

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,745 of 30th September, 1993.

LEGAL NOTICE No. 150 OF 1993.

BANKING ORDINANCE 1992

BANKING ORDINANCE (AMENDMENT) REGULATIONS 1993

In exercise of the powers conferred 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 Ordinance (Amendment) Regulations 1993 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) in the definition of the word "controller" by -

(i) inserting in paragraph (f)(ii) after the words "where in relation to" the words "another undertaking,";

(ii) omitting the semi-colon at the end of paragraph (f)(ii)(gg) and replacing it with a comma;

(iii) inserting after paragraph (f) the following words -

"and for the purpose of paragraph (d) above -

(i) a person satisfies the requirement of that paragraph in relation to an institution if, either alone or with any associate or associates -

(aa) he holds 10 per cent or more of the shares in the institution or another institution of which it is a subsidiary undertaking;

(bb) he is entitled to exercise, or control the exercise of, 10 per cent or more of the voting power at any general meeting of the institution or another institution of which it is a subsidiary undertaking; or

(cc) he is able to exercise a significant influence over the management of the institution or another institution of which it is a subsidiary undertaking, by virtue of -

(i) a holding of shares in; or

(ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of, the institution or, as the case may be, the other institution concerned;

(ii) a person who is a controller of an institution by virtue of that paragraph is in this Ordinance referred to as a "shareholder controller" of the institution;

and for the purpose of this definition references to shares –

(aa) in relation to an undertaking with a share capital, are to be allotted shares;

(bb) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and

(cc) in relation to an undertaking without capital, are to interests -

(i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking, or

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of winding up;"

- (b) inserting after the definition of "court" the following new definition-

"credit institution" means a credit institution as defined in Article 1 of the First Banking Co-ordination Directive, that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;"

- (c) in the definition of "European authorised institution" -

(i) omitting paragraph (a) and substituting therefor the following new paragraph-

"(a) which is a credit institution; and";

(ii) omitting paragraph (c)(i);

(iii) omitting the figure "(ii)" and substituting therefor the figure "(i)";

(iv) omitting in paragraph c(i), as renumbered, the words "(if any) of the other" where they appear between the words "which" and "activities";

(v) omitting the figure "(iii)" and substituting therefor the figure "(ii)";

(vi) omitting in paragraph c(ii)(aa), as renumbered, the words "conduct of those

operations" and substituted therefor the words
"management of the branch";

- (d) omitting the definition of "European subsidiary institution"
and substituting therefor the following definition -

"European subsidiary institution" means a subsidiary
institution -

- (a) whose parent institution is -

(i) a credit institution; and

(ii) for the time being authorised pursuant to Article 3
of the First Banking Co-ordination Directive by the
relevant supervisory authority of a member State; and

- (b) in respect of which, the Commissioner has received from the
relevant supervisory authorities referred to in paragraph (a)(ii)
a notice specifying -

(i) which of the activities on the list in Schedule
1 the institution proposes to carry on in
Gibraltar; and .

(ii) the institution is carrying on the activities
specified in (b)(i) in its home State; and

(iii) whether or not the institution intends to
establish its place of business in Gibraltar, and if
so, details of -

(aa) its proposed programme of operations,
including a description of the business proposed
to be carried on and the structure of the
organisation which will be carrying it on, and
the names of those responsible for the
management of the branch; and

(bb) the address in Gibraltar from which the
information and documents about the business

carried on in or from within Gibraltar may be obtained; and

(cc) the amount of own funds and the solvency ratio of the institution and, if applicable, the details of the guarantee scheme intended to ensure the protection of depositors with the Gibraltar operation;"

- (e) omitting the definition of "subsidiary" and substituting therefor the following definition -

"subsidiary" has the meaning given to that term in paragraph (f) of the definition of "controller";

- (f) in the definition of "subsidiary institution" -

(i) omitting the words "a body corporate" and substituting therefor the words "an undertaking";

(ii) omitting in paragraph (a) the words "of an institution which is for the time being a Gibraltar incorporated licensee or of a European authorised institution" and substituting therefor the words "undertaking of a credit institution for the time being authorised pursuant to Article 3 of the First Banking Co-ordination Directive";

- (iii) in paragraph (b) -

(aa) omitting the words "act as a holding company" and substituting therefor the words "acquire holdings";

(bb) omitting everything after the expression "Schedule 1," and substituting therefor the words "and is not a credit institution"

- (iv) in paragraph (c)(i) -

(aa) inserting after word "incorporated" where it appears for the first time the words "in or formed";

(bb) inserting after the word "incorporated" where it appears for the second time the words "in or formed under the law of Gibraltar".

Amendment to section 7.

3. Section 7 of the principal Ordinance is amended -

- (a) in the marginal note thereto by inserting after the word "licensed" the words "or authorised";
- (b) in subsections (1) and (2) by omitting everything after the words "unless it is" and substituting therefor in each subsection the words "licensed to do so under the Ordinance or is a European authorised institution in respect of which the Commissioner has received notice from the relevant supervisory authority 'that the institution proposes to carry on the activities specified in paragraph 1 of Schedule 1.'".

Amendment to section 18.

4. Section 18 of the principal Ordinance is amended by-

- (a) omitting sub-section (4) and substituting therefor the following subsection-

"(4) The Commissioner may, for the purpose of implementing a decision of the Council or the Commission of the European Community made under Article 9.4 of the Second Banking Co-ordination Directive, refuse an application for a licence.";

- (b) omitting sub-section (6) and substituting therefor the following subsection -

"(6) Without prejudice to the operation of any other provision of law, and subject to sub-section (7) a

licence granted by the Commissioner under the Ordinance shall cover the activities on the list in Schedule 1 which the institution is authorised by that licence to carry on."

(c) inserting after sub-section (7) the following new sub-section -

"(8) The Commissioner shall not consider an application for a licence if the application was made by a credit institution which at the time of making the application -

(a) was authorised pursuant to Article 3 of the First Banking Co-ordination Directive; or

(b) not being so authorised, is incorporated in or formed under the laws of a member State."

Amendment to section 23.

5. Section 23 of the principal Ordinance is amended -

(a) in subsection (1) by -

(i) omitting the full stop at the end of paragraph (d) and substituting therefor a semi-colon;

(ii) inserting after paragraph (d) the following new paragraph (e) -

"(e) the head office and the registered office will be in Gibraltar.";

(b) in subsection (3)(e) by inserting between the word "controller" and the words "or manager" a comma and the words "shareholder controller".

Amendment to section 25.

6. Section 25 of the principal Ordinance is amended by inserting after subsection (1) the following new sub-section (2)-

"(2) it shall be a condition of every licence that the Commissioner shall continue to be satisfied of the matters provided for in subsections (1) and (3) of section 23."

Amendment to section 26.

7. Section 26 of the principal Ordinance is amended by omitting the words "to an institution not being an European authorised other than an institution incorporated in Gibraltar".

Amendment to section 27.

8. Section 27 of the principal Ordinance is amended by inserting after subsection (2) the following new sub-section -

"(3) Where the licence is in respect of a credit institution, that shall be stated on the licence."

Amendment to section 36.

9. Section 36 of the principal Ordinance is amended in subsection (2) by omitting the words "principal place of business" and substituting therefor the words "head office".

Amendment to section 38.

10. Section 38 of the principal Ordinance is amended by -

- (a) in the marginal note thereto, by omitting the word "authourity" and substituting therefor the word "authority,";
- (b) in sub-section (3), omitting the words "considers that the establishment of the place of business will not be in the interests of depositors or potential depositors (whether in Gibraltar or elsewhere) of the institution because he";
- (c) in sub-section (6), inserting after the word "established" where it appears for the last time in that sub-section the words "and the provisions of sub-sections (3),(4) and (5) shall apply

mutatis mutandis to any notice given under this sub-section with the substitution of one month for references to three months or two months in those sub-sections":

(d) in the proviso to subsection (7) -

(i) in paragraph (a) -

(aa) omitting the word "Any" and substituting therefor the word "any";

(bb) omitting the expression "paragraph (iii)" and substituting therefor the words "subparagraph (c)";

(cc) omitting the word "and" at the end of the paragraph;

(ii) omitting the full stop at the end of paragraph (b) and substituting therefor a semi-colon;

(iii) inserting after paragraph (b) the following new paragraphs (c) and (d) -

"(c) where a Gibraltar subsidiary institution notifies the Commissioner that it does not intend to carry on any activities in another member State in accordance with the provisions of subsections (1) to (G) but proposes instead to seek from the relevant supervisory authority in that member State any' authorisation or permission necessary to carry on those activities, the Commissioner shall, if he agrees to the proposal, inform the relevant supervisory authority and, if that authority also agrees, the Commissioner shall direct that -the institution shall cease to be under the obligation imposed by subsection (1) from such date as he may agree with the relevant supervisory authority;

(d) where a Gibraltar subsidiary institution notifies the Commissioner that it does not intend to continue to carry on activities in another member State in accordance with the provisions of subsections (1) to (G) but proposes instead to seek from the relevant supervisory authority in that member State any authorisation or permission necessary to carry on those activities, the Commissioner shall, if he agrees to the proposal, inform the relevant supervisory authority and, if that authority also agrees, the Commissioner shall direct that the institution shall cease to be under the obligation imposed by subsection (1) from such date as he may agree with the relevant supervisory authority."

Amendment to section 40.

11. Section 40 of the principal Ordinance is amended in sub-section (1) by -

(a) in paragraph (b) -

(i) omitting the words "twenty-five" and substituting therefor the word "fifteen";

(ii) omitting the final fullstop and substituting therefor a semicolon;

(b) inserting the following new paragraph -

"(c) acquire or hold interests which would result in a contravention of the requirements of Article 12.2 of the Second Banking Co-ordination Directive." .

Amendment to section 55.

12. Section 55 of the principal Ordinance is amended by omitting everything after the words "a decision of the" and substituting therefor the expression "Council or the Commission of the European Community made under Article 9.4 of the Second Banking Co-ordination Directive."

Amendment to section 58.

13. Section 58 of the principal Ordinance is amended by omitting subsection (3).

Amendment to Section 59.

14. Section 59 of the principal Ordinance is amended in paragraph (b) -

(a) by inserting after paragraph (v) the following new paragraph -

"(vi) any person from whom, by virtue of the provisions of article 7.7 of Council Directive 92/30/EEC, the Commissioner or Banking Supervisor may require information for the purposes of the verification provided for in that Article;"

(b) by renumbering paragraph (vi), as previously so numbered, as paragraph (vii) and by omitting from that paragraph the final dash and substituting therefor a comma.

Amendment to section 60.

15. Section 60 of the principal Ordinance is amended in sub-section (4) by-

(a) omitting the words "its functions corresponding to those of the Commissioner or Banking Supervisor" and substituting therefor the words "the functions of the Commissioner or Banking Supervisor";

(b) in the proviso thereto -

(i) in paragraph (a) omitting the words "to facilitate supervision and/or that relating -to monitoring of the" and substituting therefor the words "likely to facilitate supervision and monitoring of the institution, and, in particular, that concerning the";

(ii) in paragraph (b) omitting the final fullstop and substituting therefor a comma and the word "and";

(iii) inserting the following new paragraph -

"(c) the functions which the Commissioner or Banking Supervisor has under the Ordinance shall be deemed to include the functions which the -relevant supervisory authority of any member State has in respect of the activities of a European institution or credit institution."

Amendment to section 64.

16. Section 64 of the principal Ordinance-is amended in sub-section (1)-

- (a) in paragraph (b) by omitting the words "Gibraltar or a member State" and substituting therefor the words "or from within Gibraltar";
- (b) by omitting the fullstop at the end of paragraph (n) and substituting therefor a semi-colon and the word "or";
- (c) by inserting the following new paragraph -

"(o) the Commissioner is informed by a relevant supervisory authority in a member State that the licensee has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Banking Co-ordination Directive."

Repeal and replacement of sections 68 and 69.

17. Sections 68 and 69 of the principal Ordinance are repealed and replaced by the following new sections -

"68(1) The Commissioner may prohibit a European institution from accepting deposits in Gibraltar if -

(a) the institution is a European authorised institution which has established a branch in Gibraltar and it appears to the Commissioner that the branch is not or may not be maintaining or, as the case may be, will not or may not maintain adequate liquidity;

(b) the Commissioner, is informed by the institution's relevant supervisory authority that the institution has failed to take any or sufficient steps to cover risks arising from its open positions on financial markets in Gibraltar;

(c) it appears to the Commissioner that the institution has failed to comply with any obligation imposed on it by this Ordinance or under the Insurance Companies Ordinance 1987 or the Financial Services Ordinance 1989;

(d) the Commissioner is informed by a supervisory authority in the member State in which the institution is authorised that it has failed to comply with any obligation imposed upon it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Banking Co-ordination Directive;

(e) it appears to the Commissioner that he has been provided with false, misleading or inaccurate information by or on behalf of the institution or by or on behalf of a person who is or is to be a director, controller or manager of the institution; or

(f) it appears to the Commissioner that the situation as respects the institution is such that, if it were licensed by the Commissioner under this Ordinance, the Commissioner would revoke the authorisation.

(2) Where it appears to the Commissioner that the situation as respects a European institution is such that the powers conferred by subsection (1) are exercisable, the Commissioner may, instead of or as well as imposing a prohibition, impose such restriction on the carrying on in Gibraltar of any

activity listed in Schedule 1 as is specified in the notice referred to in subsection (7).

(3) The Commissioner may not impose a prohibition on a European institution on the ground mentioned in subsection (1)(f) unless -

- (a) the Commissioner has requested the relevant supervisory authority to take all appropriate measures for the purpose of securing that the institution remedies the situation; and
- (b) the Commissioner is satisfied either-
 - (i) that the authority has failed or refused to take measures for that purpose; or
 - (ii) that the measures taken by that authority have proved inadequate for that purpose.

(4) Subject to section 69, where it appears to the Commissioner that the situation as respects a European institution is such that his power -

- (a) to impose a prohibition or a restriction on the institution; or
- (b) to vary otherwise than with the agreement of the institution any restriction imposed on the institution,

is exercisable by virtue of subsection (1)(a) or otherwise by virtue of any failure to comply with a requirement imposed under section 60 (provision of information) for statistical purposes, he shall require the institution in writing to remedy the situation.

(5) If an institution fails to comply with a requirement under subsection (4) within a reasonable time, the Commissioner shall give notice to that effect to the relevant supervisory authority requesting that authority -

- (a) to take all appropriate measures for the purpose of ensuring that the institution remedies the situation; and
- (b) to inform the Commissioner of the measures it has taken or proposes to take or the reasons for not taking any such measures.

(6) Where the Commissioner has given notice pursuant to subsection (5), and subject to section 69, the Commissioner shall not take any steps to impose a prohibition or a restriction on an institution, or to vary otherwise than with the agreement of the institution, any restriction imposed on the institution, unless it is satisfied -

- (a) that the relevant supervisory authority has failed or refused to take measures for the purposes mentioned in subsection 5(a);
or
- (b) that the measures taken by that authority have proved inadequate to for that purpose.

(7) Where, pursuant to subsections (1), (2), (3) or (6), the Commissioner proposes -

- (a) to impose a prohibition or a restriction; or
- (b) to vary otherwise than with the agreement of the institution any restriction imposed on an institution,

the Commissioner shall give to the institution concerned written notice of his intention to do so.

(8) The Commissioner shall not take the action proposed in the notice provided for in subsection (7) until he has taken account of any written or oral representations made to the Commissioner within 28 days of service of the notice.

(9) After giving a notice under subsection (7) and taking account of any representations made under subsection (8), the Commissioner shall decide whether -

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) if the proposed action was the imposition of a prohibition, to impose a restriction instead of or in addition to the prohibition;

- (d) if the proposed action was the imposition or variation of a restriction, to impose a different restriction or make a different variation.

(10) The Commissioner shall give the institution and its relevant supervisory authority written notice of the decision taken under subsection (9) and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give details of the appeal rights conferred by section 72.

(11) In any case where -

- (a) having been satisfied as required by subsection (6), the Commissioner has given notice under subsection (7);
- (b) the prohibition, restriction or variation has not taken effect; and
- (c) the European Commission decides under the Second Banking Co-ordination Directive that the Commissioner must withdraw or vary the notice;

the Commissioner shall in accordance with the decision withdraw or vary the prohibition, restriction or variation.

(12) For the purposes of subsection (1)(d), "supervisory authority", in relation to a member State, means an authority in that State which has regulatory functions in relation to one or more activities listed in Schedule 1.

69.(1) Subject to subsection (9) no notice need be given in accordance with section 68(7) in respect of the imposition of a prohibition, the imposition of a restriction, or the variation of a restriction otherwise than with the agreement of the institution concerned, in any case in which the Commissioner considers that the prohibition should be imposed or the restriction should be imposed or varied as a matter of urgency.

(2) In any such case as is provided for in subsection (1) the Commissioner may by written notice to the institution impose the prohibition or variation.

(3) Any notice issued in accordance with subsection (2) shall state the reasons for which the Commissioner has acted and give details of the appeal rights conferred by section 72.

(4) A recognised institution to which a notice is given under this section of the imposition of a prohibition or the imposition or variation of a restriction may within the period of 28 days beginning with the day on which the notice was given make representations to the Commissioner.

(5) After giving notice under subsection (2) imposing a prohibition or imposing or varying a restriction and taking into account any representations made in accordance with subsection (5) and by the relevant supervisory authority, the Commissioner shall decide whether -

- (a) to confirm or rescind his original decision; or
- (b) to impose a restriction or a different restriction or to vary a restriction in a different manner:

Provided that the Commissioner may not impose a prohibition unless he stated that this was his intention in such notice.

(6) The Commissioner shall within the period of 42 days beginning with the day on which the notice was given under subsection (2) give the institution concerned written notice of his decision under subsection (5) and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(7) Where the notice under subsection (G) is of a decision to take the action specified in subsection (5)(b), that notice shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it was given.

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (6)(b) the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it was given.

(9) Where it appears to the Commissioner that there is a situation as respects a European institution to which section G8(4) applies, and he considers that the prohibition, restriction or variation should be imposed as a matter of urgency, he may do so as provided for in this section before complying with section 68(4) and 68(5) or, where he has complied with those subsections, without being satisfied as mentioned in section 68(6), but

in such a case he shall, at the earliest opportunity, inform the relevant supervisory authority and the European Commission of the steps taken.

(10) In any case where -

- (a) by virtue of subsection (9) above, the Commissioner has imposed a prohibition or restriction on a European institution, or has varied a restriction imposed on such an institution, before complying with section 68(4) and 68(5) or, as the case may be, without being satisfied as mentioned in section 68(6); and
- (b) the European commission decides under the Second Banking Co-ordination Directive that the Commissioner must withdraw or vary the prohibition, restriction or variation,

the Commissioner in accordance with the decision shall withdraw or vary the prohibition, restriction or variation.

(11) Nothing in subsection (9) shall be taken to require the Commissioner to inform the European Commission of steps taken in respect of an institution authorised in the United Kingdom."

Amendment to section 69A.

18. Section 69A(1) of the principal Ordinance is amended by -

- (a) omitting the words "European authorised" and substituting therefor the word "recognised";
- (b) omitting the words "or from within".

Repeal and replacement of section 70.

19. Section 70 of the principal Ordinance is repealed and replaced by the following new section -

- "70. An institution which was an European authorised institution shall notify the Commissioner in writing at the first possible opportunity if its authorisation to accept deposits is revoked by

its relevant supervisory authority or it surrenders such authorisation. ".

Amendment to section 71B.

20. Section 71B of the principal Ordinance is amended by inserting after sub-section (4) the following new sub-section -

"(5) For the purposes of this section and section 71C the provisions of sections 68 and 69 shall be applied mutatis mutandis."

Amendment to section 78.

21. Section 78 of the principal Ordinance is amended by inserting after sub-section (3) the following new subsection -

"(4) For the purposes of this section "authorised institution" does not include an institution which is an European authorised institution."

Amendment to section 82.

22. Section 82 of the principal Ordinance is amended in subsection (10) by -

(a) in paragraph (b), omitting the word "proposes" and substituting therefor the word "purposes";

(b) in paragraph (i) -

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

(ii) inserting the following proviso to the paragraph -

"Provided that the Commissioner or Banking Supervisor shall disclose information in accordance with the provisions of this paragraph only where he is satisfied that the authority is subject to restrictions on further disclosure at

least equivalent to those imposed by the First Banking Coordination Directive and by this Ordinance."

Amendment to section 88.

23. Section 88(1) of the principal Ordinance is amended by omitting everything after the words "Banking Ordinance and" and substituting a dash and the following words -

- "(a) was a credit institution authorised in a member State, shall be considered an European authorised institution ; or
- (b) was not a credit institution authorised in a memberState, shall be considered to be a licensee, and for the purpose of this section, the requirements of paragraph (c) of the definition of "European authorised institution" in section 2 shall be deemed to have been satisfied."

Dated this 30th day of September 1993.

By Command,

A CARTER,

Deputy Governor.