



## Financial Services (Capital Adequacy of Credit Institutions)(Amendment) Regulations 2010

These Regulations implement, in part, Directive 2009/111/EC of the European Parliament and of the Council, which in turn amends Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management. These requirements are collectively referred to as "CRD2". The Regulations also impose new requirements on the Financial Services Commission in relation to its supervision of cross-border banking and investment firms.

The Capital Requirements Directive ('CRD') set out the EU framework for the prudential supervision of Credit Institutions and certain Investment Firms, by setting minimum rules on capital requirements (in line with internationally agreed standards known as "Basel II"). The CRD also provided a framework for supervision by national supervisors and established an information disclosure regime. CRD2 contains a package of reforms to the CRD dealing, in particular, with improvements to the quality of capital, the management of large exposures, and the improvement of supervisory arrangements, with a focus on firms providing cross-border services. These form part of the European Commission's response to the financial crisis.

The changes to the supervisory framework are intended to reduce the likelihood and impact of any further financial crises and the associated economic and social costs. Improving the coordination of supervisory activity is intended to also bring a general reduction in the compliance burden on firms.

The following is a list of some of the changes in the amended regulations. Please note that the list is not exhaustive, and is only an indication of some of the areas that Credit Institutions and Investment Firms should be aware of:

- The definition of unconsolidated own funds of Credit Institutions is amended via Section 7 of the Financial Services (Capital Adequacy of Credit Institutions) Regulations 2007 ("FSCACI").
- The newly introduced sections 12A and 12B in the FSCACI relate to the inclusion of certain instruments as own funds.
- Under the amended Article 110, reflected in section 63 of the FSCACI, Credit Institutions and Investment Firms will now need to report the information contained therein regarding large exposures, even if such are exempted. These will need to be reported in the quarterly supervisory return.
- There are significant changes to the treatment of exposures and exemptions applicable under regulations 64-68 of the FSCACI. Credit Institutions and Investment firms should become familiar with the changes in requirements that are reflected in the legislation and the amended Guidance Notes which will be published in due course, and should ensure that these are adequately reported in the quarterly Supervisory Return. For those exposures which are not directly exempted by the amended legislation, Credit Institutions and Investment Firms



will be required to complete an exemption request form which will be available from the FSC website in due course.

- Changes to Article 106(3), reflected in section 57(4) of the FSCACI, will also require that banks analyse the possible concentrations and report significant findings to the FSC.
- There is a new Article 122a, reflected as Regulation 78A of the FSCACI Regulations, on Securitisation.
- In relation to the Credit Risk Standardised approach, under section 1.8.2. of Part 2 of Schedule 8 of the FSCACI Regulations, changes have been effected to the conditions that must be met in order for life insurance policies pledged to the lending Credit Institution to be recognised.
- Changes to Regulation 70 of the FSCACI amend the treatment of exposures to a client where this is guaranteed by a third party, or secured by collateral issued by a third-party.
- Article 154, reflected in Schedule 1 Section 30(3) of the FSCACI regulations which provides for transitional provisions of own funds has also been amended. Credit institutions are required to review these changes in order to ensure that are not affected.
- There are changes made to Annex V on the "Technical Criteria concerning the Organisation and Treatment of Risks", which is reflected as Schedule 5 of the FSCACI regulations. Whilst there are some changes to Securitisation Risk, the majority of the changes have been effected to the Liquidity Risk requirements. Credit Institutions are encouraged to review their liquidity policies to ensure that these satisfy the technical criteria, as per the revised requirements.
- Annex XII, reflected as Part 2 of Schedule 12 of the FSCACI Regulations, on Technical Criteria for Disclosure, has also been amended.

Should any Credit Institutions or Investment Firms foresee facing any issues or difficulties as a result of these changes, they should liaise with the Commission at the earliest opportunity.

It should also be noted that the European Banking Authority (EBA) will be issuing a common reporting format which needs to be applied across all Member States by 31 December 2012. The EU Committee, via Directive 2009/111/EC (Article 74(2)), has requested that the EBA introduce the common reporting format by 01 January 2012. The FSC will be reviewing the guidance issued by the EBA and will be amending its supervisory returns accordingly.

#### **Securitisation – Article 122a of 2009/111/EC**

Gibraltar has transposed the Article 122a provisions of Directive 2006/48/EC. In accordance with these amendments, the FSC will follow the EBA guidelines on Article 122a when reviewing the compliance of Credit Institutions with said Article. The future dissemination of further details relating to the criteria and methodologies will depend upon:

- Gibraltar's experience regarding the supervision of firms' compliance with the new provisions, and
- cooperation with other EBA members



### **Directive 2010/76/EU**

Directive 2010/76/EU amends Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies. Certain sections of this amending Directive (points 3, 4, 16 and 17 of Article 1 and points 1, 2(c), 3 and 5(b)(iii) of Annex I) have now been transposed into local legislation. As a result of the transposition, the FSC will, in due course, be issuing a Guidance Note on the requirements regarding remuneration policies.

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