

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**  
No. 3965 of 22 November, 2012

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LEGAL NOTICE NO. OF 168 2012.

**FINANCIAL SERVICES (BANKING) ACT**

**FINANCIAL SERVICES (CAPITAL ADEQUACY OF CREDIT  
INSTITUTIONS) (AMENDMENT)  
REGULATIONS 2012**

In exercise of the powers conferred on me by section 79 of the Financial Services (Banking) Act, and in order to partly transpose into the law of Gibraltar Article 9 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), I have made the following Regulations–

**Title and commencement.**

1. These Regulations may be cited as the Financial Services (Capital Adequacy of Credit Institutions) (Amendment) Regulations 2012 and come into operation on the day of publication.

**Amendment of the Financial Services (Capital Adequacy of Credit Institutions) Regulations 2007**

2. The Financial Services (Capital Adequacy of Credit Institutions) Regulations 2007 are amended as follows–

(a) in regulation 2, after the definition “discretionary pension benefits” insert the following definition–

““EBA” means the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending

Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.”;

(b) after regulation 12A(5) insert the following subregulation–

“(6) The Commissioner shall ensure that instruments to which this regulation applies provide for principal, unpaid interest or dividend to be such as will absorb losses and not hinder the recapitalisation of the credit institution concerned, through appropriate mechanisms as developed by the EBA.”;

(c) for regulation 22(3) substitute the following subregulation–

“(3) The reports required to be submitted to the Commissioner under subregulation (2) shall, with effect from 31 December 2012, be in such form and shall be submitted with such frequency and on such dates as the technical standards developed by the EBA pursuant to Article 75(2) of the recast Directive require.”;

(d) for regulation 63(3) substitute the following subregulation–

“(3) The reports required under subregulations (1) and (2) shall be submitted to the Commissioner at least twice a year but with effect from 31 December 2012 such reports, be in such form and shall be submitted with such frequency and on such dates as the technical standards developed by the EBA pursuant to Article 110(2) of the recast Directive require.”;

(e) after regulation 64(4) insert the following subregulation–

“(4A) The Minister may, by legal notice in the Gazette, set a limit lower than the EUR 150 million referred to in subregulations (2) and (3) and where the Minister does so, he shall ensure that the European Commission and the EBA are informed.”.

Dated 22nd November, 2012.

G H LICUDI QC,  
For the Government.

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**EXPLANATORY MEMORANDUM**

These Regulations transpose part of Article 9 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)