



Financial Services Resolution
and Compensation Committee



GIBRALTAR FINANCIAL
SERVICES COMMISSION

Memorandum of Understanding

Between the Gibraltar Financial Services Commission and the Gibraltar Financial Services Resolution and Compensation Committee in respect of cooperation and exchange of information for 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

Definitions

The following terms used in this Memorandum of Understanding ("MOU") will have the following meaning:

"BRRD" means the Bank Recovery and Resolution Directive (2014/59/EU);

"FSRCC" means the Financial Services Resolution and Compensation Committee, delegated as the Gibraltar Resolution Authority by the GFSC for the purposes of the BRRD;

"GFSC" means the Gibraltar Financial Services Commission, acting as the Gibraltar Competent Authority for the purposes of the BRRD and appointed as Resolution Authority;

"The Participants" are the GFSC and the FSRCC

"RCU" means the Resolution and Compensation Unit, acting as support and advisors the FSRCC in the discharge of its functions;

"Recovery Plan" means a recovery plan drawn up and maintained by an institution in accordance with Regulation 7;

"Regulations" means the Financial Services (Recovery and Resolution) Regulations 2014 and, except where otherwise stated, a reference to a "Regulation" shall be interpreted as one within the Regulations;

"Resolution" means the application of a resolution tool or a tool referred to in Regulation 39(10) in order to achieve one or more of the resolution objectives referred to in Regulation 33(2);

"Resolution Plan" means a resolution plan for an institution drawn up in accordance with Regulation 12;

"Supplementary Regulations" means the Financial Services (Recovery and Resolution) (Supplemental) Regulations 2015;

Other defined terms shall have the meaning given to them in the Regulations.

Purpose and Scope

- 1 This MoU sets out the high-level framework that the GFSC and the FSRCC will use to co-ordinate and co-operate in carrying out their responsibilities as Competent Authority and delegated Resolution Authority respectively under the BRRD, the Regulations, the Supplementary Regulations and the Financial Services (Compensation and Resolution Schemes) Act 2015. It has been agreed in order to facilitate compliance with various provisions of this legislation that require co-operation between these authorities, and to assist both parties in the carrying out of their respective duties.
- 2 The GFSC and FSRCC have different mandates in relation to the BRRD. This means that the actions of each Participant may have implications for the objectives of the other. It is therefore essential that the authorities work together in exercising their functions, to ensure that each is able to advance its objectives and comply with its responsibilities under the BRRD.

Delineation of responsibilities between the GFSC and the FSRCC under BRRD

- 3 In broad terms, under the BRRD, the Regulations, the Supplementary Regulations and the Financial Services (Compensation and Resolution Schemes) Act 2015, the GFSC is responsible for:
 - a) complying, and ensuring that institutions falling under the scope of the Regulations, comply with the provisions in the Regulations on recovery plans;
 - b) applying, where necessary, the early intervention measures set out in Regulation 29 or the measures set out in Regulations 30 and 31 (removal of senior management and management body and the appointment of a temporary administrator respectively).
- 4 In broad terms, under the BRRD and the Regulations, the Supplementary Regulations and the Financial Services (Compensation and Resolution Schemes) Act 2015, the FSRCC, as the delegated Resolution Authority is responsible for:
 - a) complying, and ensuring that institutions falling under the scope of the Regulations comply, with the provisions in the Regulations on resolution planning;
 - b) applying, where necessary, the resolution tools, and exercising the resolution powers, in Regulation 39(3) and Chapter VI of the Regulations respectively, in accordance with the resolution objectives, conditions and general principles set out in Part 4, Chapter 1 of the Regulations and the provisions in Chapter IV;
 - c) using the resolution financing arrangements in accordance with Regulation 100.

European Banking Authority

- 5 In fulfilling their obligations under the BRRD, the GFSC and the FSRCC must have regard to guidelines, regulations and delegated acts issued by the European Banking Authority on the way in which they co-operate with each other.

Set up and frequency of meetings between the GFSC and the RCU under the Regulations

- 6 The GFSC and the RCU will meet quarterly to review the effectiveness and efficiency of co-ordination and co-operation. The frequency of these meetings can be decreased at a later stage with the agreement of both parties. The following members should attend these meetings:

GFSC

Head of Prudential, Manager Prudential, Policy Manager and any other person as may be determined from time to time.

RCU

Head of the RCU and any other person as may be determined from time to time.

Requirement to Co-operate

- 7 The BRRD imposes various obligations on the GFSC and FSRCC to co-operate and co-ordinate with each other when carrying out some of their duties under the Directive. The Authorities will make all reasonable efforts to ensure that they work together effectively and efficiently. The relevant provisions of the BRRD are listed in Schedule 2.

Policy and rulemaking approach

- 8 On general policy matters the GFSC and the FSRCC will, other than in exceptional circumstances, consult each other at an early stage in relation to policy deliberations that might have a material effect on the other's objectives, or the risk borne by credit institutions.
- 9 The GFSC and the RCU will seek to avoid introducing, inadvertently, incompatible requirements or policy positions in these areas.

Exchange of information: general

- 10 Timely, accurate and focused exchange of relevant information is essential to delivering effective co-ordination and co-operation in the necessary areas.
- 11 For an efficient functioning of both the supervisory and resolution functions it is essential that the annual work cycle of both Participants on recovery planning and resolution planning is aligned to the maximum extent possible.

- 12 Information available to one Participant (including regularly provided regulatory data) that is relevant to the responsibilities of the other Participant will be shared where requested. In addition, if one Participant considers that information it has gathered would be of material interest to the other, it will actively offer such information to the other.
- 13 Some information is received from third parties, such as overseas supervisors. Each Participant's ability to share such information with the other may, in some instances, be constrained by the terms of agreements with those third parties. The Participants will seek to ensure that these instances are minimised.
- 14 Concerning information that is provided on request, the request will:
 - (a) contain a general description of the required information;
 - (b) specify the purpose for which the information is sought;
 - (c) state why the information is necessary in order to perform the requesting Participant's tasks;and
 - (d) describe the urgency of the request and the desired time limit for the reply.
- 15 The Participant responds to the request within the requested timeframe taking into account the urgency of the request.
- 16 Either Participant may request information from the other party relating to matters covered by the BRRD.

Information requests to the GFSC should be made in writing or email to:

Head of Prudential
Gibraltar Financial Services Commission
PO Box 940
Suite 3, Ground Floor
Atlantic Suites
Europort Avenue
Gibraltar

Information requests to the FSRCC should be made in writing or email to:

Financial Services Resolution and Compensation Committee C/O RCU

PO Box 940

Suite 3, Ground Floor

Atlantic Suites

Europort Avenue

Gibraltar

Email: resolutions@fsc.gi

Duty to report certain information/findings to the other party

17 Each Participant shall notify the other as soon as possible on the occurrence of any event that may affect the ability of the other Participant to comply with its obligations under the BRRD, the Regulations, the Supplementary Regulations and the Financial Services (Compensation and Resolution Schemes) Act 2015. In addition, each Participant shall notify the other of any information that a Participant receives which they reasonably foresee to be of interest to the other Participant in the conduct of their functions (for example; a change in the business model of a firm). A non-exhaustive list of such events/information is set out in Schedule 1.

Enforcement action and investigations

18 The GFSC is responsible for enforcing those matters for which it has responsibility for under the BRRD, the Regulations, the Supplementary Regulations and the Financial Services (Compensation and Resolution Schemes) Act 2015.

19 The FSRCC is responsible for enforcing those matters for which it has responsibility for under the BRRD, the Regulations, the Supplementary Regulations and the Financial Services (Compensation and Resolution Schemes) Act 2015, whereby the FSRCC may request GFSC to conduct investigations on its behalf.

Joint Enforcement action and investigations

20 The GFSC and the FSRCC may conduct joint investigations and joint enforcement action in exercise of the powers contained in the Supplementary Regulations, and must ensure that in the exercise of their powers to impose penalties, they cooperate closely to ensure that administrative penalties or other administrative measures produce the desired results and coordinate their action with other authorities when dealing with cross-border cases.

21 In some cases, the FSRCC may request and instruct the GFSC to conduct investigations on its behalf. The terms of the conduct of any investigation will be agreed between the Authorities at the outset of any investigation.

External Communication

22 The Participants should cooperate, if appropriate, in external communication with interest groups and the media on matters related to recovery and resolution within their respective responsibilities. The Participants will inform each other, as early and fully as possible, before issuing any public statements relating to the recovery or resolution of Entities.

Confidentiality

23 Each Participant will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other Participant.

24 Without prejudice to the obligations a Participant may have to use or disclose information in relation to enforcement proceedings or otherwise, each Participant will endeavour to consult the other where practicable, before:

- passing the information to a third party; and
- using the information in the context of enforcement proceedings or a court case where it is likely to become publicly disclosed.

25 The Participants acknowledge that it may, over time, become more difficult to identify the source of certain types of information.

26 The Participants will liaise on responding to requests made under the Data Protection Act, where appropriate, and will consult before releasing information received from the other.

27 The GFSC, the FSRCC and the RCU shall comply with the confidentiality requirements set out in Regulation 86.

Calculation of contributions

28 The GFSC should provide to the FSRCC all the information necessary and resource requirements for Contribution Invoices to be sent to institutions as requested by the RCU.

RCU Support

29 The GFSC shall provide 'back-office' support to the RCU for, and in some cases not limited to;

- Human Resources

- Finance & Legal
- Information Technology
- Other administration

30 The support outlined in paragraph 29, falls under the scope of 23-27 above.

Emergency action

31 It is important that the GFSC and the FSRCC have the ability to act quickly where appropriate to advance their respective objectives. In that context, in particular market conditions or other relevant circumstances, the precise arrangements set out in this MoU may not be compatible with one or more of the parties advancing its objectives with the urgency required. In this case, the GFSC or FSRCC will provide the other with notice as soon as practicable of the situation and the action taken, or proposed to be taken.

32 In order to fulfil its obligations during resolution phase, the FSRCC may request additional resource assistance, in the form of appropriate personnel, from the GFSC. Such an arrangement will be in line with the operational independence requirements with the supervisory function of the GFSC.

33 Paragraph 29 is subject always to the requirements of the BRRD, the Regulations, the Supplementary Regulations and the Financial Services (Compensation and Resolution Schemes) Act 2015.

Maintenance of MoU

34 The Participants shall review the functioning and effectiveness of cooperation and information exchange under this MoU annually or earlier when deemed necessary by both Participants.

35 Any amendment to this MoU requires the mutual consent of Participants.

Knowledge exchange

36 The Participants recognise that it is of mutual interest to exchange general information relating to their respective fields of competence, including in the context of trainings, conferences and workshops. Either Participant may invite staff members of the other Participant on a case-by-case basis to join such a knowledge exchange session. Any confidential information that may be exchanged in this context falls under the scope of 23-27 above.

Settlement of disputes

37 Any disagreement between the Participants concerning the interpretation or application of this MoU or its performance will be settled, if possible, in an amicable and equitable manner through direct negotiations between the relevant units and responsible persons. If the negotiation stage does not reach a satisfactory resolution, the Participants strive to solve the disagreement by mutual agreement by entertaining good faith negotiations between senior management, who have authority to fully and finally resolve the disagreement.

38 The existence of a disagreement, its resolution, as well as any information including documentation related to or disclosed in connection with it, will be treated as confidential information.

Effect and termination

39 This MoU will come into effect on the date it has been signed by both Participants and will continue to have effect until terminated by either of them (or as updated in line with '34' above).

Signed in Gibraltar by the Participants' duly authorised representatives.

For the Financial Services Resolution and Compensation Committee



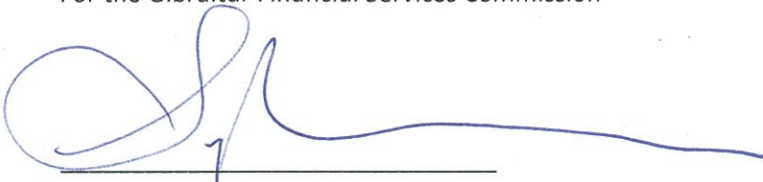
Albert Mena,

Chairman, Financial Services Resolution and Compensation Committee

Date:

23 FEB 2013

For the Gibraltar Financial Services Commission



Samantha Barrass,

Chief Executive Officer,

Gibraltar Financial Services Commission

Date:

08 MAR 2013

Schedule 1

Matter that are notifiable by the Participants

Set out below is a non-exhaustive list of matters that are notifiable by the Participants to each other.

Recovery planning and resolution planning phase:

The GFSC provides the FSRCC with the requested supervisory information available to complete the resolution plans;

The GFSC informs the FSRCC of any change in its supervisory practice relevant to BRRD firms at least one month prior to the date on which it will assume direct supervision over the institution.

The GFSC informs the FSRCC of any changes to the list of participating BRRD firms at least one month (where feasible) prior to change occurring.

The GFSC provides the FSRCC timely and duly with a final recovery plan in order to examine the recovery plan from a Resolution perspective. The FSRCC, if applicable, provides recommendations to the GFSC with regard to any actions in a recovery plan which may adversely impact the resolvability of institutions. The FSRCC provides its examination, and if applicable recommendations, in a timely manner in the assessment period as foreseen by Article 6(2) of the BRRD.

The GFSC provides the FSRCC with any group financial support agreements entered into by the Entities, as well as any changes thereto. The Participants cooperate closely in determining the impact of the group financial support on the resolvability of the providing institution prior to the GFSC decision granting the authorisation as consolidated supervisor.

The GFSC consults and cooperates with the FSRCC in the process of drawing up resolution plans, in particular as regards:

- the determination of the minimum requirement for own funds and eligible liabilities of an institution;
- the assessment of the resolvability of the institution
- the provision of the information necessary to complete the resolution plans
- the determination that there are substantive impediments to the resolvability of an institution and the preparation of a report, addressed to the Institution or the parent undertaking analysing those impediments to the effective application of resolution tools and

the exercise of resolution powers. The FSRCC communicates any measures proposed by the institution or parent undertaking to address or remove substantive impediments to resolvability to the GFSC and consults the GFSC before assessing whether the proposed measures effectively address or remove the substantive impediments in question. If the proposed measures do not effectively address or remove the substantive impediments in question, the FSRCC consults the GFSC before instructing the relevant institution to take any Resolvability Measures.

The FSRCC provides the GFSC with the resolution plans and group resolution plans (where relevant) of institutions, as well as any changes thereto.

The GFSC and the FSRCC cooperate closely and coordinate with each other when applying simplified obligations and waivers in recovery and resolution planning. The GFSC and the FSRCC should cooperate and strive to achieve a consistent approach to the application of simplified obligations or waivers.

Early intervention phase

The GFSC shall notify the FSRCC without delay upon determining that the conditions laid down in 29 (1) of the Regulations have been met in relation to an institution.

For each of the measures referred to in 29 (1) of the Regulations, the GFSC as Competent Authority shall set an appropriate deadline for completion, and to enable the GFSC as Competent Authority to evaluate the effectiveness of the measure.

The GFSC informs the FSRCC prior to imposing any measures of early intervention on the Institution concerned;

The GFSC provides the FSRCC with all the information necessary to update the resolution plan or for further assessment of an institution needed if the FSRCC decides to prepare for the resolution of an institution and for the valuation of the assets and liabilities of the institution. For this purpose the GFSC provides the FSRCC with all available information which the FSRCC has specified as necessary. Moreover for this purpose, the GFSC provides the FSRCC with any available valuation or assessments of assets and liabilities of an institution to support the FSRCC's or an independent valuer's valuation.

The FSRCC informs the GFSC of any requirement it intends to impose on an institution as a part of its preparation for resolution, in particular to contact potential purchasers. The FSRCC informs the GFSC when it starts drafting a preliminary resolution scheme or imposes any requirement on the relevant national resolution authority to draft such scheme;

During the FSRCC preparatory work for resolution and when the FSRCC intends to impose resolution requirements upon an institution, the FSRCC will have due regard to the GFSC's need to ensure the effectiveness of any early intervention measures taken by the GFSC;

The Participants ensure that any additional supervisory measures proposed and any action of the FSRCC aimed at preparing for resolution in is consistent.

Resolution phase

The determination that the institution is failing or is likely to fail can be made by the GFSC or the FSRCC following consultation between the Participants. The GFSC provides the FSRCC without delay with any relevant information that the FSRCC requests in order to make a 'failing or likely to fail' assessment;

The Participant provides the necessary information to each other before launching a 'failing or likely to fail' assessment of an institution;

The FSRCC assesses, in close cooperation with the GFSC, whether there is no reasonable prospect that any alternative private sector measures or supervisory action taken in respect of an institution would prevent its failure within a reasonable timeframe;

The FSRCC communicates an assessment that the conditions for resolution are met the institution;

The FSRCC informs the GFSC about the resolution action that it intends to adopt;

If relevant the GFSC consults the FSRCC before making an assessment of the conditions concerning the power to write down or convert capital instruments in relation to an institution. If the FSRCC decides to make its own assessment concerning those conditions in relation to an Institution, it will communicate the results of this assessment to the GFSC;

The FSRCC informs and if requested, provides the necessary information to the GFSC of its intention of making a viability assessment with regard to an institution and only makes such an assessment if the GFSC, within a reasonable timeframe, does not make it; The GFSC provides the FSRCC – without delay – with any relevant information used for the FSRCC assessment, when requested;

The FSRCC, in agreement with the GFSC, conducts the Business Reorganisation Plan Assessment of an institution, in particular the likelihood that the plan, if implemented, will restore the long term viability of that institution concerned;

The FSRCC and the GFSC should reach an agreement on the assessment of a business reorganisation plan.

Schedule 2

- Regulation 5 (2) and (4) (Designation of authorities responsible for resolution);
- Regulation 8(5) and (6) (Assessment of recovery plans);
- Regulation 12(1) (Resolution plans);
- Regulation 13(1)(b) and 13(3) and (4) (Information for the purpose of resolution plans and cooperation from the institution);
- Regulation 15(7) (Requirement and procedure for group resolution plans);
- Regulation 17(1) (Assessment of resolvability for institutions);
- Regulation 18(1) (Assessment of resolvability for groups);
- Regulation 19(1) (Powers to address or remove impediments to resolvability);
- Regulation 20(1) (Powers to address or remove impediments to resolvability: group treatment);
- Regulation 24 (Transmission of the group financial support agreements to resolution authorities);
- Regulation 34(1)(a) (Conditions for resolution);
- Regulation 47(13), (40) and (41) (Application of the minimum requirement);
- Regulation 58(5) (Government financial stabilisation tools);
- Regulation 64 (Consolidated application; procedure for determination);
- Regulation 65(2)(a) and (m) (Resolution powers : General powers);
- Regulation 83 (Notification requirements);
- Regulation 85 (Procedural obligations of resolution authorities);
- Regulation 92 (Information exchange).