

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

LEGAL NOTICE NO. 83 OF 2013.

FINANCIAL SERVICES (BANKING) ACT

**FINANCIAL SERVICES (CONSOLIDATED SUPERVISION 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 (Consolidated Supervision of Credit Institutions) (Amendment) Regulations 2013 and come into operation on 10 June 2013.

Amendments to Financial Services (Consolidated Supervision of Credit Institutions) Regulations 2007.

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

Amendments to regulation 2.

3. Regulation 2 is amended as follows—

- (a) before the definition “ancillary services undertaking” insert the following definition—

““alternative investment fund manager” means a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an undertaking the registered office of

which is in a third country and which would require authorisation under the Directive if its registered office were within the European Union;”;

- (b) for the definition “European consolidating supervisor” substitute the following definition–

““European consolidating supervisor” means the competent authority in an EEA State responsible for the exercise of supervision on a consolidated basis of European parent credit institutions and credit institutions controlled by European parent financial holding companies or European parent mixed financial holding companies;”;

- (c) in the definition “European parent credit institution” for the words “set up” substitute the words “or mixed financial holding company established”;

- (d) for the definition “European parent financial holding company” substitute the following definitions–

““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 established in any EEA State;

“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;”;

- (e) remove and re-insert the definition “financial holding company” immediately prior to the definition “mixed-activity holding company”;

- (f) after the definition “mixed-activity holding company” 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” for the words “set up” substitute the words “or mixed financial holding company established”;
- (h) in the definition “parent financial holding company in an EEA State” for the words “set up” substitute the words “or mixed financial holding company established”; 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 established in the same EEA State;”.

Amendments to regulation 3.

4. Regulation 3 is amended as follows–

- (a) for subregulation (3) substitute the following–

“(3) Where the parent of a licensee is a parent financial holding company in an EEA State, a parent mixed financial holding company in an EEA State, a European parent financial holding company or a European parent mixed financial holding company.”;

- (b) for subregulation (4) substitute the following–

“(4) Where a licensee, and other credit institutions authorised in two or more EEA States, have the same parent financial holding company in an EEA State, the same parent mixed financial holding company in an EEA State, the same European parent financial holding company or the same European parent mixed financial holding company and that financial holding

company or mixed financial holding company has its head office in Gibraltar.”;

- (c) in subregulation (5) after the words “financial holding company” insert the words “or mixed financial holding company”; and
- (d) in subregulation (6) after the words “the same financial holding company” insert the words “or the same mixed financial holding company” and after the words “in which the financial holding company” insert the words “or the mixed financial holding company”.

Amendments to regulation 4.

5. Regulation 4 is amended as follows—

- (a) in subregulation (2) after the words “European parent financial holding company,” insert the words “European parent mixed financial holding company”; and
- (b) in subregulation (3) after the words “European Commission” insert the words “and the EBA”.

Amendments to regulation 5.

6. Regulation 5 is amended as follows—

- (a) in the title after the words “financial holding companies” insert the words “and mixed financial holding companies”;
- (b) in subregulation (2) after the words “financial holding companies” insert the words “or mixed financial holding companies”;
- (c) in subregulation (3) after the words “financial holding company” insert the words “or mixed financial holding company” on both occasions those words appear; and
- (d) for subregulation (4) substitute the following—
 - “(4) The Commissioner may request the subsidiaries of a credit institution, a financial holding company or a

mixed financial holding company, which are not included in the consolidated supervision, for the information referred to in regulation 10 which shall be verified in accordance with that regulation.”.

Amendment to regulation 8.

7. After regulation 8(5) insert the following—

“(6) Sub-regulation (1) includes, in particular, a requirement to cooperate in accordance with Article 140 of Directive 2006/48/EC as amended by Article 3(23) of Directive 2011/89/EU.”.

Amendment to regulation 10.

8. In regulation 10(2), after the words “ancillary services undertakings” insert the words “, alternative investment fund managers.”.

Amendments to regulation 12.

9. Regulation 12 is amended as follows—

(a) in sub-regulation (3) after the words “financial holding companies” insert the words “, mixed financial holding companies”;

(b) for sub-regulation (5) substitute the following—

“(5) Where the Commissioner is the European consolidating supervisor, he shall establish a list of the financial holding companies or mixed financial holding companies which have credit institutions as subsidiaries included in the consolidated supervision and shall communicate that list to the competent authorities of EEA States, to the EBA and to the European Commission.”;

(c) for sub-regulation (6) substitute the following—

“(6) The Commissioner shall, when so requested by a competent authority of an EEA State, verify information concerning a credit institution, a financial

holding company, a financial institution, an ancillary services undertaking, a mixed activity holding company, a mixed financial holding company, a subsidiary mentioned in regulation 10 or a subsidiary mentioned in regulation 5(3) established in Gibraltar.

- (7) Upon receipt of such a request, the Commissioner shall, within the framework of his competence, act upon it either by carrying out the verification himself, by allowing the competent authority who made the request to carry it out, or by allowing an auditor or expert to carry it out.
- (8) The competent authority which made the request may participate in the verification when it does not carry out the verification itself.
- (9) Where the Commissioner is the European consolidating supervisor, he shall provide the competent authorities concerned and the EBA with all information regarding the banking group in accordance with section 23(2A) and 25(3) of the Act and Article 73(3) of the recast Directive, in particular regarding the legal structure and the governance and organisational structure of the group.”.

Amendments to regulation 13.

10. Regulation 13 is amended as follows—

- (a) in sub-regulation 13(1) for the words “or a financial holding company” substitute the words “, a financial holding company or a mixed financial holding company”; and
- (b) for sub-regulation (3) substitute the following—
 - “(3) The Commissioner may, in particular, require the establishment of a financial holding company or a mixed financial holding company which has its head office in an EEA State, and may apply the provisions on consolidated supervision to the consolidated position of that financial holding company or mixed financial holding company.”.

Amendment to regulation 14.

11. In sub-regulation 14(6)–

- (a) for the words “or a European parent financial holding company” substitute the words “, a European parent financial holding company or a European parent mixed financial holding company”; and
- (b) for the words “to confidentiality requirements within the EEA” substitute the words “to the confidentiality requirements in Articles 44 to 52 of the recast Directive”.

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.

