
STATUTORY INSTRUMENTS

1992 No. 3218

The Banking Coordination (Second Council Directive) Regulations 1992

PART I
GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Banking Coordination (Second Council Directive) Regulations 1992.

(2) These Regulations shall come into force on 1st January 1993.

Interpretation: general

2.—(1) In these Regulations—

“the Banking Act” means the Banking Act 1987(1);

“the Building Societies Act” means the Building Societies Act 1986(2);

“the Consumer Credit Act” means the Consumer Credit Act 1974(3);

“the Financial Services Act” means the Financial Services Act 1986(4);

“the Insurance Companies Act” means the Insurance Companies Act 1982(5);

“another member State” means a member State other than the United Kingdom;

“appointed representative” has the same meaning as in the Financial Services Act;

“authorised or permitted”, in relation to the carrying on of a listed activity, shall be construed in accordance with regulation 4 or, as the case may be, regulation 21 below;

“the Bank” means the Bank of England;

“the Board” means The Securities and Investments Board(6);

“branch” means one or more places of business established or proposed to be established in the same member State for the purpose of carrying on home-regulated activities;

“the commencement date” means 1st January 1993;

(1) 1987 c. 22.

(2) 1986 c. 53.

(3) 1974 c. 39.

(4) 1986 c. 60; various functions of the Secretary of State under the Financial Services Act 1986 have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I.1992/1315).

(5) 1982 c. 50.

(6) Various functions under the Financial Services Act 1986 have been transferred to the Securities and Investments Board by the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942), the Financial Services Act 1986 (Delegation) (No.2) Order 1988 (S.I. 1988/738), the Companies (Commencement No.3, Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990 (S.I. 1990/354), the Financial Services Act 1986 (Delegation) Order 1991 (S.I. 1991/200) and the Financial Services Act 1986 (Delegation) (No.2) Order 1991 (S.I. 1991/256).

- “the Commission” means the Building Societies Commission;
- “connected UK authority”, in relation to a credit or financial institution carrying on or proposing to carry on a listed activity in the United Kingdom, means an authority in the United Kingdom which has regulatory functions in relation to that activity;
- “constituent instrument”, in relation to an institution, includes any memorandum or articles of the institution;
- “Consumer Credit Act business” means consumer credit business, consumer hire business or ancillary credit business;
- “consumer credit business”, “consumer hire business” and “ancillary credit business” have the same meanings as in the Consumer Credit Act;
- “credit institution” means a credit institution as defined in article 1 of the First Council Directive, that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;
- “delegation order” and “designated agency” have the same meanings as in the Financial Services Act;
- “deposit” has the same meaning as in the Banking Act;
- “the Director” means the Director General of Fair Trading;
- “ecu” means the European currency unit as defined in Article 1 of Council Regulation No. 3180/78/EEC(7);
- “establish”, in relation to a branch, means establish the place of business or, as the case may be, the first place of business which constitutes the branch;
- “the European Commission” means the Commission of the Communities;
- “European institution”, “European authorised institution” and “European subsidiary” have the meanings given by regulation 3 below;
- “financial institution” means a financial institution as defined in article 1 of the Second Council Directive, that is to say, an undertaking other than a credit institution the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 in the Annex (the text of which is set out in Schedule 1 to these Regulations);
- “the First Council Directive” means the First Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (No. [77/780/EEC](#))(8);
- “home-regulated activity” shall be construed in accordance with regulation 3(7) or, as the case may be, regulation 20(6) below;
- “home-regulated investment business”, in relation to a European institution or quasi-European authorised institution, means investment business which consists in carrying on one or more listed activities—
- (a) in relation to which a supervisory authority in its home State has regulatory functions; and
 - (b) which, in the case of a European subsidiary, it is carrying on its home State;
- “home State”, in relation to an institution incorporated in or formed under the law of another member State, means that State;

(7) OJ No. L379, 30.12.78; the relevant amending instrument is Council Regulation ([EEC](#)) No. [1971/89](#), OJ No. L189, 4.7.89 p.1.
(8) OJ No. L322, 17.12.77, p.30, as amended by Council Directive [86/524/EEC](#) (OJ No. L309, 4.11.86, p.15), and by Council Directive No. [89/646/EEC](#) (OJ No. L386, 30.12.89, p.1.).

“initial capital” means capital as defined in points 1 and 2 of article 2(1) of the Council Directive on the own funds of credit institutions (No. [89/299/EEC](#))(9);

“investment business” has the same meaning as in the Financial Services Act;

“listed activity” means an activity listed in the Annex to the Second Council Directive (list of activities subject to mutual recognition), the text of which is set out in Schedule 1 to these Regulations;

“member” and “rules”, in relation to a recognised self-regulating organisation, have the same meanings as in the Financial Services Act;

“own funds” means own funds as defined in the Council Directive on the own funds of credit institutions (No. [89/299/EEC](#));

“principal”, in relation to an appointed representative, has the same meaning as in the Financial Services Act;

“quasi-European institution”, “quasi-European authorised institution” and “quasiEuropean subsidiary” have the meanings given by regulation 3(4) below;

“recognised self-regulating organisation” has the same meaning as in the Financial Services Act;

“the relevant supervisory authority”, in relation to another member State, means the authority in that State which has regulatory functions in relation to the acceptance of deposits from the public, whether or not it also has such functions in relation to one or more other listed activities;

“requisite details”, in relation to a branch in the United Kingdom or another member State (whether established or proposed to be established), means—

- (a) particulars of the programme of operations of the business to be carried on from the branch, including a description of the particular home-regulated activities to be carried on and of the structural organisation of the branch;
- (b) the name under which the business is to be carried on and the address in the member State from which information about the business may be obtained; and
- (c) the names of the managers of the business;

“the Second Council Directive” means the Second Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending the First Council Directive (No. [89/646/EEC](#))(10);

“the Solvency Ratio Directive” means the Council Directive on a solvency ratio for credit institutions (No. [89/647/EEC](#))(11);

“supervisory authority”, in relation to another member State, means an authority in that State which has regulatory functions in relation to one or more listed activities;

“the UK authority”, “UK institution”, “UK authorised institution” and “UK subsidiary” have the meanings given by regulation 20 below;

“voting rights”, in relation to an undertaking, shall be construed in accordance with paragraph 2 of Schedule 10A to the Companies Act 1985(12) or paragraph 2 of Schedule 10A to the Companies (Northern Ireland) Order 1986(13).

(9) OJ No. L124, 5.5.89, p.16, as amended by Council Directives [91/633/EEC](#) (OJ No. L339, 11.12.91, p.33) and [92/16/EEC](#) (OJ No. L75, 21.3.92, p.48).

(10) OJ No. L386, 30.12.89, p.1.

(11) OJ No. L386, 30.12.89, p.14, as amended by Commission Directive [91/31/EEC](#) (OJ No. L17, 23.1.91, p.20).

(12) [1985 c. 6](#); Schedule 10A was inserted by the Companies Act [1989 \(c. 40\)](#), section 21(2).

(13) S.I. [1986/1032 \(N.I.6\)](#); Schedule 10A was inserted by the Companies (Northern Ireland) Order 1990 (S.I. [1990/593 \(N.I.5\)](#)), Article 23(2).

(2) In these Regulations “parent undertaking”, “share”, “subsidiary undertaking” and “undertaking” have the same meanings as in Part VII of the Companies Act 1985⁽¹⁴⁾ or Part VIII the Companies (Northern Ireland) Order 1986⁽¹⁵⁾ except that—

(a) “subsidiary undertaking” also includes, in relation to an institution incorporated in or formed under the law of another member State, any undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with the implementation of the Seventh Company Law Directive based on article 54(3)(g) of the Treaty on consolidated accounts (No. 83/349/EEC)⁽¹⁶⁾; and

(b) “parent undertaking” shall be construed accordingly.

(3) For the purposes of these Regulations a subsidiary undertaking of an institution is a 90 per cent. subsidiary undertaking of the institution if the institution holds 90 per cent. or more of the voting rights in the subsidiary undertaking.

(4) Any reference in these Regulations to the carrying on of home-regulated investment business in the United Kingdom—

(a) is a reference to the carrying on of such business in reliance on regulation 5(1)(b) below; and

(b) shall be construed in accordance with section 1(3) of the Financial Services Act.

⁽¹⁴⁾ Section 258 was inserted by the Companies Act 1989 (c. 40), section 21(1), and section 259 was inserted by section 22 of the Companies Act 1989.

⁽¹⁵⁾ Article 266 was inserted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 23(1), and Article 267 was inserted by Article 24 of the Companies (Northern Ireland) Order 1990.

⁽¹⁶⁾ OJ No. L193, 18.7.83, p.1; the relevant amending instrument is Council Directive 90/605/EEC (OJ No. L316, 16.11.90, p.60).