

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**
No. 4006 of 6 June, 2013

LEGAL NOTICE NO. 82 OF 2013.

FINANCIAL SERVICES (BANKING) ACT

**FINANCIAL SERVICES (CAPITAL ADEQUACY OF CREDIT
INSTITUTIONS) (AMENDMENT)
REGULATIONS 2013**

In the exercise of the powers conferred on him by section 79 of the Financial Services (Banking) Act, and in order to transpose, in part, into the law of Gibraltar Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards supplementary supervision of financial entities in a financial conglomerate, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Financial Services (Capital Adequacy of Credit Institutions) (Amendment) Regulations 2013 and come into operation on 10 June 2013.

Amendments to Financial Services (Capital Adequacy of Credit Institutions) Regulations 2007.

2. The Financial Services (Capital Adequacy of Credit Institutions) Regulations 2007 are amended in accordance with the provisions of these Regulations.

Amendments to regulation 2.

3. Regulation 2(1) is amended as follows—

(a) after the definition “dilution risk” insert the following definition—

““Directive 2002/87/EC” means 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, as the same may be amended from time to time;”;

- (b) in the definition “European consolidating supervisor” after the words “European parent financial holding companies” insert the words “or European parent mixed financial holding companies”;
- (c) in the definition “European parent credit institution” after the words “financial holding company” insert the words “or mixed financial holding company”;
- (d) for the definition “European parent financial holding company” substitute the following definition—

““European parent financial holding company” means a parent financial holding company in an EEA State which is not a subsidiary of a credit institution authorised in any EEA State or of another financial holding company or mixed financial holding company set up in any EEA State;”;

- (e) after the definition “European parent investment firm” insert the following definition—

““European parent mixed financial holding company” means a parent mixed financial holding company in an EEA State which is not a subsidiary of a credit institution authorised in any EEA State or of another financial holding company or mixed financial holding company established in an EEA State;”;

- (f) after the definition “loss given default” insert the following definition—

““mixed financial holding company” means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC;”;

- (g) in the definition “parent credit institution in an EEA State” after the words “financial holding company” insert the words “or mixed financial holding company”;
- (h) in the definition “parent financial holding company in an EEA State” after the words “or of a financial holding company” insert the words “or mixed financial holding company”; and
- (i) after the definition “parent financial holding company in an EEA State” insert the following definition–

““parent mixed financial holding company in an EEA State” means a mixed financial holding company which is not itself a subsidiary of a credit institution authorised in the same EEA State, or of a financial holding company or mixed financial holding company set up in the same EEA State;”.

Amendment to regulation 17.

- 4. In regulation 17(3) after the words “financial holding company” insert the words “or a mixed financial holding company”.

Amendments to regulation 19.

- 5. In regulation 19 for sub-regulations (2) and (3) substitute the following–
 - “(2) Without prejudice to regulations 16 to 18, a credit institution which is controlled by a parent financial holding company in an EEA State or a parent mixed financial holding company in an EEA State shall comply to the extent and in the manner prescribed in Article 133 of the recast Directive with the obligations laid down in regulations 56 to 59, 63 to 70, 75, 76 and 79 on the basis of the consolidated financial situation of that financial holding company or mixed financial holding company.
 - (3) Where more than one credit institution is controlled by a parent financial holding company in an EEA State or by a parent mixed financial holding company in an EEA State, sub-regulation (1) shall apply only to the credit institution to which

supervision on a consolidated basis applies, in accordance with Articles 125 and 126 of the recast Directive.”.

Amendments to regulation 20.

6. Regulation 20 is amended as follows—

(a) for sub-regulation (3) substitute the following—

“(3) A credit institution which is controlled by a European parent financial holding company or by a European parent mixed financial holding company shall comply with the obligations laid down in regulations 87 to 90 on the basis of the consolidated financial situation of that financial holding company or that mixed financial holding company.”;

(b) in sub-regulation (4) after the words “European parent financial holding company” insert the words “or a European parent mixed financial holding company”; and

(c) after sub-regulation (5) insert the following—

“(6) The Commissioner, where he is the European consolidating supervisor, may, after consulting the other competent authorities responsible for the supervision of subsidiaries, apply only the relevant provisions of Directive 2002/87/EC to a mixed financial holding company which is subject to equivalent provisions under these Regulations and under Directive 2002/87/EC, in particular in terms of risk based supervision.

(7) The Commissioner, where he is the European consolidating supervisor, may, in agreement with the group supervisor in the insurance sector, apply only the provision of these Regulations relating to the most significant financial sector as determined under Article 3(2) of Directive 2002/87/EC to a mixed financial holding company which is subject to equivalent provisions under these Regulations and under Directive 2009/138, in particular in terms of risk based supervision.

- (8) The Commissioner, where he is the European consolidating supervisor, shall inform the EBA and the European Insurance and Occupational Pensions Authority established by EU Regulation 1094/2010, of the decisions taken under sub-regulations (6) and (7).”.

Amendment to regulation 21.

7. In regulation 21(3) after the words “if it is a financial holding company” insert the words “or a mixed financial holding company”.

Amendment to regulation 30.

8. In regulation 30(10)(a) after the words “a financial holding company,” insert the words “mixed financial holding company,”.

Amendments to regulation 34.

9. Regulation 34 is amended as follows—

- (a) in sub-regulation (3) after the words “European parent financial holding company and its subsidiaries” insert the words “or a European parent mixed financial holding company and its subsidiaries”; and
- (b) in sub-regulation (7) after the words “or by the European parent financial holding company and its subsidiaries” insert the words “or by the European parent mixed financial holding company and its subsidiaries,”.

Amendment to regulation 39.

10. For regulation 39(1)(e) substitute the following paragraph—

- “(e) exposures to a counter party which is the credit institution’s parent undertaking, its subsidiary or a subsidiary of its parent undertaking provided that the counter party is a credit or financial institution, an investment firm or a financial holding company, mixed financial holding company, asset management company or ancillary services undertaking subject to appropriate prudential requirements or an

undertaking linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC and exposures between credit institutions which meet the requirements set out in regulation 30(12);”.

Amendments to regulation 55.

11. Regulation 55 is amended as follows—

- (a) in sub-regulation (3)-
 - (i) after the words “or by the subsidiaries of a European parent financial holding company” insert the words “or a European parent mixed financial holding company”; and
 - (ii) after the words “regulations 81 and 82” insert the words “, the application shall include the elements listed in Part 3 of Schedule 10”; and
- (b) in sub-regulation (4) after the words “or the subsidiaries of a European parent financial holding company” insert the words “or a European parent mixed financial holding company”.

Amendments to regulation 78A.

12. Regulation 78A is amended by substituting sub-regulations (5) and (6) with the following sub-regulations—

- “(5) Where a European parent credit institution, a European parent financial holding company or a European parent mixed financial holding company, or one of its subsidiaries—
 - (a) is an originator or a sponsor; and
 - (b) securitises exposures from several credit institutions, investment firms or other financial institutions which are included in the scope of consolidated supervision,it may satisfy the requirement referred to in sub-regulations (2) to (4) on the basis of the consolidated situation of the related European parent credit institution, European parent financial

holding company or European parent mixed financial holding company.

- (6) Sub-regulation (5) shall apply only where credit institutions, investment firms or financial institutions which created the securitised exposures have committed themselves to adhere to the requirements set out in sub-regulations (16) to (19) and deliver, in a timely manner, to the originator or sponsor and to the European parent credit institution, the European parent financial holding company or the European parent mixed financial holding company the information needed to satisfy the requirements in sub-regulations (20) to (22).”.

Amendment to regulation 80.

13. For regulation 80(6) substitute the following—

- “(6) This regulation applies to financial holding companies, mixed activities holding companies and mixed financial holding companies which have their head office in an EEA State.”.

Amendments to regulation 81.

14. Regulation 81 is amended as follows—

- (a) in sub-regulation (3) for the words “, the Commissioner shall consult” substitute the words “or a European parent mixed financial holding company, the Commissioner shall fully consult,”;
- (b) for sub-regulation (9A) substitute the following—

- “(9A) The Commissioner and the competent authorities supervising subsidiaries of a European parent credit institution, a European parent financial holding company or a European parent mixed financial holding company shall do everything within their power to reach a joint decision on the application of regulations 79 and 80 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 regulation 83(2) to each entity within the banking group and on a consolidated basis.”;

(c) for sub-regulation (9E) substitute the following–

“(9E) The decision on the application of regulations 79, 80 and 83(2) shall be taken by the respective competent authorities responsible for the supervision of subsidiaries of European parent credit institutions, European parent financial holding companies or European parent mixed financial holding companies on an individual or sub-consolidated basis after consideration of the views and reservations of the Commissioner.

(9EA) If, at the conclusion of the four month period, any of the competent authorities has referred the matter to the EBA in accordance with Article 19 of EU Regulation No 1093/2010, the competent authorities shall defer their decision and await any decision that the EBA shall take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of the EBA.

(9EB) The four month period referred to in sub-regulation (9EA) shall be deemed the conciliation period within the meaning of EU Regulation No 1093/2010.

(9EC) The matter shall not be referred to the EBA after the end of the four month period or after a joint decision has been reached.”;

(d) for sub-regulation (9I) substitute the following–

“(9I) The joint decision referred to in sub-regulation (9A) and any decision taken in the absence of a joint decision, shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of a European parent credit institution, a European parent financial holding company or a European parent mixed financial holding company makes a written and fully reasoned request to the

Commissioner to update the decision on the application of regulation 83(2).”;

(e) in subregulation (10)–

(i) for paragraph (a) substitute the following–

“(a) identification of the legal structure and the governance and organisational structure of the group, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with section 23(2A) and 25(3) of the Act and Article 73(3) of the recast Directive, as well as identification of the competent authorities of the regulated entities in the group;” and

(ii) paragraph (b) is revoked;

(f) for sub-regulation (11) substitute the following–

“(11) This regulation applies to financial holding companies, mixed activity holding companies and mixed financial holding companies which have their head office in an EEA State.”.

Amendment to regulation 82.

15. For regulation 82(4) substitute the following–

“(4) This regulation applies to financial holding companies, mixed activities holding companies and mixed financial holding companies which have their head office in an EEA State.”.

Amendment to regulation 83.

16. For regulation 83(4) substitute the following–

“(4) This regulation applies to financial holding companies, mixed activity holding companies and mixed financial holding companies which have their head office in an EEA State.”.

Amendment to regulation 87.

17. After regulation 87(5) insert the following—

“(6) A credit institution shall disclose publicly, at the level of the banking group, on an annual basis, either in full or by way of references to equivalent information, a description of their legal structure, and their governance and organisational structure.”.

Amendment to Part 3 of Schedule 10.

18. For paragraph 30, under the heading “3. APPLICATION TO USE AN ADVANCED MEASUREMENT APPROACH ON A GROUP-WIDE BASIS”, of Part 3 of Schedule 10 substitute the following—

“30. When an Advanced Measurement Approach is intended to be used by the European parent credit institution and its subsidiaries, or by the subsidiaries of a European parent financial holding company or a European parent mixed financial holding company, the application shall include a description of the methodology used for allocating operational risk capital between the different entities of the group.”.

Amendment: general.

19. Wherever in the regulations the words “Committee of European Banking Supervisors” appear, substitute the words “European Banking Authority”.

Dated 6th May, 2013.

G H LICUDI QC,
Minister with Responsibility for Financial Services.

EXPLANATORY MEMORANDUM

These Regulations partly transpose into the law of Gibraltar Article 3 of Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards supplementary supervision of financial entities in a financial conglomerate.

