

FINANCIAL SERVICES (BANKING) ACT

Principal Act

Act. No. 1992-11	<i>Commencement</i>	1.10.1992
	<i>Assent</i>	9.7.1992

Amending enactments	Relevant current provisions	Commencement date
LN. 1992/138	ss.2, 18(6), 69A, 71A, 71B, 71C and Sch.1	1.10.1992
Act. 1993-15	s.10(1)	1.10.1992
LN. 1993/150	ss.2, 7(1) and (2), 18(4), (6) and (8), 23(1)(e) and (3)(e), 25(2), 26, 27, 36(2), 38(3), (6) and (7), 40(1)(b) and (c), 55, 58(3), 59(b)(vi) and (vii), 60(4)(a), (b) and (c), 64(1)(b), (n) and (o), 68, 69, 69A(1), 70, 71B(5), 78(4), 82(10)(b), (i) and 88(1)	1.10.1992
Act. 1994-01	ss.12 and 13	25.7.1994
LN. 1995/055	ss.2, 10(1)(a), 16(1), 18(9)(a) and (b), 23(1)(c), 38(1), (2), (4), (5), (6), (7)(c) and (d), 40(1)(c) and (5), 55, 59(b)(iv), 60(4), 61(3), 64(1)(o), 68(1)(d), (11)(c) and (12), 69(10)(b), 71(1), 74(2)(a), 79(m) and (n), 82(10)(i), 85 and Sch.1	21.4.1995
1995/056	s.50	1.1.1996
Acts. 1996-08	ss.18, 23(1)(e), 23(3)(g) and (h), 36(3), 37(1), 38(5), (6) and (7), 39, 44(1), 49(2) and 58(1)	12.12.1996
1998-04	ss.10(1)(b), 35(1A) and (1B), 35(2), 35(3), 75A and 79	15.1.1998
1998-06	ss.46(2), 46A, 48, 59(i) and (ii), 60, 60A, 61(3) and (4), 79(j), 86A, Sch. 2 and Sch 3.	5.1.1998
1998-07	ss.2, 3, 5(2A) and (2B), 10(1)(c) and (3), 16, 18(8), 23(1)(b),	

	23(2)(b), 37(1) and (2), 44(1), Part XA, 73A, 73B, 73C, 73D, 73E, 74(2)(d), 75B, 77, 79(jj), 81, 82(2)(b), (3) and (5)(a)	5.1.1998
1998-08	ss.23(3)(dd) and 82(10)(hh)	15.1.1998
1998-09	ss.2, 2A, 23(2A), 25(2) and 64(p)	5.1.1998
1998-45	ss.2, 18(4), 38(1), 38(1)(a), (b) and (c)(ii)(bb), 38(7)(c) and (d), 40(5) and 71	28.10.1999
2002-22	ss. 2, 11A-11F, 16(3)(a)-(f), 17(1), 18(2), (5), (8) and (9), 23(1)(a), (b), (c), (e) and (f), 23(2)(b)(iii) and (c), 23(3)(a), (b) and (dd), 24(1), (1)(a) and (b), (2) and (5), 25(1), 26, 27, 31, 33, 34, 35(1), (1A), 35A, 36(1), 39, 40(1)(c), 46A(4), 53(1), (1)(a) and (3), 55(b), 58(1), 59 and 59(b)(vi), 60(6), 60A(1), (2), (3), (4) and (4)(b), 61(1), 62(1)(b), (c) and (d)(ii), 63(1), 64(1)(b), (bb), (c), (cc), n and o, 66(1), 67, 68(1), (1)(c) and (d), and (11)(c), 69(10)(b), 69A, 71A, 71B(1), (1)(a) and (c), 71C, 75A(b), 79(a), (b) and (g), 82(9) and (10)(i), 85, 86(2), 86A(1) and (3), (4) and (5), 87, Sch.1 and Sch.3	21.1.2003
LN. 2003/031	<i>Corrigendum to Act. 2002-22</i>	
Act. 2006-33	ss. 1, 10(2) & 79	14.12.2006
“	s. 7(1A)	1.11.2007
LN. 2006/159	<i>Corrigendum to Act. 2006-33</i>	
Act. 2007-21	ss. 2, 2A, 10(1)(c), (2) & (3), 11B(10), (2) & (3), 11C, 16(1A) & (3)(a), 17(3A), 18(4), (5) & (6), 23(1)(c) & (f), 23(2B) & (2C), (3)(cc) & (ee), 24(1), 35 & 35(4), (5) & (6), 38 & 38(3), (4)(b) & (8), 40(1)(c), 40A, 42(1), (1A), (2) & (5), 46A(4), 53(2) & (6), 54(1), (2), 55, 58(3), 58A, 59(b)(vi), 60A, 61(2), 64(1)(k) & (o), 68(1), (3), (5), (6), (10), (11)(c) & (12), 69, 69A(1), (1A), (2), (3) & (4), 70, 71, 73A, 78 (1)-(4), 79, 82(10)(i)(ii), 86A(1)(a), (3)-(5), Part XII (ss.	

	88- 97) & Sch. 3	28.6.2007
2009-15	ss. 23(3)(i), (j), (3A) & (3B) & 74A	9.4.2009 ¹
LN. 2010/005	ss. 23(3)(ee), (6) & (7), 53, 54, 56, 57(4), 58, 58A & 58B	15.1.2010
2010/081	Sch. 1	29.4.2010
2011/049	ss. 25(3), 35b, 79(g), Schs. 1 & 3	12.4.2011
Act. 2011-16	s. 23(3AA)	14.7.2011
LN. 2011/167	ss. 2, 11A-11F, 23(1), (2) & (3), 35A, 59 & Sch. 1	29.9.2011
2012/177	ss. 2, 7A, 65(8), 69(9), 73B(5), 86A(7) & (8), 87A, 96A, 98-101 & Sch.3	22.11.2012
2012/199	ss. 23(3)(cc)(ii) & 83A	29.11.2012

English sources:

None

EU Legislation/International Agreements involved:

Directive 73/329/EEC	Directive 2003/41/EC
Directive 77/780/EEC	Directive 2003/71/EC
Directive 79/267/EEC	Directive 2004/39/EC
Directive 92/30/EEC	Directive 2004/109/EC
Directive 92/49/EEC	Directive 2005/60/EC
Directive 95/26/EC	Directive 2005/68/EC
Directive 97/5/EC	Directive 2006/48/EC
Directive 97/7/EC	Directive 2006/49/EC
Directive 98/26/EC	Directive 2007/EC
Directive 2000/12/EC	Directive 2007/44/EC
Directive 2000/46/EC	Directive 2007/64/EC
Directive 2002/65/EC	Directive 2009/65/EC
Directive 2002/83/EC	Directive 2009/111/EC
Directive 2002/87/EC	Directive 2010/76/EU
Directive 2003/6/EC	Directive 2010/78/EU

¹ Commencement notice LN. 2009/022

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AN ACT TO LICENCE AND REGULATE BANKING AND OTHER CATEGORIES OF DEPOSIT-TAKING BUSINESS IN GIBRALTAR.

PART I. PRELIMINARY PROVISIONS.

Title and commencement.

1. This Act may be cited as the Financial Services (Banking) Act and shall come into operation on a day to be appointed by the Governor by notice in the Gazette and different days may be so appointed for different purposes.

Interpretation

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

“approved auditor” means an auditor eligible for appointment as an auditor of a company under the Companies Act;

“approved form”, in relation to an application or notice of any description, means such form as the Commissioner may approve (in whatever manner he considers appropriate) for an application or notice of that description;

“associate”

(a) where used in relation to any person who is not a body corporate, means any of the following persons–

(i) a wife, husband, son, step-son, daughter, or step-daughter of that person; or

(ii) a company of which that person is a director; or

(iii) an employee or partner of that person;

(b) where used in relation to any person that is a body corporate, means any of the following persons–

(i) a director or employee of that body corporate; or

(ii) a subsidiary company of that body corporate; or

(iii) a director or employee of a subsidiary company of that body corporate;

(c) if a person (whether a body corporate or not) has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in a body corporate or under which they undertake to act together in exercising their voting power in relation to that company, means that other person;

(d) in relation to any person, means the trustees of any settlement of property in which that person has a life interest in possession, where “settlement of property” includes any disposition or arrangement under which property is held in trust;

“authorised institution” means a licensee or a recognised institution and “authorised” and “authorisation” shall be construed accordingly;

“branch” means a place of business which forms a legally dependent part of a credit institution or a financial institution and which carries out directly all or some of the transactions inherent in deposit-taking business;

“chief executive” in relation to an institution, means—

(a) in every case, a person who alone or jointly with any other person or persons is responsible directly to the directors of the institution for the conduct of the institution’s business; and

(b) in the case of an institution whose principal place of business is outside Gibraltar, a person who, alone or jointly with any other person or persons, is responsible for the conduct of the deposit-taking business of the institution in or from within Gibraltar;

“close links” means a situation in which two or more persons are linked in any of the following ways—

(a) participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

(b) control; or

(c) the fact that both or all are permanently linked to one and the same third person by a control relationship;

“Commissioner” means the Commissioner of Banking appointed under section 12;

“competent authority” means the national authority which is empowered by law or regulation to supervise credit institutions or financial institutions, as the case may be and, in the case of Gibraltar shall mean the Commissioner;

“control” means the relationship between a parent undertaking and a subsidiary or a similar relationship between a person and an undertaking;

“controller” in relation to any institution means any of the following persons—

- (a) a managing director or chief executive of that institution; or
- (b) a managing director or chief executive of any other institution of which that institution is a subsidiary company; or
- (c) a partner in any partnership of which that institution is also a partner; or
- (d) a person who, either alone or with any associate or associates, is entitled to exercise or control the exercise of not less than 10 per cent of the voting power in general meeting of that institution or any other institution of which that institution is a subsidiary; or
- (e) a person in accordance with whose directions or instructions the directors of the institution or of another institution of which it is a subsidiary or persons who are controllers of the institution by virtue of paragraph (d) (or any of them) are accustomed to act; or
- (f) a person who is a parent undertaking of an institution or an individual who would be such a parent undertaking if he were an undertaking where—
 - (i) an ‘undertaking’ is defined as—
 - (aa) a body corporate or partnership, or
 - (bb) an unincorporated association carrying on a trade or business, with or without a view to profit; and

- (ii) an undertaking is a parent undertaking in relation to another undertaking (a 'subsidiary undertaking') if –
 - (aa) it holds a majority of the voting rights in that undertaking, or
 - (bb) it is a member of that undertaking and has the right to appoint or remove the majority of that undertaking's board of directors, or
 - (cc) it has the right to exercise a dominant influence over that undertaking either by virtue of provisions contained in that undertaking's memorandum or articles, or by virtue of a control contract, or
 - (dd) it is a member of that undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in that undertaking,
 - (ee) it has a participating interest in that undertaking and either actually exercises a dominant influence over that undertaking or it and that undertaking are managed on a unified basis,

and, for the purposes of this paragraph, an undertaking shall be treated as a member of another undertaking if–

- (ff) any of its subsidiary undertakings is a member of that undertaking, or
- (gg) any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings ,

and for the purpose of paragraph (d) above–

- (i) a person satisfies the requirement of that paragraph in relation to an institution if, either alone or with any associate or associates –
 - (aa) he holds 10 per cent or more of the shares in the institution or another institution of which it is a subsidiary undertaking;

- (bb) he is entitled to exercise, or control the exercise of, 10 per cent or more of the voting power at any general meeting of the institution or another institution of which it is a subsidiary undertaking; or
- (cc) he is able to exercise a significant influence over the management of the institution or another institution of which it is a subsidiary undertaking, by virtue of –
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of, the institution or, as the case may be, the other institution concerned;
- (ii) a person who is a controller of an institution by virtue of that paragraph is in this Act referred to as a “shareholder controller” of the institution;

and for the purpose of this definition references to shares–

- (aa) in relation to an undertaking with a share capital, are to be allotted shares;
- (bb) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking; and
- (cc) in relation to an undertaking without capital, are to interests –
 - (i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking, or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of winding up;

“country” includes a territory;

“court” means the Supreme Court;

“credit institution” means an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;

“current account” means an account in which money deposited may be withdrawn on demand;

“deposit account” means an account that is not a current account;

“director” in relation to an institution, includes–

- (a) in every case a person who occupies the position of or performs the functions of a director, whether or not he is in fact called a director; and
- (b) in the case of an institution that is a partnership, a partner;

“EEA” means the territories to which the EEA Agreement applies;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993 and as amended, so far as relevant to the Act, by various Decisions of the EEA Joint Committee and by the Agreement on the participation of new EU States signed at Luxemburg on 14th October 2003;

“EEA State” means a State which is a Contracting Party to the EEA Agreement but, in the case of the United Kingdom, any reference to the territory of an EEA State shall be construed as excluding Gibraltar;

“electronic money” shall be interpreted in accordance with the provisions of the Financial Services (Electronic Money) Regulations 2011;

“electronic money business” shall be interpreted in accordance with the provisions of the Financial Services (Electronic Money) Regulations 2011;

“Electronic Money Directive” means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as the same may be amended from time to time;

“electronic money institution” shall be interpreted in accordance with the provisions of the Financial Services (Electronic Money) Regulations 2011;

“European authorised financial institution” means a financial institution which is for the time being authorised in an EEA State to acquire holdings or to carry on items 2 to 12 business;

“European authorised institution” means an institution—

- (a) which is a credit institution; and
- (b) which is for the time being authorised pursuant to article 6 of the recast Directive by the competent authority of an EEA State;
- (c) in respect of which the Commissioner has received from the relevant supervisory authority referred to in paragraph (b) a notice specifying—
 - (i) which activities on the list in Schedule 1 the institution proposes to carry on in Gibraltar; and
 - (ii) whether or not the institution intends to establish a place of business in Gibraltar and, if so, details of—
 - (aa) its proposed programme of operations, including a description of the types of business proposed to be carried on and the structure of the organisation which will be carrying them on, and the names of the individuals responsible for the management of the branch; and
 - (bb) the address in Gibraltar from which information and documents about the business carried on in or from within Gibraltar may be obtained; and
 - (cc) the amount of own funds and the solvency ratio of the institution and if applicable the details of any deposit guarantee scheme intended to ensure the protection of depositors with the Gibraltar operation;

“European Banking Authority” and “EBA” mean the European Banking Authority established by Regulation (EU) No 1093/2010 of the

European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;

“European Banking Committee” means that body established pursuant to Commission Decision 2004/10/EC of 5 November 2003 establishing the European Banking Committee;

“European institution” means an institution which is a European authorised institution or a European subsidiary institution;

“European subsidiary institution” means a subsidiary institution—

- (a) whose parent institution is –
 - (i) a credit institution; and
 - (ii) which is for the time being authorised pursuant to article 6 of the recast Directive by the competent authority of an EEA State;
- (b) in respect of which, the Commissioner has received from the relevant supervisory authorities referred to in paragraph (a)(ii) a notice specifying –
 - (i) which of the activities on the list in Schedule 1 the institution proposes to carry on in Gibraltar; and
 - (ii) the institution is carrying on the activities specified in (b)(i) in its home State; and
 - (iii) whether or not the institution intends to establish its place of business in Gibraltar, and if so, details of –
 - (aa) its proposed programme of operations, including a description of the business proposed to be carried on and the structure of the organisation which will be carrying it on, and the names of those responsible for the management of the branch; and
 - (bb) the address in Gibraltar from which the information and documents about the business carried on in or from within Gibraltar may be obtained; and

- (cc) the amount of own funds and the solvency ratio of the institution and, if applicable, the details of the guarantee scheme intended to ensure the protection of depositors with the Gibraltar operation;

“financial holding company” means a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, at least one of such subsidiaries being a credit institution and which is not a mixed financial holding company;

“financial institution” means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities in paragraphs 2 to 12 and 15 in Schedule 1;

“holding company” means a company of which any other company is a subsidiary;

“indirect controller” means a controller of the type referred to in paragraph (e) in the definition of “controller”;

“initial capital” shall comprise—

- (a) all amounts, regardless of their actual designation, which, in accordance with a credit institution’s legal structure, are regarded as equity capital subscribed by shareholders or other proprietors in so far as it has been paid up, plus share premium account accounts but excluding cumulative preferential shares; and
- (b) all types of reserves shown separately in the credit institution’s balance sheet and profit and losses brought forward as a result of the application of the final profit or loss;

“institution” means a credit institution which –

- (a) a body corporate established under the law of Gibraltar or of any other country; and
- (b) any association of two or more persons established in accordance with the law of Gibraltar or any other place in an EEA State;

“items 2 to 12 business” in relation to a financial institution means business which consists of carrying on one or more of the activities specified in items 2 to 12 in Schedule 1;

“items 7 to 12 business” in relation to a recognised institution, means business which consists of carrying on in or from within Gibraltar one or more of the activities specified in items 7 to 12 inclusive in Schedule 1;

“licence” means a licence granted by the Commissioner under Part IIA or IV;

“licensee” means the person to whom a licence is granted and “licensed” shall be construed accordingly;

“manager” in relation to an institution, means a person (other than a director or a chief executive) who under the immediate authority of a director or chief executive of the institution—

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the institution;

“Minister” means the Minister with responsibility for financial services;

“mixed activity holding company” means a parent undertaking, other than a financial holding company or a credit institution or mixed financial holding company, the subsidiaries of which include at least one credit institution;

“mixed financial holding company” means a parent undertaking other than a regulated entity which together with its subsidiaries, at least one of which is such a regulated entity, and other entities constitute a financial conglomerate within the meaning of article 2(14) of Directive 2002/87/EC;

“own funds” shall have the meaning assigned to it by Financial Services (Capital Adequacy of Credit Institutions) Regulations;

“parent controller” means a controller of the type referred to in paragraph (f) of the definition of “controller”;

“parent institution” in relation to a subsidiary institution, means the institution (or, if more than one, each of them) by virtue of whose authorisation (whether by the Commissioner or otherwise) the

subsidiary institution qualifies as a subsidiary institution under paragraph (a) of the definition of subsidiary institution;

“qualifying holding” means a direct or indirect holdings in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;

“recast Directive” means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 which recasts the Banking Consolidation Directive 2000/12/EC and which relates to the taking up and pursuit of the business of credit institutions and their prudential supervision extended in some areas to financial institutions, as extended, where applicable, by the EEA Agreement;

“recognised institution” means an institution which is a European authorised institution or a subsidiary institution thereof and “recognised” shall be construed accordingly;

“regulated entity” means a credit institution, insurance undertaking or investment firm;

“representative office” means except where section 73A(3) applies any office in any way appertaining to any deposit-taking business carried on by a person, not being an office from which that person actually carries on such business;

“shares” means—

- (a) in relation to an undertaking with a share capital, allotted shares;
- (b) in relation to an undertaking with capital but no share capital, rights to share in the capital of the undertaking; and
- (c) in relation to an undertaking without capital; interests conferring rights to share in the profits or liability to contribute to the losses or interests giving rise to an obligation to contribute to the debts or expenses in the event of winding-up; and

“shareholder controller” means a person who either alone or with one or more associates—

- (a) holds a qualifying holding of 10% or more in a credit institution or in any other credit institution of which it is a subsidiary;

- (b) is entitled to exercise, or control the exercise of 10% or more of the voting rights at any general meeting of a credit institution or in any other credit institution of which it is a subsidiary;
- (c) is able to exercise a significant influence over the management of a credit institution or of any other credit institution of which it is a subsidiary by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise, of the voting rights at any general meeting of the credit institution or of the other credit institution concerned; and
- (d) a “10 per cent minority shareholder controller” means a shareholder controller in whose case the percentage referred to in paragraphs (a) and (b) is less than 20;
- (e) a “20 per cent minority shareholder controller” means a shareholder controller in whose case the percentage referred to in paragraphs (a) and (b) is 20 or more but less than 33;
- (f) a “33 per cent minority shareholder controller” means a shareholder controller in whose case the percentage referred to in paragraphs (a) and (b) is 33 or more but less than 50;
- (g) a “majority shareholder controller” means a shareholder controller in whose case the percentage referred to in paragraphs (a) and (b) is 50 or more;

“subsidiary” has the meaning given to that term in paragraph (f) of the definition of “controller”;

“subsidiary institution” means an undertaking—

- (a) which is a subsidiary undertaking of a credit institution for the time being authorised pursuant to article 4 of the Banking Consolidation Directive (as extended, where applicable, by the EEA Agreement or which would be such a subsidiary if two or more institutions falling within one or both of these categories were treated as a single institution; and
- (b) the principal activity of which is to acquire holdings, or to carry on one or more of the activities in paragraphs 2 to 13 of the list in Schedule 1, and is not a credit institution;

- (c) in respect of which the Commissioner, or, in the case of a European subsidiary institution, the relevant supervisory authority of its parent institution, has certified that—
 - (i) it is incorporated in or formed under the law of either the EEA State in which its parent institution is authorised or Gibraltar where the parent institution is incorporated in or formed under the law of Gibraltar and licensed in Gibraltar;
 - (ii) its memorandum and articles of association or other instrument constituting or defining its constitution permits it to carry on the activities listed in Schedule 1 and, in the case of a European subsidiary institution, it carries on the activities carried on by it in Gibraltar in that EEA State also;
 - (iii) its parent institution is (or, where relevant, its parent institutions together are) entitled to exercise, or control the exercise of, 90 per cent or more of the voting power at any general meeting of that institution;
 - (iv) the supervision of the parent institution by the Commissioner under the Act or, in the case of European subsidiary institution, by its relevant supervisory authority under the law of the EEA State in question, effectively includes supervision of the business of that institution and the Commissioner or the relevant supervisory authority (as the case may be) is satisfied that the business of that institution is being conducted in a prudent manner; and
 - (v) the parent institution has declared, with the consent of the Commissioner or, in the case of a European subsidiary institution, its relevant supervisory authority, that it, or, if more than one, they, jointly and severally, guarantee the obligations of that institution.

2A. *Omitted.*

3. *Repealed*

Meaning of “deposit”.

4. (1) In the Act, unless the context otherwise requires, “deposit” means a sum of money that is paid on terms on which it will be repaid, (with or without any interest or premium), on demand, or at a time or circumstances

agreed by or on behalf of the person making the payment and the person receiving it.

- (2) Notwithstanding subsection (1), a sum of money is not a deposit if—
- (a) it is paid by way of advance or part payment for the sale, hire, or other provision of property or services and is repayable only in the event that the property or those services is or are not in fact sold, hired or otherwise provided; or
 - (b) it is paid by way of security for payment for the provision of property or services provided or to be provided by the person by whom or on whose behalf the money is accepted; or
 - (c) it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or in any other manner; or
 - (d) it is a sum of money that is a loan made by a person, in the course of a business of lending money carried on by him, to any other person except a licensee; or
 - (e) it is a sum of money that is paid by one company to another company at a time when either company is a subsidiary of the other company or both of the companies are subsidiaries of another company; or
 - (f) it is a sum of money that is paid to an institution by a person who is at the time when it is paid a controller, director or manager of the institution, or a spouse, child or step-child of such a person.

Meaning of “deposit-taking business”.

5. (1) In the Act, unless the context otherwise requires, a person carries on a deposit-taking business if—

- (a) in the course of that business, he lends the whole or any part of a deposit received by him to any other person; or
- (b) he uses the whole or any part of any deposit received by him in the course of that business, or the whole or any part of any interest derived from a deposit received by him in the course of that business, to finance to a material extent any other activity of the business.

(2) Notwithstanding subsection (1), a business is not a deposit-taking business if in the normal course of the business—

- (a) the person carrying on that business does not hold himself out to accept deposits on a day to day basis; and
- (b) any deposits that are accepted are accepted only on particular occasions, whether or not involving the issue of debentures or other securities.

(2A) For the purposes of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

(2B) In determining for the purposes of subsection (2)(b) whether deposits are accepted only on particular occasions, regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(3) Without limitation of the meaning of the words “in or from within Gibraltar” in this Act, but subject to subsection (2), a person who—

- (a) carries on a deposit-taking business outside Gibraltar; and
- (b) is a body corporate incorporated or registered in Gibraltar,

carries on that business from within Gibraltar, within the meaning of the Act.

PART II.

CONTROL OF DEPOSIT-TAKING BUSINESSES.

Deposit-taking business to be carried on only by institutions.

6. (1) No person other than an institution shall accept a deposit in the course of carrying on a deposit-taking business in or from within Gibraltar.

(2) No person other than an institution shall in Gibraltar accept a deposit in the course of carrying on a deposit-taking business anywhere.

Institutions to be licensed or authorised.

7.(1) No institution shall accept a deposit in the course of carrying on a deposit-taking business in or from within Gibraltar, unless it is licensed to do so under the Act or is a European authorised institution in respect of which the Commissioner has received notice from the relevant supervisory

authority that the institution proposes to carry on the activities specified in paragraph 1 of Schedule 1.

(1A) The services and activities provided for in Section A and B of Schedule 1 to the Financial Services (Markets in Financial Instruments) Act 2006 when referring to the financial instruments provided for in Section C of that Schedule are matters in respect of which—

- (a) relevant supervisory authorities may notify the Commissioner pursuant to subsection (1);
- (b) the Commissioner may notify relevant supervisory authorities pursuant to section 38.

(2) No institution shall in Gibraltar accept a deposit in the course of carrying on a deposit-taking business anywhere, unless it is licensed to do so under the Act or is a European authorised institution in respect of which the Commissioner has received notice from the relevant supervisory authority that the institution proposes to carry on the activities specified in paragraph 1 of Schedule 1.

Notification of terms and conditions.

7A. The Government shall ensure that the European Commission and the EBA are notified of the terms and conditions subject to which licences and authorisations are granted pursuant to this Act.

Repayment of Unauthorised Deposits.

8. If on the application of the Commissioner it appears to the court that any person or institution has accepted deposits in contravention of sections 6 or 7 the court may—

- (a) grant an injunction restraining the contravention; or
- (b) grant an injunction restraining the person or institution from disposing of or otherwise dealing with any assets while the suspected contravention is investigated; or
- (c) order any person who appears to the court to have been knowingly concerned in the contravention to repay the deposits at the earliest possible opportunity or at such time as the court may direct; or
- (d) appoint a receiver to recover those deposits;

but in deciding whether and, if so, on what terms to make an order under this section the court shall have regard to the effect that repayment in accordance with the order would have on the solvency of the person concerned or otherwise on his ability to carry on his business in a manner satisfactory to his creditors.

Profits from Unauthorised Deposits.

9. (1) If on the application of the Commissioner the court is satisfied that profits have accrued to a person as a result of deposits having been accepted in contravention of sections 6 and 7 the court may order him to pay into court or, appoint a receiver to recover from him, such sum as appears to the court to be just having regard to the profits appearing to the court to have accrued to him.

(2) In deciding whether, and, if so, on what terms, to make an order under this section the court shall have regard to the effect that payment in accordance with the order would have on the solvency of the person concerned or otherwise on his ability to carry on his business in a manner satisfactory to his creditors.

(3) Any amount paid into court or recovered from a person in pursuance of an order under this section shall be paid out to such person or distributed among such persons as the court may direct, being a person or persons appearing to the court to have made the deposits as a result of which the profits mentioned in subsection (1) have accrued or such other person or persons as the court thinks just.

(4) On an application under this section the court may require the person concerned to furnish it with such accounts or other information as it may require for determining whether any and, if so, what, profits have accrued to him as mentioned in subsection (1) and for determining how any amounts are to be paid or distributed under subsection (3) and the court may require any such accounts or other information to be verified in such manner as it may direct.

Exemptions.

10. (1) Sections 6 and 7 shall not apply to any of the following persons and bodies—

- (a) the Central Bank of an EEA State;
- (b) *Repealed*
- (c) *Omitted*

(d) the Gibraltar Savings Bank.

(2) The Minister with responsibility for financial services on application by the Commissioner in writing may by order published in the Gazette exempt any person wholly or partly from the provisions of sections 6 and 7, on such conditions (if any) as he may specify in the order.

(3) *Omitted.*

Civil liability.

11. The fact that a deposit is accepted in contravention of either of sections 6 and 7 shall not affect the civil liability of a person to any other person arising in respect of the deposit or the money deposited.

Part IIA ss. 11A-11F repealed.

PART III.
ADMINISTRATION.

Commissioner of Banking.

12. The Commissioner of Banking shall be the Commissioner from time to time appointed under Section 8 of the Financial Services Commission Act 1989, and all references to the Commissioner of Banking in the Act shall be interpreted accordingly.

Banking Supervisor.

13. The Commissioner of Banking appointed under section 12 of this Act may from time to time appoint a fit and proper person to be the Banking Supervisor.

Immunity from Civil Liability.

14. Neither the Commissioner, the Banking Supervisor or any person who is or is acting as an officer or servant of the Commissioner and/or the Banking Supervisor shall be liable in damages for anything done or omitted in the discharge or purported discharge of the function of the Commissioner and/or Banking Supervisor under the Act unless it was shown that the act or omission was in bad faith.

Publication of appointments and removals.

15. Where any appointment is made under section 13, or a person so appointed ceases to hold that appointment, notice of that fact shall be published in the Gazette.

Administrative notices.

16.(1) The Commissioner shall cause to be published in the form of administrative notices statements setting out the criteria and any variation in the criteria from time to time by reference to which he proposes to exercise his functions under this Act, including, in particular, his powers to grant, revoke or restrict authorisation or to impose conditions of general application on authorised institutions.

(1A) The Commissioner may also publish codes of practice and guidance notes as administrative instruments to facilitate compliance with the requirements of this Act and any regulations made thereunder..

(2) The Commissioner shall also publish in the form of administrative notices under this section criteria to facilitate compliance in Gibraltar with any relevant Community obligation.

(3) Without prejudice to the generality of subsection (2) or to its application to Community obligations taking effect after the commencement of this section, the requirements of the following Directives constitute relevant Community obligations for the purposes of that subsection—

- (a) the recast Directive; and
- (b) The Electronic Money Directive.

(4) An administrative notice published under this section shall be admissible in evidence in any action commenced in exercise of the rights contained in section 72 or otherwise in connection with the operation or application of this Act.

Registers.

17. (1) The Commissioner shall maintain a register containing details of all licences granted under this Act.

(2) The Commissioner shall cause to be entered in the register, in relation to every licence, the following details—

- (a) every renewal;
- (b) every cancellation;

- (c) every variation under section 29(1) of the conditions appearing on the face of the licence;
- (d) such other particulars as may be prescribed.

(3) The Commissioner shall maintain a register containing the names of all recognised institutions together with such particulars of those institutions as may be prescribed from time to time.

(3A) The Commissioner shall maintain a register containing the names of all European authorised financial institutions with a branch in Gibraltar together with such particulars of those institutions as may be prescribed from time to time.

(4) The registers referred to in this section shall be available for inspection by any member of the public during the normal working hours, on payment by him of the prescribed fee (if any).

PART IV. LICENCES.

Application for licences.

18. (1) The Commissioner shall not grant a licence otherwise than in accordance with an application by an institution made and determined in accordance with the Act.

(2) Every application for a licence shall be made in writing the approved form to the Banking Supervisor.

(3) In the case of an application by an applicant which is a subsidiary of a European institution or which is the subsidiary of the holding company of a European institution or which is controlled by the controller of a European institution, the Commissioner shall consult the relevant supervisory authority of the European institution before determining whether to grant or refuse the application.

(4) In the case of an application by an institution which is—

- (a) a subsidiary of an insurance undertaking or investment firm authorised in an EEA State;
- (b) a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in an EEA State;

- (c) controlled by the same persons who controls an insurance undertaking or investment firm authorised in an EEA State,

the Commissioner shall consult the competent authority of the EEA State responsible for the supervision of insurance undertakings or of investment firms before determining whether to grant or refuse the application.

(5) The Commissioner shall consult the other competent authorities referred to in subsections (3) and (4) when assessing the suitability of the shareholders and the reputation and experience of the directors managing other entities of the same group with the view of obtaining information on those shareholders and directors which is of relevance for determining whether to grant or refuse the application as well as for the purpose of ongoing supervision.

(6) In the case of an application by an applicant whose head office is in a country outside the EEA, the Commissioner may regard himself as satisfied that the criteria specified in section 23(3)(a), (b), (c), (d), (e) and (h) are fulfilled if—

- (a) the relevant competent authority in that country informs the Commissioner that it is satisfied with respect to the prudent management and overall financial soundness of the applicant; and
- (b) the Commissioner is satisfied as to the nature and scope of the supervision exercised by that authority.

(7) Without prejudice to the operation of any other provision of law, and subject to sub-section (8) a licence granted by the Commissioner under the Act shall cover the activities on the list in Schedule 1 which the institution is authorised by that licence to carry on.

(8) A licence granted under the Act shall not cover authorisation to conduct items 7 to 12 business unless the institution has obtained the necessary licence under the Financial Services Act 1989 or, as the case may be, the necessary authorisation under the Financial Services Act 1998.

(9) The Commissioner shall not consider an application for a licence if the application was made by a credit institution which at the time of making the application –

- (a) was authorised pursuant to Article 6 of the recast Directive; or
- (b) not being so authorised, is incorporated in or formed under the laws of an EEA State.

Power to require further information.

19. After receiving an application, the Banking Supervisor may require the applicant to submit such further information as the Banking Supervisor reasonably considers necessary or desirable to enable the application to be fully assessed for the purposes of the Act.

Report by Banking Supervisor.

20. After receiving an application, the Banking Supervisor shall—

- (a) prepare for the Commissioner an assessment of the application; and
- (b) submit copies of the application and of his assessment to the Commissioner.

Interviews.

21. (1) Before determining an application that has been submitted to him, the Commissioner may require a representative or representatives of the applicant to appear before the Commissioner to be interviewed in respect of the application.

(2) At the interview, the applicant's representatives may be accompanied and represented by legal advisers.

(3) At the interview the applicant may, with the leave of the Commissioner, submit further evidence to the Commissioner.

Criteria for granting licences.

22. In considering and determining an application for a licence, the Commissioner shall have regard to—

- (a) the need to protect the interests of depositors and potential depositors; and
- (b) the need to protect the reputation of Gibraltar in relation to financial matters.

Additional criteria for licences.

23. (1) Without limitation of the generality of section 22, the Commissioner shall not grant to an applicant a licence unless he is satisfied that—

- (a) the applicant either does enjoy a high reputation and standing in a financial community or will be able to do so in the carrying on of the deposit-taking business for which the licence is sought;
 - (b) in carrying on the business—
 - (i) an applicant incorporated in or formed under the law of Gibraltar will provide in Gibraltar the banking services specified in subsection (2); or
 - (ii) an applicant whose head office is in a country other than Gibraltar will provide the banking services specified in subsection (2)(a) in Gibraltar and the banking services specified in subsection (2)(b) in that other country or in Gibraltar;
 - (c) in the case of an institution, it possesses separate own funds amounting to at least Euro 5 million, (or an amount of equivalent value denominated wholly or partly in another unit of account) or such greater amount as may be prescribed by an instrument of the Council or Commission from time to time;
 - (d) the breadth, volume and range of the business will be of such magnitude (having regard to the number and size of the transactions, the assets and liabilities, and the number of customers) as to be appropriate to the granting of the status of a licence;
 - (e) an institution incorporated in or formed under the law of Gibraltar will have its head office in Gibraltar; and
 - (f) *Deleted.*
- (2) The services referred in subsection (1)(b) are—
- (a) either—
 - (i) current account or deposit account facilities for members of the public or of any section of the public or for bodies corporate, or
 - (ii) the acceptance of funds in the wholesale money markets; and
 - (b) any of the following—

- (i) overdraft or loan facilities for members of the public or of any section of the public or for bodies corporate;
 - (ii) the lending of funds in the wholesale money markets; or
 - (iii) granting credits for its own account; and/or
- (c) *Deleted.*

(2A) Without prejudice to the generality of section 22, the Commissioner shall not grant a licence to an applicant if it appears to the Commissioner that—

- (a) the applicant is an undertaking which is closely linked with any person; and
- (b) the applicant's close links with that person, or any matter relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commissioner or the Banking Supervisor of their supervisory functions in relation to the applicant institution (were it to become a licensee).

(2B) Without prejudice to the generality of section 22, the Commissioner shall not grant a licence to an applicant if it appears to the Commissioner that the laws, regulations or administrative provisions of a country outside the EEA governing persons with which a credit institution has close links, or difficulties with the enforcement of those laws, regulations or administrative provisions are such as would prevent the effective exercise by the Commissioner or the Banking Supervisor of their supervisory functions in relation to the applicant (were it to become a licensee).

(2C) The Commissioner shall require a licensee to provide him with such information and at such frequency as he may require to satisfy himself that the conditions referred to in subsections (2A) and (2B) are being complied with.

(3) Without limitation of the generality of section 22 or of subsection (1) and without prejudice to sub-section 18(4) the Commissioner shall not grant any licence unless he is satisfied as to all of the following matters—

- (a) the applicant will carry on the deposit-taking business for which the licence is sought with integrity, prudently, and with those professional skills that are necessary or desirable for the range and the scale of activities to be undertaken in the business;

- (b) in carrying on the business, the applicant will at all times maintain in the business paid-up capital and reserves that, together with the other financial resources available to the business, are in the opinion of the Commissioner sufficient to safeguard the interests of depositors, and consumers and businesses, having regard to the factors specified in subsection (4);
- (c) in carrying on the business the applicant will maintain adequate liquidity, having regard to the relationship between the liquid assets and the liabilities of the business and also having regard to the times at which the liabilities fall due and the assets of the business mature;
- (cc) in carrying out the business the applicant shall—
 - (i) have robust governance arrangements and a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to;
 - (ii) have adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote sound and effective risk management; and
 - (iii) ensure that the arrangements, processes and mechanisms referred to in paragraphs (i) and (ii) are comprehensive and proportionate to the nature, scale and complexity of the institution's activities taking into account the technical criteria concerning the organisation and treatment of risks specified in Schedule 5 of the Financial Services (Capital Adequacy of Credit Institutions) Regulations;
- (d) in carrying on the business, the applicant will make adequate provision for bad and doubtful debts and also for obligations of a contingent nature;
- (dd) in carrying on the deposit taking business, the applicant will—
 - (i) participate in and comply with the scheme established by the Deposit Guarantee Scheme Act 1997; or

- (ii) participate in and comply with a deposit guarantee scheme in its country of incorporation or formation which offers at least equivalent protection to the scheme established by the Deposit Guarantee Scheme Act 1997;
- (e) every person who is to be a director, controller, shareholder controller or manager of the business is a fit and proper person to hold that position;
- (ee) that he has been informed of the identities of the shareholders or members of the institution who have, whether directly or indirectly, qualifying holdings and the amount of such holdings;
- (f) the whole of the business will be effectively directed by not fewer than two individuals, and that insofar as the business of the licensee is carried on in or from or within Gibraltar, that part of the business will be effectively directed by not fewer than two individuals;
- (g) the business will keep in Gibraltar all proper accounts and records of so much of the business as is carried on in or from within Gibraltar;
- (h) in carrying on the business, the applicant at all times maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records;
- (i) that where the shareholders of the applicant (apart from an applicant for authorisation as an emoney institution) comprise of a person or persons who singly or between them, directly or indirectly, own or control more than 20% of the share capital or other voting rights of the applicant, and are not a credit institution licensed in an EEA state, the consent of the Minister has been obtained;
- (j) that where the applicant is not the branch of a credit institution in the UK or another EEA state, the consent of the Minister has been obtained.

(3A) The Minister shall be entitled to withhold his consent under this section to an application if he considers that it is in the public interest of Gibraltar to do so.

(3AA) The provisions of section 72 shall not apply to a person aggrieved by the decision of the Minister to withhold his consent under sub-section (3A) to an application.

(3B) The provisions of sub-paragraphs (3)(i) and (3)(j) shall apply to all authorisations definitively issued after the date of commencement hereof, including applications submitted prior to that date.

(4) The factors referred to in subsection (3)(b) are—

- (a) the nature and scale of the liabilities of the business, including the sources and amounts of the deposits that will be received by it; and
- (b) the nature of the assets of the business and the degree of risk that attaches to them.

(5) In determining whether a person is a fit and proper person under subsection (3)(e) regard shall be had to—

- (a) his probity;
- (b) his competence and soundness of judgement for fulfilling the responsibilities of that position;
- (c) the diligence with which he is fulfilling or likely to fulfill those responsibilities; and
- (d) whether the interests of depositors or potential depositors of the institution or the reputation of Gibraltar are, or are likely to be, in any way prejudiced by his holding that position,

and without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (i) committed an offence involving fraud or other dishonesty or violence;
- (ii) contravened any provision made by or under any enactment appearing to the Commissioner to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;

- (iii) engaged in any business practices appearing to the Commissioner to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business;
- (iv) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment;
- (v) contravened any internal rules of, or exceeded his authority in, any previous or current employment and/or appeared to mislead or attempt to mislead any person or persons in any previous or current employment, investigation or enquiry.

(6) In determining whether the criteria for a qualifying holding in the context of subsection (3)(ee) are fulfilled, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC¹, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive shall be taken into account.

(7) The Commissioner shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Schedule 1 to the Financial Services (Markets in Financial Instruments) Act 2006 provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

Determination of applications.

24. (1) On receipt of an application for a licence, the Commissioner shall, subject to subsection (2), within a period of six months grant or refuse the licence applied for and where an application is incomplete or further information has been requested under section 19, the Commissioner shall grant or refuse the licence—

- (a) within a period of six months of the applicant submitting the information required for a decision; or
- (b) within 12 months of the receipt of the application,

¹ Directive 2004/19/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ L 390, 31.12.2004, p. 38).

whichever is the earlier.

(2) Where the Commissioner intends to refuse to grant the licence, he shall serve on the applicant notice in writing stating that he is considering taking that decision for the reasons stated in the notice.

(3) An applicant on whom a notice is served under subsection (2) may, within 28 days of service of the notice, submit written or oral representations to the Commissioner in such form as may be prescribed.

(4) The Commissioner shall consider any representations made in response to a notice under subsection (2) before giving further consideration to the matter to which the notice relates.

(5) Where the Commissioner, after considering any representations made under subsection (3), refuses to grant the licence, he shall serve on the applicant notice in writing stating the reasons for his decision.

Conditions of licences.

25. (1) In granting a licence, the Commissioner shall specify, as conditions in respect of the licence—

- (a) the name under which the licensee shall carry on the business authorised by the licence; and
- (b) the premises in which the business authorised by the licence may be carried on by the licensee.

(2) It shall be a condition of every licence that the Commissioner shall continue to be satisfied of the matters provided for in subsections (1), (2A) and (3) of section 23.

(3) In carrying out its business, a licensee shall, at all times, have robust governance arrangements and a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, have adequate internal control mechanisms, including sound administrative and accounting procedures and remuneration policies and practices which shall be consistent with and promote sound and effective management.

Additional Conditions for institutions not being an European authorised institution.

26. In granting a licence the Commissioner may specify such other conditions in respect of the licence as he thinks fit for the purposes of the Act,

including, but without limitation of the generality of this section, conditions as to all or any of the following matters—

- (a) any condition restricting the extent to which the licensee may accept deposits, grant credit or make investments;
- (b) any condition restricting the classes of person from whom the licensee may solicit deposits;
- (c) any condition restricting the period of duration of the licence.

27. *Omitted.*

Duration of licences.

28. Subject to the other provisions of the Act, a licence shall remain in force until—

- (a) the expiry of any period of duration specified under a condition imposed in respect of that licence under section 26;
- (b) it is surrendered by the licensee;
- (c) it is cancelled;

whichever event occurs first.

Variation of licences: normal procedure.

29. (1) The Commissioner may, where it appears to him that the interests of depositors and potential depositors are threatened in any way or in order to protect the reputation of Gibraltar, of his own motion or on the application of the Banking Supervisor or of the licensee, vary a licence by imposing, amending or revoking any condition in respect of that licence.

(2) Where the Commissioner proposes to impose or amend a condition under subsection (1) otherwise than with the agreement of the licensee, he shall serve on the licensee notice in writing stating that he is considering taking the action specified for the reasons stated in the notice.

(3) A licensee on whom a notice is served under subsection (2) may, within 28 days of service of the notice, submit written or oral representations to the Commissioner in such form as may be prescribed.

(4) The Commissioner shall consider any representations made in response to a notice under subsection (2) before deciding whether—

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) to vary the licence in a different manner than that specified in the notice.

(5) The Commissioner shall give the licensee written notice of his decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give details of the appeal rights, conferred by section 72.

(6) Where the notice under subsection (5) is of a decision to take the action specified in paragraph (a) or (c) of subsection (4), the notice shall have the effect of varying the licence.

Variation of licences : in cases of urgency.

30. (1) No notice need be given under section 29(2) in respect of the variation of a licence in any case in which the Commissioner considers that the licence should be varied as a matter of urgency in order to protect the interests of depositors.

(2) In any such case the Commissioner may by written notice to the institution vary the licence and any such notice shall state the reasons for the variation and give details of the appeal rights conferred by section 72.

(3) A licensee on whom a notice is served under subsection (2) may, within 28 days of service of the notice, submit written or oral representations to the Commissioner in such form as may be prescribed.

(4) The Commissioner shall consider any representations made in response to a notice under subsection (2) before deciding whether—

- (a) to confirm or rescind his original decision; or
- (b) to vary the licence in a different manner.

(5) The Commissioner shall within the period of forty two days beginning with the day on which the notice was given under subsection (2) give the licensee written notice of his decision under subsection (4) and, except where that decision is to rescind the original decision, the notice shall state the reasons for the decision.

(6) Where the notice under subsection (5) is of a decision specified in subsection 4(b) the notice under subsection (5) shall have the effect of varying the licence in the manner specified in the notice.

31. *Omitted.*

Licences not transferable.

32. No licence shall be transferable.

33. *Omitted.*

34. *Omitted.*

Minimum capital of Credit Institutions.

35.(1) In the case of an institution other than an electronic money institution which was a licensee on 31 December 1992 the provisions of section 23(1)(c) shall not apply but such an institution, whose own funds do not attain the level prescribed in that section, shall have own funds of an amount no less than the amount it had on that date, unless—

- (a) it has at any time after 22 December 1989 had own funds of a greater amount, in which case it shall have own funds of an amount no less than that amount; or
- (b) there is any change in the person who is the parent controller of the institution, in which case the level prescribed in section 23(1)(c) shall apply to the licensee from the date of the change.

(1A) In the case of an institution other than an electronic money institution which was an existing registered society to which section 4 of the 1997 Act applied, the provisions of section 23(1)(c) shall not apply but such an institution, whose own funds do not attain the level prescribed in that section, shall have paid-up capital and reserves of an amount not less than it had at the relevant time, unless—

- (a) it has at any time after 18th December 1996 had paid-up capital and reserves of a greater amount, in which case it shall have own funds of an amount no less than that amount; or
- (b) there is any change in the person who is the parent controller of the institution, in which case the level prescribed in section 23(1)(c) shall apply to the institution from the date of the change.

(1B) In subsection (1A) and this subsection—

- (a) “the 1997 Act” means the Banking (Extension to Building Societies) Act 1997;

- (b) “existing registered society” has the same meaning as in the 1997 Act; and
- (c) “the relevant time” has the meaning given by section 4(1) of the 1997 Act.

(2) Subsection 1(b) or as the case may be, subsection(1A)(b) shall not apply if–

- (a) the institution merges with another institution which was an authorised institution on the material date; that is to say, all the assets and liabilities of the deposit-taking business of one of them are acquired by the other or by an institution which is the parent controller of one or both of them or a subsidiary of one or both of them or of such a parent controller; and
- (b) the Commissioner is satisfied that the interests of depositors or potential depositors do not require that the level prescribed in section 23(1)(c) shall apply,

in which case the merged institutions shall have net assets of an amount which is no less than the aggregate net assets of the merging institutions on the date of the change:

Provided that if the net assets of the merged institution at any time reached the level mentioned in section 23(1)(c), that level shall thereafter apply to the merged institution.

- (3) In subsection (2) “the material date” means–
 - (a) in a case where subsection (1)(b) would otherwise apply, 31 December 1992; and
 - (b) in the case where subsection (1A)(b) would otherwise apply, the relevant time, as defined in subsection (1B)(c).

(4) An institution’s own funds shall not fall below the amount of own funds required under section 23(1)(c) at the time it was licensed.

(5) Where an institution merges with one or more other institutions to which subsection (1) applies, the own funds of the merged institutions shall not fall below the aggregate own funds of the merged institutions at the time of the merger for so long as the level mentioned in section 23(1)(c) as not been attained.

(6) The Commissioner may, if he considers that circumstances justify it, allow an institution to which this section applies and whose own funds fall below the required levels, a specified short period of time determined by him to rectify the situation or use his powers of intervention with a view to a cessation of the institution's business activities.

35A. *Deleted.*

Affiliated credit institutions.

35B.(1) One or more credit institutions established in Gibraltar which is or are permanently affiliated to a central body in Gibraltar which supervises it or them may be exempted by the Commissioner from the requirements of section 23(3)(f) and from any requirement as to the need for the credit institution to provide the Commissioner with a programme of operations setting out, inter alia, the types of business it envisages to conduct and its structural organisation, if the Commissioner is satisfied that—

- (a) the commitments of that central body and the affiliated institution or institutions are joint and several liabilities or the commitment of its affiliated institutions are entirely guaranteed by the central body;
- (b) the solvency and liquidity of the central body and of the or all of the affiliated institutions are monitored as a whole on the basis of consolidated accounts; and
- (c) the management of the central body is empowered to issue instructions to the management of the affiliated institution or institutions.

(2) Any credit institution to which subsection (1) applies, may be exempted by the Commissioner from the requirements of sections 23(1)(c) and 35 if and without prejudice to the application of those provisions to the central body, the central body and all its affiliated credit institutions are subject to those provisions on a consolidated basis.

(3) Where any exemption is granted by the commissioner under this section, Part IX shall apply to the whole as constituted by the central body and its affiliated credit institutions.

PART V.
DUTIES OF LICENSEES AND
GIBRALTAR SUBSIDIARY INSTITUTIONS.

Notice of changes of officers.

36. (1) Where any person—

- (a) becomes a director, controller or manager of a licensee; or
- (b) ceases to be a director, controller or manager of a licensee,

the licensee shall within twenty-one days after the happening of that event give notice in writing of that event in the prescribed form (if any) to the Banking Supervisor.

(2) In the case of a licensee that is established outside Gibraltar and has its head office outside Gibraltar, subsection (1) shall only apply in relation to a director, controller or manager who is responsible directly for the conduct in or from Gibraltar of the business authorised by the licence.

(3) An institution incorporated in Gibraltar and licensed by the Commissioner or a Gibraltar subsidiary institution shall at least once in each year notify the Commissioner in writing of the names of each person who the institution is aware is a controller of the institution at the date of the notice and in relation to each such person specify which of the descriptions of controller in section 2 is, so far as the institution is aware, applicable to that person.

Restrictions on opening overseas offices.

37. (1) *Omitted.*

(2) No licensee who is established under the law of Gibraltar shall in any place outside Gibraltar establish or maintain a representative office of any kind, either directly or through an agent, except with the prior written consent of the Commissioner and in accordance with such conditions, if any, as the Commissioner may have specified in respect of that consent.

Notifications to the competent authority of EEA State.

38.(1) A licensee that is incorporated in Gibraltar shall give written notice to the Commissioner of the fact that it proposes to carry on any of the activities on the list in Schedule 1 (in this section called “relevant activities”) in the territory of an EEA State in which at the date of the notice it is not carrying on such business and shall specify—

- (a) in the territory of which State it proposes to carry on relevant activities;
- (b) whether or not the institution proposes to establish a place of business in the territory of that State for the purpose of carrying

on relevant activities (in this section called a “relevant place of business”); and

- (c) in the case of—
 - (i) an institution which does not propose to establish a relevant place of business, which of the relevant activities it proposes to carry on; or
 - (ii) an institution which does propose to establish a relevant place of business—
 - (aa) its proposed programme of operations, including a description of the types of business proposed to be carried on and the structure of the organisation which will be carrying them on, and the names of the individuals responsible for the conduct of those operations; and
 - (bb) an address in the territory of that State from which information and documents about the business carried on in the territory of that State may be obtained.

(2) If a notice given under subsection (1) states that the institution does not propose to establish a relevant place of business, the Commissioner shall, within one month of the date on which the notice was received by him, notify the relevant supervisory authority of the EEA State concerned of the information contained in the notice.

(3) If a notice given under subsection (1) states that the institution proposes to establish a relevant place of business and the Commissioner doubts the adequacy of the administrative structure or the financial situation of the institution, the Commissioner may within the three month period mentioned in subsection (4) notify the institution that he refuses to notify to the relevant supervisory authority in the State in which the institution proposes to establish a relevant place of business the information contained in the notice and of the credit institution’s right of appeal under section 72 against the refusal.

(4) If a notice given under subsection (1) states that the institution proposes to establish a relevant place of business the Commissioner shall, unless he has notified the institution under subsection (3) that he refuses to do so, within three months of the date on which the notice is received by him, notify to the relevant supervisory authority in the EEA State concerned—

- (a) the information contained in the notice;
- (b) the amount of own funds and the solvency ratio of the institution calculated as may be prescribed by the Financial Services (Capital Adequacy of Credit Institutions) Regulations,

and the Commissioner shall send a notice to the institution specifying the date on which the notice to the authority of the EEA State was sent.

(5) A licensee incorporated in Gibraltar shall not establish a relevant place of business unless the Commissioner has notified the relevant supervisory authority in the EEA State concerned in accordance with subsection (4) and either—

- (a) the relevant supervisory authority has informed the institution that it may establish the place of business and commence activities; or
- (b) two months have elapsed from the date specified in the notice sent to the institution under that subsection.

(6) A licensee incorporated in Gibraltar which has established a relevant place of business shall give written notice to the Commissioner and to any relevant supervisory authority in the EEA State concerned of any proposed change in the particulars mentioned in subsection (1)(c)(ii) not less than one month before the date on which such change is to take effect and if the institution establishes any other relevant place of business in the same State it shall similarly give written notice of that fact, together with details of any consequent changes in the particulars mentioned in subsection (1)(c)(ii), not less than one month before the other relevant place of business is to be established and the provisions of sub-sections (3), (4) and (5) shall apply *mutatis mutandis* to any notice given under this sub-section with the substitution of one month for references to three months or two months in those sub-sections.

(7) The provisions of this section shall apply to a Gibraltar subsidiary institution as they apply to a licensee incorporated in Gibraltar;

Provided that—

- (a) any notice given by the Commissioner to a relevant supervisory authority under subsection (2) or (4) shall include a certificate by him that the institution fulfils the requirements of subparagraph (c) of the definition of “subsidiary institution” in section 2;

- (b) in the application of subsection (4) to a subsidiary institution the reference in that subsection to the own funds and solvency ratio of the institution shall be taken to be a reference to the own funds of the subsidiary institution and the consolidated solvency ratio of the parent institution;
 - (c) where a Gibraltar subsidiary institution notifies the Commissioner that it does not intend to carry on any activities in the territory of an EEA State in accordance with the provisions of subsections (1) to (6) but proposes instead to seek from the relevant supervisory authority in that EEA State any authorisation or permission necessary to carry on those activities, the Commissioner shall, if he agrees to the proposal, inform the relevant supervisory authority and, if that authority also agrees, the Commissioner shall direct that the institution shall cease to be under the obligation imposed by subsection (1) from such date as he may agree with the relevant supervisory authority;
 - (d) where a Gibraltar subsidiary institution notifies the Commissioner that it does not intend to continue to carry on activities in the territory of an EEA State in accordance with the provisions of subsections (1) to (6) but proposes instead to seek from the relevant supervisory authority in that EEA State any authorisation or permission necessary to carry on those activities, the Commissioner shall, if he agrees to the proposal, inform the relevant supervisory authority and, if that authority also agrees, the Commissioner shall direct that the institution shall cease to be under the obligation imposed by subsection (1) from such date as he may agree with the relevant supervisory authority.
- (8) A licensee incorporated in Gibraltar who is aggrieved—
- (a) by the refusal of the Commissioner under subsection (2) or (3) to notify the relevant relevant supervisory authority in the EEA State in which the licensee proposes to establish a place of business; or
 - (b) by the failure of the Commissioner to reply to his written notice given to the Commissioner under subsection (1);

may appeal to the Supreme Court against that refusal or failure.

Prohibition on accepting security over own shares.

39. No licensee incorporated in Gibraltar shall accept any form of security over its own shares as security for any advances, credit facilities or guarantee or liability incurred by the issuing of electronic money given by it to any person.

Restrictions on other commercial activities.

40.(1) No licensee shall—

- (a) engage on its own account in any wholesale or retail trade, or in any import or export trade; or
- (b) acquire or hold in any one or more undertakings specified in subsection (2) any financial interest exceeding in value in the aggregate an amount equal to fifteen per cent of the paid-up share capital and reserves of the licensee ;
- (c) acquire or hold interests which would result in a contravention of the requirements of Article 120.2 of the recast Directive.

(2) In subsection (1)(b), “undertakings” refers to any undertakings, not in any case being a subsidiary company of the licensee that has been formed to carry out nominee, executorship, trustee or other functions that are functions incidental to a deposit-taking business.

(3) Notwithstanding subsection (1), a licensee may—

- (a) purchase or sell gold coin, silver coin, gold bullion and silver bullion; and
- (b) acquire, hold and realise any personal property as security for any advances, credit facilities or financial guarantees given by it to any person; and
- (c) in the course of and for the purpose of satisfying any debt due to it, acquire and hold, for a period not exceeding eighteen months or such longer period as the Commissioner may in writing in any case allow, any capital in any one or more undertakings exceeding the limit specified in subsection (1)(b).

(4) Notwithstanding subsection (1), a licensee that is established under the law of any country other than Gibraltar may undertake outside Gibraltar any activity specified in that subsection.

(5) Nothing in subsection (1) shall prevent a licensee (other than an institution incorporated under the law of a country or territory outside Gibraltar) from carrying on any of the activities on the list in Schedule 1,

either in Gibraltar or, following compliance with the procedures specified in section 38, in the territory of an EEA State.

Transactions with parent mixed activities holding companies.

40A.(1) Where the parent undertaking of a licensee and one or more other institutions is a mixed activity holding company, the Commissioner shall exercise general supervision over transactions between the licensee and the mixed activity holding company and its other subsidiaries.

(2) A licensee shall have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions with its parent mixed activity holding company and its other subsidiaries.

Restrictions on acquisition of land.

41.(1) No licensee shall acquire or hold any estate or interest in land.

(2) Notwithstanding subsection (1), a licensee may—

(a) acquire and hold an estate or interest in land—

- (i) for the purpose of accommodating the licensee in the carrying on of its business; or
- (ii) for the purpose of providing housing or other amenities for its staff; and

(b) subject to subsection (4), acquire and hold an estate or interest in land as security for any advances, credit facilities or financial guarantees given by it to any person.

(3) Notwithstanding subsection (1), a licensee that is established under the law of any country other than Gibraltar may acquire and hold any estate or interest in land outside Gibraltar.

(4) A licensee who acquires or holds any estate or interest in land for the purposes specified in subsection (2)(b) shall dispose of it within eighteen months after the date of default in respect of the obligation for which it is required or held as security, or within such longer period as the Commissioner may in writing in any case allow.

Disclosure of transactions.

42. (1) Any licensee who contravenes any provision of any of sections 39, 40, 40A and 41 shall immediately on becoming aware of the contravention

report to the Banking Supervisor in writing the full details of the contravention.

(1A) A licensee shall report to the Banking Supervisor, any significant transaction with its parent mixed activity holding company and its other subsidiaries referred to in section 40A other than one which is a large exposure as defined and as required to be reported by the Financial Service (Capital Adequacy of Credit Institutions) Regulations.

(2) Nothing in subsection (1) or (1A) shall be construed as requiring any person to incriminate himself.

(3) Where a licensee makes a report to the Banking Supervisor under subsection (1), the Commissioner may, notwithstanding any other provision in the Act but without prejudice to any of his other powers under the Act, allow the licensee such a period of time as the Commissioner shall specify to remedy the contravention.

(4) Where the Commissioner allows time under subsection (3), no person shall be liable to be convicted of an offence by reason of there having been a contravention of any provision of any of sections 39, 40 and 41, if the contravention is remedied within the period of time so allowed.

(5) Where the Commissioner considers that any of the intra-group transactions referred to in subsection (1A) are a threat to a licensee's financial position, he may direct the licensee to take such appropriate measures as he may require to remedy the situation.

Disclosure of inability to meet obligations.

43. (1) Where a licensee—

- (a) has reasonable grounds for believing or does believe that it is likely to be unable to meet any liability or obligation by it to any person; or
- (b) is about to suspend any payment due to any depositor,

it shall immediately (and in any event, in the case specified in paragraph (b), before it does suspend such a payment) report to the Banking Supervisor the full details of the matter.

(2) Where a licensee makes a report orally under subsection (1) to the Banking Supervisor, it shall also within twenty-four hours after so reporting, make a report in writing on the matter to the Banking Supervisor.

Appointment of auditors.

44. (1) Every licensee incorporated in Gibraltar shall appoint an approved auditor, being a person who is not disqualified under subsection (2) from holding such an appointment.

(2) No person shall be qualified to be appointed as an auditor of a licensee, or to continue to hold such an appointment, if—

- (a) he is not or he ceases to be an approved auditor; or
- (b) he is or becomes a director, controller, officer or agent of the institution; or
- (c) he has or acquires a financial or proprietary interest in the licensee otherwise than as a depositor.

(3) A person shall not be disqualified under subsection (2) from being appointed as an auditor or from continuing to hold such an appointment, by reason of the fact that he has or acquires a financial or proprietary interest in the licensee, if—

- (a) the Commissioner has before his appointment given him permission in writing to hold or acquire that interest; or
- (b) the Commissioner has before he acquires the interest given him permission in writing to acquire it; or
- (c) where he acquires the interest otherwise than of his own volition, he informs the Commissioner in writing of the acquisition within seven days of becoming aware of it and either—
 - (i) the Commissioner gives him permission to continue to hold the interest; or
 - (ii) if the Commissioner does not give him such permission, he disposes of it within fourteen days after being informed of the decision of the Commissioner (or within such longer period as the Commissioner may in writing in any case allow).

Notification in Respect of Auditors.

45. (1) A licensee shall forthwith give written notice to the Commissioner if the licensee—

- (a) proposes to remove an auditor before expiration of his term of office; or
- (b) proposes to replace an auditor at the expiration of his term of office with a different auditor.

(2) An auditor of a licensee shall forthwith give written notice to the Commissioner if the auditor—

- (a) resigns before expiration of his term of office; or
- (b) does not seek re-appointment on the expiry of his term of office.

Auditors Immunity from Civil Liability.

46. (1) No duty to which an auditor of an authorised institution may be subject shall be regarded as contravened by reason of his communicating in good faith to the Commissioner or Banking Supervisor, whether or not in response to a request made by the Commissioner or Banking Supervisor, any information of which he becomes aware or opinion that he may form in his capacity as an auditor and which relates to the business or affairs of the authorised institution.

(2) In subsection (1)—

- (a) the reference to an auditor of an authorised institution includes a reference to a person who is an auditor of a body with which an authorised institution is linked by control and who is also either—
 - (i) an auditor of the authorised institution; or
 - (ii) a person appointed to make a report under section 60 on, or on any aspect of, any matter relating to the authorised institution; and
- (b) the reference to information which relates to the business or affairs of the authorised institution includes a reference to information which relates to the business or affairs of a body with which the authorised institution is linked by control and is relevant to any functions of the Commissioner or Banking Supervisor under this or any other enactment.

Communications by auditors etc. to Banking Supervisor.

46A.(1) In the circumstances specified in subsection (3), an auditor of a licensee shall notify the Banking Supervisor of any information which relates to the business or affairs of the licensee and of which he becomes aware—

- (a) in his capacity as auditor of the licensee or of a body with which it is closely linked by control; or
- (b) in preparing a report under section 60.

(2) Subsection (2) of section 46 applies in relation to subsection (1) and the following provisions of this section as it applies in relation to subsection (1) of that section, except that for any reference to an authorised institution (or the authorised institution) there shall be substituted a reference to a licensee (or the licensee).

(3) The circumstances referred to in subsection (1) are those in which the information referred to in that subsection is such as—

- (a) to give the auditor reasonable cause to believe, as regards the licensee concerned,—
 - (i) that there is or has been, or may be or may have been, a failure to fulfil any of the criteria specified in section 23 and that the failure is likely to be of material significance; or
 - (ii) that its licence could be cancelled under section 64; or
 - (iii) that there is or has been, or may be or may have been, a contravention of any provision of this Act and that the contravention is likely to be of material significance; or
 - (iv) that the continuous functioning of the licensee may be affected; or
- (b) in a case where he is the auditor of the licensee concerned, to lead to his refusal to certify the accounts or to the expression of reservations.

(4) In this section “of material significance” means of material significance for the exercise of the functions of the Commissioner or Banking Supervisor under this Act or under any other provision giving effect to the recast Directive.

Communications by Auditors to the Banking Supervisor.

47. (1) An auditor of a licensee shall advise the Banking Supervisor at the first possible opportunity in writing if—

- (a) there has been an adverse occurrence or adverse change in the auditor's perception of the licensee, and
- (b) the occurrence in (a) has given rise to a material loss or indicates that a reasonable probability exists that a material loss may arise.

(2) Circumstances amounting to “an adverse occurrence”, “adverse change or “material loss” may be prescribed from time to time.

48. *Repealed*

Audit of accounts.

49. (1) Every licensee shall keep in respect of each of its financial years all documents of account required by any applicable Community instrument of all the business authorised by its licence, including its balance sheet, appropriation account and profit and loss account.

(2) Every licensee incorporated in Gibraltar shall cause such accounts to be audited by its auditor not less than once in each of its financial years, so that not more than twenty-one months elapses between each audit.

50. *Repealed*

Reconstructions and similar arrangements by licensees established in Gibraltar.

51. (1) The provisions of this section shall apply notwithstanding any provision to the contrary in any other enactment.

(2) No person may, in respect of a licensee that is established under the law of Gibraltar,—

- (a) alter any instrument under or by which it is so established; or
- (b) carry out or participate in the carrying out of any reconstruction or re-arrangement of its undertaking; or
- (c) if it is a public company, register any transfer of shares that will result in the transferee becoming a controller of the licensee; or
- (d) if it is a private company, register any transfer of shares,

except with the prior written consent of the Commissioner and in accordance with such conditions (if any) as he may impose.

(3) Every transaction that contravenes subsection (2) shall be null and void against any person other than a bona fide purchaser for value.

(4) Every application to the Commissioner for consent under this section shall be made in writing, through the Banking Supervisor, and shall specify in full detail the proposal for which the consent is sought.

(5) In giving consent under this section, the Commissioner may impose such conditions on his consent he thinks fit for the purposes of the Act, including, but without limitation of the generality of the foregoing, a condition that, before the proposal is carried out, the licensee shall apply for and obtain a new licence or a further licence in respect of the business to which the proposal relates.

(6) Where the Commissioner has given a person consent under this section to carry out any proposal, the person and the licensee shall inform the Commissioner in writing as soon as the proposal has been carried out.

(7) Where the Commissioner has given a person consent under this section to carry out any proposal, and—

- (a) neither the person nor the licensee has—
 - (i) within six months after the date on which consent was given; or
 - (ii) within such longer period as the Commissioner may have specified in giving consent,

informed the Commissioner in accordance with subsection (6) that the proposal has been carried out; or

- (b) proceedings have been instituted under section 65 to cancel any licence of the licensee; or
- (c) the Commissioner is satisfied that any information supplied to him by the licensee in applying for consent under this section was untrue or misleading in any material respect,

the Commissioner may by notice in writing served on the licensee withdraw the consent given under this section.

Reconstructions and similar arrangements by licensees established elsewhere than in Gibraltar.

52. Where, in respect of a licensee that is established under the law of any country other than Gibraltar, anything described in any of paragraphs (a) to (e) of section 51(2) is done, the licensee shall, if the Commissioner so requires, within such reasonable further time as the Commissioner may specify, give the Commissioner such information in writing as the Commissioner may require concerning the matter.

PART VI.
OBJECTIONS TO CONTROLLERS.

Acquisitions.

53.(1) Any natural or legal person or such persons acting in concert (hereinafter referred to as the proposed acquirer), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a licensee incorporated in Gibraltar or to further increase, directly or indirectly, such a qualifying holding in such a licensee as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the licensee would become its subsidiary (hereinafter referred to as the proposed acquisition), shall first notify in writing the Commissioner of their intention and the licensee in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and other relevant information, as referred to in section 54(4). The Commissioner need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, he applies a threshold of one-third.

(2) The Commissioner—

- (a) shall promptly and in any event within two working days following receipt of the notification, as well as following the possible subsequent receipt of the information referred to in subsection (3), acknowledge receipt thereof in writing to the proposed acquirer;
- (b) shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in section 54(4) (hereinafter referred to as the assessment period), to carry out the assessment provided for in section 54(1) (hereinafter referred to as the assessment);
- (c) shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

- (3) The following provisions apply—
- (a) the Commissioner may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed; and
 - (b) for the period between the date of request for information by the Commissioner and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the Commissioner for completion or clarification of the information shall be at his discretion but may not result in an interruption of the assessment period.
- (4) The Commissioner may extend the interruption referred to in the second subparagraph of subsection (3) up to thirty working days if the proposed acquirer is—
- (a) situated or regulated outside the EEA; or
 - (b) a natural or legal person not subject to prudential supervision.
- (5) Where the Commissioner, upon completion of the assessment, decides to oppose the proposed acquisition, he shall, within two working days, and not exceeding the assessment period, serve on the proposed acquirer a written notice of objection which shall include the reasons for that decision. Subject to the laws of Gibraltar, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent the Minister from allowing the Commissioner from making such disclosure in the absence of a request by the proposed acquirer.
- (6) Where the Commissioner does not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.
- (7) The Commissioner may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

Assessments.

54.(1) In assessing the notification provided for in section 53(1) and the information referred to in section 53(3), the Commissioner shall, in order to ensure the sound and prudent management of the licensee incorporated in Gibraltar in which an acquisition is proposed, and having regard to the likely

influence of the proposed acquirer on that licensee, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria—

- (a) the reputation of the proposed acquirer;
- (b) the reputation and experience of any person who will direct the business of the licensee incorporated in Gibraltar as a result of the proposed acquisition;
- (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the licensee in which the acquisition is proposed;
- (d) whether the licensee will be able to comply and continue to comply with the prudential requirements based on this Act and, where applicable, other financial services legislation, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the Commissioner and any appropriate home State regulator and determine the allocation of responsibilities among the Commissioner and such home State regulators;
- (e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(2) The Commissioner may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in subsection (1) or if the information provided by the proposed acquirer is incomplete.

(3) The Commissioner shall neither impose any prior conditions in respect of the level of holding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(4) The Commissioner shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the Commissioner at the time of notification referred to in section 53(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. The Commissioner shall not require information that is not relevant for a prudential assessment.

(5) Where two or more proposals to acquire or increase qualifying holdings in the same licensee have been notified to the Commissioner, the latter shall treat the proposed acquirers in a non-discriminatory manner.

55. *Omitted*

Consultation.

56.(1) The Commissioner shall work in full consultation with any appropriate home State regulator when carrying out the assessment if the proposed acquirer is one of the following—

- (a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of the Financial Services (Collective Investment Schemes) Act 2005 (hereinafter referred to as the UCITS management company) authorised in a Member State or in a sector other than that in which the acquisition is proposed;
- (b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in a Member State or in a sector other than that in which the acquisition is proposed; or
- (c) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in a Member State or in a sector other than that in which the acquisition is proposed.

(2) The Commissioner shall, without undue delay, provide any appropriate home State regulator with any information which is essential or relevant for the assessment. In this regard, the Commissioner shall communicate with any appropriate home State regulator upon request all relevant information and shall communicate on his own initiative all essential information. A decision by the Commissioner when assessing the notification shall indicate any views or reservations expressed by the home State regulator of the proposed acquirer.

Objection to existing shareholder controller.

56.(1) Where it appears to the Commissioner that a person who is a shareholder controller of any description of licensee incorporated in Gibraltar is not or is no longer a fit and proper person to be such a controller of the

institution he may serve that person with a written notice of objection to that person being such a controller of the institution.

(2) Before serving a notice of objection under this section the Commissioner shall serve the person concerned with a preliminary written notice stating that the Commissioner is considering the service on that person of a notice of objection for the reasons stated in the preliminary notice.

(3) A person served with a notice under subsection (2) may, within twenty one days of service of the notice, make written representations to the Commissioner, and where such representations are made the Commissioner shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

- (a) subject to subsection (5), specify the reasons for which it appears to the Commissioner that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
- (b) give details of the appeal rights conferred by section 72.

(5) Subsections (2) and (4)(a) shall not require the Commissioner to specify any reason which would in his opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Restrictions on and sale of shares.

57. (1) The powers conferred by this section shall be exercisable where a person—

- (a) has contravened section 53 by becoming a shareholder controller of any description after being served with a notice of objection to his becoming a controller of that description; or
- (b) having become a shareholder controller of any description in contravention of that section continues to be one after such a notice has been served on him; or
- (c) continues to be a shareholder controller of any description after being served under section 56 with a notice of objection to his being a controller of that description.

(2) The Commissioner may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or agreement to transfer the right to be issued with them shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder;
- (d) except in a liquidation, no payment shall be made of any sums due from the institution on the shares, whether in respect of capital or otherwise.

(3) The court may, on application of the Commissioner, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.

(4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 54 or 56—

- (a) until the end of the period within which an appeal under section 72 can be brought against the notice of objection; and
- (b) if such an appeal is brought, until it has been determined or withdrawn.

(5) Where an order has been made under subsection (3) the court may, on the application of the Commissioner, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them and any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

- (a) to all the shares in the institution of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the institution; and

- (b) where the person in question became a controller of the relevant description of an institution as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that institution.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the institution or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

Disposal of qualifying holdings.

58. Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a licensee incorporated in Gibraltar shall first notify in writing the Commissioner, indicating the size of his intended holding. Such a person shall likewise notify the Commissioner if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% or so that the licensee would cease to be his subsidiary. The Commissioner need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, there is applied a threshold of one-third.

Information to be provided by the licensee.

58A.(1) A licensee incorporated in Gibraltar shall serve a written notice on the Commissioner on becoming aware of any disposal or acquisition of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in sections 53(1) and 58.

(2) A licensee incorporated in Gibraltar shall, at least once a year, serve on the Commissioner a written notice stating the identity of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of the shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

Determination of qualifying holdings.

58B.(1) In determining whether the criteria for a qualifying holding in the context of sections 53, 58 or 58A are fulfilled, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

(2) In determining whether the criteria for a qualifying holding in the context of section 58A are fulfilled, the Commissioner shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Schedule 1 to the Financial Services (Markets in Financial Instruments) Act 2006, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

PART VII.
SUPERVISION OF DEPOSIT-TAKING
BUSINESSES.

Interpretation of Part VII.

59. In this Part—

- (a) “authorised officer” means the Commissioner or the Banking Supervisor or a person appointed under Section 63 of this Act; and
- (b) “relevant person” means any of the following persons—
 - (i) any person who is or has been an authorised institution;
 - (ii) any person who is or was either a subsidiary or a parent controller of an authorised institution or an undertaking with which an authorised institution is or was closely linked;
 - (iii) any person who has a liability to any other person in respect of a deposit received in the course of carrying on a deposit-taking business;
 - (iv) any other person or body whom the Commissioner or Banking Supervisor believes or suspects on reasonable grounds to be carrying on deposit-taking business in or from within Gibraltar, or who is carrying on such business in or from within Gibraltar;
 - (v) any subsidiary or parent controller of any person referred to in sub-paragraphs (iii) or (iv);
 - (vi) any person from whom, by virtue of the provisions of Article 141 of the recast Directive, the Commissioner or

Banking Supervisor may require information for the purposes of the verification provided for in that Article;

- (vii) any person who is in possession or control of any document belonging to or relating to, or any information relating to, any deposit-taking business carried on by a relevant person specified in any of sub-paragraphs (1)(i) to (vii) ,

but does not include any person described in section 10, to the extent that that person is exempted from the provisions of section 6 and 7.

Power to obtain information and require the production of documents.

60.(1) An authorised officer may by notice in writing served on a relevant person—

- (a) require the relevant person to provide the authorised officer, 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 information as the authorised officer may reasonably require for the performance of his or any other authorised officer's functions under this Act;
- (b) require the relevant person to provide the authorised officer with a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the authorised officer has required or could require the relevant person to provide information under paragraph (a);

and the authorised officer 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 subsection (1)(b) shall be a person nominated or approved by the Commissioner or Banking Supervisor.

(3) An authorised officer 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 Commissioner or Banking Supervisor (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 authorised officer may reasonably require for the performance of his or any other authorised officer's functions under this Act.

(4) Where, by virtue of subsection (3), an authorised officer or any appointee has power to require the production of any documents from a relevant person, the authorised officer 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 section claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(5) Any power under this section 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 authorised officer to be desirable in the interests of the depositors or potential depositors, or consumers and businesses dealing with electronic money of a relevant person to do so, the authorised officer may also exercise the powers conferred by subsections (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 authorised officer 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 authorised officer, within such time as may be specified in the notice, with such information or documents as the authorised officer 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 section may be used in evidence against him.

Application of section 60 in relation to competent authorities.

60A.(1) An authorised officer may exercise the powers conferred by section 60 for the purpose of assisting an institution's competent authority in the performance of any material supervisory functions; and an authorised officer 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 section 60(1)(a) to an authorised officer includes a reference to an officer or agent of the relevant competent authority.

(3) Powers under section 60 shall not be exercised by an officer or agent of the relevant competent authority unless a proper request has previously been communicated by that competent authority to the Commissioner or the Banking Supervisor.

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

- (a) any functions which correspond to those of the Commissioner or the Banking Supervisor under this Act; and
- (b) any other functions which the supervisory authority has in respect of the activities of a credit institution and in respect of which, by virtue of any community obligation, the Commissioner or the Banking Supervisor may be required to provide information.

(5) Where a licensee controls one or more subsidiaries which are insurance companies or other undertakings providing financial or investment services, an authorized officer shall cooperate closely with the Commissioner of Insurance or the Authority appointed under the Financial Services (Investment and Fiduciary Services) Act 1989, as the case may be, and

provide each other with information likely to simplify their supervisory roles of these companies or undertakings.

Inspections.

61. (1) An authorised officer may for the purposes of the prudential supervision of deposit-taking businesses or electronic money institutions –

- (a) inspect the premises and the business of a relevant person specified in any of sub-paragraphs (i) to (vii) of paragraph (b) of section 59; 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 authorised officer 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 authorised officer any matter within his knowledge or belief that relates to the business of the relevant person.

(2) In the case of a European institution an authorised officer may exercise the powers conferred by this section for the purpose of assisting the relevant competent authority of the institution in the performance of any function corresponding to those of the Commissioner or Banking Supervisor under the Act and an authorised officer shall exercise those powers in any case where such an officer is requested to do so by the relevant competent authority and is satisfied that the request is made for that purpose.

(3) The reference in subsection (1) to an authorised officer 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 section 60A of the Act.

Directions.

62. (1) Where–

- (a) a licensee makes any report orally or in writing to the Banking Supervisor under section 43; or

- (b) the Commissioner believes or suspects on reasonable grounds that a licensee 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 depositor or holder of electronic money; or
- (c) a licensee is unable to meet a liability or obligation by it to any one or more persons or does suspend any payment due to any depositor or holder of electronic money; or
- (d) the Commissioner believes or suspects on reasonable grounds that a licensee –
 - (i) has contravened any one or more provisions of the Act or any one or more conditions of its licence; or
 - (ii) is carrying on its business in a manner detrimental to the interests of its depositors or creditors or any class of its depositors or creditors including holders of electronic money; or
- (e) the Commissioner considers that it is in the public interest to do so,

the Commissioner may by notice in writing served on the licensee 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 Commissioner specifies in the notice, which notice shall give details of the rights of appeal conferred by section 72.

(2) In particular, but without limitation of the generality of subsection (1), in a notice served under that subsection the Commissioner may direct a licensee, at its own expense–

- (a) to appoint and retain an auditor approved in accordance with section 81 in respect of the business authorised by its licence; and
- (b) to have its accounts duly audited by such an auditor and to submit the audited accounts together with the auditor's report on those accounts to the Commissioner through the Banking Supervisor; and
- (c) to appoint a competent person to advise the licensee on its business or on any specified aspects of its business.

(3) The Commissioner may from time to time revoke or vary a direction given under this section in the same manner as it was given.

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

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

Investigations on behalf of the Banking Supervisor.

63. (1) If it appears to the Banking Supervisor desirable to do so in the interests of depositors or potential depositors or consumers and businesses dealing with electronic money of a licensee or in order to safeguard the reputation of Gibraltar, he may appoint one or more persons to investigate and report to the Banking Supervisor on—

- (a) the nature, conduct or state of the licensee's business or any particular aspect of it; or
- (b) the ownership or control of the institution.

and the Banking Supervisor shall give written notice of the appointment to the institution concerned.

(2) The Banking Supervisor may also request a person or persons appointed under subsection (1), if he considers it to be appropriate, to further investigate any holding company, subsidiary or related company of a licensee under investigation or any further holding company, subsidiary or related company of that institution.

(3) For the purposes of an investigation commissioned under this section a person or persons appointed under subsection (1) shall be regarded as an authorised person for the purposes of exercising all or any of the powers conferred under sections 60 and 61 of the Act.

(4) A statement made by a person in compliance with a requirement imposed by virtue of this section or by section 61 of the Act may be used in evidence against them.

(5) A person or persons appointed under subsection (1) shall be regarded as an officer or servant of the Banking Supervisor for the purposes of section 14 of this Act.

PART VIII. CANCELLATION OF LICENCES.

Grounds for cancellation.

64. (1) Subject to the other provisions of the Act, the Commissioner may cancel a licence on any of the following grounds—

- (a) that in connection with any application relating to the licensee, under the Act, information that is untrue or misleading in any material respect has been supplied to the Commissioner or the Banking Supervisor; or
- (b) Other than in the case of electronic money institutions, that the licensee has not within the period of twelve months following the date of grant of its licence accepted a deposit in or from within Gibraltar in the course of carrying on a deposit-taking business anywhere; or
- (bb) in the case of an electronic money institution, that the licensee has not within the period of twelve months following the date of issue of its authorisation in or from within Gibraltar carried on an electronic money business anywhere; or
- (c) Other than in the case of electronic money institutions, having accepted a deposit or deposits as aforesaid, has subsequently not done so for any period of more than six months; or
- (cc) in the case of an electronic money institution, having carried on business as an electronic money institution, has not done so for any period of more than six months; or
- (d) that the licensee has committed any offence under the Act; or
- (e) that the licensee has failed to pay a licence fee due and payable by it under the Act; or
- (f) that the licensee has contravened or failed to comply with any condition of its licence; or
- (g) that the licensee has contravened or failed to comply with any direction given to it under section 62; or

- (h) that the licensee has ceased to comply in any material respect with any one or more of the criteria and requirements prescribed by the Act; or
- (i) in the case of a licensee that is a body corporate, that any event described in subsection (2) has occurred in relation to the licensee; or
- (j) in the case of a licensee that is a partnership, that any event described in subsection (3) has occurred in relation to the partnership; or
- (k) in the case of a licensee that is an association of two or more persons established in accordance with the law of Gibraltar or an EEA State, that any event has occurred in relation to it under the law of the country under which it is established, being an event which appears to the Commissioner to correspond substantially in its effect to any event described in subsection (2) or subsection (3); or
- (l) in the case of a licensee whose principal place of business is outside Gibraltar, that the appropriate authorities in the country in which it has that place of business have cancelled or suspended the authorisation of the licensee to carry on deposit-taking business under the law of that country; or
- (m) that the licensee has carried on or is carrying on the business authorised by its licence in a manner that is or is likely to be detrimental to the interests of its depositors or to the public interest; or
- (n) that the interests of depositors and/or potential depositors and/or consumers and businesses dealing with electronic money of the licensee are in any other way likely to be prejudiced, whether by the manner in which the institution is conducting or proposes to conduct its affairs or for any other reason ; or
- (o) the Commissioner is informed by a relevant supervisory authority in an EEA State that the licensee has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the recast Directive, or
- (p) that the licensee is an undertaking which is closely linked with any person and the licensee's close links with that person, or any matters relating to any non-EEA laws or administrative

provisions to which that person is subject, are such as to prevent the effective exercise by the Commissioner or the Banking Supervisor of their supervisory functions in relation to the licensee.

- (2) The events referred to in subsection (1)(i) are that—
- (a) a court of competent jurisdiction has made an order for the winding up of the licensee or an administration order in respect of the licensee;
 - (b) the licensee has passed a resolution under section 204 of the Companies Act¹ for its voluntary winding up;
 - (c) a receiver of the licensee has been appointed on behalf of any person;
 - (d) any creditor of the licensee has enforced any security given to him by the licensee in respect of the liability of the licensee to that creditor, or has taken possession of any property under that security, by reason of the default of the licensee.
- (3) The events referred to in subsection (1)(j) are—
- (a) that the partnership has been dissolved;
 - (b) in the case of a partnership that is an unregistered company as defined in section 282 of the Companies Act¹, that an order has been made under Part VIII of that Act for its winding up;
 - (c) in the case of a partnership in which one of the partners is a body corporate, that any event specified in subsection (2) has occurred in relation to that partner;
 - (d) that a receiving order has been made against the partnership or against any partner in it;
 - (e) that the partnership or any of the partners in it has made a composition or an arrangement with its or his creditors.

Cancellation of licences.

65. (1) Subject to subsection (2), the Commissioner may by notice in writing served on the licensee cancel a licence.

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(2) Where the Commissioner intends to cancel a licence he shall serve on the licensee notice in writing stating that he is considering taking the decision for the reasons stated in the notice.

(3) A licensee on whom a notice is served under subsection (2) may within 28 days of service of the notice submit written or oral representations to the Commissioner in such form as may be prescribed.

(4) The Commissioner shall consider any representations made in response to a notice under subsection (2) before giving further consideration to the cancellation of the licence.

(5) The period of 28 days mentioned in subsection (3) may be reduced in any case in which the Commissioner considers it necessary to reduce that period to such period of not less than two business days as the Commissioner may in any particular case determine.

(6) Where the Commissioner after considering representations made under subsection (3)–

(a) cancels the licence; or

(b) varies the licence in any manner specified in section 33(1),

he shall serve on the licensee notice in writing stating the reasons for his decision.

(7) For the purposes of this section a business day is any day other than a Saturday, a Sunday or a public holiday.

(8) Where the Commissioner cancels a licence pursuant to this section, the Government shall ensure that the European Commission and EBA are notified of such cancellation, including the reasons therefor.

Directions on cancellation.

66. (1) Where–

(a) the Commissioner has cancelled a licence; or

(b) a licensee has surrendered its licence,

the Commissioner may give to the institution to whom the licence was granted such directions in writing as the Commissioner thinks fit to protect the interests of depositors.

(2) In particular, but without limitation of the generality of subsection (1), the Commissioner may give all or any of the following directions—

- (a) a direction prohibiting the institution from dealing with or disposing of any of its assets in any manner specified in the direction;
- (b) a direction prohibiting the institution from entering into any transaction or class of transactions specified in the direction;
- (c) a direction requiring the institution to carry out a course of action specified in the direction;
- (d) in the case of an institution that remains a licensee, a direction prohibiting the institution from receiving deposits from persons or from any class of person specified in the direction.

(3) The Commissioner may from time to time revoke or vary a direction given under this section, in the same manner as it was given.

(4) Unless it is sooner revoked, a direction given under this section shall cease to have effect when the institution to which it relates ceases to have any liability to its depositors and creditors, collectively and severally.

67. *Omitted.*

PART IX.

PROHIBITIONS AND NOTIFICATIONS RELATING TO RECOGNISED INSTITUTIONS.

Prohibitions and restrictions: normal procedure.

68. (1) The Commissioner may prohibit a European institution from accepting deposits or carrying on an electronic money business in Gibraltar if

—

- (a) the institution is a European authorised institution which has established a branch in Gibraltar and it appears to the Commissioner that the branch is not or may not be maintaining or, as the case may be, will not or may not maintain adequate liquidity;
- (b) the Commissioner is informed by the institution's competent authority that the institution has failed to take any or sufficient steps to cover risks arising from its open positions on financial markets in Gibraltar;

- (c) it appears to the Commissioner that the institution has failed to comply with any obligation imposed on it by this Act or under the Insurance Companies Act 1987 or the Financial Services Act 1989 or the Financial Services Act 1998;
- (d) the Commissioner is informed by a competent authority in the EEA State in which the institution is authorised that it has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the recast Directive or the Electronic Money Directive (each as extended where applicable, by the EEA Agreement);
- (e) it appears to the Commissioner that he has been provided with false, misleading or inaccurate information by or on behalf of the institution or by or on behalf of a person who is or is to be a director, controller or manager of the institution; or
- (f) it appears to the Commissioner that the situation as respects the institution is such that, if it were licensed by the Commissioner under this Act, the Commissioner would revoke the authorisation.

(2) Where it appears to the Commissioner that the situation as respects a European institution is such that the powers conferred by subsection (1) are exercisable, the Commissioner may, instead of or as well as imposing a prohibition, impose such restriction on the carrying on in Gibraltar of any activity listed in Schedule 1 as is specified in the notice referred to in subsection (7).

(3) The Commissioner may not impose a prohibition on a European institution on the ground mentioned in subsection (1)(f) unless –

- (a) the Commissioner has requested the relevant competent authority to take all appropriate measures for the purpose of securing that the institution remedies the situation; and
- (b) the Commissioner is satisfied either –
 - (i) that the authority has failed or refused to take measures for that purpose; or
 - (ii) that the measures taken by that authority have proved inadequate for that purpose.

(4) Subject to section 69, where it appears to the Commissioner that the situation as respects a European institution is such that his power –

- (a) to impose a prohibition or a restriction on the institution; or
- (b) to vary otherwise than with the agreement of the institution any restriction imposed on the institution,

is exercisable by virtue of subsection (1)(a) or otherwise by virtue of any failure to comply with a requirement imposed under section 60 (provision of information) for statistical purposes, he shall require the institution in writing to remedy the situation.

(5) If an institution fails to comply with a requirement under subsection (4) within a reasonable time, the Commissioner shall give notice to that effect to the relevant competent authority requesting that authority –

- (a) to take all appropriate measures for the purpose of ensuring that the institution remedies the situation; and
- (b) to inform the Commissioner of the measures it has taken or proposes to take or the reasons for not taking any such measures.

(6) Where the Commissioner has given notice pursuant to subsection (5), and subject to section 69, the Commissioner shall not take any steps to impose a prohibition or a restriction on an institution, or to vary otherwise than with the agreement of the institution, any restriction imposed on the institution, unless it is satisfied –

- (a) that the relevant competent authority has failed or refused to take measures for the purposes mentioned in subsection 5(a); or
- (b) that the measures taken by that authority have proved inadequate for that purpose.

(7) Where, pursuant to subsections (1), (2), (3) or (6), the Commissioner proposes –

- (a) to impose a prohibition or a restriction; or
- (b) to vary otherwise than with the agreement of the institution any restriction imposed on an institution,

the Commissioner shall give to the institution concerned written notice of his intention to do so.

(8) The Commissioner shall not take the action proposed in the notice provided for in subsection (7) until he has taken account of any written or oral representations made to the Commissioner within 28 days of service of the notice.

(9) After giving a notice under subsection (7) and taking account of any representations made under subsection (8), the Commissioner shall decide whether –

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) if the proposed action was the imposition of a prohibition, to impose a restriction instead of or in addition to the prohibition;
- (d) if the proposed action was the imposition or variation of a restriction, to impose a different restriction or make a different variation.

(10) The Commissioner shall give the institution and its competent authority written notice of the decision taken under subsection (9) and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give details of the appeal rights conferred by section 72.

(11) In any case where –

- (a) having been satisfied as required by subsection (6), the Commissioner has given notice under subsection (7);
- (b) the prohibition, restriction or variation has not taken effect; and
- (c) the European Commission decides under the recast Directive that the Commissioner must withdraw or vary the notice;

the Commissioner shall in accordance with the decision withdraw or vary the prohibition, restriction or variation.

(12) *Omitted*

Prohibitions and restrictions: cases of urgency.

69. (1) Subject to subsection (9) no notice need be given in accordance with section 68(7) in respect of the imposition of a prohibition, the imposition of a restriction, or the variation of a restriction otherwise than with the agreement of the institution concerned, in any case in which the

Commissioner considers that the prohibition should be imposed or the restriction should be imposed or varied as a matter of urgency.

(2) In any such case as is provided for in subsection (1) the Commissioner may by written notice to the institution impose the prohibition or variation.

(3) Any notice issued in accordance with subsection (2) shall state the reasons for which the Commissioner has acted and give details of the appeal rights conferred by section 72.

(4) A recognised institution to which a notice is given under this section of the imposition of a prohibition or the imposition or variation of a restriction may within the period of 28 days beginning with the day on which the notice was given make representations to the Commissioner.

(5) After giving notice under subsection (2) imposing a prohibition or imposing or varying a restriction and taking into account any representations made in accordance with subsection (5) and by the relevant competent authority, the Commissioner shall decide whether –

- (a) to confirm or rescind his original decision; or
- (b) to impose a restriction or a different restriction or to vary a restriction in a different manner:

Provided that the Commissioner may not impose a prohibition unless he stated that this was his intention in such notice.

(6) The Commissioner shall within the period of 42 days beginning with the day on which the notice was given under subsection (2) give the institution concerned written notice of his decision under subsection (5) and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(7) Where the notice under subsection (6) is of a decision to take the action specified in subsection (5)(b), that notice shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it was given.

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (5)(b) the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it was given.

(9) Where it appears to the Commissioner that there is a situation as respects a European institution to which section 68(4) applies, and he

considers that the prohibition, restriction or variation should be imposed as a matter of urgency, whether to protect the interests of depositors, investors and others to whom services are provided or otherwise, he may do so as provided for in this section before complying with section 68(4) and (5) or, where he has complied with those subsections, without being satisfied as mentioned in section 68(6), but in such a case he shall immediately notify the Government and it shall, at the earliest opportunity, ensure that competent authorities in EEA States, the European Commission and EBA are notified of the steps taken.

(10) In any case where –

- (a) by virtue of subsection (9) above, the Commissioner has imposed a prohibition or restriction on a European institution, or has varied a restriction imposed on such an institution, before complying with section 68(4) and 68(5) or, as the case may be, without being satisfied as mentioned in section 68(6); and
- (b) the European Commission decides under the recast Directive that the Commissioner must withdraw or vary the prohibition, restriction or variation,

the Commissioner in accordance with the decision shall withdraw or vary the prohibition, restriction or variation.

(11) Nothing in subsection (9) shall be taken to require the Commissioner to inform the European Commission of steps taken in respect of an institution authorised in the United Kingdom.

Notice to recognised institutions.

69A. (1) The Commissioner shall issue any recognised institution with a notice stating that it is authorised to conduct in Gibraltar the activities listed in Schedule 1 in accordance with such conditions or prohibitions as may, from time to time, be specified by him provided that such conditions shall not include a requirement for authorisation of endowment capital.

(1A) On issuing a notice under subsection (1), the Commissioner shall notify to the competent authority in the EEA State concerned of the information contained in the notice.

(2) The notice issued under sub-section (1) shall be issued within two months of the Commissioner having received the notification specified in section 67 and shall immediately after “subsection (1) shall contain the name and address of the institution and a copy of such notice shall form part of the register required to be maintained under section 17(3).

(3) A recognised institution to which subsection (1) applies shall give written notice to the Commissioner of any proposed change in the particulars included in the original notice of intention to establish a place of business in Gibraltar at least one month before the date on which such change is to take effect.

(4) The Commissioner may by notice require a recognised institution to provide him for statistical purposes with such periodical reports as he may require on the business activities of the institution in Gibraltar.

Loss of authorisation of European authorised institutions.

70. An institution which was an European authorised institution shall notify the Commissioner in writing at the first possible opportunity if its authorisation to accept deposits is revoked by its relevant competent authority or it surrenders such authorisation.

Limitations of Authorisation of European authorised institutions.

71. (1) No European authorised institution may conduct any of the activities on the list in Schedule 1 in or from within Gibraltar unless the institution continues to be authorised to conduct that particular activity within the territory of an EEA State in which it is authorised by the competent authority notwithstanding that the institution may not be actually conducting that particular activity within that territory.

(2) An European authorised institution shall immediately cease to conduct any activity on the list in Schedule 1 in or from within Gibraltar if its authorisation to conduct that particular activity is revoked by its competent authority and shall notify the Commissioner in writing at the first available opportunity of both the revocation and that it has ceased to conduct that particular activity.

Licences not required to conduct items 7 to 12 business.

71A. Nothing in section 3 of the Financial Services Act 1989² shall preclude a recognised institution from carrying on in or from within Gibraltar items 7 to 12 business except and in accordance with the provisions of the this Act, the Financial Services Act 1989 and the Financial Services Act 1998 in so far as those provisions relate to the recognised institution.

Power to prohibit the carrying on of items 7 to 12 business.

71B. (1) If it appears to the Commissioner that a recognised institution has—

- (a) contravened any provisions of the Financial Services Act 1989 or the Financial Services Act 1998 or any rules or regulations made under either of those Acts; or
- (b) in purported compliance of any such provisions, furnished him with false, inaccurate or misleading information; or
- (c) contravened any prohibition, requirement or direction issued under either of those Acts;

he may impose on that institution a prohibition on carrying on items 7 to 12 business.

(2) A prohibition imposed under sub-section (1), may be absolute or may be imposed for a specific period or until the occurrence of a specific event or until specific conditions are complied with, and any period, event or condition specified may be varied by the Commissioner on the application of the institution.

(3) Any prohibition imposed under sub-section (1), may be withdrawn by written notice served by the Commissioner on the institution concerned and such notice shall take effect on the date specified in the notice.

(4) A prohibition, or an initial prohibition, issued or intended to be issued under this section, shall be subject to the provisions in respect of consultation and notification in section 68 and 69.

(5) For the purposes of this section and section 71C the provisions of sections 68 and 69 shall be applied mutatis mutandis.

Power to restrict the carrying on of items 7 to 12 business.

71C. The Commissioner may exercise the powers contained in Part V of the Financial Services Act 1989² in relation to a recognised institution carrying on items 7 to 12 business and, except in the case of the powers conferred on him by section 10 of that Act, in relation to an appointed representative of the institution if it appears to the Commissioner that the institution has contravened any of the provisions of that Act or any rules or regulations made thereunder or, in purported compliance with such provisions, has furnished him with false, inaccurate or misleading information or has contravened any prohibition, requirement or direction imposed under that Act.

PART X.

² 1989-47

APPEALS.

Appeals to the Supreme Court.

72. (1) Any person aggrieved by—

- (a) the refusal, variation or revocation of a licence;
- (b) the imposition of any condition on the grant of a licence;
- (c) the refusal of any approval or consent required under the Act;
- (d) a direction, determination, prohibition or restriction by the Commissioner;
- (e) the failure of the Commissioner to deal with an application within the time prescribed;

may appeal to the Supreme Court.

(2) An appeal shall be instituted within 28 days of the notification to the appellant of the matter complained of, or in the case of an appeal under paragraph (e) of subsection (1) within 28 days of the expiration of the period prescribed.

Powers of the Supreme Court.

73. (1) The court may confirm, reverse or vary the decision appealed against or may direct the Commissioner to take any action which, under the Act, he has power to take.

(2) The court may make such order as to the costs of an appeal as it may consider proper.

(3) The institution of an appeal shall not operate as a stay of a decision appealed against, but the court shall have power, in its discretion, to order such a stay.

PART XA

OVERSEAS DEPOSIT-TAKERS WITH REPRESENTATIVE OFFICES.

Meaning of “overseas deposit-taker” and “representative office”.

73A.(1) In this Part “overseas deposit-taker” means a person (other than an authorised institution or a person specified in section 10(1)) who—

- (a) is a body corporate incorporated under the law of an overseas country or territory or a partnership or other unincorporated association formed under the law of an overseas country or territory; or
- (b) has his principal place of business in an overseas country or territory,

and, in either case, satisfies one of the conditions mentioned in subsection (2).

(2) The conditions referred to in subsection (1) are—

- (a) that the person's principal place of business is in an overseas country or territory and the person is authorised by the relevant competent authority in that or any other overseas country or territory;
- (b) that the person describes himself or holds himself out as being authorised by such an authority in an overseas country or territory;
- (c) that the person uses any name or in any other way so describes himself or holds himself out as to indicate, or reasonably be understood to indicate (whether in English or any other language), that he is a bank or banker or is carrying on a deposit-taking business (whether in Gibraltar or elsewhere).

(3) In this Act “representative office”, in relation to any overseas deposit-taker, means premises from which the deposit-taking, lending or other financial or banking activities of the overseas deposit-taker are promoted or assisted in any way; and “establishment”, in relation to such an office, includes the making of any arrangements by virtue of which such activities are promoted or assisted from it.

(4) In this Part “overseas country or territory” means a country or territory outside Gibraltar.

Notice of establishment of representative office.

73B(1) An overseas deposit-taker shall not establish a representative office in Gibraltar unless it has given not less than two months' notice to the Commissioner that it proposes to establish such an office; and a notice under this subsection shall specify the name the deposit-taker proposes to use in relation to activities conducted by it in Gibraltar after the establishment of that office.

(2) Where an overseas deposit-taker has established a representative office in Gibraltar before the date on which this Part comes into force and has not given notice of that fact to the Banking Supervisor under section 77, then, within the period of two months beginning with that date, it shall give notice in writing to the Commissioner of the continued existence of that office.

(3) Where an obligation arises under subsection (2) in respect of the establishment of an office which is established within one month beginning with the date on which this Part comes into force, that obligation shall supersede any obligation to give notice in respect of that matter under section 77.

(4) A notice under this section shall be given in such form and manner as the Commissioner may specify.

(5) The Commissioner shall ensure there is notified to the European Commission, the European Supervisory Authority (European Banking Authority) and the European Banking Committee all notices under subsection (1) by credit institutions having their head office in a non-EEA territory.

Power to object to names of overseas deposit-takers.

73C.(1) An overseas deposit-taker which has established a representative office in Gibraltar shall not change any name used by it in relation to activities conducted by it in Gibraltar unless it has given not less than two months' notice to the Commissioner of the proposed name.

(2) Where notice is given to the Commissioner under section 73B or subsection (1) and it appears to him that the name is misleading to the public or otherwise undesirable, he may, within the period of two months beginning with the day on which notice was so given to him, give notice in writing to the deposit-taker that he objects to that name.

(3) Where it appears to the Commissioner that an overseas deposit-taker which has established a representative office in Gibraltar before the date on which this Part comes into force is using a name in relation to activities conducted by it in Gibraltar which is misleading to the public or otherwise undesirable, he may give notice in writing to the deposit-taker that he objects to the name—

- (a) in a case where the Commissioner was notified of the establishment of the representative office before that date, within the period of six months beginning with that date; and

- (b) in any other case, within the period of six months beginning with the date on which the establishment of the representative office comes to his knowledge.

(4) Where, as a result of a material change in circumstances since the time when notice was given to the Commissioner under section 73B or subsection (1) or as a result of further information becoming available to him since that time, it appears to the Commissioner that the name is so misleading as to be likely to cause harm to the public, he may give notice in writing to the overseas deposit-taker in question that he objects to that name.

Effect of notices under section 73C and appeals.

73D.(1) Where the Commissioner has given notice under section 73C to an overseas deposit-taker, then, after the objection has taken effect, the deposit-taker shall not use the name to which the Commissioner has objected in relation to activities conducted by it in Gibraltar.

(2) For the purposes of this section, an objection under section 73C(2) takes effect when the deposit-taker receives the notice of objection.

(3) A deposit-taker to which a notice of objection is given under section 73C(2) may, within the period of three weeks beginning with the day on which it receives the notice, apply to the Supreme Court to set aside the objection and, on such an application, the Court may set the objection aside or confirm it (but without prejudice to its operation before that time).

(4) For the purposes of this section an objection under subsection (3) or subsection (4) of section 73C takes effect –

- (a) in a case where no application is made under subsection (5), at the expiry of the period of two months beginning with the day on which the deposit-taker receives the notice of objection or of such longer period as the notice may specify; and
- (b) where an application is made under subsection (5) and the Supreme Court confirms the objection, at the expiry of such period as the Court may specify.

(5) A deposit-taker to which a notice of objection is given under subsection (3) or subsection (4) of section 73C may, within the period of three weeks beginning with the day on which it receives the notice, apply to the Supreme Court to set aside the objection.

(6) In a case where–

- (a) the Commissioner has given notice under any provision of section 73C and the objection has taken effect;
- (b) the overseas deposit-taker concerned is a company to which Part IX of the Companies Act¹ above (overseas companies carrying on business within Gibraltar) applies; and
- (c) the deposit-taker delivers to the Registrar of Companies a statement in a form approved by the Commissioner specifying a name (other than its corporate name) which is approved by the Commissioner and under which it proposes to carry on business in Gibraltar,

then, if the Registrar so notifies the deposit-taker, the name approved by the Commissioner shall be regarded, subject to any conditions imposed by the Registrar, as the name of the deposit-taker for the purposes of Part IX of the Companies Act¹.

Duty to provide information and documents.

73E(1) The Commissioner may by notice in writing require any overseas deposit-taker which has established a representative office in Gibraltar or has given notice to the Commissioner under section 73B of its intention to establish such an office to provide him with such information or documents as he may reasonably require.

(2) Without prejudice to the generality of subsection (1), the Commissioner may by notice in writing require such an overseas deposit-taker to deliver to him—

- (a) in the case of an overseas institution which is a company incorporated under the law of Gibraltar, copies of the documents which the company is required to send to the Registrar of Companies under section 14 of the Companies Act¹;
- (b) in the case of an overseas deposit-taker to which Part IX of the Companies Act¹ applies, copies of the documents which it is required to deliver for registration in accordance with section 289;
- (c) in the case of any other overseas deposit-taker (other than an individual) information corresponding to that which would be contained in the documents which it would be required to deliver as mentioned in paragraph (b) if it were a company to which Part IX of the Companies Act¹ applied;

- (d) in the case of an overseas deposit-taker which is authorised to take deposits or conduct banking business in an overseas country or territory by the relevant supervisory authority in that country or territory, a certified copy of any certificate from that authority conferring such authorisation on it.
- (3) An overseas deposit-taker to which a notice is given under subsection (1) or subsection (2) shall comply with the notice—
- (a) in the case of a deposit-taker which has a representative office in Gibraltar, before the end of such period as is specified in the notice; and
- (b) in the case of a deposit-taker which has given notice under section 73B of its intention to establish such an office, before it establishes the office.
- (4) If at any time an overseas deposit-taker which has been required to deliver information or documents to the Commissioner under subsection (2) is required to deliver any document or give notice to the Registrar of Companies under section 7(10) or section 136(2) of the Companies Act¹, it shall no later than the time by which it must have complied with that requirement deliver a copy of that document or give notice to the Commissioner.
- (5) If at any time an overseas deposit-taker is required to furnish any document to the Registrar of Companies under section 290 of the Companies Act¹ (or would be so required if it were a company to which that section applied), it shall no later than the time by which it must have complied with that requirement deliver a copy of that document to the Commissioner.
- (6) If at any time a certificate of authorisation of which a copy was required to be delivered to the Commissioner under subsection (2) (d) is amended or the authorisation is withdrawn, the overseas deposit-taker concerned shall no later than one month after the amendment or withdrawal deliver to the Commissioner a copy of the amended certificate or, as the case may be, a notice stating that the authorisation has been withdrawn.

PART XI.

MISCELLANEOUS PROVISIONS.

Restrictions on use of word “bank”.

74. (1) No person shall, in relation to or in connection with any business carried on in or from within Gibraltar, in any way use—

- (a) the word “bank”; or
- (b) any cognate expression of the word “bank”; or
- (c) any word or words resembling the word “bank”,

in such a manner as to indicate or to be likely to cause any other person to believe that that person is a bank or is carrying on the business of a bank.

(2) Subsection (1) shall not apply to—

- (a) the Gibraltar Savings Bank or the Central Bank of an EEA State;
- (b) an authorised institution, who uses the words to which subsection (1) relates in respect only of banking business encompassing the activities listed in Schedule 1;
- (c) a holding company or subsidiary of an authorised institution where the authorised institution itself uses the word “bank” in the name under which it carries on business and the use of any words to which subsection (1) refers does not indicate that the holding company or subsidiary company is itself a bank; or
- (d) a representative office in Gibraltar of a person who is an overseas deposit-taker, within the meaning of Part XA, or a subsidiary company in Gibraltar of such a person, where—
 - (i) that person is authorised under the law of the place in which he is established to use the word “bank” in the name under which he carries on deposit-taking business; and
 - (ii) in all documents, nameplates and advertisements in Gibraltar in which the name of the person is used, the expression “representative office” is used in conjunction with and with equal prominence with that name; or
- (e) any association of employees of any institution or institutions that may otherwise lawfully use the word “bank”, where a principal purpose of the association is the protection or furtherance of the interests of the employees and the use of any words to which subsection (1) refers does not indicate that the association is itself a bank.

74A. Except with the consent of the Minister, an authorised institution of which any shareholder or shareholders directly or indirectly owning or

exercising control of the shares or other voting rights of that institution is itself or are themselves a credit institution, may only use a name which, in the opinion of the Minister, is solely derived from the name of that shareholder or shareholders, or the name of any wholly owned entity or entities in the group or groups of companies of which that shareholder or those shareholders form part.

Restrictions on use of word “trust”.

75. The provisions of section 39 of the Financial Services Act 1989 shall not apply to—

- (a) an authorised institution or;
- (b) a person who uses any words to which that section refers with the prior written consent of the Commissioner and in accordance with such conditions, if any, as the Commissioner may impose in giving that consent.

Restriction on use of words “building society”.

75A. In relation to or in connection with any business carried on in or from within Gibraltar, no person shall use the words “building society” other than—

- (a) a licensee which uses those words with the prior written consent of the Commissioner and in accordance with such conditions, if any, as the Commissioner may impose in giving that consent; or
- (b) a European institution which lawfully uses those words (or words in another language which translate into English as “building society”) as part of its name under the law of the country in which it or its parent institution is for the time being authorised by the relevant competent authority, pursuant to Article 6 of the recast Directive.

Fraudulent inducement to make a deposit.

75B. (1) A person is guilty of an offence if, in any of the circumstances set out on subsection (2)—

- (a) he makes a statement, promise or forecast which he knows is misleading, false or deceptive, or he dishonestly conceals any material facts; or
- (b) he recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive.

(2) The circumstances referred to in subsection (1) are that the person who makes the statement, promise or forecast or conceals the facts does so for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) –

- (a) to make, or refrain from making, a deposit with him or any other person; or
- (b) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit.

(3) This section does not apply unless–

- (a) the statement promise or forecast is made in or from, or the facts are concealed in or from, Gibraltar or arrangements are made in or from Gibraltar for the statement, promise or forecast to be made or the facts to be concealed; or
- (b) the person on whom the inducement is intended to or may have effect is in Gibraltar; or
- (c) the deposit is or would be made, or the agreement is or would be entered into, in Gibraltar.

(4) For the purposes of this section, the definition of deposit in section 4 shall have effect as if in subsection (2) of that section paragraphs (d) to (f) were omitted.

Approval of names of bodies corporate.

76. (1) Where a company that is incorporated or registered under the Companies Act applies for a licence under the Act, the Commissioner–

- (a) may before granting a licence require the company to apply to the Registrar of Companies to change the name under which it is so incorporated or registered to a name approved by the Commissioner; and
- (b) may refuse to grant a licence until the company has so changed its name.

(2) The Commissioner shall not approve for the purposes of the Act any name that is the name of a company (other than the company for which approval is sought) incorporated or registered under the Companies Act, or

that so resembles the name of such a company as to be likely to cause any person to think that the two companies are the same company.

77. *Repealed*

Winding up of a Gibraltar incorporated licensee.

78. (1) The Supreme Court shall have jurisdiction, under the provisions of the Companies Act relating to the winding up of companies by the Court, to wind up a licensee that is a company (as defined in section 2(1) of that Act) incorporated in Gibraltar on the application of the Commissioner, where—

- (a) the licensee is unable to pay the sums due and payable to its depositors, or is able to pay such sums only by defaulting in its obligations to its other creditors; or
- (b) the value of the licensee 's assets is less than the amount of its liabilities;
- (c) the court is of the opinion that it is just and equitable that the licensee should be wound up.

(2) The Supreme Court shall have the same jurisdiction, under the provisions of the Companies Act relating to the winding up of companies by the court, to wind up as if it were an unregistered company as defined in section 282 of the Companies Act, on the application of the Commissioner under subsection (1), any licensee that is a body described in either of paragraphs (a) and (b) of that section.

(3) Where any institution—

- (a) has been an licensee; and
- (b) is no longer an licensee; and
- (c) continues to have any liability to any person in respect of any deposit for which it had a liability when it was so licensed; and
- (d) is a company described in subsection (1) or a body described in subsection (2)—

this section shall apply to that institution as if it were an authorised institution.

(4) *Omitted*

Regulations.

79. The Minister with responsibility for financial services may from time to time make regulations for all or any of the following purposes—

- (a) *Omitted;*
- (b) making provision with respect to the proof of licences and of conditions of licences;
- (c) prescribing the procedure to be followed by the Commissioner;
- (d) prescribing particulars for the purposes of section 17(2)(d);
- (e) prescribing fees that shall be payable under this Act, and penalties for non-payment or late payment of fees;
- (f) prescribing amounts for the purposes of section 23(1)(c);
- (g) giving powers to the Commissioner to impose or apply financial or non-financial penalties on credit institutions which breach, or against persons who effectively control the business of credit institutions who breach, the provisions of any Regulations made under this Act or any rule book issued by the Commissioner with the Minister's consent and prescribing the amounts or limits of such financial penalties;
- (h) prescribing the matters provided for in section 47(2);
- (i) prescribing the manner in which licensees or classes of licensee are to keep accounts and records for the purposes of this Act;
- (j) *Repealed.*
- (jj) imposing requirements in respect of overseas deposit-takers, within the meaning of Part XA, which have established or propose to establish representative offices in Gibraltar;
- (k) prescribing the details to be published for the purposes of section 87;
- (l) regulating the issue, form and content of advertisements inviting the making of deposits;
- (m) to give effect in Gibraltar to the law of the European Union (as extended, where applicable, by the EEA Agreement) relating to any of the matters contained in the Act or having as its intention the regulation of credit institutions and regulations made under

this paragraph may make provision for the repeal or variation of any provision of the Act where such provision is—

- (i) in conflict with;
 - (ii) made unclear by;
 - (iii) rendered unnecessary by,

a regulation made hereunder;
- (n) applying the provisions of this Act and any law of the European Union (as extended, where applicable, by the EEA Agreement) relevant to the regulation of such credit institution, to credit institutions of a particular kind, which regulations may make provisions for—
- (i) the repeal of any Act which, but for the regulations, would regulate such credit institution;
 - (ii) transitional arrangements necessitated by the repeal of the kind provided for in sub-paragraph (i), including the transfer to such regulations of provisions contained in the Act being so repealed;
 - (iii) the variation or exclusion of provisions of this Act not relevant to such credit institution and not required for compliance with any requirement of European Union law (as extended, where applicable, by the EEA Agreement);
- (o) providing that any contravention of a regulation made under this section shall be an offence and providing for a maximum penalty not exceeding imprisonment for three months or a fine at level 5 on the standard scale, or both, on summary conviction for any such offence;
- (p) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act or to give full effect to the provisions of section 4 of the Banking (Extension to Building Societies) Act.

Rules of Court.

80. The Chief Justice may from time to time make rules prescribing forms and the procedure for appeals under section 72.

81. *Repealed.*

Offences.

82. (1) A person who contravenes any provision of either of sections 6 and 7 is guilty of an offence, and is liable on conviction on indictment to imprisonment for two years, and to a fine.

(2) An authorised institution who—

- (a) contravenes any provision of any of sections 36, 37, 42, 43, 44(1), 49, 52 and 67; or
- (b) wilfully contravenes any provision of any of sections 39, 40 and 41—

is guilty of an offence and is liable on conviction on indictment to a fine of four times the amount at level 5 on the standard scale.

(3) An authorised institution or an auditor of an authorised institution who contravenes any provision of any of sections 31, 33 and 45 is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

(4) An authorised institution who contravenes a direction or variation of a direction given to it under either of sections 62 and 66 is guilty of an offence and is liable on conviction on indictment to a fine of four times the amount at level 5 on the standard scale.

(5) A person who—

- (a) contravenes any provision of any of sections 46A, 47, 51(2), 53, 54, 55, 56, 57, 58, 60, 74, 75, 75A and 75B or any provision of Part XA; or
- (b) contravenes any requirement made of him under section 61; or
- (c) wilfully destroys or defaces any document or record that is required to be kept or produced under this Act,

is guilty of an offence and is liable on conviction on indictment to imprisonment for two years and to a fine.

(6) A person who—

- (a) in or in connection with any application under the Act; or

- (b) in supplying to the Commissioner or to the Banking Supervisor or to any officer authorised by or acting on behalf of either of those officers any information for the purposes of the Act,

wilfully makes any statement that he knows to be untrue in any material respect, is guilty of an offence and is liable on conviction on indictment to imprisonment for two years and to a fine of four times the amount at level 5 on the standard scale.

- (7) A person, being a person who—
 - (a) has at any time been a director, controller or manager of any institution whose licence has been cancelled under section 65; or
 - (b) has at any time been a director, controller, or manager of any person or institution whose legal authority to carry on a deposit-taking business in Gibraltar or elsewhere has at any time been cancelled, withdrawn or suspended under any law; or
 - (c) has been convicted in any country of any offence involving dishonesty and has not received a free pardon in respect of that offence; or
 - (d) is a bankrupt or has at any time suspended payment to his creditors or entered into arrangement with his creditors,

and who, without the prior consent of the Commissioner, acts as a director, controller, manager, secretary, or employee of a licensee, is guilty of an offence and is liable on conviction on indictment to imprisonment for a term not exceeding two years and to a fine of four times the amount at level 5 on the standard scale.

(8) A licensee who engages or employs or retains any person in contravention of subsection (7) is guilty of an offence and is liable on conviction on indictment to a fine of four times the amount at level 5 on the standard scale.

(9) Subject to subsection (1), a person who discloses any information obtained by him under the Act, is guilty of an offence and is liable on conviction to imprisonment for two years and to a fine of four times the amount at level 5 on the standard scale.

- (10) Subsection (9) shall not apply to the disclosure—
 - (a) of any information that is permitted or required under the Act; or

- (b) of any information to or by any person concerned with the administration of the Act, for the purposes of carrying the Act into effect; or
- (c) of any information by the Commissioner or Banking Supervisor, or by any officer on the staff of the Commissioner, to any person qualified in law, accountancy or valuation or any other matter requiring the exercise of professional skill, in order to take advice from that qualified person for the purposes of the Act; or
- (d) of any information with the consent of the person to whom it relates; or
- (e) of any information that is a matter of public record or knowledge; or
- (f) of any information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings whether under the Act or otherwise;
- (g) of any information in relation to any proceedings arising out of the Act;
- (h) of any information in connection with any winding-up or administration proceedings under the Companies Act in respect of an authorised institution or former authorised institution except for information relating to a person (not being a controller of the institution concerned) who to the knowledge of the person making the disclosure is participating in an attempt to secure the survival of the institution as a going concern;
- (hh) of any information by the Commissioner or Banking Supervisor given in connection with the Deposit Guarantee Scheme Act, 1997;
- (i) by the Commissioner or Banking Supervisor of any information, being information relating to the nature or conduct of the business of an authorised institution or the business of any other relevant person as defined in section 59, to any authority responsible for the control or supervision of institutions carrying on the business of banking, financial services or insurance in any other country where it appears to the Commissioner or Banking Supervisor—

- (i) that the person to whom the information relates carries on or proposes to carry on or has or proposes to acquire an interest in any deposit-taking business in that country; and that the disclosure of the information would assist that authority in its prudential control or supervision of deposit-taking institutions in that country; or
- (ii) that the disclosure of the information is necessary for supervision of a deposit-taking institution to be effected on a consolidated basis in accordance with recast Directive or any successor thereto:

Provided that the Commissioner or Banking Supervisor shall disclose information in accordance with the provisions of this paragraph only where he is satisfied that the authority is subject to restrictions on further disclosure at least equivalent to those imposed by the recast Directive and by this Act.

- (j) of any information in the form of a summary or collection of information, in such a manner as not to enable information relating to any particular person to be ascertained from it.

(11) A person who, otherwise than pursuant to the Currency Note Act issues or causes to be issued any bank note within Gibraltar is guilty of an offence and is liable on conviction on indictment to imprisonment for two years and to a fine of five times the amount at level 5 on the standard scale.

Criminal liability of officers.

83. Where a person other than an individual commits an offence under any provision of section 82, or under regulations made under the Act, every director, controller or manager of that person is guilty of the same offence and liable in the same manner to the penalty provided for that offence unless he proves—

- (a) that the offence was committed without his knowledge; or
- (b) where the offence was committed with his knowledge—
 - (i) that it was committed without his consent; and
 - (ii) that he took all reasonable steps to prevent the commission of the offence and to report its commission as soon as practicable to the Commissioner.

Administrative sanctions.

83A.(1) The Minister may, by Regulations, provide for appropriate effective, proportionate and dissuasive administrative measures to be taken or administrative or criminal sanctions to be imposed against persons responsible where any provision of this Act has not been complied with.

(2) The competent authority may disclose to the public any measure or sanction that will be imposed for infringement of the provisions of this Act, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Protection of legal privilege.

84. Nothing in the Act shall be construed so as to require a barrister or solicitor to disclose to any person any information or document that is privileged.

Confidential information relating to customers.

85. Authorised institutions, and their controllers and subsidiaries, and institutions of which authorised institutions are controllers, are permitted to exchange between each other information necessary to facilitate supervision of institutions on a consolidated basis in accordance with the recast or any successor thereto.

Disclosure of Confidential Information obtained under this Act.

86. (1) All persons who are entitled to obtain confidential information under the Act may not subsequently divulge any information obtained in the course of their duties to any other person or authority not entitled under the Act to obtain such information directly themselves unless and provided that the information is divulged in a summary or collective form such that individual institutions cannot be identified.

(2) Subsection (1) above shall not apply to any disclosure of information falling within any of paragraphs (d) to (i) of section 82(10).

Restrictions on disclosure of information.

86A. (1) This section applies to any confidential information which—

- (a) any person who works or has worked for the Commissioner or for any other person for the time being designated as a competent authority in relation to Gibraltar for the purposes of the recast Directive; or
- (b) any auditor or expert instructed by the Commissioner or a person so designated;

has received in the course of discharging his duties as such a person, auditor or expert in relation to an authorised institution.

(2) Section 86 shall not apply to information to which this section applies.

(3) Information to which this section applies shall not be disclosed by any person referred to in subsection (1)(a) or subsection (1)(b), or by any person receiving it directly or indirectly from such a person, except in any of the circumstances specified in Articles 44 to 52 of the recast Directive which are set out in Schedule 3.

(4) Information received under Article 44.2 of the recast Directive may not be communicated in the circumstances referred to in Article 49 of that Directive without the express consent of the competent authority from whom it was obtained.

(5) In relation to information to which this section applies, section 82(10)(i) shall not permit any disclosure beyond that permitted by Articles 44 to 47 of the recast Directive.

(6) Any person who contravenes any provision of this section shall be guilty of an offence and liable—

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

(7) Nothing in this section shall prevent the Commissioner from exchanging information or transmitting information to the EBA in accordance with this Act or the recast Directive, with other European Union obligations applicable to credit institutions, and with Articles 31 and 35 of Regulation (EU) No 1093/2010.

(8) Information exchanged or transmitted under subsection (7) shall be subject to the conditions relating to professional secrecy set out in this section.

Publication of licences and cancellations.

87. The Commissioner shall cause to be published in the Gazette, in such manner as may be prescribed, details of every licence granted under the Act, and of every cancellation of a licence under the Act.

Notification of branches.

87A. Where a credit institution has its head office in a non-EEA State and a branch is authorised pursuant to this Act, the Commissioner shall ensure that the European Commission, the EBA and the European Banking Committee are notified accordingly.

**PART XII
FINANCIAL INSTITUTIONS**

Establishment of a branch in an EEA State.

88.(1) This section applies to a financial institution incorporated in Gibraltar which is—

- (a) a subsidiary of an authorised institution;
- (b) a jointly-owned subsidiary of two or more authorised institutions; or
- (c) a subsidiary of another financial institution or of a European authorised financial institution and to which paragraph (a) or (b) applies.

(2) A financial institution shall meet the conditions specified in subsection (3) to be authorised to establish a branch in an EEA State to carry on items 2 to 12 business.

(3) A financial institution shall meet the following conditions—

- (a) its memorandum and articles of association or other instrument constituting or defining its constitution permits it to carry on items 2 to 12 business;
- (b) its parent undertaking or undertakings shall hold 90% or more of the voting rights attaching to shares in the capital of the financial institution;
- (c) its parent undertaking or undertakings shall satisfy the Authority regarding the prudent management of the financial institution and shall have declared that it guarantees, or they jointly and severally guarantee, the commitments entered into by the financial institution; and

- (d) the financial institution shall be effectively included, for the item 2 to 12 business, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with the Financial Services (Consolidated Supervision of Credit Institutions) Regulations and for the purposes of the minimum own funds requirements, control of large exposures and the limitation of holdings provided for in the Financial Services (Capital Adequacy of Credit Institutions) Regulations.

(4) A financial institution shall give written notice to the Commissioner of the fact that it proposes to carry on items 2 to 12 business in an EEA State and shall provide such information, *mutatis mutandis*, as is specified in section 38(1).

(5) Section 38(2) to (6) applies, *mutatis mutandis*, to a financial institution as they apply to an institution under that section.

(6) A financial institution which is aggrieved—

- (a) by the refusal of the Authority to notify the competent authority in the EEA State in which the financial institution proposes to establish a branch; or
- (b) by the failure of the Authority to act on its written notice given under subsection (4),

may appeal to the Supreme Court against that refusal or failure and section 73 shall apply to such an appeal.

Conditions for the establishment of a branch in Gibraltar.

89.(1) A European authorised financial institution which is—

- (a) a subsidiary of a European authorised institution;
- (b) a jointly-owned subsidiary of two or more European authorised institutions; or
- (c) a subsidiary of another European authorised financial institution and to which paragraph (a) or (b) applies,

shall meet the conditions specified in this section to be authorised by the Authority to establish a branch in Gibraltar to carry on items 2 to 12 business.

(2) A European authorised financial institution to which subsection (1) applies shall meet the following conditions—

- (a) it shall comply with the requirements of section 90;
- (b) the financial institution shall provide the Authority, for verification, with a certificate of compliance from the competent authority of the home EEA State that it meets requirements similar to those specified in section 88(3).

(3) Where the competent Commissioner of the home EEA State of a European authorised financial institution which has established a branch in Gibraltar notifies the Commissioner that the institution has ceased to fulfil any of the conditions specified in subsection (2), the activities carried on by that financial institution in Gibraltar shall become subject to the requirements of this Act and any other regulatory legislation.

Notification to the Commissioner of proposed branch or provision of services.

90.(1) A European authorised financial institution to which section 8 applies and which proposes to establish a branch in Gibraltar shall notify the Commissioner of that fact, of the item 2 to 12 business activities it proposes to carry on and provide the following information in relation to that business in Gibraltar—

- (a) its proposed programme of operations, including a description of the business proposed to be carried on and the structure of the organisation which will be carrying them on, and the names of the individuals responsible for the management of the branch; and
- (b) an address in Gibraltar from which information and documents about the business carried on may be obtained.

(2) A European authorised financial institution to which subsection (1) applies shall give written notice to the Commissioner of any proposed change in the particulars mentioned in that subsection at least one month before the date on which such change is to take effect.

(3) The Commissioner shall, within one month of the date on which the notice under subsection (1) is received, notify the competent authority in the EEA State concerned of the information contained in the notice.

(4) A European authorised financial institution to which section 89 applies and which proposes to exercise the freedom to provide services in Gibraltar shall request the competent authority in the EEA State concerned to give

written notice to the Commissioner specifying which of the items 2 to 12 business activities the financial institution proposes to carry on in Gibraltar.

Notice to European authorised financial institutions.

91.(1) The Commissioner shall issue a European authorised financial institution which has complied with the requirements of sections 89 and 90, a written notice stating that it is authorised to conduct in Gibraltar item 2 to 12 business in accordance with such conditions or prohibitions as may, from time to time, be specified by the Commissioner

(2) The notice issued under subsection (1) shall be issued within two months of the Commissioner having received the notification specified in section 90.

(3) In the event of the failure by the Commissioner to issue the notice under subsection (1) within the two month period, the European authorised financial institution may, in the absence of such a notice, commence the item 2 to 12 business by the establishment of a branch in Gibraltar.

(4) The Commissioner may by notice require a European authorised financial institution to provide him for statistical purposes with such periodical reports as he may require on the business activities of the institution in Gibraltar.

Prohibitions and restrictions: normal procedure.

92. The principles and procedures in section 68 shall apply, *mutatis mutandis*, to a European authorised financial institution as they apply to a European institution and the powers of the Commissioner under that section shall be exercised by him in relation to a European authorised financial institution as he exercises them in relation to a European institution.

Prohibitions and restrictions: cases of urgency.

93. The principles and procedures in section 69 shall apply, *mutatis mutandis*, to a European authorised financial institution as they apply to a European institution or a recognised institution and the powers of the Commissioner under that section shall be exercised by him in relation to a European authorised financial institution as he exercises them in relation to a European institution or a recognised institution.

Supervisory requirements.

94. Sections 23(3)(cc), 35(4), 53, 58, 60A, 61 and Schedule 3 shall apply *mutatis mutandis* to the supervision of a financial institution which has

established a branch in an EEA State under section 88, as they apply to the supervision of an institution.

Loss and limitations of authorisation of European authorised financial institution.

95.(1) The obligations in section 70 shall apply, *mutatis mutandis*, to a financial institution which was a European authorised financial institution as they apply to an institution which was a European authorised institution.

(2) The obligations in section 71 shall apply, *mutatis mutandis*, to a European authorised financial institution in relation to its items 2 to 12 business carried on through a branch in Gibraltar, as they apply to a European authorised institution

Directors and managers of financial holding companies.

96.(1) This section applies to a financial holding company incorporated in Gibraltar.

(2) A financial holding company shall take all reasonable steps to ensure that every person who is a director or manager of the business—

- (a) is a fit and proper person to hold that position; and
- (b) is suitably qualified and has sufficient experience to be able to perform his duties.

(3) A financial holding company shall not appoint a person to a position by virtue of which the person will be concerned in the direction or management of the company unless it has previously notified the Commissioner of the proposal to make the appointment.

(4) A financial holding company shall comply with any notice by the Commissioner directing it to provide it with such information, within such time as specified in the notice, concerning the reputation, qualifications and experience of its director and managers as he considers necessary.

(5) If the Commissioner is not satisfied on reasonable grounds that a person who is a director or manager of a financial holding company—

- (a) is a fit and proper person;
- (b) is of sufficient good repute; or
- (c) is suitably qualified or has sufficient experience,

to be a director or manager of the company, he may, by notice, direct the company to take such action (including terminating the person's appointment as director or manager) within such time as specified in the notice, as it thinks fit.

(6) The Commissioner may, by further notice, vary or revoke a direction to a financial holding company under this section to take effect from such date as may be specified in the notice.

(7) For the purposes of this section a person who is not a director of the financial holding company but who, in the opinion of the Commissioner, effectively directs or has power to control the affairs of the company or is its chief executive, shall be considered a director of the company.

Notification of refusal or of the taking of measures.

96A. The Government shall ensure that the European Commission and the EBA are informed—

- (a) of the number and types of cases where a European authorised financial institution has been refused the establishment of a branch in Gibraltar, pursuant to the provisions in this Part; and
- (b) of the measures taken by the Commissioner, in accordance with the provisions in this Part, where measures taken by the home Member State have not been effective in preventing a European authorised institution from breaching provisions in this Act .

Offences.

97.(1) A financial institution incorporated in Gibraltar which contravenes the provisions of section 88 shall be guilty of an offence.

(2) A European authorised financial institution which contravenes the provisions of section 89 or 95 or contravenes a prohibition or restriction given to it under sections 92 or 93 shall be guilty of an offence.

(3) A financial holding company incorporated in Gibraltar which contravenes the provisions of section 96(3) or which fails to comply with a direction under section 96 shall be guilty of an offence.

(4) A financial institution or financial holding company guilty of an offence under this section shall be liable on conviction on indictment to a fine of three times the amount at level 4 on the standard scale.

(5) Where a financial institution or financial holding company commits an offence under this section, every director or manager of that institution or

company shall be guilty of the same offence and shall be liable in the same manner to the penalty provided for that offence unless he proves—

- (a) that the offence was committed without his knowledge; or
- (b) where the offence was committed with his knowledge, that it was committed without his consent and that he took all, reasonable steps to prevent the commission of the offence.

Collaboration with EEA authorities.

98.(1) The Commissioner shall collaborate closely with the competent authorities of EEA States in order to supervise the activities of credit institutions operating, in particular through a branch—

- (a) where the head office is situated in Gibraltar, in Gibraltar and in at least one EEA State; or
- (b) where the head office is not situate in Gibraltar, in Gibraltar and in at least one EEA State other than that in which the head office is situated.

(2) Where subsection (1) applies, the Commissioner shall supply the competent authorities of EEA States with all information concerning the management and ownership of such credit institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of such institutions, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.

(3) Where a request for collaboration, in particular to exchange information, has been made by the Commissioner but it has been rejected or has not been acted upon within a reasonable time, the Commissioner may refer the matter to the EBA.

Requests in cross-border situations.

99.(1) The Commissioner may make a request to the consolidating supervisor (in a case where Article 129(1) of the recast Directive applies) or to the competent authorities of the home EEA State, for a branch of a credit institution to be considered as significant and the Commissioner shall provide reasons for considering the branch to be significant with particular regard to the following matters—

- (a) whether the market share of the branch of a credit institution in terms of deposit exceeds 2% in Gibraltar;

- (b) the likely impact of a suspension or closure of the operations of the credit institution on market liquidity and the payment and clearing and settlement systems in Gibraltar; and
- (c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of Gibraltar.

(2) The Commissioner, the competent authorities of the home EEA State and the consolidating supervisor (in a case where Article 129(1) of the recast Directive applies) shall do everything within their power to reach a joint decision on the designation of a branch as being significant.

(3) Where, pursuant to subsection (2), no joint decision is reached within 2 months of receipt of a request, the Commissioner shall take a decision within a further period of 2 months on whether the branch is significant and in taking that decision, the Commissioner shall take into account any views and reservations of the consolidating supervisor or the competent authorities of the home EEA State.

(4) Where, at the end of the initial 2 month period the Commissioner or any of the competent authorities concerned has referred the matter to the EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the Commissioner shall defer his decision and await the decision of the EBA, and the Commissioner shall take his decision in conformity with that of the EBA.

(5) The 2 month period referred to in subsection (3) shall be deemed to be the “conciliation phase” within the meaning of Article 19 of Regulation (EU) No 1093/2010 and the matter shall not be referred to the EBA after the end of the initial 2 month period or after a joint decision has been reached.

(6) The decisions referred subsections (3) and (4) shall be set out in a document containing the fully reasoned decision and transmitted to the competent authorities concerned, and shall be recognised as determinative and applied by the Commissioner.

(7) The designation of a branch as being significant shall not affect the rights and responsibilities of the Commissioner under this Act.

(8) Where a significant branch is established the Commissioner shall communicate to the competent authorities of a host EEA State the information referred to in Article 132(1)(c) and (d) of the recast Directive and carry out the tasks referred to in Article 129(1)(c) of the recast Directive in cooperation with the competent authorities of that State.

(9) Where the Commissioner becomes aware of an emergency situation within a credit institution as referred to in Article 130(1) of the recast Directive, he shall alert as soon as practicable the authorities referred to in the fourth paragraph of Article 49 and in Article 50 of that Directive.

Establishment of college of supervisors.

100.(1) Where Article 131a of the recast Directive does not apply and the Commissioner supervises under this Act a credit institution with significant branches in EEA States, the Commissioner shall establish and chair a college of supervisors to facilitate cooperation under section 99 and this section.

(2) The establishment and functioning of a college referred to in subsection (1) shall be based on written arrangements determined, after consultation with competent authorities concerned.

(3) Where subsection (1) applies, the Commissioner shall decide which competent authorities participate in a meeting or in an activity of the college and the decision of the Commissioner shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the EEA States concerned referred to in Article 40(3) of the recast Directive and the obligations referred to in section 99.

(4) The Commissioner shall keep all members of the college fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered and in a timely manner, of the actions taken in those meetings or the measures carried out.

Duty to take into account convergence in supervisory tools.

101.(1) In the exercise of his duties, the Commissioner shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to the recast Directive.

(2) For the purpose of subsection (1), the Minister shall ensure that—

- (a) the Commissioner participates in the activities of the EBA;
- (b) the Commissioner follows the guidelines and recommendations of the EBA and state the reasons if he does not do so;
- (c) nothing inhibits the performance by the Commissioner of duties as a member of EBA or under this Act.

SCHEDULE 1

Section 2

ACTIVITIES RELEVANT FOR CERTAIN PURPOSES OF
THE BANKING CONSOLIDATION DIRECTIVE.

1. Acceptance of deposits and other repayable funds from the public.
2. Lending⁽¹⁾.
3. Financial leasing.
4. Payment services as defined in the Financial Services (EEA) (Payment Services) Regulations 2010.
5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as this activity is not covered by paragraph 4.
6. Guarantees and commitments.
7. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills CD's etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable securities.
8. Participation in securities issues and the provision of services relating to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit references services.
14. Safe custody services.
15. Issuing electronic money.

⁽¹⁾ Including inter alia

- consumer credit,
- mortgage credit,
- factoring, with and without recourse,
- financing of commercial transactions (including forfaiting).

SCHEDULE 2

Repealed

SCHEDULE 3

Section 86A

EXCHANGE OF INFORMATION AND PROFESSIONAL SECRECY

Article 44

1. Member States shall provide that all persons working for or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy.

No confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information or transmitting information to EBA in accordance with this Directive, with other Directives applicable to credit institutions, and with Articles 31 and 35 of Regulation (EU) No 1093/2010. That information shall be subject to the conditions relating to professional secrecy set out in paragraph 1.

Article 45

Competent authorities receiving confidential information under Article 44 may use it only in the course of their duties and only for the following purposes:

- (a) to check that the conditions governing the taking-up of the business of credit institutions are met and to facilitate monitoring, on a non- consolidated or consolidated basis, of the conduct of such business, especially with regard to the

monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;

- (b) to impose penalties;
- (c) in an administrative appeal against a decision of the competent authority; or
- (d) in court proceedings initiated pursuant to Article 55 or to special provisions provided for in this in other Directives adopted in the field of credit institutions.

Article 46

In accordance with Article 33 of Regulation (EU) No 1093/2010, Member States and EBA may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Article 47 and Article 48(1) of this Directive only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 44(1) of this Directive. Such exchange of information shall be for the purpose of performing the supervisory tasks of those authorities or bodies.

Where the information originates in another Member State, it shall not be disclosed without the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Article 47

Articles 44(1) and 45 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or between Member States, between competent authorities and the following:

- (a) authorities entrusted with the public duty of supervising other financial organisations and insurance companies and the authorities responsible for the supervision of financial markets;
- (b) bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures; and
- (c) persons responsible for carrying out statutory audits of the accounts of credit institutions and other financial institutions;

in the discharge of their supervisory functions.

Articles 44(1) and 45 shall not preclude the disclosure to bodies which administer deposit-guarantee schemes of information necessary to the exercise of their functions.

In both cases, the information received shall be subject to the conditions of professional secrecy specified in Article 44(1).

Article 48

1. Notwithstanding Articles 44 to 46, Member States may authorise exchange of information between the competent authorities and the following:

- (a) the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures; and
- (b) the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance under-takings, credit institutions, investment firms and other financial institutions.

In such cases, Member States shall require fulfilment of at least the following conditions:

- (a) the information shall be for the purpose of performing the supervisory task referred to in the first subparagraph;
- (b) information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1); and
- (c) where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

2. Notwithstanding Articles 44 to 46, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and

the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

In such cases Member States shall require fulfilment of at least the following conditions:

- (a) the information is for the purpose of performing the task referred to in the first subparagraph;
- (b) information received in this context is subject to the conditions of professional secrecy specified in Article 44(1); and
- (c) where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions specified in the second subparagraph.

In order to implement the third subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this Article.

The Commission shall draw up a report on the application of the provisions of this Article.

Article 49

This Section shall not prevent a competent authority from transmitting information to the following for the purposes of their tasks:

- (a) central banks of the European System of the Central Banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision,

oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;

- (b) where appropriate, other public authorities responsible for overseeing payment systems;
- (c) the European Systemic Risk Board (hereinafter the 'ESRB'), where that information is relevant for the exercise of its statutory tasks under 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.

This Section shall not prevent the authorities or bodies referred to in the first subparagraph from communicating to the competent authorities such information as they may need for the purposes of Article 45.

Information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1).

In an emergency situation as referred to in Article 130(1), Member States shall allow the competent authorities to communicate, without delay, information to the central banks in the European System of the Central Banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and securities settlement systems, and the safeguarding stability of the financial system, and to the ESRB under Regulation (EU) No 1092/2010, where such information is relevant for the exercise of its statutory tasks.

Article 50

Notwithstanding Articles 44(1) and 45, the Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance companies and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control.

In an emergency situation as referred to in Article 130(1), Member States shall allow competent authorities to disclose information which is relevant to the departments referred to in the first paragraph of this Article in all Member States concerned.

Article 51

The Member States shall provide that information received under Articles 44(2) and 47 and information obtained by means of the on- the-spot verification referred to in Article 43(1) and (2) may never be disclosed in the cases referred to in Article 50 except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

Article 52

This Section shall not prevent the competent authorities of a Member State from communicating the information referred to in Articles 44 to 46 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their national markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy specified in Article 44(1).

The Member States shall, however, ensure that information received under Article 44(2) may not be disclosed in the circumstances referred to in this Article without the express consent of the competent authorities which disclosed it.

BANKING (AMENDMENT) ACT**Principal Act**

Act. No. 1998-07	<i>Commencement</i>	5.1.1998
	<i>Assent</i>	5.1.1998

Title, commencement and interpretation.

1. (1) This Act may be cited as the Banking (Amendment) Act.
- (2) This Act shall come into operation on a date to be appointed by the Government by notice in the Gazette.
- (3) In this Act “the Act” means the Banking Act 1992.

2-5. *Omitted.*

Administrative notices.

6. (1) *Omitted.*
- (2) Without prejudice to the operation of sections 33 and 34 of the Interpretation and General Clauses Act (effect of repeals) any administrative notice published before the commencement of this section under section 16 of the Act, as originally enacted, shall have effect after that commencement as if made under that section, as set out in subsection (1).

7-12. *Omitted.*