

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3965 of 22 November, 2012

LEGAL NOTICE NO. OF 174 2012.

INTERPRETATION AND GENERAL CLAUSES ACT

**FINANCIAL SERVICES (LISTING OF SECURITIES) ACT 2006
(AMENDMENT NO.2) REGULATIONS 2012**

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act and in order to transpose into the law of Gibraltar Article 7 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), the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Financial Services (Listing of Securities) Act 2006 (Amendment No.2) Regulations 2012 and come into operation on the day of publication.

Amendment of the Financial Services (Listing of Securities) Act 2006.

2.(1) The Financial Services (Listing of Securities) Act 2006 is amended in accordance with the provisions of this regulation.

(2) In section 2—

- (a) at the end of the definition “the Directive” insert the words “, as the same may be amended from time to time”;
- (b) after the definition “the Directive” insert the definitions—

““ESMA” means the European Securities and Markets Authority established by the ESMA Regulation;

“ESMA Regulation” means Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/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;”;

- (c) in the definition “the regulatory authority” for the words “in relation to a company incorporated under the law of Gibraltar, means such body as may be designated as such by the Minister by notice in the Gazette” substitute the words “shall be construed in accordance with section 28”.

- (3) For section 27(1)(b) substitute the following paragraph–

“(b) the regulatory authority shall inform ESMA of any exemption granted pursuant to paragraph (a).”.

- (4) Section 28 is amended as follows–

- (a) in subsection (1)–

- (i) immediately preceding paragraph (a) insert the following paragraphs–

“(aa) subject to paragraph (ac) the competent authority designated under the Prospectuses Act 2005-

(i) shall be the central competent administrative authority and in this Act shall be referred to as the “regulatory authority”; and

(ii) shall be responsible for carrying out the obligations provided for in this Act and for

ensuring that the provisions adopted pursuant to this Act are applied;

- (ab) the Minister shall ensure that the Commission and ESMA are informed of the designation pursuant to paragraph (aa);
- (ac) the Minister may, for the purpose of subsection (3)(h) designate a competent authority other than the regulatory authority;”

(b) for subsection (2) substitute the following subsection–

“(2) The Minister shall ensure that following are informed of any arrangements entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations, namely the European Commission, ESMA (in accordance with Article 28(4) of the ESMA Regulation) and the competent authorities of the Member States.”.

(5) In section 29 for subsections (2) and (3) substitute the following subsections–

- “(2) In the event that in Gibraltar there is more than one competent authority, the competent authorities shall cooperate with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers, whether under this Act or pursuant to the Directive, and the competent authorities shall render assistance to the competent authorities of the Member States.
- (3) The competent authorities may refer to ESMA where a request for cooperation has been rejected or has not been acted upon within a reasonable time.
- (4) The competent authorities shall cooperate with ESMA for the purposes of this Act or the Directive, in accordance with the ESMA Regulation.
- (5) The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties under the

Directive and under the ESMA Regulation, in accordance with Article 35 of that Regulation.

- (6) Subsection (1) shall not prevent the competent authorities from exchanging confidential information with, or from transmitting information to, other competent authorities, ESMA and ESRB and information thus exchanged shall be covered by the obligation of secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject.
 - (7) The Government may conclude cooperation agreements providing for the exchange of information with the competent authorities or bodies of third countries enabled by their respective legislation to carry out any tasks under this Act in accordance with section 28, and ESMA shall be notified of any such agreements.
 - (8) Cooperation agreements to which subsection (7) refer are subject to guarantees of professional secrecy at least equivalent to those referred to in this section and any information exchanged thereunder shall be intended for the performance of the supervisory task of the authorities or bodies mentioned.
 - (9) Where information originates in a Member State, it shall not be disclosed pursuant to an agreement to which subsection (7) refers without the express agreement of the competent authorities which disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.”.
- (6) In section 30–
- (a) at the end of subsection (1) insert the words “and to ESMA”;
 - (b) in subsection (3) for the words “the Commission is” substitute the words “the Commission and ESMA are”.

Dated 22nd November, 2012.

G H LICUDI QC,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose Article 7 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).

The Regulations amend the Financial Services (Listing of Securities) Act 2006 in order to supplement provisions dealing with cooperation with the European Securities and Markets Authority and with the competent authorities of other States.