
STATUTORY INSTRUMENTS

1992 No. 3218

**The Banking Coordination (Second
Council Directive) Regulations 1992**

PART IV

AMENDMENTS OF BANKING ACT

Authorisations

Applications for authorisation

25. At the end of section 8(1) of the Banking Act⁽¹⁾ (applications for authorisation) there shall be inserted the words

“other than—

- (a) a credit institution incorporated in or formed under the law of any part of the United Kingdom whose principal place of business is outside the United Kingdom; and
- (b) a credit institution incorporated in or formed under the law of another member State”.

Grant and refusal of authorisation

26. After subsection (6) of section 9 of the Banking Act (grant and refusal of authorisation) there shall be inserted the following subsection—

“(7) Before granting an authorisation to a credit institution incorporated in or formed under the law of any part of the United Kingdom which is—

- (a) a subsidiary undertaking;
- (b) a subsidiary undertaking of the parent undertaking; or
- (c) controlled by the parent controller,

of a credit institution which is for the time being authorised to act as such an institution by the relevant supervisory authority in another member State, the Bank shall consult that authority.”

Minimum criteria for authorisation

27.—(1) In sub-paragraph (2) of paragraph 4 (business to be conducted in a prudent manner) of Schedule 3 to the Banking Act (minimum criteria for authorisation), for the words “net assets” there shall be substituted the words “own funds”.

(2) For sub-paragraph (3) of that paragraph there shall be substituted the following sub-paragraphs—

“(3) The particular factors referred to above are—

- (a) the nature and scale of the institution's operations; and
- (b) the risks inherent in those operations and in the operations of any other undertaking in the same group so far as capable of affecting the institution.

(3A) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain own funds which amount to not less than ecu 5 million (or an amount of equal value denominated wholly or partly in another unit of account)."

(3) For sub-paragraph (10) of that paragraph there shall be substituted the following sub-paragraph—

"(10) In this paragraph 'ecu' and 'own funds' have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992."

(4) For paragraph 6 of that Schedule there shall be substituted the following paragraph—

"6.—(1) The institution will at the time when authorisation is granted to it have initial capital amounting to not less than ecu 5 million (or an amount of equal value denominated wholly or partly in another unit of account).

(2) In this paragraph 'ecu' and 'initial capital' have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992."

Revocation of authorisation

28.—(1) After subsection (1) of section 11 of the Banking Act(2) (revocation of authorisation) there shall be inserted the following subsection—

"(1A) The Bank may revoke the authorisation of a credit institution incorporated in or formed under the law of any part of the United Kingdom if—

- (a) it appears to the Bank that the institution's principal place of business is or may be outside the United Kingdom;
- (b) it appears to the Bank that the institution has carried on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits from the public) without having given prior notice to the Bank of its intention to do so;
- (c) the Bank is informed by The Securities and Investments Board, or a connected UK authority having regulatory functions in relation to the provision of financial services, that the institution—
 - (i) has contravened any provision of the Financial Services Act 1986 or any rules or regulations made under it;
 - (ii) in purported compliance with any such provision, has furnished that Board or authority with false, misleading or inaccurate information;
 - (iii) has contravened any prohibition or requirement imposed under that Act; or
 - (iv) has failed to comply with any statement of principle issued under that Act;
- (d) the Bank is informed by the Director General of Fair Trading that the institution, or any of the institution's employees, agents or associates (whether past or present) or, where the institution is a body corporate, any controller of the institution or an associate of any such controller, has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act 1974;

- (e) it appears to the Bank that the institution has failed to comply with any obligation imposed on it by the Banking Coordination (Second Council Directive) Regulations 1992; or
 - (f) the Bank is informed by a supervisory authority in another member State that the institution has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.”
- (2) After subsection (3) of that section there shall be inserted the following subsection—
- “(3A) In relation to a credit institution incorporated in or formed under the law of any part of the United Kingdom, subsection (3) above shall have effect as if the words 'and shall do so if that country or territory is a member State' were omitted.”
- (3) After subsection (9) of that section there shall be inserted the following subsection—
- “(10) The rules and prohibitions referred to in subsection (1A)(c) above include the rules of any recognised self-regulating organisation of which the institution is a member and any prohibition imposed by virtue of those rules; and in subsection (1A)(d) above—
- 'associate' has the same meaning as in section 25(2) of the Consumer Credit Act 1974;
 - 'controller' has the meaning given by section 189(1) of that Act.”

Revocation or restriction on information from supervisory authority

29. After section 12 of the Banking Act there shall be inserted the following section—

“Revocation or restriction on information from supervisory authority.

12A.—(1) This section applies where, in the case of an authorised institution which is a credit institution incorporated in or formed under the law of any part of the United Kingdom, the Bank is informed by a supervisory authority in another member State that the institution is failing to comply with an obligation imposed by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.

(2) The Bank shall as soon as practicable send a copy of the information received by it to every other authority which it knows is a connected UK authority.

(3) The Bank shall also—

- (a) consider whether to exercise its powers under section 11 or 12 above; and
- (b) notify its decision, and any action which it has taken or intends to take, to the supervisory authority and to every other authority which it knows is a connected UK authority.”

Notice of revocation, restriction or surrender

- 30.—(1) After subsection (3) of section 13 of the Banking Act (notice of revocation or restriction) there shall be inserted the following subsection—

“(3A) Where the Bank gives a notice under subsection (1) above to a credit institution incorporated in or formed under the law of any part of the United Kingdom, it shall give a copy of that notice to every other authority which the Bank knows is—

- (a) a connected UK authority; or
- (b) a supervisory authority in another member State in which the institution is carrying on a listed activity.”

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) After subsection (3) of section 15 of that Act (surrender of authorisation) there shall be inserted the following subsection—

“(4) Where the Bank receives a notice of surrender under subsection (1) above from a credit institution incorporated in or formed under the law of any part of the United Kingdom, it shall give a copy of that notice to every other authority which the Bank knows is—

- (a) a connected UK authority; or
- (b) a supervisory authority in another member State in which the institution is carrying on a listed activity.”