

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4970 GIBRALTAR Thursday 23rd June 2022

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B. 11/22

## BILL

FOR

AN ACT to amend the Legal Services Act 2017.

**ENACTED** by the Legislature of Gibraltar.

### Title.

1. This Act may be cited as the Legal Services (Amendment) Act 2022.

### Commencement.

2. This Act comes into operation on the day of publication.

### Amendments to the Legal Services Act 2017.

3. The Legal Services Act 2017 is amended in accordance with the provisions of this Act.

### Amendments to Part I of the Legal Services Act 2017.

4.(1) Section 2(1) of the Legal Services Act 2017 is amended as follows—

(a) in the definition of “Authorised Person”, for “has the meaning given to it in section 6” substitute “means a person who is authorised under section 6 to carry on or provide a legal service”;

(b) for the definition of “Barrister” substitute the following definition—

““Barrister” means a person approved, admitted and enrolled as a barrister of the Supreme Court under the provisions of the Supreme Court Act;”;

(c) after the definition of “the Board” and before the definition of “Court” insert the following definitions—

““Code of Conduct” means any code of conduct prescribed under section 16(1);

“Codes” means the Code of Conduct and any other codes prescribed under section 16(3);”;

(d) in the definition of “existing” after the words “commencement of” and before the words “this Act” insert “the relevant provision of”;

(e) for the definition of ““firm” and “law firm”” substitute–

““firm” means a person who carries on provides or holds himself out as able to carry on or provide a reserved legal activity in or from within Gibraltar and includes a Law Firm;”;

(f) for the definition of “lawyer” substitute–

““lawyer”, except in the expressions “EEA lawyer”, “European lawyer”, “foreign lawyer” and in section 6(3)(e) (in house lawyers), means a Barrister or a Solicitor;”;

(g) in the definition of “Law Costs Draftsman” after the words “who is” and before the words “on Part 7” insert “a person registered”;

(h) after the definition of “Law Costs Draftsman” insert the following definition–

““Law Firm” has the meaning ascribed to it in section 6(4);”;

(i) in the definition of “Legal Executive” after the words “in either case” and before the words “on either Parts 4 or 6” insert “a person registered”;

(j) after the definition of “Legal Executive” insert the following definition–

““legal services” has the meaning ascribed to it in section 3;”;

(k) in the definition of “LSRA” substitute “and has the meaning assigned by” with “established under”;

(l) for the definition of “person” substitute–

““person” in this Act means a natural person or legal person of any description and, without prejudice to the generality of the foregoing, includes a sole practitioner, body corporate, a partnership, a limited liability partnership, a cell of a Protected Cell Company, a trust or a Foundation;”;

(m) after the definition of “Register” insert the following definition–

““reserved legal activity” has the meaning ascribed to it in section 4;”;

(n) after the definition of “registration fee” insert the following definition–

““Rules” means rules made under section 16;”.

(2) After section 2(2) insert–

“(3) In this Act, “money laundering”, “terrorist financing” and “proliferation financing” have the same meaning as in the Proceeds of Crime Act.”.

### **Amendments to Part II of the Legal Services Act 2017.**

5.(1) Part II of the Legal Services Act 2017 is amended in accordance with the provisions of this section.

(2) Section 3 is amended as follows–

(a) at the beginning of section 3–

(i) for “legal services” substitute “a legal service”; and

(ii) delete “, not being an exempt person in relation to that particular activity”;

(b) in subsection (a)–

(i) after “he carries on” insert “or provides”;

(ii) after “able to carry on” insert “or provide, whether or not for profit or reward,”;

(iii) for “any” substitute “a”;

(iv) for “as defined in this Act” substitute “of any description in or from within Gibraltar”;

(c) delete subsection (b);

(d) re-number subsection (c) as (b);

(e) for the re-numbered subsection (b) substitute–

“(b) as a partner, director, consultant to or associate or employee of another person he provides or holds himself out as able to provide, whether or not for reward or profit, on behalf of himself or that person a reserved legal activity of any description in or from within Gibraltar to any client of that person, or to any other person;”;

- (f) re-number subsection (d) as (c);
  - (g) in the re-numbered subsection (c)–
    - (i) after “Government” appears for the first time insert “or statutory authority”;
    - (ii) after “Government” appears for the second time insert “or statutory authority, as the case may be, or to or in respect of any other person”;
  - (h) re-number subsection (e) as (d);
  - (i) for the re-numbered subsection (d) substitute–
    - “(d) he is employed by any person as that person’s employee to provide any reserved legal activity to that person in or from within Gibraltar;”;
  - (j) re-number subsection (f) as (e).
- (3) Section 4 is amended as follows–
- (a) in subsection (1), after “means” insert “the exercise or the holding himself out as able to exercise by any person, of”;
  - (b) in subsection (1)(a), delete “the exercise by any person or the holding himself out as able to exercise”;
  - (c) for subsection (1)(e) substitute–
    - “(e) the provision of legal advice or representation;”;
  - (d) in subsection (3)–
    - (i) for “each of those activities” substitute “a reserved legal activity”;
    - (ii) delete “and as to the categories of persons who may conduct such activities”
  - (e) in subsection (4) after “but does” insert “, subject to any other enactment,”;
  - (f) for subsection (5) substitute–
    - “(5) Notwithstanding subsection (4) a trade union official or a co-worker may represent a person in a disciplinary process internal to that person’s employer.”;
  - (g) in subsection (6) after “the” insert “definition of”.

(4) Section 5 is amended in subsection (2) as follows—

- (a) for “is entitled to” substitute “shall”;
- (b) for “an activity (“the relevant activity”) which is a reserved legal activity” substitute “or provide or hold themselves out as being able or entitled to carry on or provide a legal service”;
- (c) in subsection (2)(a) for “relevant activity” substitute “legal service”; and
- (d) in subsection (2)(b) for “that activity” substitute “the legal service”.

(5) Section 6 is amended as follows—

(a) for subsection (1) substitute—

“6.(1) For the purposes of this Act a person is authorised to conduct or provide a legal service if the person—

- (a) is registered in the Part of the Register provided for under subsection (2) relating to that legal service; and
- (b) except in the case of a person registered under Part 2 of the Register established under subsection (3)(b), holds a valid practising certificate issued under this or any other Act to undertake that legal service.”;

(b) in subsection (2)—

- (i) after “such Parts” insert “relating to different legal services”;
- (ii) after “subsection (3) and” insert “such further Parts”;
- (iii) after “by the Minister” insert “by Order”;

(c) in subsection (3)—

- (i) after “shall” and before “be entitled to be registered” insert “, subject to compliance with any requirements of this Act,”;
- (ii) in subsection (3)(a)—
  - (aa) delete “and holds a practising certificate under the Practising Certificate Rules”; or
  - (bb) after “;” delete “or”;
- (iii) in subsection (3)(b)—

- (aa) at the beginning of the subsection before “person” insert “a”;
- (bb) delete “or Solicitor”; and
- (cc) substitute “[“ with “(”;
- (iv) in subsection (3)(c)–
  - (aa) after “Government” appears for the first time insert “or a statutory authority”;
  - (bb) for “proposes” substitute “purposes”; and
  - (cc) after “Government” appears for the second time insert “or a statutory authority”;
- (v) in subsection (3)(d) substitute “a person registered in Part 1 of the Register or a partnership or company whose partners or members are persons registered under Part 1 of the Register and who are in the business of providing legal services in or from within Gibraltar” with “a Law Firm registered in Part 9 of the Register or by the Government or a statutory authority”;
- (vi) for subsection (3)(e) substitute–
  - “(e) a person who is either–
    - (i) a lawyer or a foreign lawyer employed by a person–
      - (aa) in an in-house capacity, for the purposes of providing legal services to that person only; or
      - (bb) in any other capacity in which he provides legal services to that person only, and  
  
is to provide on registration under this Act legal services in or from within Gibraltar to that person only; or
    - (ii) a foreign lawyer employed by a Law Firm registered under Part 9 of the Register, who, during the course of their employment provides legal services for and on behalf of the Law Firm in support of a person or persons registered under Part 1 of the Register”;
- (vii) in subsection (3)(f)–
  - (aa) delete all references to “or contracted” and “or contract”;

- (bb) substitute all references to “company or other body” with “person”;
- (cc) for “is providing or wishes to” substitute “will”;
- (dd) at the end of the subsection before “(Part 6)” insert “only”;
- (viii) in subsection (3)(g), after “field” insert “in Gibraltar or a Designated Country”;
- (ix) in subsection (3)(h), for “.” substitute “;”;
- (x) after subsection (3)(h), insert–
  - “(i) a Law Firm (Part 9).”; and
- (xi) delete “In accordance with subsection (4) Part 9 of the Register shall include particulars of Law Firms.”;
- (d) in subsection (4)–
  - (i) in subsection (4)(a)(i), replace the reference to “subsection (17)” with “subsection (15)”;
  - (ii) in subsection (4)(d), for “particulars of the Law Firm and its address shall be provided on an annual basis to the LSRA that shall register the Law Firm” substitute “the Law Firm is registered”;
  - (iii) in the proviso to subsection (4)–
    - (aa) for “regulations” substitute “rules to be made by the LSRA pursuant to section 16(3A) of this Act”;
    - (bb) delete “without authorisation”;
- (e) after subsection (4), insert–
  - “(4A) Rules made pursuant to section 16(3A) may make provision for–
    - (a) the fitness and propriety of shareholders, beneficiaries and beneficial owners who are not Authorised Persons;
    - (b) the fitness and propriety of directors who are not Authorised Persons;
    - (c) the registration and transparency of beneficiaries and/or beneficial owners;
    - (d) restrictions on who can be a shareholder, beneficiary or beneficial owner;

- (e) restrictions on who can be a director;
- (f) restrictions on the acquisition, increase or decrease of a shareholding or beneficial interest;
- (g) powers of the LSRA in relation to supervising and enforcement of the Rules; and
- (h) such other matter as the LSRA considers necessary or desirable.

(4B) A Law Firm must register under Part 9 of the Register.”.

- (f) in subsection (5) for “as provided for in Part III of this Act” substitute “in such manner as the LSRA may prescribe by Rules made by it pursuant to section 16(3A) of this Act”;
- (g) delete subsection (6);
- (h) re-number subsection (7) as (6);
- (i) in the re-numbered subsection (6)–
  - (i) for “Chief Justice” substitute “LSRA”;
  - (ii) delete “the Minister, the LSRA and”;
  - (iii) at the end of the subsection, after “Counsel”–
    - (aa) for “.” substitute “;”;
    - (bb) insert–
      - “(iv) for applications for registration during the course of a current year.”;
- (j) re-number subsection (8) as (7);
- (k) re-number subsection (9) as (8);
- (l) in the re-numbered subsection (8)–
  - (i) after “registration on the” and before “Register” insert “appropriate part of the”;
  - (ii) for “registration fee” substitute “prescribed fee”;
  - (iii) delete “issue of a”;

- (iv) after “certificate” insert “of the LSRA”;
- (m) after the re-numbered subsection (8), insert–
  - “(9) A certificate issued under subsection (8) may be issued by the LSRA either as a separate document or as part of an annual practising certificate.”;
- (n) delete subsection (10);
- (o) re-number subsection (11) as subsection (10);
- (p) for the re-numbered subsection (10), substitute–
  - “(10) Subject to the provisions of this Act, an Authorised Person, by virtue of registration in Parts 4, 5 and 6 shall have no rights of audience in the courts or tribunals in Gibraltar and may not conduct litigation except that–
    - (a) an Authorised Person registered in Part 4 of the Register shall have rights of audience and the right to conduct litigation provided that he is–
      - (i) employed by a Law Firm, the Government or a statutory authority to do work which includes to a material extent assisting with the conduct of litigation;
      - (ii) has the conduct of a particular litigation case under instructions given (either generally or in relation to that particular litigation case) by an Authorised Person registered in Parts 1 or 3 of the Register and is under the supervision of that Authorised Person; and
      - (iii) the proceedings are being heard in private in the Supreme Court or the Magistrates’ Court;
    - (b) an Authorised Person registered in Part 5 of the Register that is a Barrister or Solicitor–
      - (i) may conduct litigation on behalf of the person who is his employer for the purposes of subsection (3)(e); and
      - (ii) shall have rights of audience in relation to litigation to which subparagraph (i) applies.”;
- (q) re-number subsection (12) as (11);
- (r) for the re-numbered subsection (11), substitute–
  - “(11) Subject to the provisions of this Act, and in particular subsection (10) above, reserved legal activities specified in paragraphs 2, 3, 4 and 5 of

Schedule 1 may only be carried on or provided by an Authorised Person, provided that—

- (a) an Authorised Person registered in Part 4 of the Register may carry on or provide the reserved legal activities described in paragraphs 4 and 5 of Schedule 1 under the supervision of an Authorised Person registered in Parts 1 or 3 of the Register;
  - (b) an Authorised Person registered in Part 6 of the Register may carry on or provide the reserved legal activities described in paragraphs 4 and 5 of Schedule 1 only to his employer; and
  - (c) an Authorised Person registered in Part 7 of the Register may carry on or provide the reserved legal activities described in paragraphs 2 and 3 of Schedule 1 restricted to costs matters if that person is instructed by an Authorised Person registered in Parts 1 or 3 of the Register.”;
- (s) after the re-numbered subsection (11), insert—
- “(12) Notwithstanding the provisions of subsection (11), an Authorised Person registered on Part 2 of the Register may, in relation only to the Gibraltar proceedings for which he was admitted as a Barrister and registered on Part 2 of the Register, exercise a right of audience as described in paragraph 2 of Schedule 2.”;
- (t) for subsection (13), substitute—
- “(13) Subject to such other provisions of this Act or any other Act, the reserved legal activity specified in paragraph 6(1) of Schedule 1 may only be carried on by an Authorised Person registered on Part 1, 2, 3, 4, 5, 6 or 8 of the Register provided that—
- (a) an Authorised Person registered in Part 2 of the Register may provide legal advice and representation in relation only to the Gibraltar proceedings for which he was admitted as a Barrister and registered in Part 2 of the Register;
  - (b) an Authorised Person registered in Part 4 of the Register may provide legal advice and representation only if they are working under the supervision of a person registered in Part 1 of the Register; and
  - (c) an Authorised Person registered in Part 7 of the Register may carry on or provide the reserved legal activities described in paragraph 6 of Schedule 1 restricted to costs matters only if that person is instructed by an Authorised Person registered on Parts 1 or 3 of the Register.”;
- (u) delete subsection (14);

- (v) delete subsection (15);
- (w) re-number subsection (16) as (14);
- (x) for the re-numbered subsection (14), substitute–
  - “(14) When they are exercising rights of audience or conducting litigation in circumstances permitted by this Act, Authorised Persons who are not registered on Parts 1, 2 or 3 of the Register are officers of the Supreme Court and the Supreme Court and the Court of Appeal may exercise the same jurisdiction in respect of such Authorised Persons as any of the superior courts of law or equity in England and Wales might have exercised immediately before the passing of the Supreme Court of Judicature Act 1873 in respect of any solicitor or attorney admitted to practice there.”;
- (y) re-number subsection (17) as (15);
- (z) in the re-numbered subsection (15)–
  - (i) in subsection (15)(a), after “the LSRA” insert “has”;
  - (ii) at the end of subsection (15)(c), delete “and”;
  - (iii) at the end of subsection (15)(d), for “.” substitute “; and”;
  - (iv) after subsection (15)(d) insert–
    - “(e) the trust is a fixed trust, and is not a discretionary trust.”;
- (aa) after the re-numbered subsection (15), insert–
  - “(16) Notwithstanding any other provision in this Act to the contrary, subsection (10)(a) shall not come into effect until the Chief Justice has made regulations commencing it and making such provisions in relation thereto as he considers appropriate.
  - (17) The requirement under subsection (6) for consultation shall not apply in relation to the first occasion on which the LSRA prescribes fees under that section.
  - (18) The following provisions shall apply to a consultation under subsection (6) of this section–
    - (a) The consultation shall take place at least two calendar months before any proposed increase in fees comes into effect; and
    - (b) The LSRA shall provide to the Law Council–

- (i) an explanation of the reasons for the proposed fees increasing including details of expenditure which it is intended that the proceeds of the fees increase will fund;
- (ii) details of the sums that the proposed fees increases are expected to yield by each different category of fee and fee payer; and
- (iii) a pro-forma budget of the LSRA for the year in which the proposed fees increase will take effect including the effect of the proposed fees increases.”.

(6) For section 7 substitute—

“7. In this Act, “exempt person” in relation to a reserved legal activity, means a person who, for the purposes of carrying on the reserved legal activity, is an exempt person by virtue of Schedule 2 (exempt persons).”.

(7) Section 8 is amended as follows—

(a) for subsection (1) substitute—

“8.(1) It is an offence for a person to carry on or to hold himself out as entitled to carry on a reserved legal activity or provide or hold himself out as entitled to provide a legal service unless that person is in respect of that legal service either—

- (a) an Authorised Person; or
- (b) an exempt person.”;

(b) for subsection (2) substitute—

“(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.”;

(c) in subsection (5), for “extent” substitute “apply”.

(8) For section 9 substitute—

“Investigation of persons who are not authorised.

9.(1) The LSRA may investigate any person (“A”) who it appears to the LSRA is or may be engaging in conduct which would constitute an offence under section 8.

(2) In the conduct of an investigation under subsection (1), the LSRA shall have all the powers available to it under this Act in respect of an investigation relating to an Authorised Person.

(3) In relation to an investigation under subsection (1), A shall have all the obligations of Authorised Person under this Act in respect of investigations by the LSRA.”

(9) Section 10 is amended as follows–

- (a) in subsection (1)(g), for “money laundering and terrorist financing” substitute “money laundering, terrorist financing and proliferation financing”;
- (b) in subsection (3), after “reserved legal activity” insert “, and includes Authorised Persons.”.

(10) After section 13, insert–

*“Regulations*

**Minister’s power to make regulations.**

13A. The Minister may make regulations to amend this Act consequential upon any amendments to the Supreme Court Act.”.

**Amendments to Part III of the Legal Services Act 2017.**

6.(1) Part III of the Legal Services Act 2017 is amended in accordance with the provisions of this section.

(2) Section 15 is amended as follows–

(a) for subsection (3)(p) substitute–

“(p) monitoring the adequacy of Authorised Persons’ systems of control to prevent, detect and report money laundering, terrorist financing and proliferation financing.”;

(b) in subsection (4)(e), for “money laundering and terrorist financing” substitute “money laundering, terrorist financing and proliferation financing”;

(c) in subsection (6), for “subsections (3)(e), (i), (k), (m), (l) and (n)” substitute “subsections (3)(e), (k), (l), (m) and (n).”.

(3) Section 16 is amended as follows–

(a) in subsection (3)–

(i) after “Codes” insert “or Rules”;

- (ii) delete subsection (3)(b);
- (iii) re-number subsection (3)(c) as (3)(b);
- (iv) re-number subsection (3)(d) as (3)(c);
- (v) delete subsection (3)(e);
- (vi) re-number subsection (3)(f) as (3)(d);
- (vii) re-number subsection (3)(g) as (3)(e);
- (viii) in the re-numbered subsection (3)(e), for “money laundering and terrorist financing” substitute “money laundering, terrorist financing and proliferation financing”;
- (ix) re-number subsection (3)(h) as (3)(f);
- (x) for the re-numbered subsection (3)(f), substitute—
  - “(f) any other matters relating to the conduct of persons to whom the Supreme Court Act applies.”;
- (b) after subsection (3) insert—
  - “(3A) The LSRA with the concurrence of the Chief Justice and after consultation with the Law Council may make such Rules governing or providing for the—
    - (a) administration of applications and registrations on, and removals or suspensions from, the Register;
    - (b) prescribing the forms of Registration Certificates;
    - (c) application for, and the issue, suspension and removal of, Practising Certificates to Authorised Persons, and requirements therefor;
    - (d) prescribing the forms of Practising Certificates;
    - (e) supervision of the provision of legal services by Authorised Persons;
    - (f) supervision of compliance by Authorised Persons of their obligations and the effectiveness of their systems of control to prevent, detect and report money laundering, terrorist financing and proliferation financing;
    - (g) investigation of complaints;

- (h) procedure for dealing with disciplinary matters;
  - (i) advertising, marketing and offer of legal services to the public;
  - (j) any other matters relating to the discharge by the LSRA of its functions under this Act.”;
- (c) for subsection (4), substitute–
- “(4) An Authorised Person must comply at all times with the Code of Conduct and such other Codes and Rules as may be prescribed under this section.”;
- (d) in subsection (5), after “other Codes” insert “and or Rules”;
- (e) in subsection (6) after “A Code” insert “or Rules”.
- (4) After section 16, insert–
- “Law in England relating to barristers and solicitors.
- 16A. Subject to the provisions of this Act, the Supreme Court Act and of any regulations, Rules and Codes made thereunder for the time being in force, the law in England for the time being in force relating to barristers and solicitors shall extend to Gibraltar, and shall apply to all persons practicing as Barristers or Solicitors in Gibraltar.”.
- (5) In section 18, for subsection (1)(b) substitute–
- “(b) the function of making rules with respect to practising certificates shall cease to be a function of rules of court and shall become a function of the LSRA as provided for in section 16(3A) and upon the making and commencement of such Rules, the existing Practising Certificate Rules shall be repealed.”.
- (6) In section 19–
- (a) in the heading, for “lawyers” substitute “Solicitors”;
  - (b) in subsection (1)(b), for “lawyers” substitute “Solicitors”; and
  - (c) in subsection (4), for “Financial Services (Auditors) Act 2009” substitute “Financial Services Act 2019”.
- (7) After section 23 insert–

**“Powers of the LSRA.**

23A.(1) Subject to the provisions of this or any other Act, the LSRA may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on the LSRA by or under this or any other Act.

(2) Without limiting subsection (1), the LSRA may, in particular—

- (a) purchase, or otherwise acquire and hold any personal property and lease any real property required for the purposes of the LSRA and dispose of any such property no longer required for such purposes;
- (b) contract with any person for the supply to, or by, the LSRA of any goods, services or personnel;
- (c) pay expenses properly incurred by the LSRA;
- (d) borrow on such terms as may be agreed from time to time such sums as it may require;
- (e) invest any of its funds not required for immediate use by depositing the same in one or more banks in Gibraltar.

**Conduct and delegation of functions.**

23B.(1) Subject to the other provisions of this section the functions of the LSRA shall be carried out by its members appointed under paragraph 1 of Schedule 3 acting collectively as a board.

(2) Subject to any contrary provision in this Act, the LSRA may delegate the discharge of any of its functions to the Chief Executive.

(3) The Chief Executive, with the consent of the Chairman, may—

- (a) sub-delegate to a LSRA employee any function delegated to the Chief Executive under subsection (1); and
- (b) authorise the LSRA employee to exercise the Chief Executive’s powers in connection with the exercise of the sub-delegated function.

(4) The delegation by the LSRA of any of its functions does not affect the exercise by the LSRA of those functions.

(5) A delegation or sub-delegation to which the Chairman has consented under this section ceases with immediate effect if the Chairman by notice to the Chief Executive revokes that consent.

(6) If the Chairman shall certify in writing that a matter is too urgent to await the convening (even on short notice) of the LSRA, the Chairman, or, in his absence, the Vice-Chairman, may discharge that function on behalf of the LSRA and call a meeting to consider the matter and the action taken.

(7) On every occasion that the Chairman exercises the power in subsection (6) he shall as soon as practicable inform or cause the Chief Executive Officer to inform the other members of the LSRA in writing of the matter and the action taken by him in discharge of the LSRA's function in respect thereof.

### **Meetings and proceedings**

23C.(1) The quorum at all meetings of the LSRA is four members.

(2) The Chairman must preside at every meeting of the LSRA at which the Chairman is present and, in the Chairman's absence, the Vice-Chairman, and in his absence LSRA's members must elect one of the members present to act as Chairman for the duration of the meeting.

(3) A meeting of the LSRA must be convened by the Chief Executive at the request of—

- (a) the Chairman; or
- (b) the Vice Chairman; or
- (c) any three members,

and subject to subsection (7), all meetings must take place in Gibraltar.

(4) Any matters arising at a meeting of the LSRA are to be decided by a majority of the members present and voting on them at the meeting and in the case of an equality of votes, the Chairman has a second or casting vote.

(5) All orders and directions of the LSRA must be given under the hand of the Chairman or the Chief Executive.

(6) The LSRA must keep proper minutes of its proceedings.

(7) The LSRA may, if the Chairman so approves, transact any business by the circulation of papers to all LSRA members, and a resolution circulated to all LSRA members and approved by a majority of them is as valid and effectual as if passed at a meeting of the LSRA.

(8) Save as specifically provided in this Act, the LSRA may establish and regulate its own procedure.

### **Committees of the LSRA**

23D.(1) The LSRA may establish standing or special committee, (or sub-committees) and may refer any matter for consideration, enquiry or management to any committee.

(2) The LSRA must establish terms or reference and rules of procedure for any committee it establishes.”.

(8) In section 24(2)(a), for “Financial Services (Auditors) Act 2009” substitute “Financial Services Act 2019”.

### **Amendments to Part IV of the Legal Services Act 2017.**

6.(1) Part IV of the Legal Services Act 2017 is amended in accordance with the provisions of this section.

(2) Section 26 is amended as follows–

(a) for subsection (2) substitute–

“(2) The LSRA may, without a complaint, investigate the conduct of any person whom the LSRA has reasonable grounds to believe is or may be breaching any requirement or other provision of this Act, any Rule or Code.”;

(b) in subsection (3)(a) for “external lawyers” substitute “, with the consent of the Chairman, such other persons”.

(3) Section 27 is amended as follows–

(a) in subsection (2)(b) delete the words “that the conduct to which the investigation related is not proved or”;

(b) in subsection (3), after “Disciplinary Tribunal” insert “, whereupon the Chief Executive shall refer the matter forthwith to the Chairman”;

(b) delete subsection (4);

(c) re-number subsection (5) as (4);

(d) in the re-numbered subsection (4)(b) after “such provision” insert “as is mentioned in sub-paragraph (a) above”;

(e) re-number subsection (6) as (5);

(f) re-number subsection (7) as (6).

(4) Section 28 is amended as follows—

(a) at the end of subsection (1)(c), for “.” substitute “; and”;

(b) after subsection (1)(c) insert—

“(d) regulate its own procedure.”;

(c) after subsection (1) insert—

“(1A) The Chairman shall be the Chairman of the Disciplinary Tribunal.

(1B) The Tribunal members to hear or deal with a particular complaint or matter shall be appointed by the Chairman, and they shall constitute a Panel.

(1C) The Chairman, if a member of a Panel, shall be its chairman. If the Chairman is not a member of a Panel its members shall appoint one of their number as chairman of that Panel.”;

(d) in subsection (2)—

(i) delete the first sentence starting “The members” up to “its panels.”; and

(ii) substitute both references to “Chairman” with “chairman”.

#### **Amendments to Part V of the Legal Services Act 2017.**

7.(1) Part V of the Legal Services Act 2017 is amended in accordance with the provisions of this section.

(2) For section 31(2) substitute—

“(2) Any person who was a subscriber of the former Council on the 30<sup>th</sup> June 2019 shall be a member of the Law Council from the 1<sup>st</sup> July 2019 unless his membership is terminated or suspended under section 35.”.

(3) In section 34(1)(g), for “money laundering and terrorist financing” substitute “money laundering, terrorist financing and proliferation financing”.

(4) In section 36(2)(a), for “Financial Services (Auditors) Act 2009” substitute “Financial Services Act 2019”.

(5) After section 37(3) insert—

“(4) The first annual meeting of the members of the Law Council shall take place within 12 months following the commencement of all provisions of this Act.”.

**Amendments to Part VI of the Legal Services Act 2017.**

8.(1) Part VI of the Legal Services Act 2017 is amended in accordance with the provisions of this section.

(2) Section 40 is amended as follows—

(a) after section (1) insert—

“(1A) In section 2 (Interpretation), insert the following definition—

““Authorised Person” has the same meaning as in the Legal Services Act 2017.”

(1B) For section 27W(5) substitute—

“(5) “Legal services” for the purposes of this part of the Act shall mean any activities in respect of which a person would need to be registered in Parts 1, 2, 3 or 5 of the Register and hold a practising certificate pursuant to the Legal Services Act 2017.”;

(b) after subsection (5) insert—

“(5A) Section 31 is amended as follows—

(a) re-number the existing words as subsection (1);

(b) in subsection (1), as so amended, before the first word “It” insert “Subject to sub-section (2)”;

(c) after subsection (1) insert a new subsection (2) as follows—

“(2) Subsection (1) shall apply to persons enrolled as barristers or solicitors who are registered only in the register established under section 6(3)(e) of the Legal Services Act, to the extent specified in section 6(10)(b) of that Act only.”.

(3) For section 41 substitute—

**“Amendment to the Criminal Procedure and Evidence Act 2011.**

41.(1) The Criminal Procedure and Evidence Act 2011 is amended in accordance with this section.

(2) After section 616(10) insert—

“(11) Sections 611(3) and 611(4) do not apply in relation to any application for registration as an Authorised Person in the Register established under section 6(2) of the Legal Services Act 2017.”.

**Amendments to Schedule 1 of the Legal Services Act 2017.**

9.(1) Schedule 1 of the Legal Services Act 2017 is amended in accordance with the provisions of this section.

(2) Paragraph 3 is amended as follows–

(a) insert a new sub-paragraph (1)(a) as follows–

“(a) acting as a solicitor in relation to litigation,”;

(b) re-number sub-paragraph (1)(a) as (b);

(c) re-number sub-paragraph (1)(b) as (c);

(d) re-number sub-paragraph (1)(c) as (d);

(e) for sub-paragraph (2) substitute–

“(2) For the avoidance of doubt, a person who conducts litigation taking or intended to take place in the courts of Gibraltar (except to give instructions on behalf of a client) carries on or conducts a reserved legal activity in Gibraltar.”.

(3) Paragraph 4 is amended as follows–

(a) delete sub-paragraph (2);

(b) re-number sub-paragraph (3) as (2);

(c) re-number sub-paragraph (4) as (3).

(4) For paragraph 6 substitute–

*“General Advice and Representation*

6.(1) Subject to sub-paragraph (2) below, a person (“A”) provides legal advice within the meaning of section 4(1)(e) of this Act if A provides to another person (“B”) advice about–

(a) what is or is not the law of Gibraltar in relation to any matter; or

(b) how any law of Gibraltar impacts or affects B in relation to any matter.

(2) A does not provide legal advice to B for the purposes of sub-paragraph (1) above or for any other purpose of this Act if–

- (a) A is not a barrister, a solicitor, a foreign lawyer, a legal executive or other person eligible to be registered in any Part of the Register;
- (b) A is either–
  - (i) self-employed; or
  - (i) a director or employee of, or consultant to, a company with its principal place of business in Gibraltar (“C”) and C is not a firm;
- (c) A or C is engaged, by way of business, to provide services to, advise and assist clients in relation to a commercial activity (“Specific Commercial Activity”) which is regulated or materially impacted by specific statute laws of Gibraltar (“Specific Relevant Laws”);
- (d) A or, if A is acting as a director or employee of or consultant to C, C, is licensed, authorised or approved as may be required under any laws of Gibraltar applicable to the conduct of business generally or the Specific Commercial Activity;
- (e) A has experience and expertise in the Specific Commercial Activity and the Specific Relevant Laws, and gives the advice in his capacity as an expert;
- (f) the advice given in relation to the Specific Relevant Laws is given in a manner and in circumstances that is purely ancillary to the services being provided by A or C to B; and
- (g) A and/or C (as the case may be) inform B in writing prior to giving any such advice that they are not entitled to give legal advice and that, accordingly, B may not rely on their advice in relation to the Specific Relevant Law as legal advice.”.

### **Amendments to Schedule 2 of the Legal Services Act 2017.**

10.(1) Schedule 2 of the Legal Services Act 2017 is amended in accordance with the provisions of this section.

(2) Delete the words “This Schedule has no associated *rights of audience*.”.

(3) Paragraph 1 is amended as follows–

- (a) delete the quotation marks around the title “Rights of audience”;
- (b) at the end of sub-paragraph (1), delete the words “(subject to paragraph 7)”;

- (c) delete sub-paragraph (6).
- (4) At the end of sub-paragraph 2(1), delete the words “(subject to paragraph 7)”.
- (5) Paragraph 3 is amended as follows—
  - (a) at the end of sub-paragraph (1), delete the words “(subject to paragraph 7)”;
  - (b) at the end of sub-paragraph (3)(c), delete “and”;
  - (c) at the end of sub-paragraph (3)(d), for “otherwise than by virtue of sub-paragraph (9).” substitute “and”;
  - (d) after sub-paragraph (3)(d), insert—
    - “(e) P is an Authorised Person in relation to the activity and takes responsibility for E.”;
  - (e) for sub-paragraph (6) substitute—
    - “(6) The person is exempt to the extent that the activity carried on by the person is also a reserved legal activity within sub-paragraph (3) and the person is in relation to that activity—
      - (a) an Authorised Person; or
      - (b) an exempt person.”;
  - (f) delete sub-paragraph (7);
  - (g) re-number sub-paragraph (8) as (7);
  - (h) delete sub-paragraph (9);
  - (i) re-number sub-paragraph (10) as (8).
- (6) Paragraph 4 is amended as follows—
  - (a) at the end of sub-paragraph (1), delete the words “(subject to paragraph 7)”;
  - (b) at the end of sub-paragraph (2)(c), delete “and”;
  - (c) at the end of sub-paragraph (2)(d), for “otherwise than by virtue of sub-paragraph (9).” substitute “and”;
  - (d) after sub-paragraph (2)(d), insert—

“(e) P is an Authorised Person in relation to the activity and takes responsibility for E.”.

(7) Paragraph 5 is amended as follows—

(a) in sub-paragraph (1)—

(i) for “Foreign legal Counsel” substitute “Foreign lawyers who do not practice”; and

(ii) after “section 4(1)(e)” delete “(i)”;

(b) delete sub-paragraph (3);

(c) re-number sub-paragraph (4) as (3);

(d) for the re-numbered sub-paragraph (3) substitute—

“(3) Registered auditors registered under the Auditors Registration Act 2019; insolvency practitioners registered under the Insolvency Act 2011; and partners and employees of a registered auditor or an insolvency practitioner, who are in employment or practice in and from business premises in Gibraltar in respect of matters related to their normal course of business and specifically in relation to audit, accounting services, tax, finance or insolvency;”;

(d) re-number sub-paragraph (5) as (4);

(e) re-number sub-paragraph (6) as (5);

(f) in the re-numbered sub-paragraph (5)—

(i) at the end of sub-paragraph (5)(c) delete “and”;

(ii) in sub-paragraph (5)(d), for “otherwise than by virtue of subparagraph (6) and/or by virtue of sub-paragraphs (1) to (5).” substitute “otherwise than by virtue of sub-paragraph (5) and/or by virtue of sub-paragraphs (1) to (1), and”;

(iii) at the end of sub-paragraph (5)(d) for “.” substitute “, and”;

(iv) after sub-paragraph (5)(d) insert—

“(e) P is an Authorised Person in relation to the activity and takes responsibility for E.”.

(g) re-number sub-paragraph (7) as (6);

(h) delete sub-paragraph (8).

- (8) Delete paragraph 6.
- (9) Re-number paragraph 7 as paragraph 6.
- (10) In the re-numbered paragraph 6(3), after “in so far as” insert “concerns”.

**Amendments to Schedule 4 of the Legal Services Act 2017.**

11.(1) Schedule 4 of the Legal Services Act 2017 is amended in accordance with the provisions of this section.

(2) Paragraph 2 is amended as follows—

- (a) in sub-paragraph (1)(a), for “paragraph 9” substitute “paragraph 7”;
- (b) in sub-paragraph (3), for “Board” substitute “LSRA”.

(3) In paragraph 3(6), for “90 days” substitute “21 days”.

(4) After paragraph 4(3) insert—

“(4) All European lawyers to which this paragraph applies who wish to benefit from these transitional arrangements and maintain registration under this Act shall, within a period of 21 days from commencement of this Act, pay the initial registration fee to the LSRA.”

(5) Re-number paragraph 6 as 5.

(6) Re-numbered paragraph 5 is amended as follows—

- (a) in sub-paragraph (1)(b), after “as the case may be” insert “under the Practising Certificate Rules”;
- (b) in sub-paragraph (2), for “paragraph 6(1)” substitute “paragraph 5(1)”;
- (c) in sub-paragraph (3), for “90 days” substitute “21 days”.

(7) Re-number paragraph 7 as 6.

(8) In re-numbered paragraph 6(2), for “paragraph 7(1)” substitute “paragraph 6(1)”.

(9) In re-numbered paragraph 6(3), for “90 days” substitute “21 days”.

(10) Re-number paragraph 8 as 7.

(11) In Part II of Part B (Form of Petition) for “Legal Services Act 2016” substitute “Legal Services Act 2017”.

**Amendments to Schedule 5 of the Legal Services Act 2017.**

12.(1) Schedule 5 of the Legal Services Act 2017 is amended in accordance with the provisions of this section.

(2) In paragraph 2.1(g) of Part II, for “money laundering and terrorist financing” substitute “money laundering, terrorist financing and proliferation financing; and”.

(3) In paragraph 2.10.1 of Part II–

(a) for “April” substitute “October”; and

(b) for “21 May” substitute “30 November”.

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**EXPLANATORY MEMORANDUM**

This Bill amends the Legal Services Act 2017 to make changes identified as necessary or desirable by the LSRA during the process of its establishment following the passing of that Act. The Bill adds provisions relating to the governance of the LSRA, makes other amendments relating to the operation of the LSRA and to ensure that the purposes of the Act can be more effectively achieved.