

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4006 of 6 June, 2013

LEGAL NOTICE NO. 84 OF 2013.

**FINANCIAL SERVICES (INVESTMENT AND FIDUCIARY
SERVICES) ACT**

**FINANCIAL CONGLOMERATES (AMENDMENT)
REGULATIONS 2013**

In exercise of the powers conferred upon him by section 53 of the Financial Services (Investment and Fiduciary Services) 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 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 Conglomerates (Amendment) Regulations 2013 and come into operation on 10 June 2013.

Amendments to Financial Conglomerates Regulations 2012.

2. The Financial Conglomerates Regulations 2012 are amended in accordance with the provisions of these Regulations.

Amendments to regulation 2.

3. Regulation 2 is amended as follows—

(a) after the definition “Act” insert the following—

““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 outside the European Union and which would require authorisation under that Directive if it had its registered office within the European Union;”;

- (b) for the definition “asset management company” substitute the following—

““asset management company” means a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC or an undertaking the registered office of which is outside the European Union and which would require authorisation under that Directive if it had its registered office within the European Union;”;

- (c) for the definition “close links” substitute the following—

““close links” means a situation in which two or more persons are linked by control or participation, or a situation in which two or more persons are permanently linked to the same person by a control relationship;”;

- (d) for paragraph (b) of the definition “competent authorities” substitute the following—

“(b) in the case of an EEA state, means the national authorities which are empowered by law or regulation to supervise credit institutions, insurance undertakings, reinsurance undertakings, investment firms, asset management companies or alternative investment fund managers, whether on an individual or group-wide basis;”;

- (e) after the definition “competent authorities” insert the following—

““control” means the relationship between a parent undertaking and a subsidiary undertaking as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between persons and an undertaking;”;

- (f) for the definition “credit institution” substitute the following—

““credit institution” means a credit institution within the meaning of Article 4(1) of Directive 2006/48/EC;”;

- (g) for the definition “financial conglomerate” substitute the following—

““financial conglomerate” means a group or subgroup, where a regulated entity is at the head of the group or subgroup, or where at least one of the subsidiaries in that group or subgroup is a regulated entity, and which meets the following conditions—

- (a) where there is a regulated entity at the head of the group or subgroup—
- (i) that entity is a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
 - (ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and
 - (iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of regulation 3(2) to (5); or
- (b) where there is no regulated entity at the head of the group or subgroup—
- (i) the group or subgroup’s activities occur mainly in the financial sector within the meaning of regulation 3(1);

- (ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and
 - (iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of regulation 3(2) to (5);”;
- (h) for the definition “financial sector” substitute the following-
- ““financial sector” means a sector composed of one or more of the following entities-
- (a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 4(1), (5) or (21) of Directive 2006/48/EC, (referred to herein as “the banking sector”);
 - (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 13(1), (2), (4) or (5) or of Article 212(1)(f) of Directive 2009/138/EC, (referred to herein as “the insurance sector”); and
 - (c) an investment firm within the meaning of Article 3(1)(b) of Directive 2006/49/EC, (referred to herein as “the investment services sector”);”;
- (i) at the end of the definition of “group” insert “, including any subgroup thereof;
- (j) for the definition “insurance undertaking” substitute the following-

““insurance undertaking” means an insurance undertaking within the meaning of Article 13(1), (2) or (3) of Directive 2009/138/EC;”;

(k) in the definition “intra-group transaction” delete “either”;

(l) for the definition “investment firm” substitute the following—

““investment firm” means an investment firm within the meaning of point 1 of Article 4(1) of Directive 2004/39/EC, including the undertakings referred to in Article 3(1)(d) of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on capital adequacy of investment firms and credit institutions or an undertaking the registered office of which is outside the European Union and which would require authorisation under Directive 2004/39/EC if its registered office were in the European Union;”;

(m) in the definition of “parent undertaking” for “on consolidated accounts and” substitute “on consolidated accounts or”;

(n) for the definition “regulated entity” substitute the following—

““regulated entity” means a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm, an asset management company or an alternative investment fund manager;”;

(o) for the definition “reinsurance undertaking” substitute the following—

““reinsurance undertaking” means a reinsurance undertaking within the meaning of Article 13(4), (5) or (6) of Directive 2009/138/EC or a special purpose vehicle within the meaning of Article 13(26) of Directive 2009/138/EC;”;

(p) in paragraph (a) of the definition “relevant competent authorities” insert “, in particular of the ultimate parent undertaking of a sector” after “financial conglomerate”;

- (q) for paragraph (c) of the definition “relevant competent authorities” substitute the following—

“(c) where appropriate, other competent authorities relevant to the opinion of the authorities referred to in paragraphs (a) and (b);”; and

- (r) for the definition “sectoral rules” substitute the following—

““sectoral rules” means European Union legislation relating to the prudential supervision of regulated entities, in particular Directives 2004/39/EC, 2006/48/EC, 2006/49/EC and 2009/138/EC;”;

- (s) in the definition “subsidiary undertaking” for “Directive 83/349/EEC and” substitute “Directive 83/349/EEC or”.

Amendments to regulation 3.

4. Regulation 3 is amended as follows—

- (a) for subregulation (1) substitute—

“(1) For the purpose of determining whether the activities of a group mainly occur in the financial sector within the meaning in paragraph (a)(i) of the definition “financial conglomerate” in regulation 2, the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole shall exceed 40%.”;

- (b) for subregulation (2) substitute—

“(2) For the purpose of determining whether activities in different financial sectors are significant within the meaning in paragraph (a)(iii) or (b)(iii) of the definition “financial conglomerate” in regulation 2, for each financial sector the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency

requirements of the financial sector entities in the group should exceed 10%.”;

(c) after subregulation (4) insert the following—

“(4A) Asset management companies and alternative investment fund managers shall be added to the sector to which they belong within the group, and if they do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.”;

(d) for subregulation (5) substitute—

“(5) Cross-sectoral activities shall also be presumed to be significant within the meaning in paragraph (a)(iii) and (b)(iii) of the definition “financial conglomerate” in regulation 2 if the balance sheet total of the smallest financial sector in the group exceeds 6 billion Euro but where the group does not reach the threshold referred to in subregulation (2), the Authority, in agreement with the other relevant competent authorities, may decide not to regard the group as a financial conglomerate, or not to apply the provisions of regulations 7, 8 or 9, if they are of the opinion that the inclusion of the group in the scope of these Regulations or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.”;

(e) for subregulation (6) substitute the following—

“(6) Decisions taken in accordance with subregulation (5) shall be notified to the other competent authorities and shall, save in exceptional circumstances, be made public by the competent authorities.”;

(f) after subregulation (6) insert the following—

“(6A) If the group reaches the threshold referred to in subregulation (2), but the smallest sector does not exceed 6 billion Euro, the Authority, in agreement with the other relevant competent authorities may

decide by common agreement not to regard the group as a financial conglomerate, or not to apply regulations 7, 8 or 9, if they are of the opinion that the inclusion of the group in the scope of these Regulations or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

- (6B) Decisions taken in accordance with subsection (6A) shall be notified to other competent authorities and shall, save in exceptional circumstances, be made public by the competent authorities.”;
- (g) in subregulation (7)(a) for “; and” substitute “, unless the entity moved from a Member State to a third country and there is evidence that the entity changed its location in order to avoid regulation;”;
- (h) in subregulation (7)(b)-
- (i) for “(4)” substitute “(4A)”, and
- (ii) for the full stop substitute “; and”;
- (i) after subregulation (7)(b) insert the following—
- “(c) exclude one or more participations in the smaller sector if such participations are decisive for the identification of a financial conglomerate, and are collectively of negligible interest with respect to the objectives of supplementary supervision.”;
- (j) in subregulation (9) for “both” substitute “more” throughout;
- (k) in subregulation (9)(b) for the comma substitute “; and”;
- (l) after subregulation (9)(b) insert the following—
- “(c) total assets under management;” and
- (m) after subregulation (14) insert the following—

- “(15) The Authority shall, on an annual basis, reassess waivers of the application of supplementary supervision and shall review the quantitative indicators set out in this regulation and risk-based assessments applied to financial groups.”.

Amendments to regulation 4.

5. In regulation 4(2)–

- (a) delete “, as necessary,”; and
- (b) insert “and to the Joint Committee” at the end of the subregulation.

Amendment to regulation 5.

6. Regulation 5 is amended as follows–

- (a) at the end of subregulation (2)(b) delete “and”;
- (b) at the end of subregulation (2)(c) insert–
 - “(d) every asset management company; and
 - (e) every alternative investment fund manager.”
- (c) for subregulation (6) substitute the following–
 - “(6) In order to apply such supplementary supervision, at least one of the entities must be a regulated entity and the conditions set out in paragraph (a)(ii) or (b)(ii) and paragraph (a)(iii) or (b)(iii) of the definition “financial conglomerate” in regulation 2 must be met, and the relevant competent authorities shall take their decision, taking into account the objectives of the supplementary supervision as provided for by these Regulations.”.

Amendments to regulation 6.

7. Regulation 6 is amended as follows–

- (a) for subregulation (7) substitute the following–
 - “(7) For the purpose of calculating the capital adequacy requirements referred to in subregulation (2), the following entities shall be included within the scope

of supplementary supervision, in the manner and to the extent provided in Schedule 1–

- (a) a credit institution, a financial institution or an ancillary services undertaking;
 - (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company;
 - (c) an investment firm;
 - (d) a mixed financial holding company.”;
- (b) in subregulation (8) for “Article 54 of Directive 2000/12/EC and Annex I. 1. B of Directive 98/78/EC” substitute “in particular in Articles 133 and 134 of Directive 2006/48/EC and Article 221 of Directive 2009/138/EC”; and
- (c) for subregulation (9) substitute the following–
- “(9) When applying *'Method 2: Deduction and aggregation method'* as set out in Schedule 1, the calculation shall take account of the proportion of the subscribed capital which is directly or indirectly held by the parent undertaking or undertaking which holds a participation in another entity of the group.”.

Amendments to regulation 9.

8. Regulation 9 is amended as follows–

- (a) after subregulation 9(4) insert the following–
 - “(4A) All regulated entities at the level of a financial conglomerate shall either–
 - (a) provide the Authority on a regular basis with details on their legal structure and governance and organisational structure including all regulated entities, non-regulated subsidiaries and significant branches; and

- (b) publicly disclose on an annual basis and either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure.”; and
- (b) in subregulation (5) for “(4)” substitute “(4A)”;
- (c) after subregulation (5) insert the following—
 - “(6) The Authority shall align the application of the supplementary supervision of internal control mechanisms and risk management processes as provided for in this regulation with the supervisory review process as provided for by Article 124 of Directive 2006/48/EC and Article 248 of Directive 2009/138/EC.”.

New regulation 9A.

9. After regulation 9 insert the following—

“Stress testing.

9A. The Authority—

- (a) if appointed as the coordinator, shall ensure appropriate and regular stress testing of financial conglomerates and shall ensure that the results of the stress test are communicated to the Joint Committee; and
- (b) otherwise, shall cooperate fully with stress testing by the coordinator in accordance with Article 9(b) the Directive.”.

Amendments to regulation 11.

10. Regulation 11 is amended as follows—

- (a) in subregulation (6) insert “as provided for by European Union legislative acts,” after “competences and responsibilities”; and
- (b) after subregulation (6) insert the following—

- “(7) The cooperation required under regulations 10 to 16 and the exercise of the functions set out in this regulation and in regulation 12 and, subject to confidentiality requirements and applicable European Union law, the appropriate coordination and cooperation with relevant third-country supervisory authorities where appropriate, shall be fulfilled through colleges, established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC.
- (8) The coordination arrangements referred to in subregulation (2) shall be separately reflected in the written coordination arrangements in place pursuant to Article 131 of Directive 2006/48/EC or Article 248 of Directive 2009/138/EC.
- (9) The coordinator, as Chair of a college established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC, shall decide which other competent authorities participate in a meeting or in any activity of that college.”.

Amendment to regulation 12.

11. For regulation 12(2)(a) substitute the following—

- “(a) identification of the group’s legal structure and the governance and organisational structure, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the financial conglomerate, the holders of qualifying holdings at the ultimate parent level, as well as of the competent authorities of the regulated entities in the group;”.

Amendments to regulation 20.

12. Regulation 20 is amended as follows—

- (a) for the title substitute “**Parent undertakings in a third country**”; and

- (b) in subregulation (6)(b)(ii) at the end insert “in the financial conglomerate headed by that holding company.”.

Amendments to regulation 21.

13. Regulation 21 is amended as follows—

- (a) in subregulation (1) for “this Directive” substitute “the Directive”; and
- (b) after subregulation (2) insert the following—
 - “(3) The Authority, if appointed as the coordinator shall provide the Joint Committee with the information referred to in regulations 9(4) and 12(2)(a).”.

New regulation 22.

14. After regulation 21 insert the following—

“Cooperation with third-country competent authorities.

- 22. Article 39(1) and (2) of Directive 2006/48/EC, Article 10a of Directive 98/78/EC and Article 264 of Directive 2009/138/EC shall apply (with any necessary amendments) to the negotiation of agreements with one or more third countries regarding the means of exercising supplementary supervision of regulated entities in a financial conglomerate.”.

Amendment to Schedule 1.

15. In Schedule 1 for Method 3 and Method 4 substitute the following—

“Method 3: “Combination Method”

The Authority may allow a combination of method 1 and method 2.”

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 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 the supplementary supervision of financial entities in a financial conglomerate.

