

**FINANCIAL SERVICES (CAPITAL REQUIREMENTS DIRECTIVE
IV) (ENFORCEMENT) REGULATIONS 2016**

**Subsidiary
2016/198**

Subsidiary Legislation made under s.79 of the Financial Services (Banking) Act and s.53 of the Financial Services (Investment and Fiduciary Services) Act, as read with s.23(g)(i) and (ii) of the Interpretation and General Clauses Act.

**FINANCIAL SERVICES (CAPITAL REQUIREMENTS DIRECTIVE
IV) (ENFORCEMENT) REGULATIONS 2016**

(LN. 2016/198)

Commencement **13.10.2016**

Amending enactments	Relevant current provisions	Commencement date
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Transposing:

Directive 2013/36/EU

ARRANGEMENT OF REGULATIONS.

Regulation

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Financial Services (Banking)

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In exercise of the powers conferred upon him by section 79 of the Financial Services (Banking) Act and section 53 of the Financial Services (Investment and Fiduciary Services) Act, as read with section 23(g)(i) and (ii) of the Interpretation and General Clauses Act, in accordance with regulation 68 of the Financial Services (Capital Requirements Directive IV) Regulations 2013, in order to give further effect in the law of Gibraltar to provisions of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, the Minister has made the following Regulations—

PART 1

PRELIMINARY

Title.

1. These Regulations may be cited as the Financial Services (Capital Requirements Directive IV) (Enforcement) Regulations 2016.

Commencement.

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

Overview.

3. These Regulations make provision about the enforcement of the CRD IV Regulations and the Capital Requirements Regulation.

Interpretation.

4.(1) In these Regulations—

- (a) “the court” means the Supreme Court;
- (b) “default” means a failure to comply with an obligation under the CRD IV Regulations, where the failure relates to a matter specified in regulation 68(1)(a) to (d) (administrative measures for breach of authorisation and acquisition requirements);
- (c) “the CRD IV Regulations” means the Financial Services (Capital Requirements Directive IV) Regulations 2013; and

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- (d) other expressions have the same meaning as in those Regulations.

(2) In subregulation (1)(b) the reference to an obligation under the CRD IV Regulations includes an obligation imposed by amendment of other legislation.

PART 2

ENFORCEMENT POWERS

Enforcement action

General.

5.(1) The FSC must—

- (a) take all available steps to ensure that the provisions of the CRD IV Regulations and the Capital Requirements Regulation are complied with, and
- (b) coordinate its actions with other authorities when dealing with cross-border cases.

(2) The FSC's powers under or by virtue of the Financial Services (Banking) Act shall extend to enforcing, in relation to institutions to which that Act applies, any provision of the CRD IV Regulations or the Capital Requirements Regulation; and this subregulation is without prejudice to the generality of those powers and without prejudice to any specific provision of the CRD IV Regulations, of the Capital Requirements Regulation or of these Regulations.

(3) The FSC's powers under or by virtue of the Financial Services (Markets in Financial Instruments) Act 2006 shall extend to enforcing, in relation to institutions to which that Act applies, any provision of the CRD IV Regulations or the Capital Requirements Regulation; and this subregulation is without prejudice to the generality of those powers and without prejudice to any specific provision of the CRD IV Regulations, of the Capital Requirements Regulation or of these Regulations.

(4) Subregulations (2) and (3) do not extend any power to withdraw a licence (but this subregulation is without prejudice to any powers of withdrawal of an authorisation under the CRD IV Regulations, and to any other powers to withdraw licences).

Action to address defaults.

6. The actions specified in regulations 7 to 10 may be taken where the FSC is satisfied that a default has occurred.

Publication of default.

7.(1) The FSC may publish a statement specifying–

- (a) the nature of the default, and
- (b) the identity of the person who has committed it.

(2) Publication under this regulation may take any form, or combination of forms, that the FSC thinks appropriate.

Rectification order.

8. The FSC may order a person responsible for the default–

- (a) to cease the default, and
- (b) to take any necessary steps to avoid future defaults.

Civil penalties.

9.(1) The FSC may by order impose a penalty.

(2) Where the benefit derived from the default can be determined, the FSC may impose a penalty of an amount not exceeding twice the amount of the benefit.

(3) In the case of a legal person, the FSC may impose a penalty not exceeding 10% of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with the Capital Requirements Regulation of the undertaking in the preceding business year.

(4) Where the legal person is a subsidiary of a parent undertaking, the relevant gross income for the purposes of subregulation (3) is gross income resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year.

(5) In the case of an individual, the FSC may impose a penalty not exceeding the amount which represented the corresponding value to EUR 5,000,000 as at 17 July 2013.

(6) A penalty imposed under this regulation may be enforced in the same manner as if it were a debt owed to the FSC.

Suspension of voting rights.

10. The FSC may, under this regulation, make an order suspending voting rights of a shareholder responsible for a default.

Action against individuals.

11.(1) In deciding whether to take action against an individual under this Part or under regulation 69 of the CRD IV Regulations (penalties for failure to report etc.) the FSC must consider whether the individual has been guilty of misconduct, within the meaning of this regulation.

(2) An individual is guilty of misconduct if any of conditions A to D is met in relation to the individual.

(3) Condition A is that–

- (a) the individual has at any time committed a default, and
- (b) at that time the individual was a director, manager or employee of a relevant institution.

(4) Condition B is that–

- (a) the individual has at any time been knowingly concerned in a default by a relevant institution, and
- (b) at that time the individual was a director, manager or employee of the relevant institution.

(5) Condition C is that–

- (a) the individual has at any time been a senior manager of a relevant institution,
- (b) there has at that time been (or continued to be) a default by the relevant institution, and
- (c) the senior manager was at that time responsible for the management of any of the relevant institution's activities in relation to which the default occurred.

(6) But a person (“P”) is not guilty of misconduct by virtue of subregulation (5) if P satisfies the FSC that P had taken such steps as an individual in P’s position could reasonably be expected to take to avoid the default occurring (or continuing).

(7) Condition D is that the individual has committed a default in a personal capacity.

(8) In this regulation “relevant institution” means an entity to which the CRD IV Regulations or the Capital Requirements Regulation applies.

Procedure

Warning notices.

12.(1) Before taking action in respect of a person under this Part or under regulation 69 of the CRD IV Regulations the FSC must give the person a warning notice, stating the action proposed and the reasons for it.

(2) But subregulation (1) does not apply if the FSC 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 action to be taken, or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

(3) A warning notice—

- (a) must give the recipient not less than 14 days to make representations, and
- (b) must specify a period within which the recipient may decide whether to make oral representations.

(4) The period for making representations may be extended by the FSC.

Decision notices.

13.(1) This regulation applies where the FSC has—

- (a) issued a warning notice, or

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- (b) dispensed with the requirement to give a warning notice in accordance with regulation 12(2).

(2) After considering any representations made in accordance with regulation 12 the FSC must issue—

- (a) a decision notice stating that the FSC will take the action specified in the warning notice,
- (b) a discontinuance notice stating that the FSC does not propose to take that action, or
- (c) a combined notice consisting of a decision notice stating that the FSC will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.

(3) A decision notice takes effect, and the specified action may be taken—

- (a) at the end of the period for bringing an appeal if no appeal is brought, or
- (b) when any appeal is finally determined or withdrawn.

Appeal.

14.(1) The person on whom a decision notice is served may appeal to the court.

(2) An appeal must be brought within the period of 28 days beginning with the date of the decision notice.

Interim orders.

15. The FSC may apply to the court for permission to take action under this Part or under regulation 69 of the CRD IV Regulations where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

Publication of enforcement action.

16.(1) This regulation applies where the FSC has taken action under this Part or under regulation 69 of the CRD IV Regulations.

(2) The FSC must publish on its official website details of any action taken in respect of a person under this Part or under regulation 69 of the

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CRD IV Regulations (including the type and nature of the default and the identity of the person responsible), without undue delay after that person is informed of that action.

(3) The FSC shall publish details on an anonymous basis (despite subregulation (2)), in a manner in accordance with any other enactment, in any of the following circumstances–

- (a) where the action is taken in respect of an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
- (b) where publication would jeopardise the stability of financial markets or an ongoing criminal investigation;
- (c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or individuals involved.

(4) Alternatively, where the circumstances referred to in subregulation (3) are likely to cease within a reasonable period of time, publication under subregulation (2) may be postponed for such a period of time.

(5) Subregulation (2) does not apply while an appeal could be brought or is pending.

(6) Despite subregulation (5), the FSC may apply to the court for permission to publish a decision notice pending an appeal or the outcome of an appeal; and following publication under this subregulation the FSC shall, without undue delay, also publish on its website information on the appeal status and outcome thereof.

(7) The FSC shall ensure that information published remains on its website for at least five years.

(8) Personal data shall be retained on the website of the FSC only for the period necessary, in accordance with the applicable data protection rules.

(9) Regulation 70 of the CRD IV Regulations (publication of administrative penalties) is omitted.