

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3965 of 22 November, 2012

LEGAL NOTICE NO. OF 172 2012.

INTERPRETATION AND GENERAL CLAUSES ACT

PROSPECTUSES ACT 2005 (AMENDMENT NO.3) 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 5 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 Prospectuses Act 2005 (Amendment No.3) Regulations 2012 and come into operation on the day of publication.

Amendment of the Prospectuses Act 2005.

2.(1) The Prospectuses Act 2005 is amended in accordance with the provisions of this regulation.

(2) In section 2-

(a) after the definition “equity securities” 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;”;

- (b) at the end of the definition “the prospectus directive” insert the words “as the same may be amended from time to time”.
- (3) Section 10 is amended–
- (a) by inserting the following subsection after section 10(5)–
 - “(5A) The competent authority shall–
 - (a) notify ESMA of the approval of any prospectus and any supplement thereto at the same time as that approval is notified to the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be; and
 - (b) provide ESMA with a copy of such prospectus and any supplement thereto.”.
 - (b) in subsection (6)(a) by inserting before the words “transfer and application”, the words “subject to prior notification of ESMA”; and
 - (c) in subsection (6)(a)(ii) by inserting after the words “the date of the transfer” the words “and the time limit referred to in subsection (1) shall apply from that date and Article 28(4) of the ESMA Regulation shall not apply to the transfer of the approval of the prospectus in accordance with this paragraph”.
- (4) For section 11(3) and (4) substitute the following subsections–
- “(3) Where Gibraltar is host State and the competent authority finds that irregularities have been committed by the issuer or by the financial institutions in charge of a public offer or that an issuer has breached its obligations by reason of the fact that securities are admitted to trading on a regulated market, it shall refer those findings to the competent authority of the home Member State and to ESMA.
 - (4) Where subsection (3) applies and, despite the measures taken by the competent authority of the home Member State or

because such measures prove inadequate, the issuer or the financial institution in charge of the public offer persists in breaching the relevant legal or regulatory provisions the competent authority, after informing the competent authority of the home Member State and ESMA, shall take all appropriate measures in order to protect investors and shall inform the European Commission and ESMA at the earliest opportunity.”.

- (5) In section 12–
- (a) in subsection (1) after the words “any number of host Member States, provided that” insert the words “the ESMA and”;
- (b) for subsection (3) substitute the following subsections–
- “(3) Where significant new factors, material mistakes or inaccuracies come to light after approval of the prospectus, the competent authority shall require the publication of a supplement to be approved in accordance with section 10(1).
- (3A) In a case to which the factors set out in subsection (3) apply and where Gibraltar is acting as host State in relation to a prospectus approved by a home State, the competent authority may inform the competent authority of the home Member State of the need for new information.”.
- (c) after section 12(5) insert the following subsections–
- “(6) The competent authority shall notify ESMA of any certificate of approval of the prospectus issued under subsection (4), at the same time as it notifies the competent authority of the host Member State.
- (7) When Gibraltar is acting as host State in relation to a prospectus approved by a home State, the competent authority shall publish on its website the list of certificates of approval of prospectuses and any supplements thereto, which are notified in accordance with Article 18 of the prospectus directive, including, if applicable, a hyperlink to those documents

published on the website of the competent authority of the home State, on the website of the issuer, or on the website of the regulated market and the published list shall be kept up-to-date and each item shall remain on the website for a period of at least 12 months.”.

- (6) In section 13(1)–
- (a) after the words “Once approved, the prospectus shall be filed with the competent authority” insert the words “and shall be accessible to the ESMA through the competent authority”; and
 - (b) for the words “as soon as practicable and in any case” substitute the words “as soon as practicable and in any event”.
- (7) After section 15(6) insert the following after subsection–
- “(7) The competent authority shall-
- (a) cooperate with ESMA for the purposes of this implementation of the prospectuses directive, in accordance with the ESMA Regulation; and
 - (b) without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of the ESMA Regulation.”;
- (8) Section 16 is amended by numbering the existing provision “(1)” and inserting the following subsection after subsection (1)–
- “(2) The competent authority shall ensure that the Commission, ESMA and the competent authorities of the Member States are informed of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.”.
- (9) After section 20(2) insert the following subsection–
- “(3) Where the competent authority, in conjunction with one or more competent authority conducts an on-site inspection pursuant to subsection (2)(c), in accordance with Article 21 of

the ESMA Regulation, ESMA shall be entitled to participate in that inspection.”.

(10) After section 23(4) insert the following subsections–

“(4A) The competent authority may refer to ESMA situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

(4B) Nothing in this section shall prevent the competent authority from exchanging confidential information or from transmitting confidential information to ESMA or the European Systemic Risk Board (hereinafter the “ESRB”), subject to constraints relating to firm-specific information and effects on third countries as provided for in the ESMA Regulation and 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 respectively and information so exchanged between competent authorities and ESMA or ESRB shall be covered by the same obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are already subject.”.

Dated 22nd November, 2012.

G H LICUDI QC,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose Article 5 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 Prospectuses Act 2005 in order to supplement provisions dealing with cooperation with the European Securities and Markets Authority and with the competent authorities of other EEA States.