

**GIBRALTAR REGULATORY AUTHORITY
ACT 2000**

Principal Act

Act. No. 2000-17	<i>Commencement</i>	12.10.2000
	<i>Assent</i>	12.10.2000

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AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF A REGULATORY AUTHORITY IN GIBRALTAR FOR THE PURPOSE OF PERFORMING FUNCTIONS ASSIGNED TO OR CONFERRED ON IT, TO APPOINT A PERSON (TO BE THE CHIEF EXECUTIVE OFFICER OF THAT AUTHORITY) TO CONDUCT THE AFFAIRS, EXERCISE THE POWERS, DISCHARGE THE DUTIES AND PERFORM THE FUNCTIONS OF THAT AUTHORITY, TO GRANT POWERS TO THAT AUTHORITY, TO PROVIDE FOR THE DELEGATION OF FUNCTIONS BY THAT AUTHORITY, THE MEETING OF ITS EXPENSES AND FOR ITS ACCOUNTING AND FOR PURPOSES CONNECTED THEREWITH.

Title and commencement.

1. This Act may be cited as the Gibraltar Regulatory Authority Act 2000.

Interpretation.

2. In this Act, unless the context otherwise requires—

“the Gibraltar Regulatory Authority” means the body established under section 3(1); and

“Minister” means the Chief Minister of the Government.

The Gibraltar Regulatory Authority.

- 3.(1) The Gibraltar Regulatory Authority is established.

(2) The Gibraltar Regulatory Authority shall be a corporation sole and shall perform the functions assigned to or conferred on it by this and any other Act.

(3) The Minister shall, from time to time, by notice in the Gazette appoint a person to be the Chief Executive Officer of the Gibraltar Regulatory Authority who shall, subject to the provisions of this or any other Act, or both, -

- (a) conduct the affairs of the Gibraltar Regulatory Authority; and
- (b) exercise the powers, discharge the duties and perform the functions which may, from time to time, be vested in the Gibraltar Regulatory Authority.

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(4) An appointment under subsection (3) shall be for such a period and subject to such terms and conditions as may be specified in this Act and in the instrument appointing him.

(5) The term of the appointment referred to in subsection (3) shall be established by the Minister at the time of the appointment.

(6) A person appointed under subsection (3) may at any time resign that appointment by notice in writing addressed to the Minister.

(7) Without prejudice to section 8 -

(a) the Minister may terminate any appointment under subsection (3) on the grounds of incapacity or misbehaviour; and

(b) a person appointed under subsection (3) whose term of appointment has terminated is eligible for re-appointment except where the appointment has terminated by virtue of paragraph (a) or where the appointment would have terminated under that paragraph but for his resignation.

(8) In subsection (2) a function may be conferred on the Gibraltar Regulatory Authority pursuant to a power of appointment under any other Act and “conferred” shall be construed accordingly.

Power to appoint a person to act on a temporary basis.

4.(1) If a person appointed under section 3(3) is at any time unable to discharge the functions referred to in that section, then the Minister may appoint another person to perform those functions.

(2) A person appointed under subsection (1) shall be so appointed for such a period and upon such terms as may be specified in this Act and in the instrument appointing him.

Delegation of functions, etc.

5.(1) Without prejudice to section 4, anything authorised or required by or under this or any other Act to be done by the Gibraltar Regulatory Authority may be done by any member of the staff of the Gibraltar Regulatory Authority who is authorised, in writing, generally or specially in that behalf by the Gibraltar Regulatory Authority.

(2) Without prejudice to section 4 and to subsection (1) and subject to subsection (3), (4) and (5), the Gibraltar Regulatory Authority may delegate in writing, to such an extent, for such a period and on such terms and

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conditions as it shall generally or specially authorise, the discharge of any of the functions referred to in section 3(2) to any suitably qualified or competent person or agency.

(3) A delegation of the nature referred to in subsection (2) shall not be valid unless and until the Minister has given his written approval to that effect.

(4) The delegation by the Gibraltar Regulatory Authority of any of the functions referred to in section 3(2) shall not affect the exercise by the Gibraltar Regulatory Authority of those functions.

(5) A delegation of the nature referred to in subsection (2) shall be made only on terms which allow the Gibraltar Regulatory Authority to revoke the delegation -

- (a) in its absolute discretion; or
- (b) upon the direction of the Minister,

and without any liability upon the Gibraltar Regulatory Authority or the Minister or both.

Authentication of documents, etc.

6.(1) The Gibraltar Regulatory Authority shall adopt an official seal for the authentication of documents required for the purposes of its functions.

(2) A document purporting to be an instrument issued by the Gibraltar Regulatory Authority and to be duly executed under the seal referred to in subsection (1) or to be signed by or on behalf of the Gibraltar Regulatory Authority shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

(3) The Gibraltar Regulatory Authority may sue and, subject to section 11, be sued in its own name.

(4) Documents may be served upon the Gibraltar Regulatory Authority by leaving them at, or sending them by registered post to, such office of the Gibraltar Regulatory Authority as may from time to time be prescribed by notice in the Gazette.

Salaries, expenses, etc.

7.(1) There shall be paid from funds appropriated by the Assembly for the purpose-

- (a) to a person appointed under section 3(3),-
 - (i) such salary, pension, gratuity, compensation, expenses and allowances as may be set out in the instrument referred to in section 3(4); and
 - (ii) such other expenses and allowances as the Minister may determine;
- (b) to a person appointed under section 4(1),-
 - (i) such salary, pension, gratuity, compensation, expenses and allowances as may be set out in the instrument referred to in section 4(2); and
 - (ii) such other expenses and allowances as the Minister may determine;
- (c) to such persons as the Gibraltar Regulatory Authority may employ or take on secondment under paragraph (d) of section 9(2),-
 - (i) such salaries, pensions, gratuities, compensation, expenses and allowances as may be set out in the terms and conditions referred to in section 9(3); and
 - (ii) such other expenses and allowances as the Minister may determine;
- (d) to a person or agency to whom functions have been delegated under section 5(2), such sums (if any) as the Gibraltar Regulatory Authority may be liable to pay as a result of such delegation; and
- (e) such other sums as the Gibraltar Regulatory Authority may be liable to pay as a result of the exercise of any one or more of the powers referred to in section 10.

Eligibility and independence.

8.(1) Without prejudice to the generality of subsection (2),-

- (a) a Member of, or the Speaker of, the Assembly shall be disqualified-

- (i) for appointment under section 3(3) or 4(1); and
 - (ii) as a person to whom functions can be delegated under section 5(2); and
- (b) if a person-
- (i) appointed under section 3(3) or 4(1); or
 - (ii) to whom functions have been delegated under section 5(2),

becomes a Member of, or the Speaker of, the Assembly, his appointment or delegation, as the case may be, shall thereupon terminate.

(2) A person –

- (a) appointed under section 3(3) or 4(1); or
- (b) to whom functions have been delegated under section 5(2),

shall not hold a position which is incompatible with the performance in an independent and impartial manner of such functions as he may have to discharge as a result of an appointment under section 3(3) or 4(1) or a delegation under section 5(2) as the case may be.

(3) Subject to –

- (a) subsection (4);
- (b) Community obligations; and
- (c) this and any other Act which may assign to or confer functions on the Gibraltar Regulatory Authority,

the Gibraltar Regulatory Authority shall, in the exercise of those functions, take account of the policy of the Government in respect of those matters to which those functions relate.

(4) When the application of Community obligations or the provisions of an Act, or both, require that a function be exercised by the Gibraltar Regulatory Authority with complete or a degree of independence, then the Gibraltar Regulatory Authority shall only take into account the policy of the Government to the extent that it is lawful to do so.

Powers of the Gibraltar Regulatory Authority.

9.(1) Subject to this or any other Act, the Gibraltar Regulatory Authority shall have power, within the limits of allowances and expenses set by the Assembly, to do all things necessary for or ancillary or reasonably incidental to the carrying out of the functions referred to in section 3(2).

(2) Without prejudice to the generality of subsection (1), the Gibraltar Regulatory Authority may, within the limits of allowances and expenses set by the Assembly,-

- (a) purchase, lease or otherwise acquire and hold any property (real or personal) required for the purposes of the Gibraltar Regulatory Authority and dispose of any such property no longer required for such purposes;
- (b) contract with any person for the supply to, or by, the Gibraltar Regulatory Authority of any goods or services;
- (c) pay expenses properly incurred by the Gibraltar Regulatory Authority;
- (d) employ or take on secondment any persons as the Gibraltar Regulatory Authority may, with the consent of the Chief Secretary, determine are necessary or convenient for the purpose of performing the functions referred to in section 3(2); and
- (e) compile, prepare, print, publish, issue, circulate and distribute whether for payment or otherwise, such papers, leaflets, magazines, periodicals, books and other literary matter as may be conducive to the performance of the functions referred to in section 3(2).

(3) The Gibraltar Regulatory Authority shall, subject to the prior written approval of the Chief Secretary, establish the period, terms and conditions of employment of such persons as may be employed or taken on secondment under paragraph (d) of subsection (2).

Accounts.

10.(1) The Gibraltar Regulatory Authority shall-

- (a) keep proper accounts and other records in relation to its accounts;

- (b) prepare in respect of each financial year a statement of account in such form as the Minister may direct; and
- (c) send a copy of the statement referred to in paragraph (b) to the Principal Auditor on or before the 31 August next following the end of the year to which the statement relates or on or before such earlier date after the end of that year as the Minister may direct.

(2) The Principal Auditor shall examine and certify a statement of account sent to him under paragraph (c) of subsection (1) and he shall submit a copy of it together with his report thereon to the Minister, who shall lay them before the Assembly.

(3) In this section “financial year” means a period of twelve months beginning with 1 April in any year.

Immunity from suit.

11. (1) The Gibraltar Regulatory Authority and its employees shall be immune from suit in respect of any act or omission in the performance of the functions referred to in section 3(2) unless the act or omission is shown to have been in bad faith.

(2) Subsection (1) shall not apply to the discharge or purported discharge by the Gibraltar Regulatory Authority of the powers and functions conferred on it by paragraphs (a) to (e) of section 9(2).

(3) This section is without prejudice to section 13.

Reporting requirement.

12.(1) The Gibraltar Regulatory Authority shall prepare, within three months after the end of each financial year, a report on its activities during that year and shall submit each such report to the Minister within two weeks after it has been finalised.

(2) The Minister shall lay before the Assembly each report referred to in subsection (1).

Confidentiality.

13.(1) A person who is or has been-

- (a) employed by the Gibraltar Regulatory Authority;

- (b) seconded to the Gibraltar Regulatory Authority;
- (c) appointed under section 3(3);
- (d) appointed under section 4(1);
- (e) delegated functions under section 5(2);
- (f) contracted under paragraph (b) of section 9(2),

shall not disclose any information referred to in subsection (2).

(2) The information referred to in subsection (1) which is not to be disclosed is any information which-

- (a) has been obtained by, or furnished to, the Gibraltar Regulatory Authority under or for the purposes of this Act;
- (b) relates to an identified or identifiable individual or business; and
- (c) is not at the time of the disclosure, and has not previously been, available to the public from other sources,

unless the disclosure is made with lawful authority.

(3) For the purposes of subsection (2) a disclosure of information is made with lawful authority only if, and to the extent that-

- (a) the disclosure is made with the consent of the individual concerned or of the person for the time being carrying on the business concerned;
- (b) the information was provided for the purpose of its being made available to the public (in whatever manner) under a provision of this Act;
- (c) the disclosure is made for the purposes of, and is necessary for, the discharge of-
 - (i) any functions under this Act; or
 - (ii) any Community obligation;

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- (d) the disclosure is made under an order made by the Minister which provides for co-operation by the Gibraltar Regulatory Authority with any one or more (and in connection with their respective duties) of such persons, bodies or authorities as the Minister shall consider appropriate;
- (e) the disclosure is made for the purposes of any legal proceedings, whether criminal or civil and whether arising under, or by virtue of, this Act or otherwise;
- (f) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest; or
- (g) the disclosure is permitted under the Act which grants the powers and assigns or confers the function pursuant to which the information is obtained.

(4) A person who knowingly or recklessly discloses information in contravention of subsection (1) is guilty of an offence and liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both;
- (b) on summary conviction, to a fine of up to level 5 on the standard scale.

Regulations.

14.(1) The Minister may by regulation prescribe such matters as appear to him to be reasonably necessary for, or consequential, supplementary or incidental to, this Act.

(2) Regulations made under this Act may contain such transitional provisions as appear to the Minister to be expedient for the purposes of this Act.

(3) Any power conferred by this Act to make regulations includes power, by subsequent regulations, to vary or revoke any regulations so made.