
**SUPERVISORY BODIES (POWERS ETC.)
REGULATIONS 2017**

**Subsidiary
2017/115**

Subsidiary Legislation made under s.184.

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(LN. 2017/115)

Commencement **26.6.2017**

Amending enactments	Relevant current provisions	Commencement date
Act. 2019-05	r. 11(3)	21.3.2019
LN. 2019/116	r. 31(4A)	13.6.2019

Transposing –
Directive (EU) 2015/849

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In exercise of the powers conferred upon it by section 184 of the Proceeds of Crime Act 2015, and in order to provide powers to supervisory authorities designated under the Proceeds of Crime Act 2015 and to transpose, in part, into the law of Gibraltar, Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, the Government has made the following Regulations-

**Part 1
General**

Title.

1. These Regulations may be cited as the Supervisory Bodies (Powers etc.) Regulations 2017.

Commencement.

2. These Regulations come into operation on 26 June 2017.

Interpretation.

3. In these Regulations-

“applicable law” means any relevant Gibraltar law on the prevention of the laundering of the proceeds of crime or terrorist financing;

“default” means conduct which has or may lead to a breach of a provision of the Act, these Regulations, or any applicable law or guidance but does not include conduct which constitutes a criminal offence;

“guidance” means any relevant rules, codes or guidance issued or promulgated by a supervisory body in respect of the laws concerning the prevention of the laundering of the proceeds of crime or terrorist financing;

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“information” means any information held by or on behalf of a person including but not limited to, paper records, documents, emails, information stored electronically, audio or video recording devices, microfiche, maps, photographs, handwritten notes or any other form of recorded information and copies thereof;

“EEA State” means a State party to the European Economic Area Agreement;

“the Money Laundering Directive” means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as the same may be amended from time to time;

“relevant person” means—

- (a) a relevant financial business;
- (b) any director, officer or senior manager of a relevant financial business;
- (c) any person who is, or who has at any time been, directly or indirectly employed (whether or not under a contract of service) by any of the persons mentioned in paragraphs (a) or (b) above;
- (d) any person who has, or who has at any time had, any direct or indirect proprietary, financial or other interest in or connection with any of the persons mentioned in paragraphs (a) or (b) above;
- (e) any persons seeking to obtain any direct or indirect proprietary, financial or other interest in connection with any of the persons mentioned in paragraphs (a) or (b) above;
- (f) any person who is, or has been, directly or indirectly involved in a transaction which the relevant supervisory body considers relevant to the pursuit of its obligations under the Act, these Regulations or any applicable law or guidance;

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“supervisory body” means a body designated as a supervisory authority pursuant to section 29 and listed as a supervisory body in Part I of Schedule 2 to the Act.

Relationship with other enactments.

4.(1) Any powers vested in a supervisory body by these Regulations shall be construed as being supplementary to any power conferred on that supervisory body under any other enactment.

(2) For the avoidance of doubt nothing in these Regulations shall have the effect of varying or limiting the powers, duties or obligations vested in a supervisory body under any enactment.

Risk based approach.

5.(1) When fulfilling its obligation to effectively monitor relevant persons pursuant to section 30 of the Act, a supervisory body must use a risk based approach.

(2) Supervisory bodies must ensure that when applying a risk-based approach to supervision, they-

- (a) have a clear understanding of the risks of money laundering and terrorist financing present in Gibraltar;
- (b) have on-site and off-site access to all relevant information on the specific domestic and international risks associated with customers, products and services of the relevant financial businesses they supervise; and
- (c) base the frequency and intensity of on-site and off-site supervision on the risk profile of the relevant financial business, and on the risks of money laundering and terrorist financing in Gibraltar.

Periodical review of risk profiles.

6. The assessment, by supervisory bodies, of the money laundering and terrorist financing risk profile of relevant financial businesses, including the risks of non-compliance, shall be reviewed both periodically and when there are major events or developments in their management and operations.

Discretion to be taken account of.

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7. Supervisory bodies must take into account the degree of discretion allowed to the relevant financial businesses, and appropriately review the risk assessments underlying this discretion, and the adequacy and implementation of its internal policies, controls and procedures.

Regard for guidelines.

8. Supervisory bodies shall have regard to the guidelines referred to in Article 48(10) of the Money Laundering Directive.

**Part 2
Cooperation**

Cooperation with competent authorities outside Gibraltar.

9. In order to ensure the effective supervision of a relevant financial business, supervisory bodies must cooperate with competent authorities in the EEA State in which a relevant financial business-

- (a) has its head office; or
- (b) operates an establishment.

Cooperation with EBA, EIOPA and ESMA.

10. Supervisory bodies must, at the request of EBA, EIOPA or ESMA, provide that requesting authority with such information as may be required for the purpose of enabling it to comply with its duties under the Money Laundering Directive.

**Part 3
Supervisory Powers**

General Supervisory Powers

General supervisory powers.

11.(1) Without prejudice to its powers under any other enactment, a supervisory body may-

- (a) take preventative and corrective measures to ensure that a relevant person complies with the applicable laws and guidance concerning the prevention of the use of the financial system for the purposes of the laundering of the proceeds of crime or for terrorist financing, with which it must comply in Gibraltar;

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- (b) take any necessary measures, including where appropriate, those of an administrative or financial nature with regard to relevant persons;
- (c) require all information necessary to conduct effective supervision;
- (d) carry out on-site investigations at the premises of relevant persons.

(2) The powers conferred by this regulation must be applied in a timely and proportionate manner.

(3) For the avoidance of doubt a supervisory body may issue or promulgate such rules, codes or guidance in respect of the laws concerning the prevention of the laundering of the proceeds of crime or terrorist financing as it considers relevant.

Powers to obtain information.

Power to require information and production of documents, etc.

12.(1) A supervisory body may require a relevant person-

- (a) to attend before the supervisory body, or before a person duly appointed by the body in that behalf (an “appointed person”) at a specified time and place, and to answer questions and otherwise furnish information appearing to the supervisory body or to the appointed person to be relevant for the purposes of the Act, these Regulations or any applicable law or guidance; or
- (b) to furnish the supervisory body or an appointed person on any occasion or at specified times or intervals, with such information as the body or the appointed person may reasonably require about any specified matter relating to the Act, these Regulations or any applicable law or guidance, being if the body or the appointed person so requires, information verified in a specified manner.

(2) Where by virtue of subregulation (1)(b), the supervisory body has power to require the provision of information from a relevant person, the supervisory body shall have the like power to require the provision of that information from any person who appears to the supervisory body to be in possession thereof.

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(3) The powers conferred by subregulations (1)(b) or (2) include a power to-

- (a) take copies of any information produced;
- (b) to require a person to provide explanations of any information provided; and
- (c) to require a person to state, to the best of his knowledge and belief, where the said information might be found.

(4) A power conferred by this regulation includes the power to require the reproduction in legible form of any information maintained otherwise than in a legible form.

Skilled person report.

13.(1) A supervisory body may, by notice in writing given to a relevant person, require him to provide the supervisory body, 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 a report on any matter about which, the supervisory body may reasonably require for the performance of its functions under the Act, these Regulations or any applicable law or guidance.

(2) A supervisory body may require the report to be in such form as may be specified in the notice.

(3) The person appointed to make a report required under subregulation (1) must be a person-

- (a) nominated or approved by the supervisory body; and
- (b) appearing to the supervisory body to have the professional skills necessary to make a report on the matter concerned.

(4) The cost of producing a report under subregulation (1) shall be borne by the relevant person required to provide the report.

(5) No duty to which an auditor of a relevant person may be subject shall be regarded as contravened by reason of his communicating in good faith to the supervisory body, whether or not in response to a request made by the supervisory body, any information of which he becomes aware or opinion that he may form in his capacity as an auditor and which relates to a relevant person's compliance with the Act, these Regulations or any applicable law

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or guidance in his capacity as auditor of the relevant person or as a person appointed to make a report under subregulation (1).

(6) In subregulation (5) the reference to information which relates to compliance by a relevant person includes a reference to information which relates to compliance carried out on behalf of a relevant person by a body with which the relevant person is linked by control and is relevant to any function of the supervisory body under the Act, these Regulation or any applicable law or guidance.

Powers to appoint inspectors.

Appointment of inspectors.

14. A supervisory body may appoint a person whom it considers suitably qualified, to be an inspector to investigate compliance by a relevant person in Gibraltar with his obligations under the Act and any applicable law or guidance, and to report thereon.

Powers of inspectors.

15.(1) An inspector appointed under regulation 14 may-

- (a) examine under oath the person whose affairs he was appointed to investigate, and any employee of such person, and any banker to or auditor, barrister or solicitor of such person, and where that person is a body corporate, any of its officers, agents or employees, or
- (b) if he considers it necessary for the purpose of the investigation for which he was appointed, investigate the affairs of any other person who was at the relevant time a partner, associate, director, officer, employee, subsidiary or holding company or is closely linked to the relevant person being investigated;

provided that nothing in this regulation shall be construed so as to require a barrister or solicitor to disclose to any person any information that is privileged.

(2) Where an inspector exercises the powers conferred by subregulation (1)(b), he shall include in his report only such matters concerning the other person as are directly relevant to the investigation for which he was appointed.

(3) The costs of producing a report under subregulation (1) shall be borne by the relevant person to whom the report relates.

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Inspector's report.

16.(1) The inspector may, and if so directed by the supervisory body, shall, make interim reports to the supervisory body, and on the conclusion of the investigation shall make a final report to the supervisory body.

(2) The supervisory body may, if it thinks fit and it is permitted under the Act-

- (a) forward copies of any report made by the inspector to the person investigated and to other supervisory bodies in Gibraltar or competent authorities in EEA States; and
- (b) furnish a copy on request to-
 - (i) a person that is subject to the report;
 - (ii) the auditors of any such relevant person.

Duty to produce records, etc.

17. It shall be a duty of every person whose affairs are being investigated under the powers conferred by this Part and of any other person whom an inspector examines under those powers, to provide information in his possession or under his control.

**Part 4
Enforcement and Sanctioning Powers**

Sanctions

Penalties.

18.(1) Subject to subregulation (2), a supervisory body may impose a penalty not exceeding-

- (a) twice the amount of benefit derived from a default or breach of the applicable law or guidance where that benefit can be determined; or
- (b) EUR 1 million;

where it is satisfied that the relevant person under its supervision has defaulted or breached his obligations under the Act or any applicable law or guidance.

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(2) Where a relevant financial business is a credit institution or a financial institution, a supervisory body may impose a penalty not exceeding-

- (a) in the case of a legal person-
 - (i) EUR 5 million; or
 - (ii) 10% of the total annual turnover according to the latest available accounts approved by the management body;
- (b) in the case of a natural person-
 - (i) EUR 5 million.

where it is satisfied that the relevant person under its supervision has defaulted or breached his obligations under the Act or any applicable law or guidance.

(3) Where the relevant financial business is a parent undertaking or a subsidiary of a parent undertaking that is required to prepare consolidated accounts under the Companies Act 2014, the relevant total annual turnover is the total annual turnover or the corresponding type of income in accordance with the relevant Gibraltar law according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

(4) A penalty imposed under this regulation may be enforced in the same manner as if it were a civil debt owed to the supervisory body.

Suspension or withdrawal of licence or authorisation.

19.(1) A supervisory body may suspend, withdraw or revoke a licence or authorisation (however that authorisation is named) where a relevant person has defaulted or breached the Act or any applicable law or guidance as the case may be, and such suspension, withdrawal or revocation is in a supervisory body's opinion appropriate having regard to the circumstances.

(2) A suspension under subregulation (1) must specify the period during which it applies, which must not exceed 18 months.

Temporary ban from managerial positions.

20.(1) A supervisory body may ban a person from exercising managerial functions in a relevant financial business if that person is responsible for a default or breach of a relevant person's obligations under the Act or any

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applicable law or guidance, and such ban is in the supervisory body's opinion appropriate having regard to the circumstances.

(2) A ban under subregulation (1) must specify the period during which it applies, and may have effect for a maximum of 18 months.

Directions.

21.(1) Where-

- (a) a supervisory body believes or suspects on reasonable grounds that there is a default or breach of the Act or any applicable law or guidance; or
- (b) a supervisory body considers that it is in the public interest to do so,

the supervisory body may, by notice in writing served on the relevant person, direct it, at its own expense, to take or refrain from taking any course of action in relation to the fulfilment of its obligations under the Act, these Regulations or any applicable law or guidance that the supervisory body specifies in the notice.

(2) The supervisory body may from time to time revoke or vary a direction given under this regulation in the same manner as it was given.

Determination of sanction.

Liability of legal persons.

22.(1) A supervisory body may take action under regulations 18 to 21 against a legal person where-

- (a) a controlling person defaults or breaches the Act, or other applicable law or guidance for the benefit of that legal person; or
- (b) a lack of supervision or control by a controlling person has made it possible for a person under his authority to default or breach the Act or other applicable law or guidance for the benefit of that legal person.

(2) In subregulation (1), "a controlling person" means a person who-

- (a) has a leading position within the legal person, based on-

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- (i) a power to represent the legal person;
 - (ii) authority to take decisions on behalf of the legal person;
or
 - (iii) authority to exercise control within the legal person; and
- (b) acts alone or as part of an organ of the legal person.

Liability of natural persons.

23. Where obligations under the Act or any applicable law or guidance apply to legal persons, a supervisory body may take action under regulations 18 to 21 against members of the management body and other natural persons to whom a default or breach is attributed.

Effective application of sanctions.

24.(1) In determining the type, duration or level of action to be taken, a supervisory body must take into account all relevant circumstances, including where appropriate-

- (a) the gravity and duration of the default or breach;
- (b) the degree of responsibility of the responsible person;
- (c) the financial strength of the responsible person as indicated-
 - (i) in the case of a legal person, by its total turnover; or
 - (ii) in the case of a natural person, by his annual income;
- (d) the benefit derived from the default or breach by the responsible person, insofar as it can be determined;
- (e) the losses to third parties caused by the default or breach, insofar as they can be determined;
- (f) the level of cooperation of the responsible person with the supervisory body; and
- (g) previous defaults or breaches by the responsible person.

(2) In this regulation, a reference to a “responsible person” means the person to whom the default or a breach of the Act or other applicable law or

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guidance is attributed and to where the context so admits includes a relevant person.

Cooperation on the imposition of sanctions.

25.(1) When taking action under regulations 18 to 21, a supervisory body must, where appropriate, cooperate with other supervisory bodies and relevant competent authorities in EEA States to ensure the actions taken produce the desired results.

(2) Supervisory bodies must cooperate with competent authorities in EEA States in accordance with Article 58(5) of the Money Laundering Directive.

(3) A supervisory body may take measures under regulations 18 to 21-

- (a) in collaboration with-
 - (i) other supervisory bodies; or
 - (ii) competent authorities in EEA States; or
- (b) under their responsibility by delegation to-
 - (i) other supervisory bodies; or
 - (ii) competent authorities in EEA States.

Procedure relating to sanctions

Warning notices.

26.(1) Before taking action under regulations 18 to 21, the supervisory body must give the relevant person a warning notice, stating the action proposed and the reasons for it.

(2) Subregulation (1) does not apply if the supervisory body is satisfied that a warning notice-

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken; or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

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(3) A warning notice-

- (a) must give the recipient not less than 14 days to make representations; and
- (b) must specify a period within which the recipient may decide whether to make oral representations.

(4) The period for making representations may be extended by the supervisory body.

Issue of decision notices and directions.

27.(1) This regulation applies where a supervisory body-

- (a) issued a warning notice; or
- (b) dispensed with the requirement to issue a warning notice in accordance with regulation 26(2).

(2) After considering any representations made in accordance with regulation 26, the supervisory body must issue-

- (a) a decision notice stating that the supervisory body will take the action specified in the warning notice;
- (b) a discontinuance notice stating that the supervisory body does not propose to take that action; or
- (c) a combined notice consisting of-
 - (i) a decision notice stating that the supervisory body will take certain action specified in the warning notice; and
 - (ii) a discontinuance notice in respect of the remaining actions.

(3) A decision notice takes effect, and the specified action may be taken-

- (a) at the end of the period for bringing an appeal if no appeal is brought; or
- (b) when any appeal is finally determined or withdrawn.

Interim orders.

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28. A supervisory body may apply to the Supreme Court for permission to take action under regulations 18 to 21 where a decision notice has been issued and has not yet taken effect (whether or not a warning notice has been issued).

Service of notice and documents.

29. Any notice or documents to be served by or on behalf of a supervisory body under or in connection with these Regulations shall, without prejudice to any other valid method of service, be validly served-

- (a) on any person, if delivered to him, or left or sent by registered post or by recorded delivery service addressed to him, at his usual or last known place of abode;
- (b) on any unincorporated body, if delivered to any partner, manager, or other similar officer of that body, or if left at, or sent by registered post or by recorded delivery service to the last known place of business of that body;
- (c) on any body corporate if left at, or sent by registered post or by recorded delivery service to its registered office if situated in Gibraltar or, if its registered office is not so situated, the last known place of business in Gibraltar.

Appeals and Miscellaneous

Appeals.

30.(1) Any person aggrieved by the exercise of a power or the issue of a decision notice under these Regulations may appeal to the Supreme Court within 21 days of-

- (a) the day that the power was exercised; or
- (b) the date of the decision notice was issued;

as the case may be.

(2) The court may confirm, reverse or vary the matter appealed against or may direct the supervisory body to take any actions which it directs.

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

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Public statement.

31.(1) Subject to subregulation (3), where a supervisory body has taken action under regulations 18 to 21, it must publish on its website a statement specifying-

- (a) the action taken by the supervisory body;
- (b) the type and nature of the default or breach;
- (c) the identity of the person to whom the default or breach is attributed.

(2) Before publication of a statement under subregulation (1), the supervisory body must conduct a case by case assessment of the proportionality of the publication.

(3) Where-

- (a) the assessment under subregulation (1) determines that publication of the identity of the person to whom the default or breach is attributed or personal data of that person is disproportionate; or
- (b) the supervisory body considers that publication would jeopardise-
 - (i) the stability of financial markets; or
 - (ii) an ongoing investigation;

the supervisory body may take the measures prescribed in subregulation (4).

(4) The measures are-

- (a) delaying the publication of the statement until the reasons for not publishing it cease to exist;
- (b) publishing the statement on an anonymous basis, in a manner which accords with the law, where it is considered that such publication ensures an effective protection of the personal data concerned;
- (c) not publishing the statement, where the measures set out in paragraphs (a) and (b) would be insufficient to ensure-

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- (i) the stability of financial markets would not be put in jeopardy; or
- (ii) the proportionality of the publication of a statement with regard to actions taken in respect of minor breaches or defaults.

(4A) Where a statement is to be published on an anonymous basis in accordance with subregulation (4)(b), that publication may be postponed for a reasonable period of time if it is foreseen that within that period the reasons for anonymous publication will cease to exist.

(5) A supervisory body must publish any decision annulling an action taken by the supervisory authority under regulations 18 to 22.

(6) No publication can be made while an appeal could be brought or is pending.

(7) A statement published by a supervisory body in accordance with this regulation must be maintained on the website for a period of five years.

(8) Personal data contained within a published statement may only be kept on the website for the period permitted in accordance with Gibraltar law.

Notification of sanctions to EBA, EIOPA an ESMA.

32. Supervisory bodies must inform the EBA, EIOPA and ESMA of all actions taken under regulations 18 to 21 against credit institutions or financial institutions, including the facts and outcome of any appeals brought.

**Part 5
Offences**

Wilfully making a statement or furnishing information knowing it to be untrue.

33.(1) A person who-

- (a) acting in connection with Part 3 of these Regulations; or
- (b) providing information to the supervisory body in accordance with Part 3 of these Regulations;

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wilfully makes a statement or supplies information that he knows to be untrue in any material respect, is guilty of an offence.

- (2) A person who commits an offence under subsection (1) is liable-
- (a) on summary conviction to imprisonment for a term of up to 6 months or a fine not exceeding level 3 on the standard scale, or both; or
 - (b) on conviction on indictment to imprisonment for a term of up to 2 years or a fine not exceeding four times the amount at level 5 on the standard scale, or both.

Unwillingness to co-operate and protection of legal privilege.

34. (1) Subject to subsection (3) a person who refuses to supply information or cooperate with a supervisory body, a skilled person appointed under regulation 13, or an inspector appointed under regulation 14 is guilty of an offence and is liable on conviction on indictment to imprisonment for up to two years or to a fine of up to four times the amount at level 5 on the standard scale, or both.

- (2) A person is not guilty of an offence under this regulation if-
- (a) that person is a notary, independent legal professional, auditor, external accountant or tax advisor; and
 - (b) the information has been obtained on or received from one of their clients-
 - (i) in the course of ascertaining the legal position for their client, or
 - (ii) whilst performing the task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings,

whether such information is received or obtained before, during or after such proceedings and the person refused to supply this information.

Offences by body corporate, partnerships and unincorporated associations.

35.(1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of any director, manager, secretary or

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other similar officer of the body corporate or any other person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by the members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.

(3) Where an offence is committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.