



Financial Services Resolution
and Compensation Committee



GIBRALTAR FINANCIAL
SERVICES COMMISSION

Resolution Authority Internal Rules

Regarding professional secrecy and information exchanges between the Gibraltar Financial Services Commission (“GFSC”) and the Gibraltar Financial Services Resolution and Compensation Committee (“FSRCC”) the purposes of fulfilling their respective roles of competent authority and resolution authority pursuant to the Bank Recovery and Resolution Directive (2014/59/EU)

Gibraltar, February 2018

Contents

1	Background	3
2	Operational Independence	4
2.1	Structural Separation	4
2.2	Resolution Function delegation	4
2.3	Access to information	5
2.4	Record keeping	5
3	Confidentiality and Professional Secrecy.....	5
4	Exchange of Information with other structural units of the GFSC	5
5	Reporting	6
6	Governance.....	7
7	Signature	7

1 Background

The BRRD was transposed into Gibraltar legislation in the Financial Services (Recovery and Resolution) Regulations 2014 ("the Regulations"). The BRRD requires that each Member State appoints an authority to act as Resolution Authority.

The primary duties of the Resolution Authority are to:

- 1) comply, and ensure that institutions falling under the scope of the BRRD comply, with provisions in the Regulations on resolution planning;
- 2) apply, where necessary, the resolution tools and exercise the resolution powers, in accordance with the resolution objectives, conditions and general principles set out in the Regulations;
- 3) apply the Resolution Financing Arrangements to credit institutions and investment firms (to which BRRD applies) for the purpose of resolution.

The Gibraltar Financial Services Commission ("GFSC") has been appointed as the Resolution Authority ("RA") under the Financial Services (Recovery and Resolution) Regulations 2014 and the Bank Recovery and Resolution Directive. In order to retain its operational independence from the supervisory function of the GFSC, the Regulations establish a Financial Services Resolution and Compensation Committee ("the Committee") and a Resolution and Compensation Unit ("the Unit"). The powers of the GFSC as RA will be delegated to the Committee with the Unit will work for and reporting to the Committee. This delegation does not prevent the Board, at any time, from exercising the powers of the resolution authority and taking back the responsibilities of the resolution authority, and the Board remains, at all times, ultimately responsible for compliance with the obligations of the resolution authority. Pursuant to this delegation, the Committee will exercise the powers delegated to it independently from, and without recourse to, the GFSC Board, except in the circumstances set out below.

The Committee will also manage:

- the Gibraltar Deposit Guarantee Scheme; and
- the financing arrangements under the BRRD.

The GFSC Board will only exercise the powers of the resolution authority directly in exceptional circumstances and on a temporary basis. Where such circumstances arise, and dependent on the reason, the Board will immediately put in place alternative measures to ensure the operational separation of the competent authority and resolution authority functions. The GFSC's contingency plans will address this scenario.

As per Regulation 4(4) of the BRRD Regulations, the RA will “*adopt and make public any necessary relevant internal rules including rules regarding professional secrecy and information exchanges between the different functional areas*”.

The purpose of this document is to set out, how the GFSC will ensure that its functions are and will remain operationally independent of each other. The Internal Rules are not intended to be exhaustive but rather set out the general parameters that are expected.

2 Operational Independence

Where a Competent Authority is designated as Resolution Authority, adequate structural arrangements shall be in place to ensure operational independence and avoid conflicts of interest between the functions of supervision pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU or the other functions of the relevant authority and the functions of resolution authorities pursuant to this Directive.

2.1 Structural Separation

The Unit shall be an independent structural unit that will assist the Committee in its function as delegated RA, in addition to Internal Rules detailed in this document. In performing its powers as the designated RA, the Committee shall prepare opinions to the GFSC for the adoption of decisions in relation to performing its functions as a bank resolution authority.

Staff involved in carrying out the functions of the resolution authority pursuant to this Directive shall be structurally separated from, and subject to, separate reporting lines from the staff involved in carrying out the tasks pursuant to Regulation (EU) No 575/2013 and Directive 2013/36/EU or with regard to the other supervisory functions of the GFSC.

The structural separation that is operated between the GFSC’s function as resolution authority and its other functions (including its supervision functions) safeguards staff of the Unit from exposure to conflicts of interest between the resolution authority functions and those of the Commission. In the event that the Committee experiences a conflict of interest that cannot be resolved, the Chair of the Committee will immediately notify the GFSC Board.

2.2 Resolution Function delegation

Although the powers and duties of the resolution authority have been delegated from the GFSC Board to the Committee the delegation does not prevent the Board, at any time, from exercising the

powers of the resolution authority and taking back the responsibilities of the resolution authority, and the Board remains, at all times, ultimately responsible for compliance with the obligations of the resolution authority.

The GFSC Board will only exercise the powers of the resolution authority directly in exceptional circumstances and on a temporary basis. Where such circumstances arise, and dependent on the reason, the Board will immediately put in place alternative measures to ensure the operational separation of the competent authority and resolution authority functions. The GFSC's contingency plans will address this scenario.

2.3 Access to information

The Unit will have separate folders on the GFSC systems to those of supervisory staff and will not have access to GFSC information. Similarly, the GFSC will not have access to information held by the Committee or the Unit.

2.4 Record keeping

The Unit on behalf of the Committee, will maintain the records of the Committee acting in its capacity as the resolution authority.

3 Confidentiality and Professional Secrecy

When using information acquired and created in connection with bank recovery and resolution, all confidentiality requirements under the Financial Services (Recovery and Resolution) Regulations 2014 (and/or other relevant other legislation where appropriate) shall be applied and such information shall only be used for the exercise of duties from Financial Services (Recovery and Resolution) Regulations 2014.

In addition, where the resolution authority considers that any information it intends to share with persons directly involved in the resolution process is subject to professional secrecy, it will clearly identify any correspondence containing such information as subject to professional secrecy to the receiving party.

4 Exchange of Information with other structural units of the GFSC

Regulations provide that separate structuring and rules (as set out in Section 2 and 3) should not in any way limit the exchange of information between the supervisory functions and the Unit which are

necessary for the performance of functions and exercise of powers under the said Regulations. In addition, supervisory functions and the Unit should consult each other and cooperate, whenever such exchange, consultation or cooperation is required to exercise their powers under the BRRD Regulations. This should include but should not be limited to the preparation, planning, the execution of resolution functions, and application of resolution decisions.

A separate agreed working document entitled "The Memorandum Of Understanding" will outline what is to be shared on a periodic basis between the GFSC and the Committee, and the procedure for dealing with ad hoc requests. All requests should specify the information sought and the purpose for which it is required with an indication of the urgency of the request. The party that receives a request for information should make all reasonable efforts to respond in a timely manner as set out in the request.

In the event of a resolution action, employees of the GFSC may be required to assist the Unit in carrying out its functions in supporting the resolution authority. Information exchange between the supervisory functions and the Unit will take place as soon as practicable after the receipt of a request for any relevant information necessary for the performance of functions under the BRRD and BRRD transposed regulations.

5 Reporting

The GFSC will receive at a minimum annual reporting from the Chair of the Committee. However, that reporting will be limited in order to maintain operational separation. The reporting should cover:

- a general report on the activity of the Committee;
- sufficiency of the Committee's resources;
- key risks to the work of the Committee and how these are being mitigated;
- any conflicts of interest of the Committee between its roles as resolution authority, and the manager of the Deposit Guarantee Scheme and the BRRD financing arrangements;
- any recommendations, if appropriate, for GFSC to take back the responsibilities of the resolution authority.

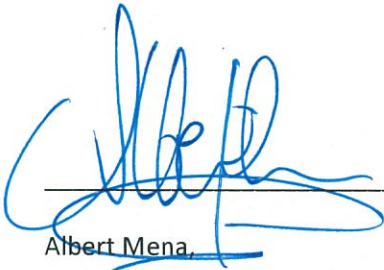
In the event that the Committee experiences a conflict of interest that cannot be resolved, the Chair of the Committee will immediately notify the GFSC Board.

The FSRCC will receive an update from the GFSC, at each meeting of the FSRCC, on the financial health (and any other relevant information) of BRRD firms under the remit of the GFSC.

6 Governance

This document has been reviewed and formally approved by the Chairman of the FSRCC and the CEO of the GFSC prior to publication. The participants shall review the functioning and effectiveness of this document annually or earlier when deemed necessary by both parties. Any amendment to this document will require the mutual consent of both participants.

7 Signatures



Albert Mena,

Chairman, Financial Services Resolution and Compensation Committee

Date:

23 FEB 2013



Samantha Barrass,

Chief Executive Officer,

Gibraltar Financial Services Commission

Date:

08 MAR 2013

