FIRST SUPPLEMENT TO THE GIBRALTAR GAZETTE
No. 3,325 of 30 January, 2003

I ASSENT,

DAVID BLUNT

LS

ACTING GOVERNOR.

21st January 2003.

GIBRALTAR

No. 22 of 2002

AN ORDINANCE to implement in the law of Gibraltar the provisions of Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of electronic money institutions and Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Ordinance may be cited as the Banking (Amendment) Ordinance 2002.

PART I

AMENDMENTS TO DEFINITIONS

Amendment of section 2.

2.(1) Section 2 of the Banking Ordinance ("the Ordinance") is amended as follows.

(2) After the definition of "approved auditor" insert–

""approved form", in relation to an application or notice of any description, means such form as the Commissioner may approve (in whatever manner he considers appropriate) for an application or notice of that description;"

(3) After the definition of "authorised institution" insert–

""Banking Consolidation Directive" means Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions;"

(4) In the definition of "controller", in paragraph (f)(ii) for the words "a 'parent undertaking' is defined as an undertaking where in relation to another undertaking, a subsidiary undertaking", substitute "an undertaking is a parent undertaking in relation to another undertaking (a 'subsidiary undertaking') if ".

(5) For the definition of "credit institution", substitute–

""credit institution" means a credit institution as defined in Article 1 of the Banking Consolidation Directive;"

(6) After the definition of "EEA state" insert–

""electronic money" means monetary value, as represented by a claim on the issuer, which is–

(a) stored on an electronic device;

(b) issued on receipt of funds for an amount not less in value than the monetary value issued; and

(c) accepted as a means of payment by persons other than the issuer;

"electronic money business" means the business of an electronic money institution as prescribed by the Electronic Money Directive;

"Electronic Money Directive" means Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions;

"electronic money institution" means an undertaking or any other legal person, other than a credit institution as defined in Article 1, point 1, first subparagraph (a) of the Banking Consolidation Directive which issues means of payment in the form of electronic money;".

(7) Omit the definition of "ecu".

(8) In paragraph (b) of the definition of "European authorised institution" for "Article 3 of the First Banking Co-ordination Directive" substitute "Article 4 of the Banking Consolidation Directive".

(9) In sub-paragraph (a)(ii) of the definition of "European subsidiary institution" for "Article 3 of the First Banking Co-ordination Directive" substitute "Article 4 of the Banking Consolidation Directive".

(10) Omit the definition of "First Banking Co-ordination Directive".

(11) For the definition of "investment business", substitute–

""items 7 to 12 business" in relation to a recognised institution, means business which consists of carrying on in or from within Gibraltar one or more of the activities specified in items 7 to 12 inclusive in Schedule 1;".

(12) In the definition of "licence" for the words from "issued by the Commissioner" onwards, substitute "granted by the Commissioner under Part IV;".

(13) In the definition of "licensee" for the word "issued", substitute "granted".

(14) Omit the definition of "relevant investment business".

(15) Omit the definition of "Second Banking Co-ordination Directive".

(16) In paragraph (a) of the definition of "subsidiary institution" for "Article 3 of the First Banking Co-ordination Directive", substitute "Article 4 of the Banking Consolidation Directive".

PART II

AMENDMENTS IN RESPECT OF THE ELECTRONIC MONEY DIRECTIVE

3. After section 11, insert the following–

"PART IIA. – ELECTRONIC MONEY.

Scope of Part IIA.

11A.(1) This Part shall apply to the business of administering and issuing electronic money.

(2) No person or undertaking shall issue electronic money in the course of its trade business unless it is a credit institution or an electronic money institution.

(3) Except insofar as it may be permitted to issue electronic money, an electronic money institution shall only be involved in the business of–

(a) the provision of closely related financial and non-financial services such as the administering of electronic money by the performance of operational and other ancillary functions related to its issuance, and the issuing and administering of other means of payment but excluding the granting of any form of credit; and

(b) the storing of data on the electronic device on behalf of other undertakings or public institutions.

(4) Electronic money institutions shall not have any holdings in other undertakings except where these undertakings perform operational or other ancillary functions related to electronic money issued or distributed by the institution concerned.

Excluded business.

11B.(1) This Part shall not apply in respect of institutions where the Commissioner has issued an authorisation under this section.

(2) The Commissioner shall issue an authorisation to any institution issuing or administering electronic money where it is demonstrated to him that–

(a) the total business activities concerning electronic money of the institution generate a total amount of financial liabilities related to outstanding electronic money that normally does not and/or will not exceed Euro 5 million and never exceeds Euro 6 million; or

(b) the electronic money issued by the institution is or will be accepted as a means of payment only by any subsidiaries of the institution which perform operational or other ancillary functions related to electronic money issued or distributed by the institution, any parent undertaking of the institution or any other subsidiaries of that parent undertaking; or

(c) electronic money issued by the institution is or will be accepted as payment only by a limited number of undertakings, which can be clearly distinguished by–

(i) their location in the same premises or other limited local area; or

(ii) their close financial or business relationship with the issuing institution, such as a common marketing or distribution scheme,

and in all of the above cases, the underlying contractual arrangements must provide that the electronic storage device at the disposal of bearers for the purpose of making payments is or will be subject to a maximum storage amount of not more than Euro 150.

(3) An institution granted a waiver under this section shall not benefit from the mutual recognition arrangements provided for in the Banking Consolidation Directive.

(4) Parts VII to X of this Ordinance shall apply in respect of authorisations issued under this section as they apply to the regulation of licences, investigation of relevant conduct, decisions by the Commissioner and appeals against such decisions.

Electronic money institutions to be licensed or authorised.

11C. Subject to the provisions of this Part an electronic money institution shall not carry on business in or within Gibraltar unless it is licensed to do so under this Ordinance or is a European institution in respect of which the Commissioner has received notice from the relevant supervisory authority that the institution proposes to carry on business in Gibraltar.

Repayment of Unauthorised Deposits and accounting for profits therefrom.

11D.(1) A relevant business for the purpose of this section is anyone carrying on the business of issuing electronic money contrary to the provisions of this Ordinance.

(2) The provisions of sections 8 and 9 of this Ordinance shall apply mutatis mutandis in respect of–

(a) money or money's worth received by a relevant business in consideration of issuing electronic money, including any administration fees, as if such money was a deposit;

(b) profits accrued by a relevant business from money or money's worth received in consideration of issuing electronic money.

(3) Where sub-section (2)(a) applies, the action in respect of the value of the electronic money issued shall lie against the person from time to time holding such electronic money.

Civil Liability.

11E. The fact that any person has carried on any part of the business of an electronic money institution in contravention of this Part shall not affect the civil liability of a person to any other person arising in respect of such business.

Transitional Provisions.

11F.(1) Subject to subsection (2), this Part shall not apply to any institution lawfully engaged at the date this Ordinance comes into operation in electronic money business in or from within Gibraltar for six months from 27 April 2002, but thereafter shall require a licence pursuant to this Part in

respect of such business unless otherwise authorised or exempt from such requirement.

(2) This Part shall not apply to any institution lawfully engaged at the date this Ordinance in electronic money business from within Gibraltar to any EEA state (other than the United Kingdom) until 27 October 2002, but thereafter shall require a licence pursuant to this Part in respect of such business unless otherwise authorised or exempt from such requirement.".

Amendment of section 16 (Administrative Notices).

4. For paragraphs (a) to (f) of subsection (3) of section 16, substitute–

"(a) the Banking Consolidation Directive; and

(b) The Electronic Money Directive,".

Amendment of section 23 (Additional requirement for licences).

5.(1) Section 23 is amended as follows.

(2) For subsection (1)(a) substitute–

"(a) the applicant either does enjoy a high reputation and standing in a financial community or will be able to do so in the carrying on of the deposit-taking business or electronic money business for which the licence is sought;".

(3) At the end of subsection (1)(b), omit "and".

(4) For subsection (1)(c), substitute–

"(c) the paid-up capital and reserves of the applicant will from the commencement of the business amount to at least Euro 5 million, or in the case of electronic money institutions, Euro 1 million (or in both cases an amount of equivalent value denominated wholly or partly in another unit of account) or such greater amount as may be prescribed by an instrument of the Council or Commission from time to time;".

(5) For subsection (1)(e), substitute and thereafter insert–

"(e) an institution incorporated in or formed under the law of Gibraltar will have its head office in Gibraltar; and

(f) in the case of any institution issuing electronic money that it will redeem electronic money on demand by the holder of such money at par value in coins and bank notes or by a transfer to an account free of charges other than those strictly necessary to carry out that operation.".

(6) For subsection (2)(b)(iii), substitute and thereafter insert–

"(iii) granting credits for its own account; and/or

(c) any business of an electronic money institution.".

(7) For subsection (3)(a) substitute–

"(a) the applicant will carry on the deposit-taking business or electronic money business for which the licence is sought with integrity, prudently, and with those professional skills that are necessary or desirable for the range and the scale of activities to be undertaken in the business;".

(8) For subsection (3)(b) substitute–

"in carrying on the business, the applicant will at all times maintain in the business paid-up capital and reserves that, together with the other financial resources available to the business, are in the opinion of the Commissioner sufficient to safeguard the interests of depositors, and consumers and businesses dealing with electronic money as the case may be, having regard to the factors specified in subsection (4);".

(9) For subsection (3)(dd) substitute–

"(dd) in carrying on the deposit taking 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;".

Amendment of Section 35 (Minimum capital).

6.(1) Section 35 is amended as follows.

(2) In the heading of the section, after "Minimum capital" insert "of Credit Institutions".

(3) For subsection (1), substitute–

"(1) In the case of an institution other than an electronic money institution which was a licensee on 31 December 1992 the provisions of section 23(1)(c) shall not apply but such an institution, whose paid up capital and reserves do not attain the level prescribed in that section, shall have paid up capital and reserves of an amount no less than the amount it had on that date, unless–

(a) it has at any time after 22 December 1989 had paid-up capital and reserves of a greater amount, in which case it shall have paid up capital and reserves of an amount no less than that amount; or

(b) there is any change in the person who is the parent controller of the institution, in which case the level prescribed in section 23(1)(c) shall apply to the licensee from the date of the change.".

(4) For subsection (1A), substitute–

"(1A) In the case of an institution other than an electronic money institution which was an existing registered society to which section 4 of the 1997 Ordinance applied, the provisions of section 23(1)(c) shall not apply but such an institution, whose capital and reserves do not attain the level prescribed in that section, shall have paid-up capital and reserves of an amount not less that it had at the relevant time, unless–

(a) it has at any time after 18th December 1996 had paid-up capital and reserves of a greater amount, in which

case it shall have paid up capital and reserves of an amount no less than that amount; or

(b) there is any change in the person who is the parent controller of the institution, in which case the level prescribed in section 23(1)(c) shall apply to the institution from the date of the change.".

Insertion of section 35A (Minimum capital of electronic money institutions).

7. After section 35 insert–

"Minimum capital of electronic money institutions.

35A.(1) Electronic money institutions shall have at all times own funds which are equal to or above 2% of the higher of the current amount or the average of the preceding six months' total amount of their financial liabilities related to outstanding electronic money.

(2) Where an electronic money institution has not completed a six months' period of business, including the day it starts up, it shall have own funds which are equal to or above 2% of the higher of the current amount or the six months' target total amount of its financial liabilities related to outstanding electronic money.

(3) In the case of subsection (2), the six months' target total amount of the institution's financial liabilities related to outstanding electronic money shall be evidenced by its business plan subject to any adjustment to that plan having been required by the Commissioner.".

Replacement of section 39 (prohibition on accepting security over own shares).

8. For section 39 substitute–

"39. No licensee incorporated in Gibraltar shall accept any form of security over its own shares as security for any advances, credit facilities or guarantee or liability incurred by the issuing of electronic money given by it to any person.".

Amendment to Part VII.

9.(1) Part VII of the Ordinance is amended as follows.

(2) At the end of section 59 insert "or any electronic money institution exempted from Part IIA by reason of section 11B".

(3) For section 60(6) substitute–

> "If it appears to an authorised officer to be desirable in the interests of the depositors or potential depositors, or consumers and businesses dealing with electronic money of a relevant person to do so, the authorised officer may also exercise the powers conferred by subsections (1) and (3) in relation to any body corporate which is or has at any relevant time been–
>
> (a) a holding company, subsidiary or related company of the relevant person;
>
> (b) a subsidiary of a holding company of the relevant person;
>
> (c) a holding company of a subsidiary of the relevant person; or
>
> (d) an undertaking which is closely linked with the relevant person;
>
> or in relation to a partnership of which the relevant person is or has at any relevant time been a member.".

(4) In subsection 60A(4)(b), after "credit institution" insert ", electronic money institution,".

(5) In section 61(1), after "deposit-taking businesses" insert "or electronic money institutions".

(6) In section 62(1)–

(a) in subsection (b) after "any depositor" insert "or holder of electronic money";

(b) in subsection (c) after "any depositor" insert "or holder of electronic money"; and

(c) in subsection (d)(ii) after "or creditors" insert ", including holders of electronic money".

(7) In section 63(1) after "or potential depositors" insert ", or consumers and businesses dealing with electronic money".

Amendments of section 64.

10.(1) Section 64 of the Ordinance is amended as follows–

(2) In subsection (1)(b) insert at the start "Other than in the case of electronic money institutions,".

(3) After subsection (1)(b) insert–

"(bb) in the case of an electronic money institution, that the licensee has not within the period of twelve months following the date of issue of its authorisation in or from within Gibraltar carried on an electronic money business anywhere; or".

(4) In subsection (1)(c) insert at the start "Other than in the case of electronic money institutions,".

(5) After subsection 1(c) insert–

"(cc) in the case of an electronic money institution, having carried on business as an electronic money institution, has not done so for any period of more than six months; or".

(6) In subsection (1)(n) after "and/or potential depositors" insert "and/or consumers and businesses dealing with electronic money".

Amendment of section 68.

11.(1) Section 68 of the Ordinance is amended as follows.

(2) In subsection (1), after "accepting deposits" insert "or carrying on an electronic money business".

(3) In subsection (1)(d), for "the Second Banking Co-ordination Directive (as extended)", substitute "the Banking Consolidation Directive or the Electronic Money Directive (each as extended)".

PART III

MISCELLANEOUS AMENDMENTS

Provision of approved forms in place of prescribed forms etc.

12.(1) For the words "the prescribed form" in each place where they occur in sections 18(2) and 36(1), substitute the words "the approved form".

(2) In section 53 (notification of new or increased control)–

(a) in subsection (1)(a) after the words "written notice," insert "in the approved form"; and

(b) in subsection (3) for the words from "The notice" to "any person", substitute "After receiving from any person a notice in accordance with subsection (1)(a), the Commissioner may".

(3) In section 69A, for the word "prescribed", substitute "specified by him".

(4) Omit paragraphs (a) and (g) of section 79.

(5) Regulations 2 to 4 and Schedules 1 and 2 of the Banking Regulations 1992 are revoked.

Clarification of references to Financial Services Ordinances.

13.(1) In section 18(8), for the words "Financial Services Ordinance 1997", substitute "Financial Services Ordinance 1998".

(2) In section 68(1(c), for the words "or the Financial Services Ordinance 1989", substitute "the Financial Services Ordinance 1989 or the Financial Services Ordinance 1998".

(3) In section 71A, after the words "Financial Services Ordinance", in the first place where they occur, insert "1989" and for the words "the Ordinance and the Financial Services Ordinance", substitute "this Ordinance, the

Financial Services Ordinance 1989 and the Financial Services Ordinance 1998".

(4) In section 71B, in subsection (1)–

(a) in paragraph (a), for the words "Financial Services Ordinance or any rules or regulations made thereunder", substitute "Financial Services Ordinance 1989 or the Financial Services Ordinance 1998 or any rules or regulations made under either of those Ordinances"; and

(b) in paragraph (c) for the words "that Ordinance", substitute "either of those Ordinances".

(5) In section 71C, after the words "Financial Services Ordinance", insert "1989".

Business falling within items 7 to 12 in Schedule 1 to the Banking Ordinance 1992.

14.(1) In section 18(8) for the words "any one or more of the activities at items 7 to 12 inclusive in Schedule 1", substitute "items 7 to 12 business"; and

(2) For the words "relevant investment business" or "relevant business", in each place where they occur in sections 71A to 71C, substitute the words "items 7 to 12 business".

(3) In this section and in sections 15 to 19, references to sections are references to sections of the Banking Ordinance 1992.

Amendment to section 53.

15. In section 53 (notification of new or increased control), in subsection (1) omit the words "incorporated in Gibraltar".

Notice of disposal of shares etc.

16. In section 58(1) for the words "on the Commission", substitute "on the Commissioner".

Powers to assist supervisory authorities.

17.(1) Section 60A is amended as follows.

(2) The words "of EEA States" are deleted from the heading of the section.

(3) In sub-section (1), replace the words "a European" with "an".

(4) In sub-sections (2) and (3), omit the words "of any EEA State".

(5) In sub-section (4), omit the words "of an EEA State".

Information.

18.(1) In sub-section 82(9), for the words "A person who discloses otherwise than for any purpose specified in subsection (10), any information", substitute "Subject to subsection (1), a person who discloses any information".

(2) In sub-section 86(2), for the words from "information divulged" to the end of the subsection, substitute "any disclosure of information falling within any of paragraphs (d) to (i) of section 82(10)".

Abolition of "paper" licences.

19.(1) In sub-section 17(1), for the words "duplicate copies of all licences issued", substitute "details of all licences granted".

(2) In sub-section 18(8), for the word "issued", substitute "granted".

(3) In section 24–

(a) in subsection (1), delete "either-" and for paragraphs (a) and (b), substitute the words "grant or refuse the licence applied for";

(b) in subsections (2) and (5) for the words "grant the application", in each case substitute "grant the licence".

(4) In sub-section 25(1), omit the words "an application for".

(5) In section 26, omit the words "an application for".

(6) Omit sections 27, 31, 33, 34 and 67.

(7) In sub-section 64(1)(b), for the word "issue", substitute "grant".

(8) In sub-section 66(1)(b) for the words "by whom the licence was held", substitute "to whom the licence was granted".

(9) In section 79, for paragraph (b), substitute–

"(b) making provision with respect to the proof of licences and of conditions of licences;".

(10) In section 87 for the word "issued", substitute "granted".

Changes in references.

20.(1) Schedule 1 to this Ordinance sets out certain amendments to the Ordinance necessitated by changes in European legislation.

(2) For Schedule 3 to the Ordinance substitute the Schedule set out in Schedule 2 to this Ordinance.

(3) Schedule 3 to this Ordinance sets out some consequential amendments to the Financial Services Ordinance 1989.

SCHEDULE 1

Section 20

AMENDMENT OF REFERENCES TO EUROPEAN LEGISLATION

1. In section 18(5) for "Article 9.4 of the Second Banking Co-ordination Directive" substitute "Article 23.5 of the Banking Consolidation Directive".

2. In paragraph (a) of section 18(9) for "Article 3 of the First Banking Co-ordination Directive" substitute "Article 4 of the Banking Consolidation Directive".

3. In paragraph (c) of section 40.1 for "Article 12.2 of the Second Banking Co-ordination Directive" substitute "Article 51.2 of the Banking Consolidation Directive".

4. In section 46A(4) for "Second Banking Co-ordination Directive" substitute "Banking Consolidation Directive".

5. In section 55(b) for 'Article 9.4 of the Second Banking Co-ordination Directive" substitute "Article 23.5 of the Banking Consolidation Directive"

6. In sub-paragraph (b)(vi) of section 59 for "Article 7.7 of Council Directive 92/30/EEC" substitute "Article 56.7 of the Banking Consolidation Directive".

7. In paragraph (o) of section 64(1) for "Second Banking Co-ordination Directive" substitute "Banking Consolidation Directive".

8. In paragraph (c) of section 68(11) for "Second Banking Co-ordination Directive" substitute "Banking Consolidation Directive".

9. In paragraph (b) of section 69(10) for "Second Banking Co-ordination Directive" substitute "Banking Consolidation Directive".

10. In paragraph (o) of section 75A for "Article 3 of the First Banking Co-ordination Directive" substitute "Article 4 of the Banking Consolidation Directive".

11. In sub-paragraph (ii) of section 82(10)(i) for "Council Directive 83/350/EEC" substitute "Banking Consolidation Directive".

12. In the proviso to section 82(10)(i) for "First Banking Co-ordination Directive" substitute "Banking Consolidation Directive".

13. In section 85 for "Council Directive 83/350/EEC" substitute "Banking Consolidation Directive".

14. In paragraph (a) of section 86A(1) for "First Banking Co-ordination Directive" substitute "Banking Consolidation Directive".

15. In section 86A(3) for the words "1 to 6 and 12 of Article 12 of the First Banking Co-ordination Directive" substitute "1 to 8 and 10 of Article 30 of the Banking Consolidation Directive".

16. In section 86A(4):

For "Article 12.2 of the First Banking Co-ordination Directive" substitute "Article 30.2 Banking Consolidation Directive"; and

For "Article 12.6" substitute "Article 30.8".

17. In section 86A(5) for "Article 12 of the First Banking Co-ordination Directive" substitute "Article 30 of the Banking Consolidation Directive".

18. In the title of Schedule 1 for "SECOND BANKING CO-ORDINATION DIRECTIVE (AS EXTENDED, WHERE APPLICABLE, BY THE EEA AGREEMENT)" substitute "BANKING CONSOLIDATION DIRECTIVE".

SCHEDULE 2

Section 20

NEW SCHEDULE 3 TO THE ORDINANCE

"Exchange of information and professional secrecy.

1. The Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy. This means that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual institutions cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive and with other Directives applicable to credit institutions. That information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

3. Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 5 and 6 only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be for the purpose of performing the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

4. Competent authorities receiving confidential information under paragraphs 1 or 2 may use it only in the course of their duties:

- to check that the conditions governing the taking-up of the business of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such business, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms, or

– to impose sanctions, or

– in an administrative appeal against a decision of the competent authority, or

– in court proceedings initiated pursuant to Article 33 or to special provisions provided for in this in other Directives adopted in the field of credit institutions.

5. Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or between Member States, between competent authorities and:

– authorities entrusted with the public duty of supervising other financial organisations and insurance companies and the authorities responsible for the supervision of financial markets,

– bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures,

– persons responsible for carrying out statutory audits of the accounts of credit institutions and other financial institutions,

in the discharge of their supervisory functions, and the disclosure to bodies which administer deposit-guarantee schemes of information necessary to the

exercise of their functions. The information received shall be subject to the conditions of professional secrecy indicated in paragraph 1.

6. Notwithstanding paragraph 1 to 4, Member States may authorise exchanges of information between, the competent authorities and:

– the authorities responsible for overseeing the bodies, involved in the liquidation and bankruptcy of credit institutions and other similar procedures, or

– the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the provisions of the first subparagraph shall require at least that the following conditions are met:

– the information shall be for the purpose of performing the supervisory task referred to in the first subparagraph,

– information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

– where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the name of the authorities which may receive information pursuant to this paragraph.

7. Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

Member States which have recourse to the provision in the first subparagraph shall require at least that the following conditions are met:

– the information shall be for the purpose of performing the task referred to in the first subparagraph,

– information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

– where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of person appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the third indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of the provisions of this paragraph.

8. This Article shall not prevent a competent authority from transmitting:

– to central banks and other bodies with a similar function in their capacity as monetary authorities,

– where appropriate to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4.

Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

9. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their Member States' markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1. The Member States shall, however, ensure that information received under paragraph 2 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it."

SCHEDULE 3

Section 20

Consequential amendments to the Financial Services Ordinance 1989

1. In section 2(1) of the Financial Services Ordinance 1989–

(a) after the definition of "European authorised institution", insert–

""items 7 to 12 business" has the same meaning as in the Banking Ordinance 1992;" and

(b) for the definition of "relevant investment business" substitute–

""relevant investment business", in relation to a recognised institution, means any items 7 to 12 business which the institution is authorised or permitted to carry on by the relevant supervisory authority of an EEA State;".

2. In sections 8(2) and 38(1)(c), the words "items 7 to 12 business" shall be substituted for the words "relevant investment business" in each place where they occur.

Passed by the Gibraltar House of Assembly on the 19th day of December, 2002.

Dennis J Reyes

Clerk to the Assembly.