

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,019 of 5th January, 1998**

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I ASSENT,  
M J ROBINSON,  
ACTING GOVERNOR.

5th January, 1998.



**GIBRALTAR**

**No. 7 of 1998**

**AN ORDINANCE** to amend the Banking Ordinance 1992.

**E**NACTED by the Legislature of Gibraltar .

**Title, commencement and interpretation.**

1.(1) This Ordinance may be cited as the Banking (Amendment) Ordinance 1997.

(2) This Ordinance shall come into operation on a day to be appointed by the Government by notice in the Gazette.

(3) In this Ordinance "the Ordinance" means the Banking Ordinance 1992.

**Appointment of approved auditors.**

2.(1) In section 2 of the Ordinance (interpretation) for the definition of "approved auditor" there shall be substituted -

"approved auditor" means an auditor eligible for appointment as an auditor of a company under the Companies Ordinance;".

(2) In section 44(1) of the Ordinance (appointment of auditors) for the words "an auditor approved in accordance with section 81" there shall be substituted "an approved auditor".

(3) Section 81 of the Ordinance (approval of professional bodies of auditors) is hereby repealed.

**Repeal of section 3.**

3. Section 3 of the Ordinance (which made provision about residence in Gibraltar for the purposes of the Ordinance but which is now spent) is hereby repealed.

**Meaning of "deposit-taking business".**

4. In section 5 of the Ordinance, after subsection (2) there shall be inserted the following subsections -

"(2A) For the purposes of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

(2B) In determining for the purposes of subsection (2)(b) whether deposits are accepted only on particular occasions,

regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other."

**Exemption for certain insurers.**

5.(1) In section 10 of the Ordinance (exemptions), in subsection (1) for paragraph (c) there shall be substituted the following paragraph -

"(c) a licensed insurer, as defined in section 2(2) of the Insurance Companies Ordinance, in respect of any insurance business that it is authorised to carry on pursuant to a licence issued to it under that Ordinance and an EEA company which is lawfully carrying on insurance business, or providing insurance, in Gibraltar;"

(2) At the end of that section there shall be added the following subsection -

"(3) In subsection (1) (c) an "EEA company" means a company-

- (a) which is incorporated in or formed under the law of a territory within the EEA, other than Gibraltar;
- (b) whose head office is in that territory; and
- (c) which is authorised in accordance with Article 6 of Council Directive 73/329/EEC (the first general insurance Directive) or Article 6 of Council Directive 79/267/EEC (the first long term insurance Directive)."

**Administrative notices.**

6.(1) For section 16 of the Ordinance there shall be substituted -

"16.(1) The Commissioner shall cause to be published in the form of administrative notices statements setting out the criteria and any variation in the criteria from time to time by reference to which he proposes to exercise his functions under this Ordinance, including, in particular, his powers to grant, revoke or restrict authorisation or to impose conditions of general application on authorised institutions.

(2) The Commissioner shall also publish in the form of administrative notices under this section criteria to facilitate compliance in Gibraltar with any relevant Community obligation.

(3) Without prejudice to the generality of subsection (2) or to its application to Community obligations taking effect after the commencement of this section, the requirements of the following Directives constitute relevant Community obligations for the purposes of that subsection -

- (a) Council Directive 89/299/EEC on the own funds of credit institutions;
- (b) Council Directive 89/647/EEC on the solvency ratio for credit institutions;
- (c) Council Directive 92/30/EEC on the supervision of credit institutions on a consolidated basis;
- (d) Council Directive 92/121/EEC on the monitoring and control of large exposures of credit institutions;
- (e) Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions; and
- (f) European Parliament and Council Directive 96/10/EC amending Directive 89/647/EEC as regards recognition of contractual netting by the competent authorities.

(4) An administrative notice published under this section shall be admissible in evidence in any action commenced in exercise of the rights contained in section 72 or otherwise in connection with the operation or application of this Ordinance.”.

(2) Without prejudice to the operation of sections 33 and 34 of the Interpretation and General Clauses Ordinance (effect of repeals) any administrative notice published before the commencement of this section under section 16 of the Ordinance, as originally enacted, shall have effect

after that commencement as if made under that section, as set out in subsection (1).

**Relevant investment business.**

7.(1) In section 2 of the Ordinance (definitions) in the definition of irrelevant investment business the word "and" following the words "Schedule 1" shall be omitted.

(2) In section 18 of the Ordinance (application for licences), in subsection (8) (a licence under the Ordinance does not cover relevant investment business) for the words from "relevant investment business" onwards there shall be substituted "any one or more of the activities at items 7 to 12 inclusive in Schedule 1 unless the institution has obtained the necessary licence under the Financial Services Ordinance 1989 or, as the case may be, the necessary authorisation under the Financial Services Ordinance 1997".

**Additional criteria for granting licences.**

8. In section 23 of the Ordinance -

(a) for paragraph (b) of subsection (1) there shall be substituted -

“(b) in carrying on the business -

- (i) an applicant incorporated in or formed under the law of Gibraltar will provide in Gibraltar the banking services specified in subsection (2); or
- (ii) an applicant whose head office is in a country other than Gibraltar will provide the banking services specified in subsection (2)(a) in Gibraltar and the banking services specified in subsection (2)(b) in that other country or in Gibraltar; and”.

(b) for paragraph (b) of subsection (2) there shall be substituted -

“(b) any of the following -

- (i) overdraft or loan facilities for members of the public or of any section of the public or for bodies corporate;

- (ii) the lending of funds in the wholesale money markets; or
- (iii) granting credits for its own account.”.

**Representative offices of Gibraltar licensees.**

9. In section 37 of the Ordinance (restrictions on opening overseas offices) -

- (a) subsection (1) shall be omitted; and
- (b) in subsection (2), for the words "an office" there shall be substituted "a representative office".

**Representative offices of overseas deposit-takers.**

10.(1) After section 73 of the Ordinance there shall be inserted, as Part XA of the Ordinance, the provisions set out in the Schedule to this Ordinance (being provisions relating to overseas deposit-takers with representative offices) and, accordingly, section 77 of the Ordinance (which previously dealt with this topic) is hereby repealed.

(2) In consequence of subsection (1) -

- (a) in section 2 of the Ordinance (definitions), in the definition of "representative office" after the word "means" there shall be inserted "except where section 73A(3) applies";
- (b) in section 74 (restrictions on use of word "bank"), in subsection (2), in paragraph (d) for the words "or a subsidiary company in Gibraltar of a person referred to in section 77(1)" there shall be substituted "of a person who is an overseas deposit-taker, within the meaning of Part XA, or a subsidiary company in Gibraltar of such a person".

(3) In section 79 of the Ordinance (power to make regulations) after paragraph (j) there shall be inserted the following paragraph -



"(jj) imposing requirements in respect of overseas deposit-takers, within the meaning of Part XA, which have established or propose to establish representative offices in Gibraltar;"

**Fraudulent inducement to make a deposit.**

11. After section 75A of the Ordinance there shall be inserted the following section -

**"Fraudulent inducement to make a deposit.**

75B. (1) A person is guilty of an offence if, in any of the circumstances set out on subsection (2) -

- (a) he makes a statement, promise or forecast which he knows is misleading, false or deceptive, or he dishonestly conceals any material facts; or
- (b) he recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive.

(2) The circumstances referred to in subsection (1) are that the person who makes the statement, promise or forecast or conceals the facts does so for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) -

- (a) to make, or refrain from making, a deposit with him or any other person; or
- (b) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit.

(3) This section does not apply unless -

- (a) the statement promise or forecast is made in or from, or the facts are concealed in or from, Gibraltar or arrangements are made in or from Gibraltar for the statement, promise or forecast to be made or the facts to be concealed; or

- (b) the person on whom the inducement is intended to or may have effect is in Gibraltar; or
- (c) the deposit is or would be made, or the agreement is or would be entered into, in Gibraltar.

(4) For the purposes of this section, the definition of deposit in section 4 shall have effect as if in subsection (2) of that section paragraphs (d) to (f) were omitted."

**Offences.**

12.(1) In section 82 of the Ordinance, in subsection (2) (b) (offences by authorised institutions) for the words "sections 39, 40, 41 and 47" there shall be substituted "sections 39, 40 and 41".

(2) In subsection (3) of that section (offences by authorised institutions and auditors) for the words "sections 31, 33, 45 and 50" there shall be substituted "sections 31, 33 and 45".

(3) In subsection (5)(a) of that section (offences by persons generally) -

- (a) after the word "sections" there shall be inserted "46A, 47"; and
- (b) for the words "75 and 77" there shall be substituted "75, 75A and 75B or any provision of Part XA".

**SCHEDULE**

Section 10

**NEW PART XA FOR INCLUSION IN BANKING ORDINANCE 1992**

**"PART XA**

**OVERSEAS DEPOSIT-TAKERS WITH REPRESENTATIVE  
OFFICES**

**Meaning of "overseas deposit-taker" and "representative office".**

73A.(1) In this Part "overseas deposit-taker" means a person (other than an authorised institution or a person specified in section 10(1)) who -

- (a) is a body corporate incorporated under the law of an overseas country or territory or a partnership or other unincorporated association formed under the law of an overseas country or territory; or
- (b) has his principal place of business in an overseas country or territory,

and, in either case, satisfies one of the conditions mentioned in subsection (2).

(2) The conditions referred to in subsection (1) are -

- (a) that the person's principal place of business is in an overseas country or territory and the person is authorised by the relevant supervisory authority in that or any other overseas country or territory;
- (b) that the person describes himself or holds himself out as being authorised by such an authority in an overseas country or territory;
- (c) that the person uses any name or in any other way so describes himself or holds himself out as to indicate, or reasonably be understood to indicate (whether in English or any other

language), that he is a bank or banker or is carrying on a deposit-taking business (whether in Gibraltar or elsewhere).

- (3) In this Ordinance "representative office", in relation to any overseas deposit-taker, means premises from which the deposit-taking, lending or other financial or banking activities of the overseas deposit-taker are promoted or assisted in any way; and "establishment", in relation to such an office, includes the making of any arrangements by virtue of which such activities are promoted or assisted from it.
- (4) In this Part "overseas country or territory" means a country or territory outside Gibraltar.

**Notice of establishment of representative office.**

73B(1) An overseas deposit-taker shall not establish a representative office in Gibraltar unless it has given not less than two months' notice to the Commissioner that it proposes to establish such an office; and a notice under this subsection shall specify the name the deposit-taker proposes to use in relation to activities conducted by it in Gibraltar after the establishment of that office.

(2) Where an overseas deposit-taker has established a representative office in Gibraltar before the date on which this Part comes into force and has not given notice of that fact to the Banking Supervisor under section 77, then, within the period of two months beginning with that date, it shall give notice in writing to the Commissioner of the continued existence of that office.

(3) Where an obligation arises under subsection (2) in respect of the establishment of an office which is established within one month beginning with the date on which this Part comes into force, that obligation shall supersede any obligation to give notice in respect of that matter under section 77.

(4) A notice under this section shall be given in such form and manner as the Commissioner may specify.

**Power to object to names of overseas deposit-takers.**

73C.(1) An overseas deposit-taker which has established a representative office in Gibraltar shall not change any name used by it in relation to activities conducted by it in Gibraltar unless it has given not less than two months' notice to the Commissioner of the proposed name.

(2) Where notice is given to the Commissioner under section 73B or subsection (1) and it appears to him that the name is misleading to the public or otherwise undesirable, he may, within the period of two months beginning with the day on which notice was so given to him, give notice in writing to the deposit-taker that he objects to that name.

(3) Where it appears to the Commissioner that an overseas deposit-taker which has established a representative office in Gibraltar before the date on which this Part comes into force is using a name in relation to activities conducted by it in Gibraltar which is misleading to the public or otherwise undesirable, he may give notice in writing to the deposit-taker that he objects to the name -

- (a) in a case where the Commissioner was notified of the establishment of the representative office before that date, within the period of six months beginning with that date; and
- (b) in any other case, within the period of six months beginning with the date on which the establishment of the representative office comes to his knowledge.

(4) Where, as a result of a material change in circumstances since the time when notice was given to the Commissioner under section 73B or subsection (1) or as a result of further information becoming available to him since that time, it appears to the Commissioner that the name is so misleading as to be likely to cause harm to the public, he may give notice in writing to the overseas deposit-taker in question that he objects to that name.

**Effect of notices under section 73C and appeals.**

73D.(1) Where the Commissioner has given notice under section 73C to an overseas deposit-taker, then, after the objection has taken effect, the deposit-taker shall not use the name to which the Commissioner has objected in relation to activities conducted by it in Gibraltar.

(2) For the purposes of this section, an objection under section 73C(2) takes effect when the deposit-taker receives the notice of objection.

(3) A deposit-taker to which a notice of objection is given under section 73C(2) may, within the period of three weeks beginning with the day on which it receives the notice, apply to the Supreme Court to set aside the objection and, on such an application, the Court may set the objection aside or confirm it (but without prejudice to its operation before that time).

(4) For the purposes of this section an objection under subsection (3) or subsection (4) of section 73C takes effect -

- (a) in a case where no application is made under subsection (5), at the expiry of the period of two months beginning with the day on which the deposit-taker receives the notice of objection or of such longer period as the notice may specify; and
- (b) where an application is made under subsection (5) and the Supreme Court confirms the objection, at the expiry of such period as the Court may specify.

(5) A deposit-taker to which a notice of objection is given under subsection (3) or subsection (4) of section 73C may, within the period of three weeks beginning with the day on which it receives the notice, apply to the Supreme Court to set aside the objection.

(6) In a case where -

- (a) the Commissioner has given notice under any provision of section 73C and the objection has taken effect;
- (b) the overseas deposit-taker concerned is a company to which Part IX of the Companies Ordinance (overseas companies carrying on business within Gibraltar) applies; and
- (c) the deposit-taker delivers to the Registrar of Companies a statement in a form approved by the Commissioner specifying a name (other than its corporate name) which is approved by the Commissioner and under which it proposes to carry on business in Gibraltar,

then, if the Registrar so notifies the deposit-taker, the name approved by the Commissioner shall be regarded, subject to any conditions imposed by the Registrar, as the name of the deposit-taker for the purposes of Part IX of the Companies Ordinance.



**Duty to provide information and documents.**

73E(1) The Commissioner may by notice in writing require any overseas deposit-taker which has established a representative office in Gibraltar or has given notice to the Commissioner under section 73B of its intention to establish such an office to provide him with such information or documents as he may reasonably require.

(2) Without prejudice to the generality of subsection (1), the Commissioner may by notice in writing require such an overseas deposit-taker to deliver to him -

- (a) in the case of an overseas institution which is a company incorporated under the law of Gibraltar, copies of the documents which the company is required to send to the Registrar of Companies under section 14 of the Companies Ordinance;
- (b) in the case of an overseas deposit-taker to which Part IX of the Companies Ordinance applies, copies of the documents which it is required to deliver for registration in accordance with section 289;
- (c) in the case of any other overseas deposit-taker (other than an individual) information corresponding to that which would be contained in the documents which it would be required to deliver as mentioned in paragraph (b) if it were a company to which Part IX of the Companies Ordinance applied;
- (d) in the case of an overseas deposit-taker which is authorised to take deposits or conduct banking business in an overseas country or territory by the relevant supervisory authority in that country or territory, a certified copy of any certificate from that authority conferring such authorisation on it.

(3) An overseas deposit-taker to which a notice is given under subsection (1) or subsection (2) shall comply with the notice -

- (a) in the case of a deposit-taker which has a representative office in Gibraltar, before the end of such period as is specified in the notice; and

(b) in the case of a deposit-taker which has given notice under section 73B of its intention to establish such an office, before it establishes the office.

(4) If at any time an overseas deposit-taker which has been required to deliver information or documents to the Commissioner under subsection (2) is required to deliver any document or give notice to the Registrar of Companies under section 7(10) or section 136(2) of the Companies Ordinance, it shall no later than the time by which it must have complied with that requirement deliver a copy of that document or give notice to the Commissioner.

(5) If at any time an overseas deposit-taker is required to furnish any document to the Registrar of Companies under section 290 of the Companies Ordinance (or would be so required if it were a company to which that section applied), it shall no later than the time by which it must have complied with that requirement deliver a copy of that document to the Commissioner.

(6) If at any time a certificate of authorisation of which a copy was required to be delivered to the Commissioner under subsection (2) (d) is amended or the authorisation is withdrawn, the overseas deposit-taker concerned shall no later than one month after the amendment or withdrawal deliver to the Commissioner a copy of the amended certificate or, as the case may be, a notice stating that the authorisation has been withdrawn."

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

D J REYES,

Clerk to the Assembly.

