

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,696, of 5th November, 1992.

LEGAL NOTICE No. 138 OF 1992.

BANKING ORDINANCE 1992.

**BANKING (REGULATION OF CREDIT INSTITUTIONS)
REGULATIONS, 1992.**

In exercise of the powers confirmed on him by section 79 of the Banking Ordinance, 1992, and of all other enabling powers, the Governor has made the following regulations-

Title and commencement.

1. These regulations may be cited as the Banking (Regulation of Credit Institutions) Regulations 1992 and shall be deemed to have come into effect on the 1st day of October 1992.

Amendment to section 2.

2. Section 2 of the Banking Ordinance 1992 (hereinafter called "the principal Ordinance") is amended-

- (a) by inserting after the definition of "institution" the following new definition-

““investment business” has the meaning given to it in section 3(2)(b) of the Financial Services Ordinance 1989;”;

- (b) by inserting after the definition of "-recognised institution" the following new definition-

““relevant investment business” in relation to a recognised institution means investment business which consists of carrying on in or from within Gibraltar one or more of the activities at items 7 to 12 inclusive in Schedule 1 which that institution is authorised or permitted to carry on by the relevant supervisory authority of a member State;”.

Amendment to section 18.

3. Section 18 of the principal Ordinance is amended-

- (a) in sub-section (6) by inserting after the words "provision of law" the words "and subject to sub-section (7)";
- (b) by inserting a new sub-section (7) as follows-

"(7) A licence issued under the Ordinance shall not cover authorisation to conduct relevant investment business unless the institution has obtained the necessary licence under the Financial Services Ordinance to conduct any one or more of the activities at items 7 to 12 inclusive in Schedule 1."

New section 69A.

4. The principal Ordinance is amended by inserting after section 69 the following new section 69A-

"Notice to recognised institutions.

69A.(1) The Commissioner shall issue any European authorised institution with a notice stating that it is authorised to conduct in or from within Gibraltar the activities listed in Schedule 1 in accordance with such conditions or prohibitions as may, from time to time, be prescribed.

(2) The notice issued under sub-section (1) shall contain the name and address of the institution and a copy of such notice shall form part of the register required to be maintained under section 17(3)."

New sections 71A, 71B and 71C.

5. The principal Ordinance is further amended by inserting after section 71 the following new sections-

"Licences not required to conduct relevant investment business.

71A. Nothing in section 3 of the Financial Services Ordinance shall preclude a recognised institution from carrying on in or from within Gibraltar relevant investment business except and in accordance with the provisions of the Ordinance and the Financial Services Ordinance in so far as those provisions relate to the recognised institution.

Power to prohibit the carrying on of relevant investment business.

71B.(1) If it appears to the Commissioner that a recognised institution has-

- (a) contravened any provisions of the Financial Services Ordinance or any rules or regulations made thereunder; or
- (b) in purported compliance of any such provisions, furnished him with false, inaccurate or misleading information; or
- (c) contravened any prohibition, requirement or direction issued under that Ordinance;

he may impose on that institution a prohibition on carrying on relevant investment business.

(2) A prohibition imposed under sub-section (1), may be absolute or may be imposed for a specific period or until the occurrence of a specified event or until specific conditions are complied with, and any period, event or condition specified may be varied by the Commissioner on the application of the institution.

(3) Any prohibition imposed under sub-section (1), may be withdrawn by written notice served by the Commissioner on the institution concerned and such notice shall take effect on the date specified in the notice.

- (4) A prohibition, or an initial prohibition, issued or intended to be issued under this section, shall be subject to the provisions in respect of consultation and notification in sections 68 and 69.

Power to restrict the carrying on of relevant investment business.

71C. The Commissioner may exercise the powers contained in Part V of the Financial Services Ordinance in relation to a recognised institution carrying on relevant business and, except in the case of the powers conferred on him by section 10 of that Ordinance, in relation to an appointed representative of the institution if it appears to the Commissioner that the institution has contravened any of the provisions of that Ordinance or any rules or regulations made thereunder or, in purported compliance with such provisions, has furnished him with false, inaccurate or misleading information or has contravened any prohibition, requirement or direction imposed under that Ordinance."

Repeal and replacement of Schedule 1.

6. Schedule 1 to the principal Ordinance is repealed and replaced by the following new Schedule 1-

"SCHEDULE 1.

Section 2

**ACTIVITIES RELEVANT FOR CERTAIN PURPOSES OF THE
SECOND BANKING CO-ORDINATION DIRECTIVE.**

1. Acceptance of deposits and other repayable funds from the public.
2. Lending (1).
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills CD's etc);

- (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable securities.
8. Participation in share issues and the provision of services relating to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit references services.
14. Safe custody services.
- (1) Including inter alia
- consumer credit,
 - mortgage credit,
 - factoring, with or without recourse,
 - financing of commercial transactions (including forfaiting)."

Amendment to the Financial Services Ordinance 1989.

7. The Financial Services Ordinance 1989 is amended-

(a) in section 2(1) by-

(i) inserting after the definition of "public investment company" the following new definition-

""recognised institution" has the meaning given to it in the Banking Ordinance 1992;"

(ii) inserting after the definition of "recognised scheme" the following new definition-

""relevant investment business" has the meaning given to it in the Banking Ordinance 1992;"

(b) in section 3 by inserting a new sub-section (3) as follows-

"(3) A person which is a recognised institution may conduct relevant investment business-

(a) as if a licence had been issued to it under section 8, and

(b) subject to the provisions of that section.";

(c) in section 8 by-

(i) inserting after the figure "8" the figure "(1)";

(ii) inserting the following two new sub-sections-

"(2) Subject to sub-section (3), the Authority may consider a recognised institution to be licensed under this Ordinance if-

(a) it is authorised or permitted to conduct relevant investment business by the relevant supervisory authority of a member State; and

(b) it is authorised or permitted to conduct relevant investment business under the Banking Ordinance.

(3) In considering whether a recognised institution should be considered to be licensed under this Ordinance, the Authority shall take into account the provisions of section 9:

Provided that in so doing, the Authority shall not take into account the provisions of paragraph (b) of that section. ";

(d) by inserting at the beginning of Part II of the Ordinance and immediately before section 12, the following new section-

"Application of conduct of business regulations etc.

11A. In this Part and any regulations made to give effect to the provisions of this Part, all references to licensees shall be construed as including a reference to a recognised institution where a licence is considered to have been issued to that institution in accordance with section 8 and in so far as those provisions apply to the relevant investment business being conducted by that institution.";

(e) section 38(1) by-

(i) omitting the fullstop at the end of paragraph (b) and substituting therefor a semi-colon;

(ii) inserting the following two new paragraphs-

"(c) the affairs of a recognised institution in relation to relevant investment business suspected of being carried out in or from within Gibraltar in contravention of the provisions of this Ordinance or any regulations or rules made hereunder or upon the request of the relevant supervisory authority and in such case the appointed person shall carry out the investigation in such manner as that supervisory authority may require and shall, if so required by the Authority, report on such investigation directly to that supervisory authority;

(d) for the purposes of paragraph (c) "relevant supervisory authority" shall have the meaning given to it in the Banking Ordinance. ";

(f) in section 41(1) by inserting after the word "agreement" at the end of paragraph (b) a comma and the following words-

"and for the purposes of this paragraph a licensee shall be taken to include a recognised institution";

(g) in section 56 (1) by-

(i) omitting in paragraph (c) the final fullstop and substituting therefor a semi-colon;

(ii) inserting after (c) the following new paragraph-

"(d) from time to time, in respect of recognised institutions considered under the provisions of section 8 to hold a licence."

Dated this 5th day of November, 1992.

By Command,
A. CARTER,
Deputy Governor.