

Subsidiary Legislation made under ss.6(1), 24(3)(v), 44(4), 63(3), 64(3), 150(1), 166(2), 620(1), 621(1) and 627 of, and para.6 of Sch. 10.

FINANCIAL SERVICES (DISTRIBUTED LEDGER TECHNOLOGY PROVIDERS) REGULATIONS 2020

LN.2020/012

Commencement **15.1.2020**

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In exercise of the powers conferred upon the Minister under section 6(1), 24(3)(v), 44(4), 63(3), 64(3), 150(1), 166(2), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10 to, the Financial Services Act 2019, the Minister has made the following Regulations.

**PART 1
PRELIMINARY****Title and commencement.**

1.(1) These Regulations may be cited as the Financial Services (Distributed Ledger Technology Providers) Regulations 2020.

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

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“the Act” means the Financial Services Act 2019;

“DLT Provider” means a person with Part 7 permission to carry out DLT Provider’s business;

“DLT Provider’s business” means a regulated activity that falls within paragraph 139 of Schedule 2 of the Act;

“Part 7 permission” means permission under Part 7 of the Act;

“the Register” or “the GFSC Register” means the register which is established by the GFSC in accordance with Part 4 of the Act;

“the regulatory principles” means the regulatory principles set out in the Schedule to these Regulations.

**PART 2
AUTHORISATION CONDITIONS****Authorisation application.**

3.(1) A person who proposes to apply for Part 7 permission to carry on DLT Provider’s business, before doing so, must submit—

- (a) an initial application assessment request to the GFSC in the form and manner it directs;

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(b) any documents and other information that the GFSC may direct; and

(c) the prescribed initial application assessment fee.

(2) The GFSC, as soon as reasonably practicable after it has received a complete initial application assessment request, must—

(a) assess the nature and complexity of the applicant's proposed business model and of the products and services which the applicant proposes to offer; and

(b) provide the applicant with an initial assessment notice informing the applicant of—

(i) any steps which the applicant must take before applying for Part 7 permission to carry out DLT Provider's business;

(ii) the documents and other information which must accompany any application; and

(iii) the prescribed application fee which is payable.

(3) A person who has received an initial application assessment notice from the GFSC may apply for Part 7 permission to carry out DLT Provider's business, but only if the application conforms with the requirements of the notice.

Authorisation of DLT Providers.

4.(1) The GFSC must not grant a Part 7 permission to carry out DLT Provider's business unless it is satisfied that the applicant will at all times comply with the regulatory principles.

(2) The GFSC must publish guidance on its application of the regulatory principles, including, in particular, any criteria to which it refers in determining whether a person will comply, is complying or has complied with those principles.

(3) This regulation applies without limiting the Act.

**PART 3
CONDUCT OF BUSINESS**

Ongoing obligations of DLT Providers.

5.(1) A DLT Provider must at all times comply with the regulatory principles.

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(2) A DLT Provider must promptly inform the GFSC of any event which the DLT Provider knows or reasonably suspects may affect its compliance with the regulatory principles.

(3) This regulation applies without limiting a DLT Provider's obligations under its Part 7 permission, the Act or any other enactment.

**PART 4
NOTIFICATION AND REPORTING**

Duties of auditors.

6.(1) In the circumstances specified in subsection (2) the auditor of a DLT Provider must notify the GFSC of any matters which relate to the affairs of the DLT Provider and of which he becomes aware in his capacity as auditor.

(2) The circumstances referred to in subsection (1) are those in which the auditor has reasonable cause to believe that the matters are or are likely to be of material significance for determining either—

- (a) whether a person is a fit and proper person to carry on the DLT Provider's business;
- (b) whether powers under section 69, 97(2), 102 or Part 11 of the Act should be exercised in order to protect investors or customers from a significant risk of loss.

**PART 5
REGULATORY POWERS**

Directions.

7.(1) If it appears to the GFSC that a person is not fit and proper to carry out any function in relation to DLT Provider's business carried on by a DLT Provider, the GFSC may direct that the person must not perform a specified function, any function falling within a specified description, or any function as stated in the direction.

(2) Where the GFSC—

- (a) proposes to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a warning notice; or
- (b) decides to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a decision notice.

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(3) Sub-regulation (2)(a) does not apply if the GFSC is satisfied that a warning notice–

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the direction; or
- (c) is superfluous having regard to the need to give notice of legal proceedings, or for some other reason.

(4) A person aggrieved by a decision notice under sub-regulation (2)(b) may appeal against the decision under section 615 of the Act.

(5) For the purposes of sub-regulation (3)(a), the GFSC must not consider that urgency exists unless Conditions B and C in section 80(3) and (4) of the Act are met.

(6) If those conditions are met, the GFSC must give the regulated firm and the person concerned a notice stating that the direction takes effect on the date of the notice or on any later date that may be specified in the notice.

(7) Sections 80(7) and (8) and 81 of the Act apply to a decision by the GFSC under sub-regulation (3)(a)–

- (a) as if references in those sections to the varying of a permission or the imposing or varying of a requirement (however expressed) were references to the imposition of a direction under sub-regulation (1); and
- (b) with such other modifications as may be required by the circumstances and context of sub-regulation (3).

(8) The issue of a decision notice imposing a direction under sub-regulation (1) is a specified regulatory decision to which section 24(3) of the Act applies.

Administrative penalties.

8.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement by a person to whom these Regulations apply must be of an amount which does not exceed the higher of the following–

- (a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;
- (b) in the case of a legal person–

- (i) £1,000,000; or
- (ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of an individual, £250,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with the Accounting Directive, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, (or the corresponding type of income) in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

PART 6 MISCELLANEOUS

The Register: DLT Providers.

9.(1) This regulation makes provision as to the contents of the GFSC Register in connection with DLT Provider's business.

(2) The Register must contain such information as the GFSC considers appropriate and must include, at least, a list of DLT Providers.

(3) The GFSC Register must include details of any variation or cancellation of a DLT Provider's Part 7 permission.

(4) If it appears to the GFSC that a person in respect of whom there is an entry in the GFSC Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect to whom that provision applies, the GFSC may remove the entry from the Register.

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**SCHEDULE
THE REGULATORY PRINCIPLES**

1. A DLT Provider must conduct its business with honesty and integrity.
2. A DLT Provider must pay due regard to the interests and needs of each and all its customers and must communicate with them in a way that is fair, clear and not misleading.
3. A DLT Provider must maintain adequate financial and non-financial resources.
4. A DLT Provider must manage and control its business effectively, and conduct its business with due skill, care and diligence; including having proper regard to risks to its business and customers.
5. A DLT Provider must have effective arrangements in place for the protection of customer assets and money when it is responsible for them.
6. A DLT Provider must have effective corporate governance arrangements.
7. A DLT Provider must ensure that all of its systems and security access protocols are maintained to appropriate high standards.
8. A DLT Provider must have systems in place to prevent, detect and disclose financial crime risks such as money laundering and terrorist financing.
9. A DLT Provider must be resilient and have contingency arrangements for the orderly and solvent wind down of its business