

Banking Newsletter

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**Financial Services
Commission**

New banking legislation

Several pieces of new banking legislation have recently come into effect as part of the process of implementing EC banking directives and matching UK standards in banking supervision. Copies of these, which are identified below, can be purchased at 6 Convent Place or downloaded from the FSC's Internet site: '<http://www.gibraltar.gi/fsc>'.¹ An updated consolidated version of the Banking Ordinance 1992 is also available from this site.

The Banking (Accounts Directive) Regulations 1997

These regulations were published in Legal Notice no.151 of 1997 and come into force on 1st April 1998. They replace the **Banking Ordinance (Bank Accounts) Regulations 1995**, which are repealed, and complete the implementation in Gibraltar of the Bank Accounts Directive (86/635/EEC).

New requirements have been introduced with these regulations regarding the audited financial statements of licensed institutions. Amongst these is a requirement for such institutions to file, with the Registrar of Companies, copies of the financial statements which can be read by members of the public. There are also additional disclosure requirements in the notes to the accounts. Where an institution has a duty to prepare consolidated accounts, various new requirements have also been introduced.

Banking (Amendment) Ordinance 1997

This Ordinance, which was commenced on 5th January 1998, contains a number of amendments designed to improve the operation and application of the Banking Ordinance 1992. The following is extracted from the Bill's Explanatory Memorandum.

Section 2 provides for a new definition of "approved auditor" which is linked to the Companies Ordinance. Section 3 removes from the Banking Ordinance a provision which ceased to serve any purpose after changes to the licensing system in 1992. Section 4 clarifies the definition of a "deposit-taking business" so as to close certain loopholes in the existing wording.

Section 5 alters the exemption for insurers so as to take account of Council Directive 92/96/EEC (the Third Life Co-ordination Directive).

Section 6 substitutes a new version of section 16 of the Banking Ordinance. This brings the Commissioner of Banking's powers with respect to administrative notices into line with the powers in section 28 of the Financial Services Ordinance 1998 for administrative notices published by the Authority (within the meaning of that Ordinance).

Subsection (2) of section 7 amends subsection (8) of section 18 of the Banking Ordinance 1992 so as to ensure that the application of the subsection is no longer limited to recognised institutions and takes account of the Financial Services Ordinance 1998.

¹ The FSC cannot accept any responsibility for the accuracy of information contained on its Internet site.



Section 8 clarifies the licensing criteria in the Banking Ordinance 1992 so as to reflect more closely the wording in Council Directive 77/780/EEC (the First Banking Co-ordination Directive).

Sections 9 and 10 and the Schedule introduce new provisions about representative offices. In particular, section 10 and the Schedule set up a regime under which the establishment and maintenance of representative offices in Gibraltar by overseas deposit-takers is subject to additional requirements.

Section 11, which introduces a new offence of making a fraudulent inducement to make a deposit, fills a gap in the legislation regulating deposit-taking.

Section 12 makes a number of changes to the principal offence provision of the Banking Ordinance. Mainly these police new provisions introduced into the Banking Ordinance.

Banking (Auditors and Information) Ordinance 1997

This Ordinance, which was commenced on 5th January 1998, gives effect to certain provisions of the so-called "Post-BCCI" Directive (95/26/EC) relating to the obligations of auditors of credit institutions and makes other changes to the Banking Ordinance 1992. The following is extracted from the Bill's Explanatory Memorandum.

Section 2 extends the existing immunity of auditors of licensees under the Banking Ordinance 1992 from civil liability in respect of disclosures to the Commissioner or the Banking Supervisor to cover auditors of all authorised institutions and also certain auditors of bodies with which authorised institutions are linked by control.

Section 3 introduces a new section into the Banking Ordinance 1992 requiring auditors of licensed institutions to inform the Banking Supervisor of matters of concern which come to their notice in their capacity as auditors.

Section 4 substitutes a new version of section 60 of the Banking Ordinance 1992. This amends the powers of the Commissioner, the Banking Supervisor and a person appointed to carry out an investigation on behalf of the Banking Supervisor to obtain information and documents required for the performance of their functions under the Ordinance. The section also introduces a new section 60A which applies the new version of section 60 so as to enable assistance to be provided, in compliance with Community obligations, to the competent authorities of other EEA States. Section 5 makes amendments to the Banking Ordinance 1992 which are consequential on or give full effect to the revised and new provisions in section 4.

Sections 6 and 7 deal with confidential information received under the Banking Ordinance by staff of, and auditors and other experts instructed by, the Commissioner or of any other person for the time being designated as the competent authority for Gibraltar. In particular, the sections restrict the disclosure of such confidential information by reference to provisions of Article 12 of the First Banking Co-ordination Directive. These provisions are set out in the Schedule which is introduced by section 7 and which becomes Schedule 3 to the Banking Ordinance 1992.

Financial Institutions (Prudential Supervision) Ordinance 1997

This Ordinance, which was commenced on 5th January 1998, completes the implementation of the Post BCCI Directive (95/26/EC) with respect to credit



institutions and also to undertakings for collective investment in transferable securities (UCITS). The following is extracted from the Bill's Explanatory Memorandum.

The Ordinance defines "closely linked" for the purpose of the Banking Ordinance 1992, this Ordinance and any other Ordinance for the purposes of which it is applied. It then amends the Banking Ordinance 1992 so as to require licensing to be refused or withdrawn where effective supervision is prevented by an undertaking being "closely linked" to another person. It also makes certain consequential amendments.

The Ordinance also deals with information relating to undertakings which are situated in EEA States and to which the UCITS Directive applies.

Banking (Extension to Building Societies) Ordinance 1997

This Ordinance, which was commenced on 15th January 1998, applies the provisions of the Banking Ordinance 1992 to building societies registered and recognised under the Building Societies Ordinance as credit institutions within the terms of the First Banking Co-ordination Directive (77/780/EC). It also gives existing registered building societies which do not wish to comply with the provisions of the Banking Ordinance 1992 an opportunity to wind up voluntarily within a certain period.

Deposit Guarantee Scheme Ordinance 1997

The above Ordinance was partially commenced on 15th January 1998. Information on this will be circulated separately by the Gibraltar Deposit Guarantee Board.

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