GIBRALTAR REGULATORY AUTHORITY ACT 2000

Principal Act

Act. No. 2000-17 *Commencement* 12.10.2000
Assent 12.10.2000

Amending enactments	Relevant current provisions	Commencement date
Act. 2013-05	Long title, ss. 2, 3(2), (3), (4), (5), (6), (7), (8), 4(1), (2), (3), (4), (5), 5, 6, 7, 8, 9(1), (2), (5), 10, 11(1), (2), (3), (4), (5), (6), 12(1), (2), (2)(b), (d), (e) & (f), (3), 13, 14, 15(1), (2), (3), (4), (5), 16, 17(1), (2), (3), (4), 18, 19, 20, 21(1)(c), (d), (e) & (f), 22, 23, 24	28.2.2013

English sources

None cited

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Gibraltar Regulatory Authority

2000-17

AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF A REGULATORY AUTHORITY IN GIBRALTAR FOR THE PURPOSE OF PERFORMING FUNCTIONS ASSIGNED TO OR CONFERRED ON IT, TO APPOINT A PERSON TO BE THE CHIEF EXECUTIVE OFFICER OF THAT AUTHORITY TO CONDUCT THE AFFAIRS, EXERCISE THE POWERS, DISCHARGE THE DUTIES AND PERFORM THE FUNCTIONS OF THAT AUTHORITY AND A PERSON TO BE THE DEPUTY CHIEF EXECUTIVE OFFICER OF THAT AUTHORITY, TO GRANT POWERS TO THAT AUTHORITY, TO PROVIDE FOR THE DELEGATION OF FUNCTIONS BY THAT AUTHORITY, THE MEETING OF ITS EXPENSES AND FOR ITS ACCOUNTING AND FOR PURPOSES CONNECTED THEREWITH.

Title and commencement.

1. This Act may be cited as the Gibraltar Regulatory Authority Act 2000.

Interpretation.

2. In this Act, unless the context otherwise requires–

"business" means a business or activity for which an authorisation, licence, notification or registration is required under an Act and which comes within the ambit of the functions of assigned to or conferred on the Gibraltar Regulatory Authority by this or any other Act;

"Chairman" means the Chairman of the Gibraltar Regulatory Authority;

"Chief Executive Officer" means the person appointed under section 6;

"Deputy Chief Executive Officer" means the person appointed under section 7;

"the Gibraltar Regulatory Authority" means the body established under section 3(1);

"Gibraltar Regulatory Authority member" means an individual appointed to be a Gibraltar Regulatory Authority member under this Act;

"institution" means any person, company or partnership;

"in writing" shall include by electronic means; and

"Minister" means the Chief Minister of the Government.

The Gibraltar Regulatory Authority.

3.(1) The Gibraltar Regulatory Authority is established.

(2) The Gibraltar Regulatory Authority shall consist of–

(a) the Chief Executive Officer;

(b) the Deputy Chief Executive Officer;

(c) a minimum of two and a maximum of three other persons who shall be appointed by the Minister;

The Chief Executive Officer shall be the Chairman of the Gibraltar Regulatory Authority.

(3) The period and term of an appointment referred to in paragraph (c) of subsection (2) shall be established by the Minister at the time of the appointment.

(4) A person appointed under paragraphs (a) or (c) of subsection (2) may at any time resign that appointment by notice in writing addressed to the Minister and the Gibraltar Regulatory Authority.

(5) Without prejudice to section 11, if the Minister is satisfied that any member of the Gibraltar Regulatory Authority–

(a) has been absent from three consecutive meetings of the Gibraltar Regulatory Authority without the permission of the Chairman;

(b) has become bankrupt;

(c) has been convicted of a criminal offence punishable by a term of the imprisonment of 3 months or more;

(d) is incapacitated by physical or mental illness;

(e) is in material breach of the terms under which he was appointed; or

(f) is otherwise unable or unfit to discharge the functions of a member;

the Minister may, after consultation with the other members of the Gibraltar Regulatory Authority, declare that person's office as a member of the Gibraltar Regulatory Authority to be vacant and thereupon such office shall

become vacant and such decision shall become effective by publication in the Gazette.

(6) A member appointed under subsection (2) whose term of appointment has terminated is eligible for re-appointment except where the appointment has terminated by virtue of subsection (5) or where the appointment would have terminated under that paragraph but for his resignation.

(7) The Gibraltar Regulatory Authority shall designate an officer or member of staff of the Gibraltar Regulatory Authority to be the secretary to the Gibraltar Regulatory Authority.

(8) *Omitted.*

The Gibraltar Regulatory Authority to be a body corporate.

4.(1) The Gibraltar Regulatory Authority shall be a body corporate with perpetual succession under the name of the Gibraltar Regulatory Authority and shall have a common seal which shall be officially and judicially noted.

(2) The common seal of the Gibraltar Regulatory Authority may only be affixed to an instrument in the presence of–

(a) the Chairman and at least one other Gibraltar Regulatory Authority member; or

(b) any three or more Gibraltar Regulatory Authority members.

(3) Such instruments as are referred to in subsection (2) of this section shall be signed by the persons so present as witnesses to the sealing and the acts of sealing and witnessing shall be recorded in a register to be kept for the purpose.

(4) The Gibraltar Regulatory Authority may sue and, subject to section 17, be sued in its corporate name. Service of any process or notice on the Gibraltar Regulatory Authority may be effected by leaving it at, or sending it by registered post to, the principal office of the Gibraltar Regulatory Authority;

(5) The Gibraltar Regulatory Authority shall not be treated for any purposes as a body exercising functions on behalf of the Crown and, accordingly, no person shall be treated as a servant of the Crown by reason only of his membership of, or employment or being taken on secondment by, the Gibraltar Regulatory Authority.

Meetings and proceedings.

5.(1) The quorum at all meetings of the Gibraltar Regulatory Authority shall be three members.

(2) The Chairman shall preside at every meeting of the Gibraltar Regulatory Authority at which he is present and, in his absence, the members of the Gibraltar Regulatory Authority shall elect one of the members present to act as Chairman.

(3) All meetings of the Gibraltar Regulatory Authority shall be called by the secretary to the Gibraltar Regulatory Authority at the request of the Chairman and shall, save as provided under sub-section (7), take place in Gibraltar.

(4) Any matters arising at a meeting of the Gibraltar Regulatory Authority shall be decided by a majority of the members present and voting thereon at the meeting and, in the case of an equality of votes, the Chairman shall have a second or casting vote.

(5) All orders and directions of the Gibraltar Regulatory Authority shall be given under the hand of the Chief Executive Officer.

(6) The Gibraltar Regulatory Authority shall keep proper minutes of its proceedings.

(7) The Gibraltar Regulatory Authority may, if the Chairman so approves, transact any business by the circulation of papers to all Gibraltar Regulatory Authority members, and a resolution in writing approved by a majority of Gibraltar Regulatory Authority members shall be as valid and effectual as if passed at a meeting of the Gibraltar Regulatory Authority by the votes of the members of the Gibraltar Regulatory Authority so approving the resolution.

Appointment of the Chief Executive Officer.

6.(1) The Minister shall appoint a person to be the Chief Executive Officer of the Gibraltar Regulatory Authority.

(2) The Chief Executive Officer shall be appointed for a term of five years, and may be re-appointed for such additional period(s) as the Minister may determine.

(3) The Chief Executive Officer shall perform such functions, and exercise such powers as are from time to time conferred upon him by this or any other Act or regulation or are delegated to him by the Gibraltar Regulatory Authority.

(4) The Chief Executive Officer shall, with the approval of the Gibraltar Regulatory Authority, additionally be responsible for drawing up and implementing codes for regulating the terms of service, discipline and training of all persons employed by the Gibraltar Regulatory Authority.

(5) In the event of the absence from Gibraltar of the Chief Executive Officer for a period in excess of fourteen days, the Gibraltar Regulatory Authority shall appoint the Deputy Chief Executive Officer to act as Chief Executive Officer for a period of time not exceeding one month.

Appointment of the Deputy Chief Executive Officer.

7.(1) The Gibraltar Regulatory Authority shall, upon the recommendation of the Chief Executive Officer, appoint a person to be the Deputy Chief Executive Officer of the Gibraltar Regulatory Authority.

(2) The Deputy Chief Executive Officer shall be appointed from the officers employed or taken on secondment by the Gibraltar Regulatory Authority under and in accordance with paragraph (d) of section 12(2).

(3) In the event of the absence from Gibraltar of the Deputy Chief Executive Officer for a period in excess of fourteen days, the Chief Executive Officer shall appoint another officer of the Gibraltar Regulatory Authority to act as Deputy Chief Executive Officer for a period of time not exceeding one month.

Functions of the Gibraltar Regulatory Authority.

8.(1) The Gibraltar Regulatory Authority shall perform the functions assigned to or conferred on it by this and any other Act.

(2) In subsection (1) a function may be conferred on the Gibraltar Regulatory Authority pursuant to a power of appointment under any other Act and “conferred” shall be construed accordingly.

Delegation of functions, etc.

9.(1) Save for the delegation referred to in section 6(3), the giving of the approval referred to in section 6(4), the appointment referred to in section 6(5) the appointment referred to in section 7(1), anything authorised or required by or under this or any other Act to be done by the Gibraltar Regulatory Authority may be done by any officer or member of the staff of the Gibraltar Regulatory Authority who is authorised, generally or specially in that behalf by the Gibraltar Regulatory Authority.

(2) Subject to subsections (3) and (4), the Gibraltar Regulatory Authority may delegate in writing, to such an extent, for such a period and

on such terms and conditions as it shall generally or specially authorise, the discharge of any of the functions referred to in section 8 to any suitably qualified or competent person or agency.

(3) The delegation by the Gibraltar Regulatory Authority of any of the functions referred to in section 8 shall not affect the exercise by the Gibraltar Regulatory Authority of those functions.

(4) A delegation of the nature referred to in subsection (2) shall be made only on terms which allow the Gibraltar Regulatory Authority to revoke the delegation –

(a) in its absolute discretion; or

(b) upon the direction of the Minister,

and without any liability upon the Gibraltar Regulatory Authority or the Minister or both.

(5) Any officer or member of staff authorised under and in accordance with subsection (1) shall, upon there being so authorised, be furnished by the Gibraltar Regulatory Authority with a certificate of his authorisation and when exercising a power shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

Salaries, expenses, etc.

10. The Gibraltar Regulatory Authority shall pay−

(a) to a person appointed under paragraphs (a) or (b) of section 3(2),−

(i) such salary, pension, gratuity, compensation, expenses and allowances as may be set out in the instrument appointing that person; and

(ii) such other expenses and allowances as the Gibraltar Regulatory Authority may determine;

(b) to such persons as the Gibraltar Regulatory Authority may employ or take on secondment under paragraph (d) of section 12(2),−

(i) such salaries, pensions, gratuities, compensation, expenses and allowances as may be set out in the terms and conditions of their employment or secondment as the case may be; and

(ii) such other expenses and allowances as the Gibraltar Regulatory Authority may determine;

(c) to a person or agency to whom functions have been delegated under section 9(2), such sums (if any) as the Gibraltar Regulatory Authority may be liable to pay as a result of such delegation; and

(d) such other sums as the Gibraltar Regulatory Authority may be liable to pay as a result of the exercise of any one or more of the powers referred to in section 12.

Eligibility and independence.

11.(1) Without prejudice to the generality of subsection (2),–

(a) a Member of, or the Speaker of, the Gibraltar Parliament shall be disqualified–

(i) for appointment under section 3(2); and

(ii) as a person to whom functions can be delegated under section 9; and

(b) if a person–

(i) appointed under section 3(2); or

(ii) to whom functions have been delegated under section 9,

becomes a Member of, or the Speaker of, the Gibraltar Parliament, his appointment or delegation, as the case may be, shall thereupon terminate.

(2) A person –

(a) appointed under section 3(2); or

(b) to whom functions have been delegated under section 9,

shall not hold a position which is incompatible with the performance in an independent and impartial manner of such functions as he may have to discharge as a result of an appointment under section 3(2) or a delegation under section 9 as the case may be.

(3) The Gibraltar Regulatory Authority shall act with complete independence when exercising its functions and shall only take into account public policy to the extent that it is lawful to do so.

(4) Without prejudice to subsections (1) and (2), a member of the Gibraltar Regulatory Authority who has any direct or indirect personal, professional, business or pecuniary interest in any matter coming before the Gibraltar Regulatory Authority shall on each and every occasion on which the matter comes before the Gibraltar Regulatory Authority declare his interest and thereafter, unless the Chairman directs that a conflict of interest thereby arising is insufficiently significant to require the withdrawal of that member, shall withdraw from the meeting, take no further part in the proceedings of the Gibraltar Regulatory Authority in relation to such matter nor vote on such matter and the quorum necessary for that meeting shall be reduced by the number of members withdrawing under this section.

(5) A declaration, withdrawal or direction referred to in subsection (4) of this section shall be recorded.

(6) Unless the Chairman shall otherwise direct, any decision reached by the Gibraltar Regulatory Authority on a matter in which a member has declared an interest in accordance with subsection (4) shall be recorded in the normal way save that proceedings of the Gibraltar Regulatory Authority on such a matter prior to the making of a decision shall be recorded separately and that record shall be provided only to those members of the Gibraltar Regulatory Authority who were present at those proceedings.

Powers of the Gibraltar Regulatory Authority.

12.(1) Subject to this or any other Act, the Gibraltar Regulatory Authority shall have power, to do all things necessary for or ancillary or reasonably incidental to the carrying out of the functions referred to in section 8.

(2) Without prejudice to the generality of subsection (1), the Gibraltar Regulatory Authority may, –

(a) purchase, lease or otherwise acquire and hold any property (real or personal) required for the purposes of the Gibraltar Regulatory Authority and dispose of any such property no longer required for such purposes;

(b) contract with any person for the supply to, or by, the Gibraltar Regulatory Authority of any goods or services or personnel;

(c) pay expenses properly incurred by the Gibraltar Regulatory Authority;

(d) employ or take on secondment any persons as the Gibraltar Regulatory Authority may determine are necessary or convenient for the purpose of performing the functions referred to in section 8;

(e) establish and maintain schemes or make such other arrangements as it thinks fit for the payment of pensions or other benefits to its employees;

(f) compile, prepare, print, publish, issue, circulate and distribute whether for payment or otherwise, such papers, leaflets, magazines, periodicals, books and other literary matter as may be conducive to the performance of the functions referred to in section 8.

(3) The Gibraltar Regulatory Authority shall establish the period, terms and conditions of employment of such persons as may be employed or taken on secondment under paragraph (d) of subsection (2).

The revenues of the Gibraltar Regulatory Authority.

13.(1) The revenues of the Gibraltar Regulatory Authority shall be−

(a) such fees and charges as may be payable to the Gibraltar Regulatory Authority under any Act;

(b) such funds as may from time to time be voted by the Gibraltar Parliament;

(c) such funds as may properly accrue to the Gibraltar Regulatory Authority from any other source.

(2) The Gibraltar Regulatory Authority may invest any of its funds not required for immediate use by depositing the same in one or more banks or building societies in Gibraltar or otherwise.

Establishment and operation of general fund.

14.(1) The Gibraltar Regulatory Authority shall establish a general fund into which all monies received by the Gibraltar Regulatory Authority shall be paid and out of which all payments made by the Gibraltar Regulatory Authority shall be made.

(2) The Gibraltar Regulatory Authority shall be responsible for the management of the general fund.

(3) The Gibraltar Regulatory Authority may borrow such sums as the Gibraltar Regulatory Authority may require to enable it to discharge its functions and for the purposes of meeting expenditure of a capital nature.

(4) The Gibraltar Regulatory Authority may borrow the sums referred to in subsection (3) either without security or secured by mortgage, charge, pledge or any other security whatsoever on all or any of the assets present or future of the Gibraltar Regulatory Authority.

Accounts and auditing.

15.(1) The Gibraltar Regulatory Authority shall keep proper accounting records of its income and other receipts and expenditures during each financial year and shall also cause a statement of its accounts for each financial year to be prepared within three months after the end of that year.

(2) The financial statements of the Gibraltar Regulatory Authority for each financial year shall be audited and certified within four months after the end of that year by an auditor to be appointed annually by the Gibraltar Regulatory Authority.

(3) The auditor of the Gibraltar Regulatory Authority shall be a person or firm registered or authorised to act as such in Gibraltar.

(4) The auditor of the Gibraltar Regulatory Authority shall, with reference to the accounts of the Gibraltar Regulatory Authority, report whether–

(a) he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of the audit;

(b) in his opinion, proper accounting records have been kept by the Gibraltar Regulatory Authority;

(c) the Gibraltar Regulatory Authority's balance sheet and accounts dealt with by the report are in agreement with the accounting records;

(d) in his opinion, and to the best of his information and according to the explanations given to him, the accounts give a true and fair view, in the case of the balance sheet of the Gibraltar Regulatory Authority's finances, as at the end of the financial year and, in the case of the income and expenditure account, of the surplus or deficit for that financial year; and

(e) in his opinion, the Gibraltar Regulatory Authority has discharged with diligence its obligations in relation to the collection of its revenues.

(5) In this section "financial year" means a period of twelve months beginning with 1 April in any year.

Preparation of estimates.

16. The Gibraltar Regulatory Authority shall prepare and furnish to the Minister annual estimates of income and expenditure, including capital expenditure, not later than 3 months prior to the commencement of each financial year, and such additional information and explanations as the Minister may require.

Immunity from suit.

17. (1) The Gibraltar Regulatory Authority, any one or more Gibraltar Regulatory Authority members, any employees, officers or servants of the Gibraltar Regulatory Authority, and any person to whom the powers of the Gibraltar Regulatory Authority have been delegated, shall be immune from suit in respect of any act or omission in the performance of the functions conferred on the Gibraltar Regulatory Authority by this or any other Act unless the act or omission is shown to have been in bad faith.

(2) Subsection (1) shall not apply to the discharge or purported discharge by the Gibraltar Regulatory Authority of the powers and functions conferred on it by paragraphs (a) to (e) of section 12(2).

(3) The Gibraltar Regulatory Authority shall (unless bad faith is definitively found to have existed) indemnify any of its existing and former members, officers or servants for the costs of defending any action brought by a third party in respect of anything they are alleged to have done or omitted in the discharge or purported discharge of any powers or functions conferred on the Gibraltar Regulatory Authority or any of its members by this or any other Act.

(4) This section is without prejudice to section 21.

Restriction on execution.

18. No execution by attachment of property or process in the nature thereof shall be issued against the Gibraltar Regulatory Authority.

Reporting requirement.

19.(1) The Gibraltar Regulatory Authority shall prepare, within three months after the end of each financial year, a report on its activities during that year and shall submit each such report to the Minister within two weeks after it has been finalised.

(2) The Minister shall lay before the Parliament each report referred to in subsection (1).

Exemption from Income Tax.

20. The income of the Gibraltar Regulatory Authority shall be exempt from income tax under the Income Tax Act.

Confidentiality.

21.(1) A person who is or has been–

(a) employed by the Gibraltar Regulatory Authority;

(b) seconded to the Gibraltar Regulatory Authority;

(c) appointed under section 3(2);

(d) delegated functions under section 9;

(e) contracted under paragraph (b) of section 12(2),

shall not disclose any information referred to in subsection (2).

(2) The information referred to in subsection (1) which is not to be disclosed is any information which–

(a) has been obtained by, or furnished to, the Gibraltar Regulatory Authority under or for the purposes of this Act;

(b) relates to an identified or identifiable individual or business; and

(c) is not at the time of the disclosure, and has not previously been, available to the public from other sources,

unless the disclosure is made with lawful authority.

(3) For the purposes of subsection (2) a disclosure of information is made with lawful authority only if, and to the extent that–

(a) the disclosure is made with the consent of the individual concerned or of the person for the time being carrying on the business concerned;

(b) the information was provided for the purpose of its being made available to the public (in whatever manner) under a provision of this Act;

(c) the disclosure is made for the purposes of, and is necessary for, the discharge of–

(i) any functions under this Act; or

(ii) any Community obligation;

(d) the disclosure is made under an order made by the Minister which provides for co-operation by the Gibraltar Regulatory Authority with any one or more (and in connection with their respective duties) of such persons, bodies or authorities as the Minister shall consider appropriate;

(e) the disclosure is made for the purposes of any legal proceedings, whether criminal or civil and whether arising under, or by virtue of, this Act or otherwise;

(f) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest; or

(g) the disclosure is permitted under the Act which grants the powers and assigns or confers the function pursuant to which the information is obtained.

(4) A person who knowingly or recklessly discloses information in contravention of subsection (1) is guilty of an offence and liable–

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both;

(b) on summary conviction, to a fine of up to level 5 on the standard scale.

Regulations.

22.(1) The Minister may by regulation prescribe such matters as appear to him to be reasonably necessary for, or consequential, supplementary or incidental to, this Act.

(2) Regulations made under this Act may contain such transitional provisions as appear to the Minister to be expedient for the purposes of this Act.

(3) Any power conferred by this Act to make regulations includes power, by subsequent regulations, to vary or revoke any regulations so made.

Petitioning the court for winding up.

23.(1) The Gibraltar Regulatory Authority (with the consent of the Minister) may petition the Supreme Court for the winding up of a company incorporated in Gibraltar which–

(a) appears to the Gibraltar Regulatory Authority to be undertaking business without an authorisation, licence, notification or registration required for undertaking the business being carried out; or

(b) has had its licence, authorisation, recognition or registration cancelled or suspended under the provision of any Act.

(2) The Gibraltar Regulatory Authority may not present a petition if the Court is already winding up the company.

(3) Notwithstanding any provision in the Companies Act, the Court shall wind up the company if it appears to the Court that the company has undertaken or is undertaking business without an authorisation, licence, notification or registration required for undertaking the business being or that has been carried out.

Deregistration of Part IX companies.

24. The Minister may, at the request of the Gibraltar Regulatory Authority direct the Registrar of Companies to deregister any Part IX companies which–

(a) appears to the Gibraltar Regulatory Authority to be undertaking business without an authorisation, licence, notification or registration covering the business being undertaken; or

(b) has had its licence cancelled or suspended under the provision of any Act.