
**FINANCIAL SERVICES (CONSOLIDATED SUPERVISION OF
CREDIT INSTITUTIONS) REGULATIONS 2007**

**Subsidiary
2007/039**

Subsidiary Legislation made under s. 79 of the Financial Services (Banking) Act.

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SUPERVISION OF CREDIT INSTITUTIONS)
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(LN. 2007/039)

Commencement 8.3.2007

Amending enactments	Relevant current provisions	Commencement date
None		

EU Legislation/International Agreements involved:

Directive 2000/12/EC

Directive 2006/48/EC

ARRANGEMENT OF REGULATIONS

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Financial Services (Banking)

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In exercise of the powers conferred on him by section 79 of the Financial Services (Banking) Act and all other enabling powers, the Minister has made the following regulations to transpose, in part, into the law of Gibraltar Council 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.

Title.

1. These Regulations may be cited as the Financial Services (Consolidated Supervision of Credit Institutions) Regulations 2007.

Interpretation.

2. In the Regulations, unless the context otherwise requires—

“ancillary services undertaking” means an undertaking whose principal activity consists in owning or managing property, managing data processing services or any other activity of one or more credit institutions;

“asset management company” means a management company of an undertaking for collective investment in transferable securities and an undertaking whose registered office is not in an EEA State;

“EEA consolidated supervisor” means the competent authority responsible under the recast Directive for the exercise of supervision on a consolidated basis of a European parent credit institution, a European parent investment firm, or credit institutions controlled by a European parent financial holding company where the parent is authorised in a different EEA State to at least one of the subsidiaries;

“European parent credit institution” means a parent credit institution in an EEA State which is not a subsidiary of another credit institution authorised in any EEA State or of a financial holding company set up in any EEA State;

“European parent financial holding company” means a financial holding company which is not itself a subsidiary of a credit institution authorized in the same EEA State, or of a financial holding company set up in the same EEA State;

“mixed-activity holding company” means a parent undertaking, other than a financial holding company or a credit institution or a mixed financial holding company within the meaning of Article 2(15) of

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Directive 2002/87/EC, the subsidiaries of which include at least one credit institution;

“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;

“parent credit institution in an EEA State” means a credit institution which has a credit or financial institution as a subsidiary or which holds a participation in such institution and which is not itself a subsidiary of another credit institution authorised in the same EEA State, or of a financial holding company set up in the same EEA State;

“parent financial holding company in an EEA State” means a financial holding company which is not itself a subsidiary of a credit institution authorised in the same EEA State or of a financial holding company set up in the same EEA State;

“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, as extended, where applicable, by the EEA Agreement.

Consolidated supervision by the Commissioner.

3.(1) The Commissioner shall become the EEA consolidated supervisor in the circumstances mentioned in sub-regulations (2) to (6).

(2) Where a licensee is a parent credit institution in an EEA State or a European parent credit institution.

(3) Where the parent of a licensee is a parent financial holding company in an EEA State or a European parent financial holding company.

(4) Where a licensee, and other credit institutions authorised in one or more EEA States, have the same parent financial holding company in an EEA State or the same European parent financial holding company and that financial holding company has its head office in Gibraltar.

(5) Where the parents of a licensee, and other credit institutions authorised in two or more EEA States, comprise more than one financial holding company with head offices in different EEA States and there is a credit

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institution in each of those States, if the licensee is the credit institution with the largest balance sheet total.

(6) Where a licensee, and one or more other credit institution authorised in EEA States, have as their parent the same financial holding company and neither the licensee nor those credit institutions have been authorised in the State in which the financial holding company has its head office, if the licensee is the credit institution with the largest balance sheet total.

(7) In the circumstances referred to in sub-regulation (6) the licensee shall be considered as the credit institution controlled by a European parent financial holding company.

Power to waive regulation 3 requirements.

4.(1) The Commissioner and the other competent authorities may, by common agreement, waive the criteria referred to in regulations 3(4) to (6) if the application of that criteria would be inappropriate, taking into account the credit institutions and the relative importance of their activities in the different EEA States, appoint a different competent authority to be the EEA consolidated supervisor.

(2) Before taking the decision referred to in sub-regulation (1), the Commissioner and the other competent authorities shall, by common agreement, give the European parent credit institution, or the European parent financial holding company, or the credit institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that decision.

(3) The European Commission shall be notified of any agreement reached under sub-regulation (1).

Inclusion of financial holding companies.

5.(1) This regulation applies where the Commissioner is the EEA consolidated supervisor.

(2) The Commissioner may adopt any measures necessary, where appropriate, to include financial holding companies in the consolidated supervision.

(3) Any decision under sub-regulation (2) to consolidate the financial situation of the financial holding company shall not be taken as requiring the Commissioner to supervise the financial holding company on a stand alone basis.

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(4) The Commissioner may request the subsidiaries of a credit institution or of a financial holding company, which are not included in the consolidated supervision for the information referred to in regulation 10 which shall be verified in accordance with that regulation.

Consolidated supervision arrangements.

6. Where the Commissioner is the EEA consolidated supervisor, he shall, so far as reasonably practicable, have written co-ordination and co-operation arrangements in place with other competent authorities.

Consolidated supervision obligations.

7.(1) The Commissioner shall, on request, provide a relevant competent authority for the purposes of consolidated supervision, with all information which he considers to be relevant for the exercise of that authority's supervisory tasks having regard to the importance of the credit institution within the financial system of the EEA State in which it is authorised.

(2) Where the Commissioner is considering whether to impose a major sanction or exceptional measure on a licensee he shall, before making a decision, consult the EEA consolidated supervisor, and where his decision would be of importance to another competent authority's supervisory tasks, that authority.

(3) Where the Commissioner is considering whether to approve a change to a licensee's management or organisational structure, he shall, before making a decision, consult the EEA consolidated supervisor and any other competent authority where his decision would be of importance to that authority's supervisory tasks.

(4) Sub-regulations (2) and (3) shall not apply where the Commissioner considers that—

- (a) there is an urgent need to act; or
- (b) such consultation may jeopardise the effectiveness of the decision referred to in those sub-regulations.

(5) Where sub-regulations (2) or (3) does not apply by virtue of sub-regulation (4), the Commissioner shall, without delay, inform the EEA consolidated supervisor and any other competent authorities of the action that he has taken.

Disclosed information.

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8.(1) The Commissioner shall take such steps as he considers appropriate to cooperate with the EEA consolidated supervisor and other relevant competent authorities.

(2) The Commissioner shall provide the EEA consolidated supervisor and other relevant competent authorities with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under the recast Directive.

(3) For the purposes of sub-regulation (2), information shall be regarded as essential if it could materially influence the assessment of the financial soundness of a credit institution or financial institution in an EEA State.

(4) Where a licensee is a subsidiary of a European parent credit institution and the Commissioner needs information regarding the implementation of such approaches and methodologies as set out in the recast Directive which may already be available to the EEA consolidated supervisor, he shall, so far as possible, obtain that information by requesting that the EEA consolidated supervisor discloses the information to him.

(5) Where the Commissioner is the EEA consolidated supervisor and he needs information which has already been given to a competent authority in an EEA State, he shall, so far as it is possible, obtain that information by requesting the other competent authority which holds the information, to disclose it to him.

Consolidated supervision procedures.

9.(1) This regulation applies where the Commissioner is the EEA consolidated supervisor.

(2) The Commissioner shall require full consolidation of all the credit institutions and financial institutions which are subsidiaries of a parent undertaking.

(3) The Commissioner may require only proportional consolidation where, in his opinion, the liability of a parent undertaking holding a share of the capital is limited to that share of the capital in view of the liability of the other shareholders or members whose solvency is satisfactory.

(4) The Commissioner shall require the proportional consolidation of participations in credit institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where those undertakings' liability is limited to the share of the capital they hold.

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(5) In the case of participations or capital ties other than those referred to in sub-regulations (2) to (4), the Commissioner shall determine whether and how consolidation is to be carried out.

(6) In a case under sub-regulation (5), the Commissioner may permit or require use of the equity method but that method shall not be taken as including the undertakings concerned in consolidated supervision.

Determination of consolidated supervision in certain circumstances.

10.(1) Without prejudice to regulation 9, where a licensee is involved, the Commissioner and other relevant competent authorities shall, in consultation with each other, determine whether and how consolidation is to be carried out in the following case—

- (a) where a credit institution exercises a significant influence over one or more credit institutions or financial institutions, but without holding a participation or other capital ties in those institutions; and
- (b) where two or more credit institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association.

(2) Where consolidated supervision is determined under regulations 3, ancillary services undertakings and asset management companies shall be included in consolidations in those cases, and in accordance with the methods in regulation 9.

Supply of information to the Commissioner.

11.(1) Where a licensee and one or more other credit institutions, have as their same parent a mixed activity holding company, the Commissioner shall require that parent and the licensee to supply him with such information as he may require for the purpose of supervising the licensee.

(2) The Commissioner may carry out such inspections as he may require to verify information received under sub-regulation (1) from the mixed activity holding company and its subsidiaries.

(3) If the mixed activity holding company or one of its subsidiaries is an insurance undertaking, the procedure in sub-regulation (1) may be used.

(4) If a mixed activity holding company or one of its subsidiaries, other than the licensee, is situated in an EEA State, the verification of information shall be carried out in accordance with the procedure in regulation 12(6).

(5) Any exchange of information shall be done so on the understanding that the Commissioner is not required to play a supervisory role in relation to the mixed activity holding company and those of its subsidiaries which are not credit institutions.

Exchange of information for consolidated supervision purposes.

12.(1) Where a parent undertaking and those of its subsidiaries which are credit institutions, one of which is a licensee, are situated in different EEA States, the Commissioner shall communicate to the other competent authorities such information as may assist in the exercise of consolidated supervision.

(2) Where the Commissioner is requested by the EEA consolidated supervisor to ask a parent undertaking established in Gibraltar for any information which would be relevant for the purposes of consolidated supervision, he shall endeavour to obtain and transmit that information.

(3) Any information transmitted under this regulation shall be provided on the understanding that, in the case of financial holding companies, financial institutions or ancillary services undertakings, the Commissioner is not required to play a supervisory role in relation to those institutions or undertakings on a stand alone basis.

(4) Information received, in the framework of consolidated supervision and any exchange of information between the Commissioner and other competent authorities, shall be subject to the obligations of professional secrecy in Schedule 3 of the Act.

(5) Where the Commissioner is the EEA consolidated supervisor, he shall establish a list of parent financial holding companies which have credit institutions as subsidiaries included in the consolidated supervision and shall communicate that list, as appropriate, to the other competent authorities.

(6) The Commissioner shall when so requested by a competent authority of an EEA State verify information concerning a licensee, a financial holding company, a financial institution, an ancillary services undertaking, a mixed activity holding company, a subsidiary mentioned in regulation 10 or a subsidiary mentioned in regulation 5(3) established in Gibraltar.

Other supervisory techniques.

13.(1) Where a licensee is part of a group which is not subject to consolidated supervision under regulation 3 and whose parent undertaking is a credit institution or a financial holding company whose head office is in

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a non-EEA State, the Commissioner, if, were sub-regulation (2) to apply, he would be the EEA consolidated supervisor shall—

- (a) if he thinks it appropriate to do so; or
- (b) if so requested by the parent undertaking; or
- (c) if so requested by a member of the group which is authorised in an EEA State;

verify whether the licensee is subject to consolidated supervision by a non-EEA competent authority and if it is whether that supervision is equivalent to that governed by the recast Directive.

(2) In the absence of an equivalent supervision, the Commissioner shall apply other appropriate supervisory techniques which will achieve the objectives of supervision of credit institutions on a consolidated basis after consultation with other relevant competent authorities in EEA States and agreement with the EEA consolidated supervisor, if the Commissioner is not that supervisor.

(3) The Commissioner may, as a result of the consultation under sub-regulation (3), require the establishment of a financial holding company which has its head office in an EEA State and, if that head office is in Gibraltar, apply the provisions on consolidated supervision to that financial holding company.