub-regulation (2) may continue to carry on business as a relevant financial business referred to in regulation 4(1) until the application has been determined and, in so doing, is not to be regarded as carrying on business in contravention of the Act or these Regulations.