

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3965 of 22 November, 2012

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LEGAL NOTICE NO. OF 175 2012.

## INTERPRETATION AND GENERAL CLAUSES ACT

### CRIME (MONEY LAUNDERING AND PROCEEDS) ACT 2007 (AMENDMENT) REGULATIONS 2012

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act and in order to transpose into the law of Gibraltar Article 8 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), the Government has made the following Regulations—

#### **Title and commencement.**

1. These Regulations may be cited as the Crime (Money Laundering and Proceeds) Act 2007 (Amendment) Regulations 2012 and come into operation on the day of publication.

#### **Amendment of the Crime (Money Laundering and Proceeds) Act 2007.**

2.(1) The Crime (Money Laundering and Proceeds) Act 2007 is amended in accordance with the provisions of this regulation.

(2) In section 2(8) before the definition “Gibraltar Financial Intelligence Unit” insert the following definitions—

““European Banking Authority” and “EBA” means the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;”;

“European Insurance and Occupational Pensions Authority” and “EIOPA” mean the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC;

“European Securities and Markets Authority” and “ESMA” means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;”.

(3) Section 5 is amended by inserting the following subsection after subsection (12)–

“(13) Where the Government considers that a non-EEA State meets the conditions set out in subsections (5), (6) or (7) it shall ensure that EEA States, EBA, EIOPA and ESMA are informed, to the extent relevant for the purposes of this Act the Money Laundering Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.”.

(4) The following is inserted after section 10G(8)–

“(9) Where the Government considers that a non-EEA State meets the equivalence conditions laid down in this section or that there are other situations where the technical criteria established in accordance with Article 40(1)(b) of the Money Laundering Directive are met, the Government shall ensure that EEA States, EBA, EIOPA and ESMA are informed, to the extent relevant for the purposes of this Act, the Money Laundering Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.”.

(5) Section 10L is amended by inserting the following subsection after subsection (3)–

“(4) The Government, EEA States, EBA, EIOPA and ESMA and the European Commission, to the extent relevant for the purposes of this Act, the Money Laundering Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, shall inform each other of cases where the legislation of non-EEA States does not permit application of the measures required under Article 31(1)(1<sup>st</sup> paragraph) and coordinated action could be taken to pursue a solution.”

(6) Section 10N is amended by inserting the following subsection after subsection (5)–

“(6) Where the Government considers that a non-EEA State meets the conditions set out in subsection (2)(d) it shall ensure that EEA States, EBA, EIOPA and ESMA are informed, to the extent relevant for the purposes of this Act, the Money Laundering Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.”

(7) The following is inserted after section 19A–

**“Duty to cooperate with EBA, EIOPA and ESMA.**

19B.(1) The supervisory authorities shall cooperate with EBA, EIOPA and ESMA, for the purposes of this Act, the Money Laundering Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, respectively.

- (2) The supervisory authorities shall provide EBA, EIOPA and ESMA, with all information necessary to carry out their duties under the Money Laundering Directive and under Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, respectively.”.

Dated 22nd November, 2012.

G H LICUDI QC,  
For the Government.

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#### **EXPLANATORY MEMORANDUM**

These Regulations transpose Article 8 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

The Regulations amend the Crime (Money Laundering and Proceeds) Act 2007 in order to supplement provisions dealing with cooperation with the European supervisory authorities and with the competent authorities of other EEA States.