

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3965 of 22 November, 2012

LEGAL NOTICE NO. OF 178 2012.

FINANCIAL SERVICES (BANKING) ACT

FINANCIAL SERVICES (CONSOLIDATED SUPERVISION 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 (Consolidated Supervision of Credit Institutions) (Amendment) Regulations 2012 and come into operation on publication.

Amendment of the Financial Services (Consolidated Supervision of Credit Institutions) Regulations 2007.

2.(1) The Financial Services (Consolidated Supervision of Credit Institutions) Regulations 2007 are amended in accordance with the provisions of this regulation.

(2) In regulation 2 after the definition “asset management company” insert the 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;

“ESRB” means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;”.

(3) In regulation 4(3) after the words “The European Commission” insert the words “and the EBA”.

(4) After regulation 6 insert the following regulations–

“Consolidating supervisor’s duties.

6A.(1) In addition to any other duties provided for in these Regulations, the Commissioner, where he is the EEA consolidating supervisor, shall carry out the following duties–

- (a) coordination of the gathering and dissemination of relevant or essential information in going-concern and emergency situations; and
- (b) planning and coordination of supervisory activities in going-concern situations, including in relation to the activities referred to in Articles 123, 124, 136, in Chapter 5 and in Annex V of the recast Directive, in cooperation with the competent authorities involved;
- (c) planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with central banks, in preparation for and during emergency situations, including adverse developments in credit institutions or in financial markets using, where possible, existing defined channels of communication for facilitating crisis management.

(2) In the event that the EEA consolidating supervisor fails to carry out the duties referred to in subregulation (1) or where the competent authorities do not cooperate with the EEA

consolidating supervisor to the extent required in carrying out the duties in subregulation (1), any of the competent authorities concerned may refer the matter to EBA, which may act in accordance with Article 19 of Regulation (EU) No 1093/2010.

- (3) The planning and coordination of supervisory activities referred to in subregulation (1)(c) includes exceptional measures referred to in Article 132(3)(b) of the recast Directive, the preparation of joint assessments, the implementation of contingency plans and communication to the public.

Cooperation between competent authorities.

- 6B.(1) In the case of applications for the permissions referred to in Article 84(1), Article 87(9) and Article 105 and in Part 6 of Annex III of the recast Directive respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the competent authorities shall work together, in full consultation, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.
- (2) An application under subregulation (1) shall be submitted only to the competent authority referred to in regulation 6A.
- (3) The competent authorities shall do everything within their power to reach a joint decision on the application within 6 months and that joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the applicant by the competent authority referred to in regulation 6A.
- (4) The period referred to in subregulation (3) shall begin on the date of receipt of the complete application by the competent authority referred to in regulation 6A, who shall forward the complete application to the other competent authorities without delay.

- (5) In the absence of a joint decision between the competent authorities within 6 months, the competent authority referred to in regulation 6A shall—
- (a) make its own decision on the application and such decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other competent authorities expressed during the 6 months period; and
 - (b) provide the applicant and the other competent authorities with that decision.
- (6) If, at the end of the 6 month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, and the Commissioner is the EEA consolidating supervisor, he shall defer his decision and await any decision that EBA may take and he shall take his decision in conformity with the decision of EBA.
- (7) The 6 month period shall be deemed the conciliation period within the meaning of Regulation (EU) No 1093/2010.
- (8) The matter shall not be referred to EBA after the end of the 6 month period or after a joint decision has been reached.
- (9) The decisions referred to in subregulations (3) and (5) shall be recognised as determinative and applied by the Commissioner.

Joint decisions.

6C.(1) The EEA consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company shall do everything within their power to reach a joint decision on the application of Articles 123 and 124 of the recast Directive to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile and the required level of own funds for the application of Article 136(2) of the recast Directive to

each entity within the banking group and on a consolidated basis.

- (2) The joint decision shall be reached within 4 months after submission by the consolidating supervisor of a report containing the risk assessment of the group in accordance with Articles 123 and 124 of the recast Directive to the other relevant competent authorities and the joint decision shall also duly consider the risk assessment of subsidiaries performed by relevant competent authorities in accordance with Articles 123 and 124 of that Directive.
- (3) The joint decision shall be set out in a document containing the fully reasoned decision which shall be provided to the EU parent credit institution by the EEA consolidating supervisor.
- (4) In the event of disagreement, the EEA consolidating supervisor shall at the request of any of the other competent authorities concerned consult EBA but the EEA consolidating supervisor may also consult EBA on its own initiative.
- (5) In the absence of such a joint decision between the competent authorities within 4 months, a decision on the application of Articles 123 and 124 and Article 136(2) of the recast Directive shall be taken on a consolidated basis by the EEA consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities but if at the end of the 4 month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the EEA consolidating supervisor shall defer his decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take his decision in conformity with the decision of EBA.
- (6) The 4 month period referred to in subregulation (5) shall be deemed the conciliation period within the meaning of Regulation (EU) No 1093/2010.
- (7) The matter shall not be referred to EBA after the end of the 4 month period or after a joint decision has been reached.

- (8) The decision on the application of Articles 123 and 124 and Article 136(2) of the recast Directive shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the EEA consolidating supervisor.
- (9) If, at the end of the 4 month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA.
- (10) The 4 month period shall be deemed the conciliation period within the meaning of Regulation (EU) No 1093/2010.
- (11) The matter shall not be referred to EBA after the end of the 4 month period or after a joint decision has been reached.
- (12) The decisions shall be set out in a document containing the fully reasoned decisions and shall take into account the risk assessment, views and reservations of the other competent authorities expressed during the 4 month period and the document shall be provided by the EEA consolidating supervisor to all competent authorities concerned and to the EU parent credit institution.
- (13) Where EBA has been consulted, all the competent authorities shall consider its advice, and explain any significant deviation therefrom.
- (14) The joint decision referred to in subregulation (1) and the decisions taken by the competent authorities in the absence of a joint decision shall be recognised as determinative and shall be applied by the Commissioner.
- (15) The joint decision referred to in subregulation (1) and any decision taken in the absence of a joint decision in accordance with subregulation (5) and (6), shall be updated on an annual

basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company makes a written and fully reasoned request to the EEA consolidating supervisor to update the decision on the application of Article 136(2) of the recast Directive, in the latter case, the update may be addressed on a bilateral basis between the EEA consolidating supervisor and the competent authority making the request.”.

(5) After regulation 8(2) insert the following subregulation-

“(2A) The competent authorities shall cooperate with EBA for the purposes of these Regulations and the recast Directive in accordance with Regulation (EU) No 1093/2010 and the competent authorities shall provide EBA with all information necessary to carry out its duties under the recast Directive and under Regulation (EU) No 1093/2010, in accordance with Article 35 of that Regulation.”.

(6) In regulation 12(5) after the words “to the other competent authorities” insert the words “, EBA and the European Commission”.

(7) After regulation 12 insert the following regulations-

“Coordination and cooperation agreements.

12A.(1) The EEA consolidating supervisor shall establish written coordination and cooperation arrangements with the other competent authorities in order to facilitate and establish effective supervision.

(2) The competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with the recast Directive, and EBA shall be kept informed of the existence and content of such agreements.

Exchange of information – emergency.

- 12B.(1) Where an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets arises, which potentially jeopardises the market liquidity and the stability of the financial system in an EEA State where entities of a group have been authorised or where significant branches (referred to in Article 42a of the recast Directive) are established, the EEA consolidating supervisor shall, subject to Chapter 1, Section 2 (*Exchange of information and professional secrecy*) of the recast Directive, alert as soon as is practicable, EBA, ESRB and the authorities referred to in the fourth subparagraph of Article 49 and in Article 50 and shall communicate all information essential for the pursuance of their tasks.
- (2) The obligations set out in subregulation (1) shall apply to all competent authorities under Articles 125 and 126 of the recast Directive and to the competent authority identified under Article 129(1) of that Directive.
- (3) If the authority referred to in the fourth paragraph of Article 49 of the recast Directive becomes aware of a situation described in subregulation (1), it shall alert as soon as is practicable the competent authorities referred to in Articles 125 and 126 of the recast Directive, and EBA.
- (4) Where possible, the competent authority and the authority referred to in the fourth paragraph of Article 49 shall use existing defined channels of communication.
- (5) Where the Commissioner is the competent authority responsible for supervision on a consolidated basis the Commissioner shall, when he needs information which has already been given to another competent authority, contact this authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.”
- (8) In regulation 13-
- (a) after subregulation (1) insert the following subregulation–

“(1A) In carrying out the verification referred to in the subregulation (1) the Commissioner shall take into account any guidance issued pursuant to Article 143(2) of the recast Directive and prior to adopting a decision the Commissioner shall consult EBA.”.

(b) after subregulation (2) insert the following subregulation–

“(2A) The supervisory techniques referred to in subregulation (2) shall be designed to achieve the objectives of consolidated supervision as defined in these Regulations and shall be notified to the other competent authorities involved, EBA and the European Commission.”.

(9) In regulation 14–

(a) in subregulation (3) after the words “framework for the Commissioner” insert the words “, EBA”;

(b) in subregulation (3)(a) after the words “exchanging information” insert the words “among themselves and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010”;

(c) in subregulation (5) for “7” substitute “12A”;

(d) in subregulation 10–

(i) for the words “the Committee of European Banking Supervisors” substitute “EBA”;and

(ii) for the words and “that Committee” substitute “EBA”.

(10) After regulation 14 insert the following regulation-

“Referral to EBA.

15. The Commissioner may refer to EBA situations where–

(a) a competent authority has not communicated essential information; or

- (b) a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.”.

Dated 22nd November, 2012.

G H LICUDI QC,
Minister responsible for financial services,
For and on behalf of the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose part of article 9 of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.