

Subsidiary Legislation made under s.184.

## **Supervisory Bodies (Powers etc.) Regulations 2017**

### **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
2020/110	rr. 3, 9(1)-(4), 9A, 10A, 32, 32A, 34A	13.3.2020
Act.2021-08	rr. 3, 5(2)(a), (c), 6, 9A(1)(a)-(b), 10A(3)(a)(i), 11(1)(a)	9.2.2021
LN.2021/191	r. 9A(3)	22.3.2021
2022/160	rr. 3, 9(1), (2)(a)-(b), (3)(b), (4), 9A(2)-(3), 10, 10A(4)(a)-(b), 11(3), 12(1)(a)-(b), 13(1), (5)-(6), 14, 16(2)(a), 17A, 18(1)-(2), (5), 19(1), 20(1)(a), 22(1)(a)-(b), 23, 24(1)(a), (d)-(e), (g), (2), 25(1)-(3), 31(1), (3)(a), (4)(c)(ii), 32, 32A	30.6.2022
2022/177	rr. 3, 8, 9(1), (2)(a)-(b), 11(1)(a), (3), 12(1)(a)-(b), 13(1), (5)-(6), 14, 18(1), (2), (b), 19(1), 20(1), 21(1), (a), 22(1)(a)-(b), 23, 24(1)(a), (2),	7.7.2022

**Transposing –**  
Directive (EU) 2015/849

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**2015-22**

Proceeds of Crime

**2017/115**

**Supervisory Bodies (Powers etc.) Regulations 2017**

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*This version is out of date*

*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, and as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, 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-

“Act” means the Proceeds of Crime Act 2015;

“applicable provision” means a provision of –

- (a) the Act, these Regulations or any other law concerning or related to the prevention of the laundering of the proceeds of crime, terrorist financing or proliferation financing; or
- (b) any guidance;

“beneficial owner” has the meaning given to it in section 7 of the Act;

“credit institution” has the meaning given to it in Section 7 of the Act;

“financial institution” has the meaning given to it in Section 7 of the Act;

“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, terrorist financing or proliferation financing;

“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;

“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 any applicable provision;

“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, terrorist financing and proliferation 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—
  - (i) the money laundering, terrorist financing and proliferation financing risks, and the policies internal controls and procedures associated with the relevant financial business, as identified by the supervisory body's assessment of the risk profile of the relevant financial business; and
  - (ii) on the risks of money laundering, terrorist financing and proliferation financing in Gibraltar as identified within any information that is made available to the relevant financial business pursuant to the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016.

**Periodical review of risk profiles.**

6. The assessment, by supervisory bodies, of the money laundering, terrorist financing and proliferation 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.**

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 FATF guidance.**

8. Supervisory bodies shall have regard to any relevant guidance issued by the Financial Action Task Force.

**Part 2  
Cooperation**

**Cooperation with competent authorities outside Gibraltar.**

9.(1) In order to ensure the effective supervision of a relevant financial business, supervisory bodies must cooperate so far as reasonable with competent authorities in the country or territory outside Gibraltar in which a relevant financial business-

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

(2) In the case of credit and financial institutions that are part of a group-

- (a) where a parent undertaking is established in Gibraltar, supervisory bodies must cooperate so far as reasonable with the competent authorities of the countries or territories outside Gibraltar where the establishments that are part of the group are established in order to effectively supervise (in accordance with section 30(4) of the Act) the effective implementation of group-wide policies and procedures referred to in sections 21 and 26 of the Act; and
- (b) where a parent undertaking is established outside Gibraltar and a credit or financial institution that is part of that group is established in Gibraltar, supervisory bodies must cooperate so far as reasonable with the competent authorities of the country or territory where the parent undertaking is established.

(3) For the purposes of this regulation, co-operation may include the sharing of information which the supervisory body is not prevented from disclosing, provided that-

- (a) any confidential information disclosed to the competent authority in question will be subject to an obligation of confidentiality equivalent to that provided for in regulation 10A; or



- (b) where the information disclosed has been received from a country or territory outside Gibraltar, it is only disclosed-
  - (i) with the express consent of the competent authority which provided the information; and
  - (ii) where appropriate for the purposes for which the information was originally provided.
- (4) A supervisory body is not obliged to refuse a request to assist a competent authority in a country or territory outside Gibraltar on the grounds that-
  - (a) the request is also considered to involve tax matters;
  - (b) any other enactment requires a relevant financial business or a supervisory body to maintain secrecy or confidentiality, provided that nothing in this regulation shall be construed so as to require a supervisory body to disclose to any person any information that is the subject of legal privilege;
  - (c) there is an inquiry, investigation or proceeding underway in Gibraltar, unless the assistance would impede that inquiry, investigation or proceeding; or
  - (d) the nature or status of the requesting competent authority is different from that of the supervisory body concerned in a request made under this regulation.

**Cooperation between supervisory bodies and equivalent authorities.**

9A(1). Subject to regulation 9(2), a supervisory body must take such steps as it considers appropriate-

- (a) to co-operate with other supervisory bodies, the Commissioner of Income Tax and law enforcement authorities in Gibraltar in relation to the development and implementation of policies to counter money laundering, terrorist financing and proliferation financing;
- (b) to co-ordinate activities to counter money laundering, terrorist financing and proliferation financing with other supervisory authorities and law enforcement authorities; and
- (c) to co-operate with such supervisory authorities and law enforcement authorities to the greatest extent possible, regardless of their respective nature or status.

(2) In discharging its functions under subregulation (1), a supervisory body in receipt of a request for information or assistance from a supervisory authority or law enforcement authority, may exercise its powers-

- (a) to conduct inquiries on behalf of the requesting supervisory authority or law enforcement authority; and
- (b) exchange information obtained through such inquiries with the requesting supervisory authority or law enforcement authority.

(3) A supervisory body's ability to exchange information or provide assistance to a supervisory authority or law enforcement authority under this regulation shall not be impeded on the ground that there are differences, in the nomenclature or status of relevant financial business, between Gibraltar law and the law of the country or territory where the supervisory authority or law enforcement authority is located, or where criminal conduct takes place.

10. *Omitted.*

## **Part 2a Confidentiality**

### **Obligation of confidentiality.**

10A.(1) No person working for a relevant authority, or acting on behalf of a relevant authority (or who has worked or acted for or been contracted by a relevant authority), may, except in accordance with this regulation, disclose any confidential information received in the course of their employment or engagement.

(2) Any information received by a person referred to in subregulation (1) in the course of their employment or engagement may be disclosed only in summary or aggregate form, and in such a way that no credit institution or financial institution is identifiable from the information disclosed.

(3) A relevant authority may only use confidential information received pursuant to the exercise of its functions-

- (a) in the discharge of its duties under these Regulations or under other legislation relating to-
  - (i) money laundering, terrorist financing or proliferation financing;

- (ii) prudential regulation; or
  - (iii) the supervision of credit institutions and financial institutions;
  - (b) in an appeal against one of its decisions; and
  - (c) in court proceedings initiated by it in the exercise of the duties referred to in subregulation (3)(a),
- or otherwise relating to the discharge of those duties.
- (4) Subject to subregulation (5), nothing in this regulation shall prevent the exchange of information between-
- (a) relevant authorities in Gibraltar; or
  - (b) a relevant authority in Gibraltar and the relevant authority (including the central bank) in a country or territory outside Gibraltar.
- (5) Confidential information may only be exchanged under subregulation (4) if the relevant authority to which the information is provided holds it subject to an obligation of confidentiality equivalent to that set out in subregulation (1).
- (6) For the purposes of this regulation, a “relevant authority” is a supervisory body responsible for the supervision of credit institutions or financial institutions.
- (7) Nothing in this regulation shall be construed so as to require a supervisory body to disclose to any person any information that is privileged.

### **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 provisions 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 or proliferation financing, with which it must comply in Gibraltar;

- (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, or guidance in respect of the laws concerning the prevention of the laundering of the proceeds of crime, terrorist financing or proliferation 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 any applicable provision; 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 any applicable provision, 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.
- (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 any applicable provision.

(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 any applicable provision 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 any applicable provision.

*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 any applicable provision, 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.

**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, where relevant, in countries or territories outside Gibraltar; 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.

**Admissibility of statements.**

17A.(1) A statement made by a person in response to a requirement imposed under regulation 12 or 15 may only be used in evidence in criminal proceedings against the person if–

- (a) the person has introduced the statement in evidence; or
- (b) the proceedings concern the prosecution of the person–
  - (i) for an offence under regulation 33; or
  - (ii) for an offence where, in giving evidence, the person makes a statement inconsistent with the statement to which this sub-regulation applies.

(2) Sub-regulation (1) does not apply in the case of confiscation proceedings under Part 4 of the Act.

**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 the benefit derived from the contravention, where that benefit can be determined; or

- (b) EUR 1 million;

where it is satisfied that a relevant person has contravened an applicable provision.

(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 EUR 5 million,

where it is satisfied that a relevant person has contravened an applicable provision.

(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.

(5) A penalty under this regulation may not be imposed on a person who for the same contravention has been convicted of an offence.

### **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 contravened an applicable provision, 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 relevant person's contravention of an applicable provision, 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 a relevant person is contravening or has contravened an applicable provision; 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 applicable provision 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 contravenes an applicable provision 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 contravene an applicable provision 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-

- (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 applicable provision 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 contravention 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 contravention of the applicable provision;
- (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 contravention by the responsible person, insofar as it can be determined;
- (e) the losses to third parties caused by the contravention, insofar as they can be determined;
- (f) the level of cooperation of the responsible person with the supervisory body; and
- (g) previous contravention by the responsible person.

(2) In this regulation, a reference to a “responsible person” means the person to whom the contravention of the applicable provision is attributed and to whom 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 may, where appropriate, cooperate with other supervisory bodies and relevant competent authorities in countries or territories outside Gibraltar to ensure the actions taken produce the desired results.

(2) *Omitted.*

(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 countries or territories outside Gibraltar; or

(b) under their responsibility by delegation to-

(i) other supervisory bodies; or

(ii) competent authorities in countries or territories outside Gibraltar.

*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.

(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.**

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.

**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 contravention;
- (c) the identity of the person to whom the contravention 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 contravention 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-
  - (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 contraventions.

(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.

32. *Omitted.*

### **Reporting offences to law enforcement authorities.**

32A. Where a supervisory body has reasonable grounds to suspect that a person has committed an offence, whether under Part 5 or otherwise, it must promptly refer the matter to the GFIU, the Royal Gibraltar Police, HM Customs or the Income Tax Office, as appropriate.

## **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;

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.

**Breach of confidentiality.**

34A.(1) Any person who discloses information in contravention of regulation 10A is guilty of an offence.

(2) A person guilty of an offence under subregulation (1) is liable on summary conviction to imprisonment for a term of up to 3 months or a fine not exceeding level 5 on the standard scale, or both.

(3) In proceedings for an offence under this regulation, it is a defence for the accused to prove-



- (a) that the accused did not know and had no reason to suspect that the information was confidential information; and
- (b) that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.

**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 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.