

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**
No. 3844 of 12 April, 2011

LEGAL NOTICE NO. 49 OF 2011.

INTERPRETATION AND GENERAL CLAUSES ACT
FINANCIAL SERVICES (BANKING) (AMENDMENT)
REGULATIONS 2011

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to partly transpose into the law of Gibraltar Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management and part of Article 3(1)(a) of Directive 2010/76/EU of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations and the supervisory review of remuneration policies, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Financial Services (Banking) (Amendment) Regulations 2011 and shall come into operation on the day of publication.

Amendment of the Financial Services (Banking) Act.

2. The Financial Services (Banking) Act is amended in accordance with regulations 3 and 4.

Amendment to section 25.

3. The following subsection is inserted after subsection (2)—

“(3) In carrying out its business, a licensee shall, at all times, have robust governance arrangements and a clear organisational structure with well defined, transparent and consistent lines of

responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, have adequate internal control mechanisms, including sound administrative and accounting procedures and remuneration policies and practices which shall be consistent with and promote sound and effective management.”.

Insertion of section 35B.

4. The following section is inserted after section 35A–

“Affiliated credit institutions.

35B.(1) One or more credit institutions established in Gibraltar which is or are permanently affiliated to a central body in Gibraltar which supervises it or them may be exempted by the Commissioner from the requirements of section 23(3)(f) and from any requirement as to the need for the credit institution to provide the Commissioner with a programme of operations setting out, inter alia, the types of business it envisages to conduct and its structural organisation, if the Commissioner is satisfied that–

- (a) the commitments of that central body and the affiliated institution or institutions are joint and several liabilities or the commitment of its affiliated institutions are entirely guaranteed by the central body;
- (b) the solvency and liquidity of the central body and of the or all of the affiliated institutions are monitored as a whole on the basis of consolidated accounts; and
- (c) the management of the central body is empowered to issue instructions to the management of the affiliated institution or institutions.

(2) Any credit institution to which subsection (1) applies, may be exempted by the Commissioner from the requirements of sections 23(1)(c) and 35 if and without prejudice to the application of those provisions to the central body, the central

body and all its affiliated credit institutions are subject to those provisions on a consolidated basis.

- (3) Where any exemption is granted by the commissioner under this section, Part IX shall apply to the whole as constituted by the central body and its affiliated credit institutions.”

Amendment to section 79.

5. Section 79 is amended by inserting the following paragraph after paragraph (f)–

- “(g) giving powers to the Commissioner to impose or apply financial or non-financial penalties on credit institutions which breach, or against persons who effectively control the business of credit institutions who breach, the provisions of any Regulations made under this Act or any rule book issued by the Commissioner with the Minister’s consent and prescribing the amounts or limits of such financial penalties;”.

Amendment to Schedule 1.

6. In paragraph 8, “securities” is substituted for “shares”.

Amendment of Schedule 3.

7.(1) Sub-paragraph (a) of the first paragraph under “Article 49” is substituted by–

- “(a) central banks of the European system of the central banks and other bodies with a similar function in their capacity as monetary authorities when this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system.”.

- (2) The following un-numbered paragraph is inserted under “Article 49” as the fourth paragraph–

“In an emergency situation as referred to in Article 130(1), Member States shall allow competent

authorities to communicate information to the central banks of the European system of the central banks when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and safeguarding the stability of the financial system.”.

- (3) The following un-numbered paragraph is inserted under “Article 50” as the third paragraph–

“In an emergency situation as referred to in Article 130(1), Member States shall allow competent authorities to disclose information which is relevant to the departments referred to in the first paragraph of this Article in all Member States concerned.”.

Dated 12th April, 2011.

P R CARUANA,
Chief Minister,
for the Government.