

Financial Services (Auditors)

FINANCIAL SERVICES (AUDITORS) REGULATIONS 2010

Subsidiary Legislation made under s. 5, 20, 21, 22, 30, 40, 42, 46 and 51.

2009-18
Repealed
Subsidiary
2010/048

FINANCIAL SERVICES (AUDITORS) REGULATIONS 2010

Repealed by LN.2020/028 as from 15.1.2020

(LN. 2010/048)

Commencement **18.3.2010**

| Amending enactments | Relevant current provisions | Commencement date |
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EU Legislation/International Agreements involved:

ARRANGEMENT OF REGULATIONS.

Regulation

1. Title.

PART I MISCELLANEOUS AND GENERAL

2. Withdrawal of approval: Good Repute.

3. Register.

4. Code of ethics.

5. Independence and objectivity.

6. *Omitted.*

7. *Omitted.*

8. Non-EEA Auditors and audit entities.

PART II SUPERVISION BY THE COMPETENT AUTHORITY

9. Interpretation of Part.

10. Power to obtain information and require the production of documents.

11. Application of regulation 10 in relation to home competent authorities.

12. Inspections.

2009-18

Repealed
Subsidiary
2010/048

Financial Services (Auditors)

FINANCIAL SERVICES (AUDITORS) REGULATIONS 2010

13. Directions.
14. Investigations on behalf of the competent authority.

PART III **FINAL PROVISIONS**

15. *Omitted.*

In exercise of the powers conferred upon on me by sections 5, 20, 21, 22, 30, 40, 42, 46 and 51 of the Financial Services (Auditors) Act 2009, I have made the following Regulations—

Title.

1. These Regulations may be cited as the Financial Services (Auditors) Regulations 2010.

PART I MISCELLANEOUS AND GENERAL

Withdrawal of approval: Good Repute.

2.(1) Where section 5(2) applies, the competent authority shall grant the statutory auditor or audit firm concerned up to 30 days for the purpose of meeting the requirement of good repute or fulfilling the conditions set out in sections 3(3)(b) and (c).

(2) Subject to sub-regulation (3), the competent authority shall not withdraw approval of a statutory auditor or an audit firm pursuant to section 5 whilst time granted under sub-regulation (1) is still current.

(3) Sub-regulation (2) shall not apply in any case where the Minister certifies that the public interest of Gibraltar requires the competent authority to withdraw approval of a statutory auditor or an audit firm immediately, or to allow a shorter period of time than 30 days to meet the requirement of good repute or fulfilling the conditions set out in sections 3(3)(b) and (c).

Register.

3.(1) Information entered in the public register pursuant to section 20 may be in any official language of the European Union.

(2) When information is entered in the register in any official language of the European Union other than English, it shall be accompanied by a translation into English by a translator approved by the competent authority for the purpose.

Code of ethics.

4. The principles of professional ethics referred to in section 21 are those set out in the Code of Ethics for Professional Accountants, published by the

International Ethics Standards Board for Accountants*, and as amended from time to time.

Independence and objectivity.

5. In accordance with section 22(6), section 290 of the Code of Ethics for Professional Accountants, as referred to in regulation 4, shall have effect for all purposes connected with the operation of section 22(3).

6. *Omitted.*

7. *Omitted*

Non-EEA Auditors and audit entities.

8. or the purposes of section 46, a registered non-EEA auditor or audit entity is exempted from the quality assurance system set out in the Act if the quality assurance system subject to which that auditor or audit entity is subject is assessed by the competent authority as equivalent to that set out in the Act, in accordance with section 47, and a quality review of the registered non-EEA auditor or audit entity has been carried out during the previous 3 years.

PART II
SUPERVISION BY THE COMPETENT AUTHORITY

Interpretation of Part.

9. In this Part–

“inspector” means the competent authority or a person authorised on the competent authority’s behalf under section 30; and

“relevant person” means any person entered in the Register.

Power to obtain information and require the production of documents.

10.(1) An inspector may by notice in writing served on a relevant person–

- (a) require the relevant person to provide the inspector, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with such

* The Code of Ethics for Professional Accountants can be found at :
<http://web.test.ifac.org/publications/international-ethics-standards-board-for-accountants/code-of-ethics#code-of-ethics-for-professi-1>

information as the inspector may reasonably require for the performance of his or any other inspector's functions under the Act;

- (b) require the relevant person to provide the inspector with a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the inspector has required or could require the relevant person to provide information under paragraph (a);

and the inspector may require such information or report to be in such form as is specified in the notice.

(2) The accountant or other person appointed by a relevant person to make any report required under sub-regulation (1)(b) shall be a person nominated or approved by the competent authority.

(3) An inspector may—

- (a) by notice in writing served on a relevant person require him to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
- (b) authorise an officer, servant or agent of the competent authority (in this section referred to as an “appointee”) on producing evidence of his authority, to require the relevant person to provide the appointee forthwith with such information, or to produce to the appointee forthwith such documents as he may specify,

being such information or documents as the inspector may reasonably require for the performance of his or any other inspector's functions under the Act.

(4) Where, by virtue of sub-regulation (3), an inspector or any appointee has power to require the production of any documents from a relevant person, the inspector or appointee shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom production of any documents is required under this regulation claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(5) Any power under this regulation to require a person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require the person in question or, where that person is an institution, any other person who is a present or a past director, controller or manager of, or is or was at any time employed by or acting as an employee of, that institution, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If it appears to an inspector to be required for the performance of his duties, the inspector may also exercise the powers conferred by sub-regulations (1) and (3) in relation to any body corporate which is or has at any relevant time been—

- (a) a holding company, subsidiary or related company of the relevant person;
- (b) a subsidiary of a holding company of the relevant person;
- (c) a holding company of a subsidiary of the relevant person; or
- (d) an undertaking which is closely linked with the relevant person;

or in relation to a partnership of which the relevant person is or has at any relevant time been a member.

(7) An inspector may by notice in writing served on any person who is or is to be a director, controller or manager of an institution which is a relevant person require him to provide the inspector, within such time as may be specified in the notice, with such information or documents as the inspector may reasonably require for determining whether he is a fit and proper person to hold the position which he holds or is to hold.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this regulation may be used in evidence against him.

Application of regulation 10 in relation to home competent authorities.

11.(1) An inspector may exercise the powers conferred by regulation 10 for the purpose of assisting a relevant person's home competent authority in the performance of any material supervisory functions; and an inspector shall exercise those powers in any case where such an officer is requested to do so by that authority and is satisfied that the request is made for that purpose.

(2) Subject to subsection (3) any reference in regulation 10(1)(a) to an inspector includes a reference to an officer or agent of the relevant home competent authority.

(3) Powers under regulation 10 shall not be exercised by an officer or agent of the relevant competent authority unless a proper request has previously been communicated by that home competent authority to the competent authority.

(4) For the purposes of this regulation the material supervisory functions of the relevant home competent authority are—

- (a) any functions which correspond to those of the competent authority under the Act; and
- (b) any other functions which the home competent authority has in respect of the activities of the relevant person and in respect of which, by virtue of any community obligation, the competent authority may be required to provide information.

Inspections.

12.(1) An inspector may for the purposes of the supervision of any relevant person—

- (a) inspect the premises and the business of that person; and
- (b) require any person appearing to him to be or at any time to have been a director, controller, manager, or agent of that relevant person to produce to the inspector any documents, accounts, and other records that are in that person's possession or control and relate to the business of that relevant person; and
- (c) examine, make copies of, or retain for the purposes of the Act any documents, accounts or other records referred to in paragraph (b); and
- (d) require any person referred to in paragraph (b) to explain to the inspector any matter within his knowledge or belief that relates to the business of the relevant person.

(2) In the case of an institution of the Community an inspector may, with the prior consent of the Minister, exercise the powers conferred by this regulation for the purpose of assisting the institution in the performance of

any function corresponding to those of the competent authority under the Act and an inspector shall exercise those powers in any case where such an officer is requested to do so by the institution and is satisfied that the request is made for that purpose.

(3) The reference in sub-regulation (1) to an inspector shall include a reference to an officer or agent of the relevant supervisory authority of any EEA State and the reference in that subsection to powers of inspection, production, examination and access shall be similarly restricted by the limitations imposed under these Regulations.

Directions.

13.(1) Where—

- (a) a relevant person makes any report orally or in writing to the competent authority; or
- (b) the competent authority believes or suspects on reasonable grounds that the relevant person is likely to be unable to meet any liability or obligation by it to any one or more persons, or is about to suspend any payment due to any person; or
- (c) a relevant person is unable to meet a liability or obligation by it to any one or more persons or does suspend any payment due to any person; or
- (d) the competent authority believes or suspects on reasonable grounds that a relevant person—
 - (i) has contravened any one or more provisions of the Act or any one or more conditions of his approval; or
 - (ii) is carrying on its business in a manner detrimental to the interests of his clients or creditors or any class of clients or creditors; or
- (e) the competent authority or the Minister considers that it is in the public interest to do so,

the competent authority may and in the case of (e) above at the direction of the Minister shall by notice in writing served on the relevant person direct it, at its own expense, to take or refrain from taking any course of action in relation to the conduct of its business that the competent authority specifies in the notice, which notice shall give details of the rights of appeal conferred by the Act.

(2) In particular, but without limitation of the generality of sub-regulation (1), in a notice served under that sub-regulation the competent authority may and at the direction of the Minister shall direct a relevant person, at his own expense—

- (a) to appoint and retain an auditor approved by the competent authority in respect of the approved business to be carried by the relevant person by virtue of the Act; and
- (b) to have his accounts duly audited by such an auditor and to submit the audited accounts together with the auditor's report on those accounts to the competent authority; and
- (c) to appoint a competent person to advise the relevant person on its business or on any specified aspects of its business.

(3) The competent authority may from time to time revoke or vary a direction given under this section in the same manner as it was given, but, in the case of a direction given upon the direction of the Minister, may only do so with the Minister's consent.

(4) Where a relevant person fails to comply with a notice served on it under this regulation directing it to appoint any person specified in either paragraphs (a) or (c) of sub-regulation (2), the competent authority may, and on the direction of the Minister shall as the agent of the relevant person, make such an appointment on such terms and conditions as he thinks fit, and the relevant person shall be bound to the person so appointed on the terms and conditions so determined by the competent authority.

(5) In the winding up of a relevant person in respect of whom any person has been appointed under either sub-regulations (2) or (3), the fees payable by the relevant person to that person shall rank as a preferential debt equally with any other debts that are first charges on the assets of the relevant person.

Investigations on behalf of the competent authority.

14.(1) If it appears to the Minister or to the competent authority desirable to do so in the interests of any client of a relevant person or in order to safeguard the reputation of Gibraltar, he may and at the direction of the Minister shall appoint one or more persons to investigate and report to the competent authority and to the Minister on—

- (a) the nature, conduct or state of the authorised person's business or any particular aspect of it; or

- (b) the ownership or control of the body (in cases where the authorised person is not an individual), and the competent authority shall give written notice of the appointment to the authorised person concerned.

(2) The competent authority or the Minister may also request a person or persons appointed under sub-regulation (1), if it considers it to be appropriate, to further investigate any holding company, subsidiary or related company of a relevant person under investigation or any further holding company, subsidiary or related company of that person.

(3) For the purposes of an investigation commissioned under this regulation a person or persons appointed under sub-regulation (1) shall be regarded as a relevant person for the purposes of exercising all or any of the powers conferred under the Act.

(4) A statement made by a person in compliance with a requirement imposed by virtue of this Part may be used in evidence against them.

(5) A person or persons appointed under sub-regulation (1) shall be regarded as an officer or servant of the competent authority for the purposes of the Act.

PART III
FINAL PROVISIONS

15. *Omitted.*