
STATUTORY INSTRUMENTS

1992 No. 3218

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

PART III

RECOGNITION IN OTHER MEMBER STATES OF UK INSTITUTIONS

Preliminary

UK institutions etc.

20.—(1) In these Regulations “UK institution” means a UK authorised institution or a UK subsidiary.

- (2) A credit institution is a UK authorised institution for the purposes of these Regulations if—
- (a) it is incorporated in or formed under the law of any part of the United Kingdom;
 - (b) its principal place of business is in the United Kingdom; and
 - (c) it is for the time being authorised by the Bank under the Banking Act(1) or by the Commission under the Building Societies Act(2).
- (3) A financial institution is a UK subsidiary for the purposes of these Regulations if—
- (a) it is incorporated in or formed under the law of any part of the United Kingdom;
 - (b) it is a 90 per cent. subsidiary undertaking of a UK authorised institution; and
 - (c) the conditions mentioned in paragraph (5) below are fulfilled in relation to it.

(4) For the purposes of paragraph (3)(b) above, any two or more UK authorised institutions which hold voting rights in the same undertaking shall be regarded as a single institution; and in these Regulations “parent undertaking”, in relation to an institution which is a UK subsidiary by virtue of this paragraph, shall be construed accordingly.

- (5) The conditions referred to in paragraph (3)(c) above are—
- (a) that each listed activity stated in the institution’s recognition notice is carried on by it in the United Kingdom;
 - (b) that the constituent instrument of the institution permits it to carry on each such activity;
 - (c) that the consolidated supervision of the institution’s parent undertaking or, if more than one, any of them effectively includes supervision of the institution; and
 - (d) that the institution’s parent undertaking has guaranteed or, if more than one, they have each jointly and severally guaranteed, with the consent of the UK authority, the institution’s obligations;

(1) 1987 c. 22.

(2) 1986 c. 53.

and in this paragraph and regulation 23(1) below “recognition notice”, in relation to an institution, means a notice given by it in accordance with paragraph 2 of Schedule 6 to these Regulations.

- (6) In these Regulations “home-regulated activity”—
- (a) in relation to a UK authorised institution, means any listed activity;
 - (b) in relation to a UK subsidiary, means any listed activity which it is carrying on in the United Kingdom.
- (7) In these Regulations “the UK authority”—
- (a) in relation to a UK authorised institution which is authorised by the Bank under the Banking Act or a UK subsidiary whose parent undertaking (or each of whose parent undertakings) is so authorised, means the Bank;
 - (b) in relation to a UK authorised institution which is authorised by the Commission under the Building Societies Act or a UK subsidiary whose parent undertaking (or each of whose parent undertakings) is so authorised, means the Commission;
 - (c) in relation to a UK subsidiary of whose parent undertakings one is authorised by the Bank under the Banking Act and another is authorised by the Commission under the Building Societies Act, means such one of the Bank and the Commission as may be agreed between them.
- (8) An agreement made for the purposes of sub-paragraph (c) of paragraph (7) above—
- (a) may relate to particular UK subsidiaries or to UK subsidiaries of particular descriptions; and
 - (b) shall provide that the UK authority in relation to any UK subsidiary falling within that sub-paragraph shall keep the other party informed of anything done by it in relation to that subsidiary.
- (9) In the case of a UK authorised institution which is authorised by the Commission under the Building Societies Act, the power conferred by section 18(1)(b) of that Act to guarantee the discharge of the liabilities of the bodies corporate there mentioned includes power, with the consent of the Commission, to guarantee their obligations for the purposes of this regulation.

Authorised and permitted activities

21.—(1) For the purposes of these Regulations a UK authorised institution is authorised to carry on in the United Kingdom any listed activity which it is lawful for it to carry on in the United Kingdom.

(2) For the purposes of these Regulations a UK subsidiary is permitted to carry on in the United Kingdom any listed activity which it is lawful for it to carry on, and it is carrying on, in the United Kingdom.

Procedural requirements

Procedural requirements for carrying on certain listed activities

- 22.**—(1) Subject to paragraph (2) below, a UK institution shall not—
- (a) carry on in another member State by the provision of services any listed activity which it is authorised or permitted to carry on in the United Kingdom; or
 - (b) establish a branch in another member State for the purpose of carrying on such an activity, unless the requirements of paragraph 1 of Schedule 6 to these Regulations have been (and, in the case of a UK subsidiary, continue to be) complied with in relation to its carrying on of the activity or, as the case may be, its establishment of the branch.

- (2) Paragraph (1) above shall not apply in relation to a UK subsidiary if—
- (a) there has been no compliance with the requirements of paragraph 1 of Schedule 6 to these Regulations in relation to its carrying on of an activity or its establishment of a branch; or
 - (b) each such compliance has ceased to have effect.
- (3) A UK institution shall not change the requisite details of a branch established by it in another member State unless the requirements of paragraph 5 of Schedule 6 to these Regulations have been complied with in relation to its making of the change.
- (4) An institution which contravenes paragraph (1) or (3) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In proceedings brought against an institution for an offence under paragraph (4) above it shall be a defence for the institution to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (6) Schedule 6 to these Regulations (which contains requirements to be complied with by or in relation to UK institutions) shall have effect.

Regulation of UK subsidiaries for recognition purposes

Restriction on activities of UK subsidiaries

23.—(1) In this regulation “restriction” means a direction that a UK subsidiary to which section 22(1) above applies—

- (a) may not carry on in the United Kingdom any listed activity stated in its recognition notice which is specified in the direction; or
- (b) may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any such activity which is so specified.

(2) Where it appears to the UK authority that the situation as respects a UK subsidiary is such that, if it were authorised by the Bank under the Banking Act, the Bank could revoke its authorisation on the ground specified in section 11(1)(a) of that Act, the UK authority may impose on the institution such restriction as appears to it desirable.

(3) Subsection (4) of section 12 of the Banking Act (examples of conditions that may be imposed) applies for the purposes of this regulation as it applies for the purposes of that section; and Schedule 3 to that Act (minimum criteria for authorisation) as applied by this regulation shall have effect as if—

- (a) paragraph 6 (minimum initial capital) were omitted; and
- (b) where the Commission is the UK authority, the reference to that Act in paragraph 4(8) were a reference to the Building Societies Act.

(4) Any restriction imposed under this regulation—

- (a) may be withdrawn; or
- (b) may be varied with the agreement of the institution concerned,

by written notice served by the UK authority on the institution; and any such notice shall take effect on such date as is specified in the notice.

(5) An institution which contravenes or fails to comply with a restriction shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(6) The fact that a restriction has not been complied with (whether or not constituting an offence under paragraph (5) above) shall not invalidate any transaction.

(7) Schedule 7 to these Regulations (which makes supplemental provision with respect to restrictions imposed under this regulation) shall have effect.

Restriction on information from supervisory authority

24.—(1) This regulation applies where in the case of a UK subsidiary the UK authority 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 UK authority 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 UK authority shall also—

- (a) consider whether to exercise its powers under regulation 23 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.