GIBRALTAR FINANCIAL SERVICES COMMISSION

Memorandum of Understanding

Between

Gibraltar Financial Services Commission

And

Financial Services Resolution and Compensation Committee

February 2025

Definitions

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

"Act" means the Financial Services Act 2019;

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

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

"The Participants" are the GFSC and the FSRCC;

"RCU" means the Resolution and Compensation Unit, acting as support and advisers to 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 2020 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 37(10) in order to achieve one or more of the resolution objectives referred to in Regulation 31(2);

"Resolution Plan" means a resolution plan for an institution drawn up in accordance with Regulation 10;

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

Introduction, 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 and functions as Competent Authority and delegated Resolution Authority respectively under the Act and the Regulations.

2. It has been agreed to facilitate compliance with various provisions of the Act and Regulations that require co-operation between these authorities, and to assist both parties in the carrying out of their respective duties.

3. The Participants recognise the significant gains by increasing their levels of co-operation in the exchange of information.

Competent Authorities and Legal Basis

4. The GFSC was established under the Financial Services Commission Act 2007 and continues to exist in accordance with Part 3 of the Financial Services Act 2019. The GFSC's functions include:

    a. to supervise regulated persons in accordance with the Financial Services Act 2019;
    b. to consider and determine applications for authorisation, permission, licensing, approval, registration or recognition made under the Financial Services Act 2019;
    c. to monitor compliance by regulated persons with the Financial Services Act 2019 and any regulations, rules, codes and guidance made under it and, when appropriate, take enforcement action in respect of any non-compliance;
    d. to monitor compliance by regulated persons with legislation, rules, codes and guidance relating to the prevention of financial crime and, when appropriate, take enforcement action in respect of any non-compliance; and
    e. to carry out the duties and discharge the functions imposed on, or given to, it under the Financial Services Act 2019 or any other Act.

5. The GFSC continues to be designated as the Gibraltar Resolution Authority to carry out the functions under Part 17 of the Act. The GFSC's functions as the Gibraltar Resolution Authority are to be exercised by the GFSC acting through the FSRCC.

6. The GFSC may exercise its resolution functions (including together with the FSRCC) where in the opinion of the GFSC it would be more appropriate for the GFSC to exercise those functions or in particular, it would be inappropriate for the FSRCC to do so because of a conflict between

the FSRCC's interests in the discharge of the resolution functions and its functions under Part 15 in relation to the Gibraltar Deposit Guarantee Scheme ("GDGS").

7. The FSRCC was established under the Financial Services Commission Act 2007 and continues to exist as a statutory committee of the GFSC in accordance with Part 3 and Part 15 of the Act.

8. The FSRCC is also responsible for the GDGS and Gibraltar Investor Compensation Scheme ("GICS"). The GDGS and GICS are responsible for paying compensation if a participating firm is unable to, for reasons directly related to its financial circumstances, meet its obligations.

Aims and objectives

9. This MoU seeks to establish an effective relationship to provide a procedural framework for the Participants to co-ordinate and cooperate in the carrying out of their responsibilities under the Act and Regulations.

10. This MoU's aim is to facilitate the authorities working together in exercising their functions, to ensure that each is able to advance its objectives and comply with its responsibilities under the Act.

11. Under this MoU, the Participants will seek to achieve the following objectives:

    - formalising the working relationship between the Participants;
    - establish single points of contact ("SPOC") to facilitate communication and the disclosure of information and cooperation, noted under paragraphs 16 and 17; and
    - develop and provide a framework to coordinate and cooperate in carrying out the Participant's responsibilities in accordance with the Act and Regulations.

Legal status and Effect

12. The Participants recognise and respect their separate powers; functions; duties; operational priorities; constraints; confidentiality requirements and they agree to coordinate and co-operate with each other, in accordance with the performance of their respective functions and within the limitations of those powers.

13. Moreover, nothing in this MoU shall, or is intended to:
    a. create any legal or procedural right or obligation which is enforceable by either of the Participants against the other; or
    b. create any legal or procedural right or obligation which is enforceable by any third party against either of the Participants, or against any other third party; or

c. prevent either of the Participants from complying with any law which applies to them; or

d. fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows each of the Participants to exercise; or

e. create any legitimate expectation on the part of each of the Participants and any other person that the other Participant will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.

14. Within the boundaries set out in paragraphs 13-14, the Participants are committed to pursuing the aims and purposes of this MoU in good faith and intend to act in accordance with its terms on a voluntary basis.

Procedures and Protocols

15. Exchange of information shall be carried out between the Participants through the SPOCs. Any reference or material that either Participant considers does not fall within the parameters of the MoU, will not be processed or shared. However, the requesting party shall be informed of the reasons for the refusal.

16. The Participants will comply, in all respects, with their obligations under the Data Protection Act 2004, the Gibraltar General Data Protection Regulation and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020 in respect of any personal data exchanged and sensitive personal data processed in pursuance of this MoU. All disclosures must remain confidential and only to the intended recipient(s) and subject to mutually agreed data safeguards.

Information and documentation

17. The information shared in the context and for the purposes of this MoU shall be limited to information which falls within the definition of "confidential information" under the Act, which means information in any form which:

    (a) has been obtained by the GFSC in the course of carrying out its functions and from which a person can be identified; or

    (b) which the HM Government of Gibraltar has provided in confidence.

18. The GFSC may disclose confidential information only to the extent that doing so appears to the GFSC to be necessary under Section 46 of the Act, such as for the purpose of assisting a domestic authority in carrying out of its functions.

19. In circumstances where the GFSC has received information from a third party which it is restricted from onward sharing, nothing in this MoU will require the GFSC to disclose it without the express agreement of the third party that provided it.

20. In disclosing any information to the FSRCC, the GFSC shall unless specified otherwise require the FSRCC:

    (a) to use the information only for the purposes for which the GFSC has provided it; and

    (b) not to disclose the information without the GFSC's express agreement.

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

21. The GFSC and the RCU will meet whenever necessary to discuss and update each other on relevant matters. The following members should attend these meetings:

    GFSC

    Director of Banking, Investments and Markets 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

22. The Act imposes various obligations on the GFSC and FSRCC to co-operate and co-ordinate with each other when carrying out their duties. The Authorities will make all reasonable efforts to ensure that they work together effectively and efficiently. The relevant provisions of the Act are listed in Schedule 1.

Exchange of information: General

23. Timely, accurate and focused exchange of relevant information is essential to delivering effective co-ordination and co-operation in the necessary areas.

24. 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.

25. Information available to one Participant (including regularly provided regulatory data) that is relevant to the responsibilities of the other Participant may 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 consider sharing such information to the other.

26. 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.

27. The Participant responds to the request within the requested timeframe taking into account the urgency of the request.

28. Either Participant may request information from the other party relating to matters covered by the Act.

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

    Director of Banking, Investments and Markets

    Gibraltar Financial Services Commission

    PO Box 940

    Suite 3, Ground Floor

    Atlantic Suites

    Europort Avenue

    Gibraltar

    Email: banking@fsc.gi

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

    Head of RCU

    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

31. Each Participant shall notify the other as required under the FSA 2019 or the Regulations 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 Act and the Regulations.

32. In addition each Participant shall where reasonable and within the context of their priorities and objectives, 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.

Enforcement action and investigations

33. The GFSC is responsible for enforcing those matters for which it has responsibility for under the Act and the Regulations.

34. The FSRCC is responsible for enforcing those matters for which it has responsibility for under the Act and the Regulations, whereby the FSRCC may request GFSC to conduct investigations on its behalf.

Joint enforcement action and investigations

35. The GFSC and the FSRCC may conduct joint investigations and joint enforcement action in exercise of the powers contained in Part 8 of the 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.

36. In some cases, the FSRCC may request 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

37. The Participants shall cooperate, if appropriate and necessary, in external and public 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

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

39. 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 either party 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.

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

41. 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.

42. The GFSC, the FSRCC and the RCU shall comply with the confidentiality requirements set out in Regulation 84.

Calculation of contributions

43. 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.

44. The GFSC will discuss in advance with the FSRCC any issues with participants that could materially affect the Schemes' funding needs.

45. Where a shortfall arises in ex-ante funding for the Schemes, the GFSC will be requested to provide confirmation regarding the ability of 'non-troubled' firms to provide Extraordinary Contributions (as calculated by the Schemes) within one month of request.

RCU Support

46. The GFSC shall provide support to the RCU for, and in some cases not limited to;
    - Human Resources
    - Finance
    - Information Technology
    - Other administration

47. The support outlined in paragraph 46, falls under the scope of paragraphs 43-45 above.

Emergency action

48. 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.

49. In order to fulfil its obligations during the 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.

50. Paragraph 48 is subject always to the requirements of the Act and the Regulations.

Maintenance of MoU

51. The Participants shall review the functioning and effectiveness of cooperation and information exchange under this MoU every three years or earlier when deemed necessary by both Participants. The Participants may consult with each other at any time with the aim of ensuring effective implementation of this MoU and the security of the data shared.

52. This MoU may be modified at any time by mutual agreement between the Participants.

Knowledge exchange

53. 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 this MoU.

Settlement of disputes

54. 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.

55. 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

56. 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 paragraph 51 above). At this time a new MoU between the participants may be decided upon and implemented.

57. Once signed by both participants, this MoU replaces the previous MoU in place between the GFSC and FSRCC which came into effect in February 2018.

Signatories & Signature Block

58. By signing this MoU, the signatories accept responsibility, on behalf of the Participants, for its overall execution and ensure that relevant persons engaged in its operation are familiar with, and suitably briefed by the respective SPOCs, to ensure that they comply with all relevant legislation requirements in operation under this MoU.

Name: Kerry Blight

Position held: Chief Executive Officer

For and on behalf of the Gibraltar Financial Services Commission

Signature: _____

Dated: 27.02.2025

Name: Louise Cruz

Position held: Chair, Financial Services Resolution and Compensation Committee

For and on behalf of the Financial Services Resolution and Compensation Committee

Signature: _____

Dated: 27.2.2025

Schedule 1

Regulation 6(5) and (6) (Assessment of recovery plans);

Regulation 10(1) (Resolution plans);

Regulation 11(1)(b) and 11(3) and (4) (Information for the purpose of resolution plans and cooperation from the institution);

Regulation 13(1) (Requirement and procedure for group resolution plans);

Regulation 15(1) (Assessment of resolvability for institutions);

Regulation 16(1) (Assessment of resolvability for groups);

Regulation 17(1) (Powers to address or remove impediments to resolvability);

Regulation 18(1) (Powers to address or remove impediments to resolvability: group treatment);

Regulation 22 (Transmission of the group financial support agreements to resolution authorities);

Regulation 32(1)(a) (Conditions for resolution);

Regulation 45C(14) and 45H(7) (Determination of the minimum requirement for own funds and eligible funds);

Regulation 56(5) (Government financial stabilisation tools);

Regulation 63(2)(a) and (m) (Resolution powers: General powers);

Regulation 81 (Notification requirements);

Regulation 83 (Procedural obligations of resolution authorities);