



Mission Statement

Chairman's & CEO's  
Report

Corporate Governance  
Report

Financial Statements

Financial Services Commission  
Gibraltar

Annual Report

2010

## Our Mission Statement

*To provide financial services regulation in an effective and efficient manner in order to protect the public from financial loss and enhance Gibraltar's reputation as a quality financial centre*



# Chairman and Chief Executive's Report for the year ended 31 March 2010

## The Commission and its Statutory Duties

The Commission has a number of statutory duties. These are set out in the Financial Services (Commission) Act 2007 and include the following regulatory objectives:

- (a) the promotion of market confidence;
- (b) the reduction of systemic risk;
- (c) the promotion of public awareness;
- (d) the protection of the good reputation of Gibraltar;
- (e) the protection of consumers; and
- (f) the reduction of financial crime.

In respect of those areas of financial services business where EU law applies the Commission is required to supervise and regulate financial services business in accordance with Community obligations and, in those areas, to establish and implement standards and supervisory practices which match the standards and supervisory practices governing the provision of financial services within the United Kingdom.

The Commission is also required to advise the Government if, at any time, it considers that legislation does not provide it with sufficient powers or it does not have such financial, technical and other resources, and such personnel, as are necessary to enable it to supervise and regulate financial services business to internationally accepted standards.

Day to day decisions such as those concerning licensing, enforcement and staffing issues are delegated by the Commission to the Chief Executive Officer.

## Our approach to supervision

The international financial crisis has meant that the phrase "light regulatory touch" has virtually disappeared from the regulators' lexicon. It remains the Commission's view that it can be both robust in its approach to regulation but also responsive to the needs of its stakeholders. Supervision should still be by consent. The vast majority of the finance sector is as keen on a well supervised industry as we are.

It remains important, in this time of crisis, that there is no regulatory over-reaction and we should approach regulatory changes with caution; in other words we must continue to adopt the principle "first do no harm". There is a danger that regulators will become preoccupied with the task of implementing a vast new array of requirements and initiatives diverting themselves from the risk judgments that form the key part of their work.

## Matching UK standards

The Commission interprets this statutory requirement to match UK standards as meeting the regulatory objectives (which both the UK FSA and Commission share), to the same extent as the FSA does, but not necessarily in the same way. Our focus is therefore upon the outcome of those processes - for example do they achieve the same level of market confidence and consumer protection as do the practices in the UK?

To focus on the processes themselves is not, in the Commission's view, a productive approach. Given the differences between the UK and Gibraltar markets and social environments, the simplistic replication of a regulatory process may, in fact, lead to the end objective being missed or achieved to a lesser degree.

The differences between the UK and Gibraltar environments will occasionally mean that supervision in Gibraltar is tighter than in the UK; for example the UK does not operate a programme of on-site visits to all its regulated firms, nor indeed does it regulate as wide a range of financial service providers as does Gibraltar. On other occasions the Gibraltar regime can adopt a case-by-case approach more often than the UK does but with no reduction in overall supervisory standards.

## The work of the Commission

The main work of the Commission is that of regulatory supervision. This includes the

assessment of applications from firms wishing to conduct regulated activities, ongoing supervision of regulated firms (both through the review of returns and by a regular programme of on-site visits) and the taking of disciplinary or enforcement action where required. The Commission has a wide range of powers including the issue of directions or imposing conditions upon a licensee. In an extreme case a licence can be cancelled.

The Commission is organised by industry groups with four supervisory areas covering banking and investment services, insurance, fiduciary services and auditor supervision together with an enforcement section. These areas are supported by both strong operations and IT resources.

It is important that the Commission uses its resources as efficiently and effectively as possible. In order to achieve this, we focus upon the risks faced both by the Commission and the firms it regulates, and how these risks may be mitigated.

A regular programme of on-site visits to all licensed firms is in place. The visits form part of the risk assessment process and the firm is then placed on the appropriate cycle for future visits. These cycles are normally 12, 24 or 36 months. Being on a short cycle does not automatically mean that the Commission has concerns with the firm. Its size, nature of business and customer type also impact upon how frequently we conduct our visits.



In addition to its supervisory duties the Commission performs a number of other tasks including advising Government on new financial services legislation. It undertakes any additional work requested by the Government including issuing of the Anti Money Laundering & Combating the Financing of Terrorism Guidance Notes. The Commission is also the Competent Authority under the Market Abuse and Prospectus Acts.



The Commission "patrols the perimeter," including monitoring the media and the internet in order to identify possible unlicensed financial service activity. Where this is detected, swift action is taken to resolve the position. If necessary the Commission will invite the Attorney General to bring criminal charges against those found to be conducting licensable activity without



authorisation.

The Commission also receives complaints about licence-holders. These complaints primarily relate to alleged miss-selling of financial products. The Commission's remit does not extend to adjudicating on levels of compensation. Such action, under Gibraltar law, is the responsibility of the Courts and recourse to the Courts, of course, continues to be available to consumers. Notwithstanding this, the Commission takes an active interest in such complaints as these may point to regulatory breaches on the part of the firm.

### The year in retrospect

Writing in the annual report provides a useful time for retrospection. 2009-2010 has again been a turbulent time for the finance sector. Whilst stock markets have generally improved the very real danger of a second dip remains. Sovereign debt default, historically the domain of Latin America, now casts a shadow over parts of the European Union. Since the end of year under review we have seen further events such as the calamitous impact on BP following the disastrous Gulf of Mexico oil spill. There is little doubt that the climate for the short and indeed medium term is anything but benign.

Regulators globally have, individually and collectively, worked to resolve the current crisis and make the system more robust to withstand future ones. Yet new financial instruments and strategies are being developed, such as high frequency traders, which may be sowing the seeds of future problems.

Overall we seem a lifetime away from the "benign economic past marked by both financial and economic stability" referred to by the then Chairman of the UK Financial Services Authority in February 2006.

Gibraltar has maintained the development of its finance sector despite these turbulent times, but it would be foolish to assume that we are immune from them. As an international finance centre we thrive from the success of others. It is vital that we therefore work collectively to maintain our reputation; however we must still do so in a way that is both innovative and capable of responding swiftly to new market

opportunities.

An example of this is the Experienced Investor Fund regime which, whilst still growing, needs further development. We therefore welcome the efforts being made by the Gibraltar Fund Industry Association in respect of this.

The subsections below set out some of the key developments over the period covered by the annual report.

### **New legislation during the period**

The Financial Services (Auditors) Act 2009 came into force on 28th May 2009, to transpose the EU Statutory Audit Directive. The FSC has been appointed the Competent Authority under the Act to undertake the necessary supervision.

The regulations made under this Act came into force on 18th March 2010, but the Commission had already been working with the Gibraltar Society of Accountants (GSA) and others to facilitate a smooth implementation. The Commission proposes that initially the ICAEW will be appointed by the FSC to undertake the quality assurance controls required under Section 29 of the Act. The ICAEW will perform its role under the direct control and supervision of the Commission. Other areas that will need to be addressed include the issue of continuing professional education for auditors required under Section 13 of the Act.

In addition to the above, the Payments Services Directive was implemented on 29th April 2010 by means of the Financial Services (EEA) (Payment Services) Regulations 2010.

### **Changes to our key regulatory processes**

The two most important aspects of the FSC work centre around the risk assessment of firms and the processing of applications to conduct new or extended financial services from Gibraltar.

In both of the these key processes the Commission has been working hard to ensure that wherever improvement can be made that these are brought into effect. A criticism of the Commission in the past has been in the length of time it has taken to process new applications. Whilst in most

cases the Commission refutes that it is to blame for these delays, it has nonetheless taken onboard these criticisms. The revised streamlined process ensures that applicants and their professional advisers understand, from the onset, what will be required to support a successful and efficient application.

Whilst the Commission rolled out its substantially revised risk assessment programme last year, it has been dedicating resources to ensure that both its staff and the firms it regulates understand the process and its objectives. The Commission will continue to monitor the development of its risk assessment methodology as time progresses.

Undoubtedly one of the main ways the Commission interfaces with both new and existing firms is through its web-site. Considerable work has been put in by the FSC to ensure that the web-site remains current and easy to use. The new web-site provides a new look and feel which is easier to navigate whilst at the same time providing more information than ever. Further improvements to the search facility, in particular, will be made over the coming months.

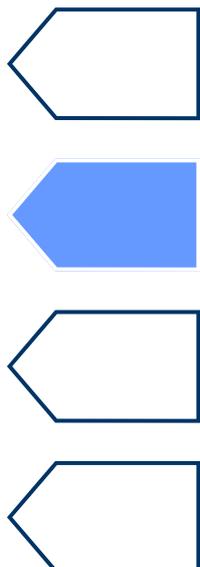
### **International Cooperation**

The international downturn has demonstrated clearly the interconnectivity of the global financial system and the fact that problems spread like a plague from one jurisdiction to another.

To help deal with this, strong international regulatory cooperation is required. Those centres that do not play a role in this will quickly see themselves marginalised and excluded.

The Commission has therefore continued to participate in the development of international regulatory standards through its work in the International Association of Insurance Supervisors (IAIS), the International Organisation of Securities Commissions (IOSCO), the Offshore Group of Banking Supervisors (OGBS) and the Offshore Group of Insurance Supervisors (OGIS).

We have also been accepted as a "B" signatory to IOSCO's Mutual Memorandum of Understanding.



In addition we work closely with a number of other regulators on a bilateral basis, including the FSA in the UK and the Commissions in Jersey, Guernsey and the Isle of Man.

### Enforcement Action

It would be impossible to review a year, or indeed focus on the Commission's work in the year ahead, without reference to the FSC's decision to cancel the licences of Cabor Trustees Limited (Cabor), Gibland Secretarial Services Limited (Gibland) and a number of related entities. This was followed by the closure of the related law firm Marrache & Co and the subsequent arrest and charging of a number of persons. Given the fact that this remains an ongoing investigation and that matters have yet to come to court, it would be inappropriate to comment in this year's report. However we hope that, by next year's report, we will be in a position to discuss the matter in much greater depth.

It is however important to recognise that, given the amount of the Commission's continued work in this area, it has been necessary to reprioritise our resources. This financial and manpower strain is being contained. However, we are grateful to Government for including the provision for a special levy in the new Financial Services (Temporary Administration of Companies) Act 2010, under which we are currently operating in Gibland and Cabor.



One thing is certain, there will be a number of enhancements needed to the current regulations, particularly but not exclusively relating to client money which have been identified as a result of the Gibland/Cabor situation and we will be submitting our proposals to government in the next few months. The need for the Commission to have fining powers, similar to those that exist for many other regulators, will also be considered.



We were also successful in our restitution action against a number of the Directors of Rock Financial Services Ltd and are currently pursuing them to enforce this. Additionally we obtained an injunction against the curious and somewhat unusual Reincarnation Bank. During the year we also exercised our enforcement powers on a number of other occasions.

As part of our enforcement activities we work closely with the law enforcement authorities to seek the prosecution of those who commit crimes and to counter abuse of the financial system. We also cooperated with a number other regulators in their enforcement actions.

### Commission finances

The Commission continues to seek to minimise the cost of regulation to our licensees. However, like virtually every other regulator, recent events in the global financial community have resulted in a need to increase fees.

Despite this there has been an impact on our reserves. The accounts set out below show a deficit of £222,840 for the year. A significant element of this was as a result of the action taken by the Commission against Cabor, Gibland and associated entities referred to above. Whilst we increased our reserves in previous years expressly to deal with such eventualities, it is vital that the FSC continues to have the resources to undertake its statutory duties.

### Internal Developments

During the course of the year we have seen a number of arrivals and departures. Firstly, the long standing Head of Fiduciary Services, Kieran Power, announced his wish to return to private practice, having joined us in 1997. We wish him well in his new role.

Other leavers during the year were Monica Duran, Leigh Neish and Lisa Perera; we wish them every success in the future as well.

Joining us during the year were:

- Dinah Alvarez (Operations)
- Amy Ballantine-Latin (Banking & Investment Services)
- Nicholas Gomez (Banking & Investment Services)
- Louis Lombard (IT)
- Suzanne Bant (Insurance)
- Hannah Strain (Fiduciary)

Darren Vinales also joined us in May 2010 as Actuary in the Insurance Division, bringing our total number to 37.

Within the Commission there have been a number of other changes. It was announced that the Banking and Investment Services Division (BIS) would be divided and a separate Funds Division under Joanne Beiso (currently Acting Head of BIS during Heidi Bocarisa’s maternity leave) will be created. This reflects the growing size of the funds industry in Gibraltar and the material changes and opportunities provided by UCITS IV and the Alternative Investment Fund Managers Directive.

Other improvements made include the creation of a new Policy and Research function which is managed by Bethan Hampson-Jones.

Following Kieran Powers’ departure, referred to above, we have also changed our internal structure on a temporary basis, splitting the old Fiduciary Division into its three constituent parts, Fiduciary itself, Auditor Supervision and Enforcement. Each of these sections will, for the time being, be reporting directly to the Chief Executive. Neill Perera has rejoined Fiduciary, this time as Manager; Bethan Hampson-Jones is temporarily acting as the Manager - Auditor Supervision and Albert Yome as Manager- Enforcement.

The end of June 2010 will see the FSC move to its new premises in Atlantic Suites. Having been at Europort for over seventeen years we had simply outgrown the space available to us there and used the opportunity presented by the break clause in our contract to move to premises which will allow the team to operate in a single open plan office.

Given the new pieces of legislation planned for this year together with the ever growing amount of international regulatory requirements, the work of the Commission will continue to increase. As a result, further recruitment will take place in 2010/11.

The Commission remains committed to the training of its team members. The chart below details the qualifications of our 30 front line regulatory staff.

|  |    |
|--|----|
| 2nd Degree   | 3  |
| Professional Qualification<br>(e.g. Accountant/Lawyer/Actuary) | 10 |
| 1st Degree (e.g. BA, Bsc)                                      | 25 |
| Industry Qualification<br>(e.g. Step, ICSA, CII)               | 10 |

We also continue to build the strength of an already internationally recognised regulatory team at the Commission through our participation in the pilot “Investors in People” programme.

**The year ahead**

2011 will formally mark the Commission’s 20th year in existence. Whilst the Ordinance creating it was passed in 1989 the Commission itself only started in 1991.

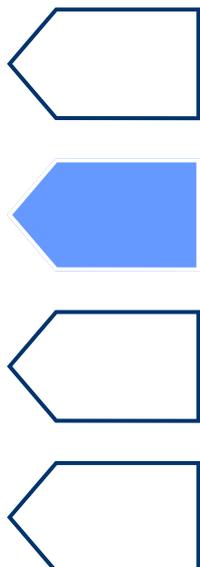
**Legislative Development**

There are several key legislative developments which we will need to implement in the year ahead. These include changes to the Capital Requirements Directive, MiFID II, the Solvency II Directive, UCITS IV and the Alternative Investment Fund Managers Directive. These, particularly Solvency II which will require significant regulatory and industry resources, are clearly vital to the future well being and growth of the finance sector. Others are less obvious, but just as important. These include changes to our powers for international cooperation to allow us to move from a B to A list participant in the IOSCO Mutual Memorandum of Understanding. Similarly, changes to the Collective Investment Schemes Act 2005 are now needed.

Other EU legislative developments include the implementation of the Credit for Consumers Directive which is due to be transposed by May 2010.

Government are also considering a number of new initiatives including the regulation of mortgage provision and changes to the Moneylenders Act.

We also remain hopeful that the Financial Services (Training & Competency) Act 2006 will finally be brought into force and the Finance Centre Skills Council established under it come into being. Similarly an “Approved Persons” regime is one that would both streamline the supervisory process and demonstrate our continued commitment to international regulatory expectations. Other areas currently with Government for consideration include: compulsory PII and fidelity cover and changes to the Financial Services Commission (Supervisory Acts) Order.



Whilst not primarily a financial services issue we also welcome the Minister for Justices initiative in respect of new insolvency legislation.

### EU

Clearly the ongoing work in the EU regarding the creation of the new pan European supervisory authorities such as European Securities Market Authority and European Banking Authority will have an impact on the FSC. Their remit may not be entirely clear but they are likely to have powers over national regulators such as ourselves. It is therefore important that we are able to have our voice on them heard. We have already had some success in this area via the invitations for us to participate in the EU Supervisory colleges for two of our licensed banks.

### Cabor/Gibland

In addition to the work of the Authorised Administrator and his team, the Commission has had up to five members of staff working full time in respect of this. Whilst the intensity of the FSC involvement is likely to reduce during the year, our work in this area is likely to remain a resource drain for sometime to come.

### Supervision

Various international organisations are making various recommendations as a result of the credit crisis. The FSC will need keep track of these and make relevant changes to its supervisory processes. This will be an ongoing and extensive project.

We will also develop our supervisory oversight of Money Services Businesses and Occupational Pension Schemes.

We will continue to conduct Risk assessments as part of the Commission's ongoing work to arrive at a conclusion on the ability and competence of a firm's senior management to identify and mitigate risks as well as to put into place adequate systems of control to meet regulatory requirements. As part of this we will continue to review firm's Internal Capital Adequacy Assessment Processes (ICAAP) as part of the Supervisory Review and Evaluation Process (SREP).

Throughout all of the above we will continue to work with all our stakeholders whilst rigorously defending our independence.

We would like to thank all our colleagues for their hard work, professional approach and dedication during the last year.

Brian Hilton CB  
Chairman

Marcus Killick  
Chief Executive  
Officer

27 July 2010

# Corporate Governance Report for the year ended 31 March 2010

The Commission is committed to transparency and open regulation. It is therefore important that our stakeholders are aware of how we seek to ensure that key principles of good governance are applied within the Commission. The Commission considers that the Combined Code on Corporate Governance (the "Combined Code") issued by the United Kingdom's Financial Reporting Council as a suitable model of best practice that it should follow.

Whilst the Combined Code is primarily aimed at listed companies rather than regulators and therefore is not directly applicable to the FSC, it nevertheless contains many useful principles which do have an application within the Commission. The Commission complies with the provisions of the Code to the extent that compliance is proportionate and consistent with the Commission's responsibilities as a regulator.

The Commission publishes, on its website, a self assessment on the extent to which it complies with the Combined Code

## Commission structure

The Commission is a statutory body established under the Financial Services Commission Act 2007 (the Act)

The Commission consists of the Chief Executive as ex officio member and seven other persons appointed by the Minister with responsibility for financial services. At least two of these persons must have significant experience of regulation and supervision of financial services businesses in another jurisdiction.

The Commission appoints one of their members to be the Chairman of the Commission. Appointment as Chairman is for a period of one year. Members may be reappointed Chairman any number of times consecutively.

Commission members are appointed for three years and upon such terms as may be specified in the instrument appointing them.

When there is a vacancy to be filled the Commission must, within four weeks of the creation of the vacancy, nominate no fewer than three persons to the Minister. Should the Minister decline to appoint a person from the nominations made by the Commission, the Commission shall, within a period of a further four weeks, nominate no fewer than three further persons.

Should the Minister decline to appoint a person from the nominations made by the Commission, the Minister may then appoint any person whom he believes to be suitably qualified to be a member of the Commission. If he does so, such an appointment is subject to ratification by a resolution of the Parliament.

## Functions of the Commission

Under Section 6(1) of the Act, the functions of the Commission are:-

- (a) to supervise Authorised persons in accordance with this Act and the Supervisory Acts;
- (b) to consider and determine applications for authorisations, licences, recognitions and registrations made under the Supervisory Acts;
- (c) to monitor compliance by Authorised persons with such legislation, rules, codes and guidance made under this Act or any Supervisory Acts;
- (d) to monitor compliance by Authorised persons with legislation, rules, codes and guidance relating to the prevention of financial crime;
- (e) to monitor financial services business carried on in or from Gibraltar and to take such appropriate action as it is empowered to do against persons carrying on such business without the necessary authorisation, licence or registration;
- (f) to carry out the duties and discharge the functions imposed on, or given to, it under this or any other Act;
- (g) to determine subject to the approval of the Minister the terms of service of the Chief Executive;
- (h) to determine the number and skill mix

- of employees required by the Commission to carry out its functions and to determine their terms and conditions of employment;
- (i) to monitor and oversee the performance by the Chief Executive of all functions delegated to him by the Commission;
  - (j) to approve the annual estimates of income and expenditure to be furnished to the Minister; and
  - (k) in respect of those areas of financial services business where Community law applies, to supervise and regulate financial services business carried on in or from Gibraltar in accordance with Community obligations and in those areas to establish and implement standards and supervisory practices which match the standards and supervisory practices governing the provision of financial services within the United Kingdom..

The Commission has eight members and meets four times each year. The chairman is Brian Hilton (Appointment Term: 1 October 2002 – 30 September 2011) and the Senior Independent Member is Alan Whiting (Appointment Term: 26 January 2008 – 26 January 2011). The other Commission Members are;

Marcus Killick (CEO)  
 Franco Cassar (Appointment Term: 1 October 2003 – 30 September 2012)  
 Joseph Caruana (Appointment Term: 30 July 2003 – 29 July 2012)  
 Nigel Feetham (Appointment Term: 28 May 2007 – 27 May 2013)  
 Robert Vasquez (Appointment Term: 1 August 2006 – 31 July 2012)  
 John Tattersall (Appointment Term: 1 October 2009 – 30 November 2012).

Members are appointed for a period of three years. This is renewable. However, with the exception of the CEO, Members may not be reappointed if they have served a term of nine years or more.

The Commission has established committees to assist it in its role. Details of each member's attendance at both Commission and committee meetings are set out on the Commission's website at [www.fsc.gi](http://www.fsc.gi). The terms of reference for the committees are

also on the Commission website.

The Commission conducts an annual self assessment of its performance. An annual assessment of the Chairman is also undertaken, led by the Senior Independent Director.

With the exception of the Chief Executive Officer, all Commission members are considered independent as none have any day to day executive role within the Commission, are not connected to any senior official within the Commission and, by the nature of the Commission's structure, cannot be shareholders of the Commission.

On an annual basis, the Commission holds a "Blue Skies Day". This event, which occurs at the time of the June board meeting, is also attended by senior executives of the Commission. It is an opportunity for the Board to evaluate the risks it faces in seeking to fulfil its statutory duties. From this it is able to develop its business plan for the following year and budget accordingly.

At the September Commission meeting the Executive presents its draft business plan for the forthcoming financial year.

A revised business plan taking into account the views of the Commission together with a draft budget is considered by the Budget Review Committee in December of each year. The business plan is finalised at the Commission meeting in January

The Commission monitors performance against the objectives set in the business plan at each Commission meeting.

### Committees of the Commission

The Commission has four standing sub committees

#### Nomination Committee

This leads the process for the appointment of the posts of Chief Executive and Commission Members and makes recommendations to the Commission and the Chief Minister as appropriate.

The Committee may also advise the Chief Executive on the appointment of other senior executives in the Commission and shall

be notified by him of any short listed candidates for these posts.

It is currently chaired by the Chairman (Brian Hilton) of the Commission and its other members are the Senior Independent Member (Alan Whiting), the Chief Executive (Marcus Killick) and two other members of the Commission (Nigel Feetham and Robert Vasquez). Another Commission member would replace the CEO when that appointment is being considered.

The Committee met twice during the year.

**Remuneration Committee**

Two Commission members together with the Chairman act as the Remuneration Committee. One of these Members is the Senior Independent Member (Alan Whiting), who is Chairman of the Committee. Its other members are the Chairman of the Commission (Brian Hilton) and Franco Cassar.

The Committee’s role is to review the performance of the most senior executives against the aims and objectives set for them and determine their remuneration (including any bonus structure) accordingly. The Committee will also, when necessary, make changes to senior executive’s terms and conditions.

The Committee met once during the year.

**Audit Committee**

An Audit Committee has been in place since 2004. The role of the Audit Committee amongst other matters is to monitor the integrity of the financial statements, review the Commission’s internal financial controls and to approve the terms of engagement of the external auditors. It reports to the Commission, identifying matters in respect of which it considers that action or improvement is needed, and makes recommendation on any steps to be taken. The Committee comprises Joseph Caruana, as Chairman and the Senior Independent Member (Alan Whiting).

The Committee met three times during the year.

**Budget Review Committee**

The role of this committee is to provide an independent challenge to the FSC budgetary

process and to recommend the annual budget to the Commission.

Membership consists of Franco Cassar, Joseph Caruana, Alan Whiting and Robert Vasquez. The Chief Executive and Chief Operations Officer also form part of the Committee and the Chief Operations Officer acts as the Secretary.

The Committee met once during the year.

**Delegation arrangements**

Pursuant to Section 9 of the Act, subject to any express provision to the contrary the Commission may delegate the discharge of any of its functions to the Chief Executive or, with the consent of the Minister, to such other person or persons as the Commission may propose. However, the delegation by the Commission of any of its functions shall not affect the exercise by the Commission of such functions.

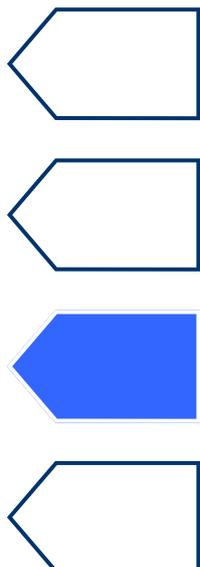
**Accountability arrangements**

Whilst the Commission is an independent body, it is accountable for its overall performance to the Government of Gibraltar through the Minister with responsibility for financial services.

Section 6(2) of the Act requires the Commission to advise the Minister if, at any time, it considers that the Act and the Supervisory Acts do not provide it with sufficient powers, or otherwise do not enable it, or it does not have such financial, technical and other resources, and such personnel, as are necessary to enable it:-

- (i) to supervise and regulate financial services business carried on in or from Gibraltar to internationally accepted standards; or
- (ii) to discharge its functions under the Act or any other Act

As a further part of this accountability, under Section 16(5) of the Act the Commission, within five months after the end of the financial year, must prepare and submit to the Minister a written report of its operations for that year together with a copy of the audited accounts for that year and the Minister shall lay a copy of such report and of the audited accounts on the table of the

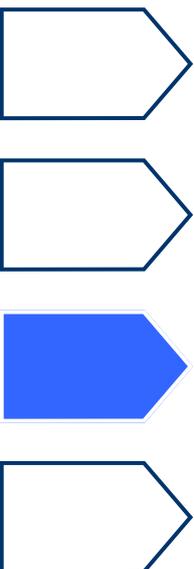


Gibraltar Parliament at the earliest possible opportunity.

Section 17(1) requires that the Commission prepares and furnish to the Minister annual estimates of income and expenditure, including capital expenditure, not later than 3 months prior to the commencement of each financial year and such additional information and explanations as he may require.

Under Section 17(2) the Minister may at any time and from time to time appoint any person or persons to conduct a value for money review of the expenditure budget of the Commission and to report thereon to the Minister and the Minister shall lay in the Parliament a copy of any such report within 30 days of its receipt by him.

Under Section 20 if at any time it appears to the Minister that the Commission has failed to comply with any of the provisions of this or any other Act, the Minister may, by notice in writing, require the Commission to make good the default within such time as may be specified in the notice. If the Commission fails to comply with the requirements of such a notice the Minister may apply to the Supreme Court for an order requiring the Commission to remedy the default specified and the Supreme Court may make such order on the application as it thinks fit.





# Independent Auditors' Report to The Financial Services Commission

## Report on the financial statements

We have audited the accompanying financial statements ("the financial statements") of The Financial Services Commission for the year ended 31 March 2010 which comprise the income and expenditure account, the balance sheet and the related notes. These financial statements have been prepared under the accounting policies set out therein.

## Commission's responsibilities for the financial statements

The Commission is responsible for the preparation and true and fair presentation of these financial statements in accordance with applicable law in Gibraltar and Gibraltar Accounting Standards. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and true and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

## Auditors' responsibilities

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and true and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## Opinion

In our opinion the financial statements give a true and fair view, in accordance with Gibraltar Generally Accepted Accounting Practice, of the state of the Commission's affairs as at 31 March 2010 and of its loss for the year then ended.



## Independent Auditors' Report to The Financial Services Commission—continued

### Report on other legal and regulatory requirements

In addition to reporting on the financial statements, Gibraltar legal and regulatory requirements also require us to report to you our opinion as to whether the Commission has kept proper accounting records, whether the Commission's Balance Sheet and Income and Expenditure Account dealt with by this report are in agreement with the accounting records, if we have obtained all the relevant information and explanations which to the best of our knowledge and belief were necessary for the purpose of our audit, and whether the Commission has discharged with diligence its obligations in relation to the collection of its revenues.

### Opinion

In our opinion:

1. proper accounting records have been kept by the Commission;
2. the Commission's Balance Sheet and Income and Expenditure Account dealt with by this report are in agreement with the accounting records;
3. we have obtained all the relevant information and explanations which to the best of our knowledge and belief were necessary for the purpose of our audit; and
4. the Commission has discharged with diligence its obligations in relation to the collection of its revenues.

We have nothing to report to you in respect of our responsibility set out in (c) above.

### Other matters

This report, including the opinions, has been prepared for and only for the Commission as a body in accordance with Section 16 of the Financial Services Commission Act and for no other purpose. We do not, in giving these opinions, accept or assume responsibility for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.



Adrian J. Hogg (Statutory Auditor)  
For and on behalf of Grant Thornton (Gibraltar) Limited  
6A Queensway  
Gibraltar

Date: 28 July 2010



Member of Grant Thornton International Ltd

## Income and Expenditure Account For the year ended 31 March 2010

|                             | Notes | 2010<br>£        | 2009<br>£          |
|-----------------------------|-------|------------------|--------------------|
| <b>INCOME</b>               |       |                  |                    |
| Fees receivable             | 3     | 2,228,453        | 2,099,523          |
| Interest receivable         |       | 10,995           | 55,059             |
|                             |       | <hr/>            | <hr/>              |
| <b>TOTAL INCOME</b>         |       | <b>2,239,448</b> | <b>2,154,582</b>   |
|                             |       | <hr/>            | <hr/>              |
| <b>EXPENDITURE</b>          |       |                  |                    |
| Staff expenses              | 4     | 1,700,968        | 1,648,823          |
| Establishment costs         |       | 160,235          | 165,724            |
| Other operating expenses    |       | 98,506           | 107,914            |
| Commission members' fees    | 5     | 119,600          | 115,000            |
| Legal and professional fees |       | 315,814          | 161,405            |
| Auditors remuneration       |       | 6,000            | 6,500              |
| Depreciation                | 6     | 39,413           | 38,883             |
| Other professional charges  |       | 21,752           | 12,786             |
|                             |       | <hr/>            | <hr/>              |
| <b>TOTAL EXPENDITURE</b>    |       | <b>2,462,288</b> | <b>2,257,035</b>   |
|                             |       | <hr/>            | <hr/>              |
| <b>OPERATING LOSS</b>       | £     | <b>(222,840)</b> | £ <b>(102,453)</b> |
|                             |       | <hr/>            | <hr/>              |

There are no recognised gains or losses other than as disclosed above and there have been no discontinued activities or acquisitions in the current or preceding year.

The notes on pages 17 to 21 form part of these financial statements.

## Balance Sheet As at 31 March 2010

|   | Notes | 2010<br>£ | 2009<br>£ |
|---|-------|-----------|-----------|
| <b>FIXED ASSETS</b>                                   |       |           |           |
| Tangible assets                                       | 6     | 57,789    | 61,983    |
| <hr/>   |       |           |           |
| <b>CURRENT ASSETS</b>                                 |       |           |           |
| Debtors and prepayments                               | 7     | 420,005   | 81,385    |
| Fixed term deposits                                   |       | 422,130   | 939,977   |
| Cash at bank and in hand                              |       | 225,312   | 36,438    |
| <hr/>   |       |           |           |
|   |       | 1,067,447 | 1,057,800 |
| <b>CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR</b> | 8     | 358,115   | 129,822   |
| <hr/>   |       |           |           |
| <b>NET CURRENT ASSETS</b>                             |       | 709,332   | 927,978   |
| <hr/>   |       |           |           |
| <b>NET ASSETS</b>                                     |       | £ 767,121 | £ 989,961 |
| <hr/>   |       |           |           |
| <b>FINANCED BY:<br/>GENERAL FUND</b>                  | 9     | £ 767,121 | £ 989,961 |
| <hr/>   |       |           |           |

The financial statements on pages 15 to 21 were approved by the Commission on 27 July 2010 and signed on its behalf by:

Marcus Killick  
Chief Executive Officer

Brian Hilton  
Chairman

The notes on pages 17 to 21 form part of these financial statements.

# Notes to the Financial Statements

## 1. PRINCIPAL ACCOUNTING POLICIES

### Basis of accounting

The financial statements are prepared in accordance with Gibraltar Accounting Standards. The particular accounting policies adopted by the Commission are described below.

### Accounting convention

The financial statements are prepared under the historical cost convention.

### Cash Flow Statement

The Commission is exempt from the requirement to prepare a cash flow statement under the provisions of Financial Reporting Standard 1 (Revised) on the grounds of the Commission's size.

### Income

Annual Renewal Fees due under the Banking, Insurance and Financial Services Acts are recognised on an invoiced basis, whilst all other fee income is recognised on a receipts basis.

Interest receivable is accounted for on an accruals basis.

### Depreciation

Depreciation has been calculated so as to write off the cost of fixed assets on a straight line basis over their expected useful economic lives at the following annual rates:

|                               |         |
|-------------------------------|---------|
| Motor Vehicles                | 20%     |
| Office Furniture and Fittings | 20%     |
| Office Equipment:             |         |
| General                       | 20%     |
| Computers                     | 33 1/3% |

### Leasehold Improvements

As in previous years, leasehold improvements are written-off in the year in which they occur.

### Pension costs

The Financial Services Commission operated a money purchase pension scheme called the Financial Services Commission Retirement Benefit Scheme on behalf of its employees. In 2006 this scheme was replaced by the Gibraltar Provident Trust (No. 3) Pension Scheme. Costs are accounted for on an accruals basis and are recognised in the income and expenditure account in the year in which they are incurred.

### Government contributions

Government contributions are recognised in the Income and Expenditure Account on a receipt basis.

## Notes to the Financial Statements

### General Fund

The General Fund represents the retained earnings of the Commission and includes the Special Reserve which is a memorandum account within the General Fund reflecting the accumulated unutilised portion of Government contributions. The Special Reserve is available to the Commission to fund deficits in operating income in future years and is not repayable to Government. As such it is deemed to form part of the General Fund.

### 2. TAXATION

Under the provisions of the Financial Services Commission Act, the income of the Commission is exempt from income tax.

### 3. FEES RECEIVABLE

|                         | 2010<br>£          | 2009<br>£          |
|-------------------------|--------------------|--------------------|
| Financial Services Acts | 1,070,183          | 1,023,977          |
| Banking Act             | 190,000            | 174,000            |
| Insurance Companies Act | 834,000            | 859,000            |
| Others                  | 134,270            | 42,546             |
|                         | <u>£ 2,228,453</u> | <u>£ 2,099,523</u> |

### 4. STAFF EXPENSES

|                       | £                  | £                  |
|-----------------------|--------------------|--------------------|
| Salaries              | 1,401,887          | 1,350,995          |
| Social security costs | 50,504             | 44,056             |
| Pension costs         | 140,648            | 115,189            |
| Other staff costs     | 107,929            | 138,583            |
|                       | <u>£ 1,700,968</u> | <u>£ 1,648,823</u> |

The Chief Executive Officer received total remuneration, including pension contribution, of £250,000 (2009: £257,219).

The average number of employees for the year was 35 (2009: 33).

|                      |           |           |
|----------------------|-----------|-----------|
| Regulatory           | 28        | 27        |
| Administration       | 7         | 6         |
| Total staff employed | <u>35</u> | <u>33</u> |

## Notes to the Financial Statements

### 5. COMMISSION MEMBERS' FEES

Fees paid to the Members of the Commission were as follows:

|                 |                           | 2010             | 2009           |
|-----------------|---------------------------|------------------|----------------|
|                 |                           | £                | £              |
| Mark Boleat     | Retired 30 September 2009 | 7,800            | 15,000         |
| Brian Hilton    |                           | 26,000           | 25,000         |
| Joseph Caruana  |                           | 15,600           | 15,000         |
| Franco Cassar   |                           | 15,600           | 15,000         |
| Alan Whiting    |                           | 15,600           | 15,000         |
| Robert Vasquez  |                           | 15,600           | 15,000         |
| Nigel Feetham   |                           | 15,600           | 15,000         |
| John Tattersall | Appointed 1 October 2009  | 7,800            |                |
|                 |                           | <u>£ 119,600</u> | <u>115,000</u> |

The Chairman and Commission Members fees increase annually in line with the average increase in Commission staff salaries.

### 6. TANGIBLE ASSETS

|                       | Office<br>Furniture<br>& Fittings<br>£ | Office<br>Equipment<br>£ | Motor<br>Vehicles<br>£ | Total<br>£      |
|-----------------------|--|--------------------------|------------------------|-----------------|
| <b>Cost</b>           |  |                          |                        |                 |
| As at 1 April 2009    | 83,766                                 | 157,136                  | 25,339                 | 266,241         |
| Additions             | 375                                    | 34,858                   | -                      | 35,233          |
| Disposals             | -                                      | (28,335)                 | (24,418)               | (52,753)        |
| As at 31 March 2010   | <u>84,141</u>                          | <u>163,659</u>           | <u>921</u>             | <u>248,721</u>  |
| <b>Depreciation</b>   |  |                          |                        |                 |
| As at 1 April 2009    | 58,664                                 | 120,349                  | 25,245                 | 204,258         |
| Charge for the year   | 10,908                                 | 28,413                   | 92                     | 39,413          |
| Disposals             | -                                      | (28,322)                 | (24,417)               | (52,739)        |
| As at 31 March 2010   | <u>69,572</u>                          | <u>120,440</u>           | <u>920</u>             | <u>190,932</u>  |
| <b>Net book value</b> |  |                          |                        |                 |
| As at 31 March 2010   | <u>£ 14,569</u>                        | <u>£ 43,219</u>          | <u>£ 1</u>             | <u>£ 57,789</u> |
| As at 31 March 2009   | <u>£ 25,102</u>                        | <u>£ 36,787</u>          | <u>£ 94</u>            | <u>£ 61,983</u> |

## Notes to the Financial Statements

### 7. DEBTORS

|   | 2010<br>£        |   | 2009<br>£     |
|---|------------------|---|---------------|
| Authorised Administrator fees and costs to be recovered | 307,875          |   | -             |
| Trade debtors   | 11,825           |   | 23,228        |
| Other debtors and prepayments                           | 100,305          |   | 58,157        |
|   | £ <u>420,005</u> | £ | <u>81,385</u> |

Under section 11 of the Financial Services (Temporary Administration of Companies) Act 2010, all the fees and costs of the Authorised Administrator in the carrying out of his powers and functions under this Act shall be defrayed out of the monies and assets of the Company.

If the Company shall not have sufficient monies, the said fees and costs shall be borne by the Authority.

The Authority may, with the consent of the Minister, levy a special fee upon all the holders of licences under the Principal Act, on such terms as to division between them as it shall consider equitable, to recover any costs incurred by it under this Act.

The raising of a levy shall not prejudice the existence of a debt by the Company to the Authority for all such fees and costs, which shall rank in priority upon a winding up to any debt due by the Company to any director or shareholder of the Company or to any Associated Company or director or shareholder thereof.

### 8. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

|   | £                |   | £              |
|---|------------------|---|----------------|
| Trade creditors   | 66,435           |   | 1,205          |
| Other creditors, including taxation and social security | 34,051           |   | 27,844         |
| Accruals and deferred income                            | 257,629          |   | 100,773        |
|   | £ <u>358,115</u> | £ | <u>129,822</u> |

## Notes to the Financial Statements

### 9. GENERAL FUND

|                               | Other<br>Retained<br>Earnings | Special<br>Reserve | Total          |
|-------------------------------|-------------------------------|--------------------|----------------|
| As at 1 April 2009            | 424,048                       | 565,913            | 989,961        |
| Result for the year           | (222,840)                     | -                  | (222,840)      |
| Transfer from Special Reserve | 222,840                       | (222,840)          | -              |
| As at 31 March 2010    £      | <u>424,048</u>                | <u>343,073</u>     | <u>767,121</u> |

### 10. LEASE COMMITMENTS

The Commission leases a property for its own occupation. Annual rentals payable under this lease are as follows:

|                                | £                           | £                           |
|--------------------------------|-----------------------------|-----------------------------|
| Operating leases which expire: |                             |                             |
| Less than one year             | 26,445                      | -                           |
| After five years               | 135,713                     | 104,859                     |
|                                | <u>                    </u> | <u>                    </u> |

### 11. RELATED PARTY TRANSACTIONS

During the year ended 31 March 2010, Deloitte Limited, of which Joseph Caruana is a director, provided certain services totalling £35,000 to the Commission. At 31 March 2010, £35,000 was owed by the Commission to Deloitte Limited.

During the year ended 31 March 2010, Triay and Triay, of which Robert Vasquez is a partner, provided certain legal services totalling £10,250 to the Commission. No amounts were outstanding at 31 March 2010.

During the year ended 31 March 2010, Hassans, of which Nigel Feetham is a partner, provided certain legal services totalling £500 (2008: £1,100) to the Commission. No amounts were outstanding at 31 March 2010.

During the year ended 31 March 2010, Grant Thornton (Gibraltar) Limited provided certain non-audit services totalling £25,138 to the Commission. In addition as Authorised Administrators they provided services totalling £92,266. At 31 March 2010, £34,400 was owed to Grant Thornton (Gibraltar) Limited.

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