

FIRST SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3,019 of 5th January, 1998

DEPOSIT GUARANTEE SCHEME ORDINANCE 1997

ARRANGEMENT OF SECTIONS

Section

1. Title and commencement.
2. Interpretation.
3. Amendments to the Banking Ordinance.
4. Participants in the scheme.
5. The Gibraltar Deposit Guarantee Board.
6. Status of Board.
7. Financial year.
8. Establishment of funds.
9. Continued participation.
10. Default.
11. Compensation.
12. Payment of compensation.
13. Branches in EEA States other than the United Kingdom.
14. Annual fees.
15. Levies on participants.
16. Co-operation.
17. Liquidation of participant in default.
18. Subrogation.
19. Failure to comply with the scheme.
20. Compliance with requests by the Board.
21. Non-compliance with scheme by a European Authorised Institution.
22. Non-compliance with scheme in an EEA State other than the United Kingdom.
23. Co-operation with other authorities.
24. Information to depositors.
25. Tax treatment.
26. Transitory provision for certain Spanish and Greek credit institutions.
27. Information to EC Commission.
28. Building societies.
29. Minor and consequential amendments.

SCHEDULE 1 - DEPOSITS WHICH ARE NOT QUALIFYING
DEPOSITS

SCHEDULE 2 - COMPENSATION LIABILITY OF PARTICIPANTS

SCHEDULE 3 - MINOR AND CONSEQUENTIAL AMENDMENTS



I ASSENT,
M J ROBINSON,
ACTING GOVERNOR.

5th January, 1998.



GIBRALTAR

No. 8 of 1998

AN ORDINANCE to transpose into the law of Gibraltar European Parliament and Council Directive 94/19/EC on deposit guarantee schemes.

ENACTED by the Legislature of Gibraltar .

Title and commencement.

1.(1) This Ordinance may be cited as the Deposit Guarantee Scheme Ordinance 1997.

(2) This Ordinance shall come into force on such day or days as the Government may appoint by notice in the Gazette and different days may be appointed for different purposes.

Interpretation.

2.(1) This Ordinance creates a deposit guarantee scheme (“the scheme”) in Gibraltar.

(2) In this Ordinance -

“The Board” means the Gibraltar Deposit Guarantee Board established under section 5.

“Branch” means a place of business which forms a legally dependent part of a credit institution and which conducts directly all or some of the operations inherent in the business of credit institutions; any number of branches set up in one EEA State by a credit institution which has its head office in another EEA State will be regarded as a single branch.

“The Directive” means European Parliament and Council Directive 94/19/EC on deposit guarantee schemes.

“Joint account” means an account opened in the names of two or more persons or over which two or more persons have rights that may operate against the signature of one or more of those persons.

“The Minister” means the Minister with responsibility for Trade and Industry;

“Qualifying deposit” means the amount, including any accrued interest up to the date of declaration of a default under section 10(1), in an account in a currency of an EEA State or in ECU held in Gibraltar (or in a branch of a licensed institution in an EEA State other than the United Kingdom) with a participant in the scheme which is -

- (a) not deposited by another credit institution for its own account;
- (b) not part of the participant's own funds within the meaning of Article 2 of Council Directive 89/299/EEC;

- (c) not deposited arising out of transactions in connection with which there has been a conviction under the Criminal Justice Ordinance 1995 (or legislation in another country prohibiting money-laundering within the meaning of Article 1 of Directive 91/308/EEC); and
 - (d) not excluded under Schedule 1.
- (3) Words and phrases defined in the Banking Ordinance 1992 have the same meaning in this Ordinance.

Amendments to the Banking Ordinance.

3. (1) The following paragraph is inserted after section 23(3)(d) of the Banking Ordinance 1992 -

“(dd) in carrying on the business, the applicant will -

- (i) participate in and comply with the scheme established by the Deposit Guarantee Scheme Ordinance 1997; or
- (ii) participate in and comply with a deposit guarantee scheme in its country of incorporation or formation which offers at least equivalent protection to the scheme established by the Deposit Guarantee Scheme Ordinance 1997;”.

(2) The following subsection is inserted after section 82(10)(h) of the Banking Ordinance 1992 -

“(hh) of any information by the Commissioner or Banking Supervisor given in connection with the Deposit Guarantee Scheme Ordinance 1997;”.

Participants in the scheme.

4.(1) An institution which is licensed in Gibraltar under the Banking Ordinance 1992 shall participate in the scheme if -

- (a) it is incorporated in or formed under the law of Gibraltar;

- (b) it is incorporated in or formed under the law of a non-EEA State and any deposit guarantee scheme in which it participates in its State of incorporation or formation does not offer equivalent protection to depositors in branches in Gibraltar; or
 - (c) it is incorporated in or formed under the law of any part of the United Kingdom (unless it is a building society within the meaning of the United Kingdom Building Societies Act 1986 with a branch in Gibraltar).
- (2) An institution which is authorised in Gibraltar under the Banking Ordinance 1992 and incorporated or formed under the law of the United Kingdom shall participate in the scheme.
- (3) An institution which is a European Authorised Institution (except a bank incorporated under the law of any part of the United Kingdom with a branch in Gibraltar) may apply to the Board to participate in the scheme if the deposit guarantee scheme in which it participates in its EEA State of authorisation does not offer equivalent protection to this scheme.
- (4) An institution which participates under sub-section (3) may withdraw on giving the Board at least 6 months' written notice.
- (5) An institution which applies to participate under sub-section (3) but whose application is refused may appeal by notice in writing to the Minister.
- (6) An institution whose appeal under sub-section (5) is refused may further appeal to the Supreme Court in accordance with sections 72 and 73 of the Banking Ordinance.

The Gibraltar Deposit Guarantee Board.

- 5.(1) The scheme shall be administered by the Gibraltar Deposit Guarantee Board.
- (2) The Board shall be appointed by the Minister and consist of -
- (a) the Commissioner of Banking as Chairman;

- (b) the Banking Supervisor;
- (c) an auditor, registered under Part I of the register kept by the Auditors' Registration Board, nominated by the Gibraltar Society of Chartered and Certified Accountancy Bodies;
- (d) a barrister or solicitor nominated by the General Council of the Bar in Gibraltar; and
- (e) two individuals nominated by the executive committee of the Gibraltar Bankers' Association.

The members nominated under paragraphs (c), (d) and (e) shall be approved by the Chairman.

(3) If the relevant professional associations who nominate members under paragraphs (c), (d) and (e) of sub-section (2) also nominate alternates (with the approval of the Chairman), those alternates shall be appointed by the Minister and shall serve in any case where the Chairman rules that a conflict of interest arises.

(4) Notice of the names of the members of the Board and their alternates (and any resignation, dismissal and new appointment) shall be published in the Gazette.

(5) A member (or alternate) of the Board shall hold office for the length of time specified in the letter of appointment and is eligible for reappointment if he has not resigned or been dismissed. A member (or alternate) may resign by notice in writing to the Minister at any time. A member (or alternate) may be removed by the Minister if -

- (a) he is incapacitated;
- (b) he is bankrupt or has made an arrangement with his creditors;
- (c) he has been convicted of an indictable criminal offence; or
- (d) he is otherwise unable or unfit to continue.

(6) The Board shall act with a quorum of three members, one of whom must be the Chairman.

- (7) The Chairman shall have a second and casting vote.
- (8) Subject to sub-sections (5), (6) and (7), the Board may lay down its own rules of procedure, appoint sub-committees of persons appearing to it to be suitably qualified to carry out particular functions and grant contracts for services to outside persons (including the Financial Services Commission) for particular functions.
- (9) The Board shall appoint auditors of its financial affairs. The auditors must be eligible for appointment as auditors of a company under the Companies Ordinance, and shall report -
- (a) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of the audit;
 - (b) whether, in their opinion, proper accounting records have been kept by the Board;
 - (c) whether the Board's balance sheet and accounts dealt with by the report are in agreement with the books of account; and
 - (d) whether in their opinion and to the best of their information and according to the explanations given to them, the accounts give a true and fair view, in the case of the balance sheet of the Board'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.
- (10) The Board shall appoint a person to be its Secretary.

Status of Board.

- 6.(1) The Board shall be a corporate body with a seal which may only be applied in the presence of the Chairman and one other member of the Board.
- (2) The members of the Board, their alternates, the Secretary and outside persons appointed under section 5(8) shall have immunity from prosecution or suit for all their actions or omissions while carrying out their functions for the Board unless any action or omission is shown to have been in bad faith.
- (3) The Board may sue and be sued in its name.

(4) Documents may be served by leaving them at, or sending them by registered post to, the office of the Board.

Financial year.

7.(1) The first financial year of the scheme is, unless the Board decides otherwise, the period ending at the end of 1998. From then, the financial year of the scheme shall be a year beginning on 1 January.

(2) Within three months after the end of its financial year, the Board shall prepare and have audited its accounts for that year.

(3) The Board shall publish, within three months after the end of the audit of its accounts for any financial year, a report on its activities during that year together with its audited accounts.

(4) The Board shall ensure that proper records are kept so that its financial position can be ascertained with reasonable accuracy at any time.

Establishment of funds.

8.(1) The Board shall establish -

- (a) an administration fund; and
- (b) as the need arises, a fund for each default.

(2) The Board shall hold, manage and apply the funds in accordance with this Ordinance.

(3) The funds shall consist of -

- (a) money paid as administrative fees by all participants;
- (b) money levied on participants by the Board;
- (c) money received as income from investments;
- (d) money borrowed by the Board for the purposes of the scheme;

- (e) money received by the Board on any policy of insurance it takes out;
 - (f) money received from a liquidator or receiver of a participant in default; and
 - (g) any other money required to be paid into the funds or received by the Board for the purposes of the scheme.
- (4) The Board may invest any money in the funds in -
- (a) stock issued by the Government of any EEA State;
 - (b) Government of Gibraltar debentures or bonds;
 - (c) deposits in the Gibraltar Savings Bank; and
 - (d) deposits in credit institutions authorised under the Banking Ordinance.
- (5) For the purposes of the scheme the Board may borrow money and take out insurance policies.
- (6) There shall be paid out of the funds -
- (a) money determined by the Board as compensation for depositors;
 - (b) money required for the repayment of (or interest on or charges in connection with) any money borrowed, or for the payment of premiums on any insurance policies taken out, for the purposes of the scheme;
 - (c) the costs incurred in administering the scheme and the funds, including the expenses of the members of the Board, and payments to persons to whom contracts are granted under section 5(8); and
 - (d) any other money paid out by the Board for the purposes of the scheme.

Continued participation.

9.(1) An institution which has given notice of withdrawal under section 4(4) shall continue to be treated as a participant until the expiry of 6 months from the date of the notice.

(2) An institution shall not be treated as a participant if it is itself the subject of a declaration of default between the time of the declaration of default of another participant and the notice of any levy following that default.

(3) An institution which was, at the time of a declaration of default under section 10(1), a participant in the scheme (unless sub-section (2) applies to it) shall continue to be treated as a participant even if it is no longer, at the time of any levy following that default, a participant.

Default.

10.(1) A participant shall be in default if the Commissioner of Banking so declares.

(2) The Commissioner of Banking shall make the declaration under sub-section (1) within 21 days of any of the following -

- (a) the Commissioner of Banking taking the view that, because of its financial circumstances, the participant appears to be unable to repay deposits with it; or
- (b) in respect of a participant incorporated in Gibraltar†ó
 - (i) a winding-up order being made;
 - (ii) a voluntary winding-up resolution being passed under section 204 of the Companies Ordinance;
 - (iii) a creditors' meeting being held or called under section 145 of the Companies Ordinance;
 - (iv) a receiver being appointed (whether by a court or otherwise); or
 - (v) a voluntary arrangement with its creditors being made; or

- (c) in respect of a participant incorporated outside Gibraltar, the Commissioner of Banking considering that an event corresponding to any of those mentioned in paragraph (b) has occurred.

Compensation.

11.(1) The Board shall, subject to sections 12 and 13, pay compensation in pounds sterling in respect of a qualifying deposit if -

- (a) a participant is in default; and
- (b) the Board is satisfied that, on application (in the form prescribed by the Board) by or for a person claiming to be entitled to the deposit (“the claimant”), and on the basis of evidence produced by or for that claimant or independently available to the Board, the participant in default holds that qualifying deposit.

(2) The Board shall be in a position to pay the compensation for verified claims within three months of the occurrence of the event giving rise to the Commissioner of Banking’s declaration under section 10(1). The Board may, in exceptional circumstances, apply to the Commissioner of Banking for an extension of this period by a further period of up to three months; and up to two further periods of up to three months after that.

(3) The Board shall make its own administrative arrangements for verifying claims. These arrangements shall include -

- (a) providing a clearly understandable application form for claimants (in English in Gibraltar, and in the official language or languages of the EEA State where a branch of a licensed institution is established);
- (b) providing for the exercise of the Board's right of subrogation under section 18; and
- (c) requiring claimants to give -
 - (i) their identity and address;
 - (ii) the capacity in which they claim;

- (iii) evidence of the qualifying deposits (and the date they became due);
- (iv) proof that they have made a claim to the liquidator or receiver (or equivalent in another country), where applicable, of the participant in default; and
- (v) any other matter reasonably required by the Board.

Payment of compensation.

12.(1) The amount of compensation for each successful claimant shall be calculated as specified in this section.

(2) Subject to section 13, the total amount of compensation to any claimant shall be limited to the lesser amount of -

- (a) 90% of the total amount of all qualifying deposits with that institution (wherever held) in respect of which he is a claimant; or
- (b) £18,000 (or the sterling equivalent, as calculated under subsection (6) on the date of declaration of default under section 10(1), of ECU 20,000, whichever is the greater).

(3) Subject to sub-sections (4) and (5), a qualifying deposit held in a joint account shall be divided according to the holders' shares in the account or equally if there is no indication of the share of each holder, and a client (or similar) account shall be divided according to the shares of those on whose behalf the account is held.

(4) A business partnership, association or grouping of a similar nature without separate legal personality shall be treated as one claimant.

(5) Qualifying deposits held by trustees or under equivalent arrangements in any country (except in collective investment undertakings) shall be treated -

- (a) as one deposit, if under the trust there is only one beneficiary of the trust or if held as a bare trustee or nominee;

- (b) as separate deposits, if each of the beneficiaries of the trust can be separately identified and has a separate right under the trust before the date of declaration of the default under section 10(1).

(6) A qualifying deposit held in a currency of an EEA State other than sterling or in ECU shall be translated into sterling by taking the value of the ECU and other EEA currencies at the rates published in the Official Journal of the European Communities on or nearest to the date of declaration of the default under section 10(1) or the date the deposit became due whichever is the later.

(7) The compensation to which a claimant is entitled shall be reduced by the amount of any repayment the claimant actually receives or is entitled to and will receive in respect of the qualifying deposit or deposits, including -

- (a) from a deposit guarantee scheme elsewhere;
- (b) from an insurance policy taken out by the depositor or on his behalf in respect of the deposit;
- (c) from the liquidator or receiver (or equivalent in another country) of the participant in default; or
- (d) following any right of set-off at the date of declaration of the default under section 10(1).

(8) If a European Authorised Institution which has joined the scheme under section 4(2) is in default, the Board shall ask the relevant authority in that EEA State to supply it with full details of -

- (a) the default;
- (b) the amount of compensation paid to each claimant (or to which each claimant is entitled) under that State's deposit guarantee scheme;
- (c) any subrogated or other right to recover compensation paid or any claim that State's scheme may have which will reduce its liability to pay compensation; and

(d) any other information the Board may require to establish the amount of compensation payable under the scheme.

(9) If a licensed institution with a branch in an EEA State other than the United Kingdom participates in that State's scheme and is in default, the Board and the Commissioner of Banking shall co-operate with the competent authority in that other State and supply it with details corresponding to those in sub-section (8).

(10) The Board may decide to delay payment to a claimant until determination of any criminal charge brought against the claimant, depositor or any person entitled to, or interested in respect of a qualifying deposit under the provisions of the Criminal Justice Ordinance 1995 (or legislation in another country prohibiting money-laundering within the meaning of Article 1 of Directive 91/308/EEC).

(11) The compensation payable in respect of a qualifying deposit shall not be paid until the deposit becomes due.

(12) A claimant who is dissatisfied with a decision of the Board relating to compensation may appeal to the Supreme Court who may direct the Board to take any action which the Board may take under this Ordinance.

Branches in EEA States other than the United Kingdom.

13. Until the end of 1999, if a licensed institution with a branch in an EEA State other than the United Kingdom and participating in that State's scheme defaults, the amount of compensation payable in respect of any qualifying deposit at that branch shall not be more than the amount which the Board decides would be payable under that State's scheme for an equivalent deposit.

Annual fees.

14.(1) In respect of each financial year of the Board, each participant shall pay an annual fee of an amount determined by the Board. In determining the amount of the fee for any financial year, the Board shall seek to cover by the fees its expected administrative expenses in that year together with any outstanding shortfall from previous financial years of administrative expenses over receipts.

(2) The annual fee in respect of any financial year becomes due -

- (a) in the case of an institution which becomes a participant at any time during that financial year, at that time (but such an institution will only pay the fee in proportion to the number of months remaining in that financial year); and
- (b) in the case of any other participant, at the beginning of that financial year or at any other time the Board may decide.

(3) If, at the time it would be determining the amount of the annual fee for a forthcoming financial year, it appears to the Board that there will be a sufficient credit balance carried forward from the previous financial year to cover the expected administrative expenses of the Board in the next financial year, the Board may determine to waive all or part of the annual fee for that year and shall notify the participants accordingly.

Levies on participants.

15.(1) If a participant is in default, the Board shall, in accordance with this section, impose on all the other participants in the scheme at the date of default one or more levies to meet the costs of and incidental to the payment of compensation under the scheme.

(2) The amount of a participant's contribution to a levy is that proportion of the total amount to be raised by the levy which the compensation liability of that participant bears to the total of the compensation liabilities of all the participants; and Schedule 2 has effect to determine the compensation liability of each participant.

(3) The amount to be raised by the first levy imposed following the default of a participant shall be the amount which the Board estimates will be the

costs referred to in sub-section (1). If it is necessary to impose any further levy or levies, the amount to be raised shall be based on the amount by which the total raised by the earlier levy or levies falls short of the Board's estimate of those costs or, as the case may require, of the amount of those costs as finally determined.

(4) If the total raised by a levy or levies exceeds the amount of the costs referred to in sub-section (1), as finally determined, the Board shall repay the excess to the participants in the same proportions as the contributions made.

(5) Where the Board imposes a levy, it shall give written notice to each participant liable to contribute stating -

- (a) the amount of the participant's contribution;
- (b) the method by which it is calculated; and
- (c) the date on which it is due (which will not be earlier than 14 days after the date of the notice).

(6) If, at any time after a levy is imposed, any participant liable for a contribution to that levy itself is declared under section 10(1) to be in default before paying its contribution, that liability shall be cancelled (so that the total amount raised by the levy will be reduced accordingly).

Co-operation.

16.(1) Each participant shall co-operate with the Board in making available to the Board all information it requires (in the form it requests) to carry out its functions.

(2) The duty of co-operation extends to any successor of the participant, including -

- (a) a liquidator, if the participant is being wound up;
- (b) a receiver, if the participant is in receivership; and
- (c) any other person who appears to the Board to be carrying out duties similar to those in paragraphs (a) and (b) in respect of

the participant or has continuing responsibility for the affairs of the participant.

Liquidation of participant in default.

17.(1) The liquidator or receiver of a participant in default shall co-operate with the Board in providing it with all the information it requires (in the form it requests) to carry out its functions. In particular, this duty extends to information which will assist the Board in exercising its rights of subrogation under section 18.

(2) The Board shall be -

- (a) in the position of a creditor of a participant in default;
- (b) entitled to nominate a member (or alternate) of the Board or any other appropriately qualified person to sit upon any creditors' committee or committee of inspection of the participant; and
- (c) entitled to receive any notice addressed to creditors and to attend (and vote at) any creditors' meeting under the Companies Ordinance.

(3) The liquidator or receiver of a participant in default shall pay the Board any amount realised in respect of a qualifying deposit up to the amount of compensation paid or payable by the Board to the claimant.

Subrogation.

18.(1) The Board has the right of subrogation to the rights of claimants who apply for compensation under the scheme.

(2) No compensation shall be paid to any claimant in respect of any qualifying deposit until that claimant has agreed in writing that -

- (a) his rights in respect of that deposit will vest in the Board;
- (b) he will provide any assistance the Board may ask to enable the Board to exercise those rights;

- (c) he will pay the Board any amount he receives in respect of those rights, after deduction of any amount the Board may be required to repay him under sub-section (3); and
- (d) any prospect of recovering an amount in excess of the compensation payable will vest in the Board, who may settle the claim.

(3) Any amount received by the Board under this section shall be paid into the fund established in respect of the default in question. The Board shall pay the claimant any amount which it receives in respect of his deposit and which exceeds -

- (a) the amount of compensation paid or payable in respect of the particular qualifying deposit; and
- (b) any costs incurred by the Board specifically in relation to that deposit.

Failure to comply with the scheme.

19.(1) If a participant fails to comply with this Ordinance or any request made by the Board under it, the Board shall inform the Commissioner of Banking who may decide to cancel the licence granted to that institution under section 24 of the Banking Ordinance.

(2) Any qualifying deposit held by the institution on the date the licence is cancelled under sub-section (1) shall continue to be covered by the scheme and that institution shall continue to be liable for the annual fees under section 14 and any levy or levies imposed under section 15 and obliged to comply with sections 16 and 17 in relation to qualifying deposits it continues to hold.

Compliance with requests by the Board.

20.(1) If any person fails to provide the Board with any information it has requested under section 16 or 17, the Board shall inform the Commissioner of Banking.

(2) The Commissioner of Banking may by notice in writing require the person requested to provide information to do so at a time and place specified in the notice.

(3) A person is guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale if he -

- (a) fails without a reasonable excuse to provide the information required at the time and place required under sub-section (2);
- (b) fails without a reasonable excuse to answer any question properly put to him by the Board under section 16 or 17; or
- (c) intentionally obstructs the Board's investigations under section 16 or 17.

Non-compliance with scheme by a European Authorised Institution.

21.(1) If a European Authorised Institution which participated in the scheme under section 4(3) is no longer eligible to participate or fails to comply with this Ordinance, the Board shall inform the Commissioner of Banking and the relevant competent authority in the EEA State concerned and request the latter -

- (a) to take measures to ensure that the institution complies with this Ordinance; and
- (b) to inform the Board what measures it has taken.

(2) If the Board considers that the measures referred to in sub-section (1) have not been taken or are inadequate, it may give notice to the relevant competent authority that it will exclude the institution concerned from the scheme if the institution does not comply with this Ordinance within 12 months from the date of the notice.

(3) If, within 12 months from the date of the notice, the institution concerned is still not complying with this Ordinance, the Board may, with the consent of the relevant competent authority, exclude it from the scheme.

(4) If an institution is excluded under this section (or withdraws from the scheme under section 4(4)), it shall immediately inform all its depositors with deposits in its Gibraltar branch that it no longer participates in the scheme.

(5) A qualifying deposit held at the moment of exclusion by an institution which is excluded under this section shall continue to be covered by the scheme and the institution shall still be liable to pay the annual fees under section 14 and any levy or levies imposed under section 15 and shall comply with sections 16 and 17 in relation to qualifying deposits it continues to hold.

Non-compliance with scheme in an EEA State other than the United Kingdom.

22.(1) If the relevant competent authority of, or person responsible for a scheme in, an EEA State other than the United Kingdom notifies the Commissioner of Banking that a credit institution licensed in Gibraltar has

failed to comply with the terms of a deposit guarantee scheme in which the institution participates, the Commissioner shall -

- (a) inform the Board of the notification;
- (b) warn the institution concerned that it must take steps to comply with the scheme in that other State, in accordance with the steps required by the relevant competent authority or person responsible;
- (c) inform the relevant competent authority or person responsible of his actions; and
- (d) inform the Commission of the European Communities of his actions.

(2) If the Commissioner of Banking receives notice from the relevant competent authority or person responsible in that other EEA State that no steps have been taken by the institution (or that they are inadequate) to comply with the scheme in that State, the Commissioner may, within 12 months from the date of that notice, cancel the institution's licence. In that case he shall also inform the Commission of the European Communities.

Co-operation with other authorities.

23. The Commissioner of Banking and the Board shall consult the relevant competent authorities and the persons responsible for the schemes in other EEA States and seek to reach agreement with those authorities and persons about -

- (a) the procedures to be followed if a participant defaults;
- (b) the amounts of compensation payable (after deductions, if any) under each scheme; and
- (c) the procedures to be followed under sections 21 and 22.

Information to depositors.

24.(1) Participants in the scheme (in whatever capacity) shall make information available in a readily comprehensible form in explanatory material to actual and intending depositors about -

- (a) the scheme or schemes to which the participant belongs; and
- (b) a summary of the provisions of the scheme or schemes, including details of the amount and scope of cover offered.

(2) Participants shall also, on request, inform actual and intending depositors about the conditions for compensation and the procedures for claiming it.

(3) The information in sub-sections (1) and (2) shall be given in English in Gibraltar and in the official language or languages of the EEA State where a branch of a licensed institution is established.

(4) Advertisements inviting a deposit (or which might lead to a deposit being made) may not refer to the cover offered by the scheme or schemes to which the participant belongs. However, advertisements may make a factual reference to the existence of the scheme or schemes to which the participant belongs.

(5) The information required by sub-sections (1) and (2), given in explanatory material to actual or intending depositors, is not an advertisement for the purposes of sub-section (4).

(6) Licensed institutions which are not participants in the scheme (for whatever reason) shall inform actual and intending depositors of that fact in clear and comprehensible language in explanatory material.

(7) The Board shall issue recommended wording for giving the information required by this section.

Tax treatment.

25.(1) For the purposes of the Income Tax Ordinance, a participant -

- (a) may deduct as an allowable expense any money paid as a contribution to the funds (whether as a fee or on any levy); and

(b) shall treat as a trading receipt any repayment made by the Board under section 15(4).

(2) The income of the Board shall be exempt from income tax and all other taxes, and any property of the Board shall be exempt from all duties and rates levied by the Government of Gibraltar.

Transitory provision for certain Spanish and Greek credit institutions.

26. Until the end of 1999 a branch in Gibraltar of a Spanish or Greek credit institution listed in Annex III to the Directive shall participate in the scheme established by this Ordinance.

Information to EC Commission.

27. The Commissioner of Banking shall notify the Commission of the European Communities of the names and titles of all the participants in the scheme, in whatever capacity they participate.

Building societies.

28. While the Building Societies Ordinance remains in force, a building society within the meaning of the United Kingdom Building Societies Act which is recognised under the Building Societies Ordinance may seek to participate in the scheme under section 4(3).

Minor and consequential amendments.

29. The minor and consequential amendments in Schedule 3 have effect.

SCHEDULE 1

(Section 2(2))

DEPOSITS WHICH ARE NOT QUALIFYING DEPOSITS

1. Deposits by financial institutions as defined in Article 1(6) of Council Directive 89/646/EEC.
2. Deposits by insurance undertakings.
3. Deposits by governments, central administrative authorities or local or regional governments or authorities.

4. Deposits by collective investment undertakings.
5. Deposits by pension and retirement funds.
6. Deposits by a credit institution's own directors, managers, members personally liable, holders of at least 5% of the institution's capital, persons responsible for carrying out the statutory audits of the institution's accounting documents and depositors of similar status in other companies in the same group.
7. Deposits by close relatives and third parties acting for the depositors referred to in paragraph 6.
8. Deposits by other companies in the same group which provide consolidated accounts under Council Directive 83/349/EEC, or its equivalent in countries outside the EEA.
9. Non-nominative deposits.
10. Deposits for which the depositor has, on an individual basis, obtained from the same institution rates and financial concessions which have helped to aggravate its financial situation.
11. Debt securities issued by the same institution and liabilities arising out of own acceptances and promissory notes.
12. Deposits by companies which are not permitted to draw up abridged balance sheets under Article 11 of Council Directive 78/660/EEC.

SCHEDULE 2

(Section 15 (2))

COMPENSATION LIABILITY OF PARTICIPANTS

1.(1) For the purpose of establishing the compensation liability of a participant in the scheme, every participant shall make to the Commissioner of Banking, at such times as the Board directs, a report specifying the total amount of compensation (in this Schedule referred to as "the potential

compensation”) which would be payable under the scheme in respect of relevant deposits if the participant were declared in default under section 10(1) at that time.

(2) For the purposes of a report under sub-paragraph (1), relevant deposits are those qualifying deposits held by the participant in Gibraltar and, as the case may be, in its branches in an EEA State other than the United Kingdom.

2.(1) Subject to paragraph 3, at the time of the default of a participant in the scheme, the compensation liability of each other participant is the mean average of the potential compensation specified in the participant’s most recent reports.

(2) For the purposes of sub-paragraph (1), a participant’s most recent reports are the last three reports made by the participant under paragraph 1 before the time of the default or, if the participant has made only two reports before that time, those reports.

3.(1) If, at the time of the default of a participant in the scheme, another participant has made only one report under paragraph 1, the compensation liability of that participant is the potential compensation specified in that report.

(2) If, at the time of the default of a participant in the scheme, another participant has not yet made any report under paragraph 1, the Board may require the participant to make such a report as at the time of the default and the compensation liability of that participant is the potential compensation specified in that report.

4. The Board may require any report made under paragraphs 1 to 3 to be audited by an auditor eligible for appointment as auditor of a company under the Companies Ordinance.

SCHEDULE 3

(Section 29)

MINOR AND CONSEQUENTIAL AMENDMENTS

1. Section 178 of the Companies Ordinance is amended by inserting the following new sub-section after sub-section (1) -

“(1A). In the case of the liquidation of an institution licensed under the Banking Ordinance in default within the meaning of the Deposit Guarantee Scheme Ordinance 1997, the liquidator shall -

- (i) distribute to the Gibraltar Deposit Guarantee Board any sums available for distribution to any creditor who had a qualifying deposit in the institution in default and whose rights are subrogated to the Board, irrespective of whether the Board has pursued those rights; and
- (ii) comply with all requests for information about the institution made by the Gibraltar Deposit Guarantee Board, even if that information would normally remain confidential to the liquidator or one or more other creditors.”.

2. Section 184 of the Companies Ordinance is amended by inserting the following new sub-section after sub-section (1) -

“(1A). A person nominated by the Gibraltar Deposit Guarantee Board shall be entitled to a seat on any committee of inspection or creditors' committee, and to receive any notice addressed to creditors, in respect of an institution licensed under the Banking Ordinance in default within the meaning of the Deposit Guarantee Scheme Ordinance 1997.”.

Passed by the Gibraltar House of Assembly on the 19th day of December, 1997.

D J REYES,
Clerk to the Assembly.

