

Memorandum of Understanding
Between
Gibraltar Investor Compensation Board
And
Gibraltar Financial Services Commission

Date Published: 31 March 2020

Version Number: V1.00

Glossary

“the Board” means the Gibraltar Investor Compensation Board

“the Scheme” means the Gibraltar Investor Compensation Scheme

“the Act” means the Financial Services Act 2019

“GFSC” means the Gibraltar Financial Services Commission

“MoU” means the Memorandum of Understanding

“the Parties” means the Board and the GFSC

Memorandum of Understanding between the Gibraltar Investor Compensation Board and the Gibraltar Financial Services Commission.

Purpose and Scope

1. The Gibraltar Investor Compensation Board (the Board) exists to provide protection for eligible customers of failed financial services firms. The Investor Compensation Scheme (the Scheme) was established by the Financial Services Act 2002 and continues to exist in accordance with the provisions of Part 16 of the Financial Services Act 2019 (the Act), and is administered by the Board. The Scheme is Gibraltar's statutory 'fund of last resort' for customers of authorised investment services firms. It is responsible for paying compensation if a member firm is unable, for reasons directly related to its financial circumstances, to meet its obligations.
2. The Gibraltar Financial Services Commission (GFSC), established as the Financial Services Commission under the Financial Services Commission Act 2007, and which continues to exist in accordance with Part 3 of the Act, is responsible for regulating and supervising financial services providers that operate in or from Gibraltar. It has statutory powers of authorising, supervising and investigating, and has the ability to exercise its powers for the prevention and detection of financial crime.
3. Under section 46 (1)(d) of the Act, the GFSC is able to share confidential information with a domestic authority if it is necessary to assist the domestic authority in carrying out its functions. The Board is a domestic authority listed in Schedule 9 of the Act. Section 47 of the Act permits the GFSC to enter into cooperation agreements with domestic authorities, establishing procedures for the exchange of information in accordance with Part 5 of the Act. The GFSC and the Board may share any other information as required.
4. This Memorandum of Understanding (MoU) sets out the high-level framework agreed between the GFSC and the Board for co-operation between the parties, particularly in respect of the exchange of information to assist the Board and the GFSC in carrying out their respective functions.

Legal status and effect

5. 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 parties against the other; or
 - b. create any legal or procedural right or obligation which is enforceable by any third party against either of the parties, or against any other third party; or
 - c. prevent either of the parties 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 the parties to exercise; or
 - e. create any legitimate expectation on the part of any person that either of the parties to this MoU will do any act (either at all, or in any particular way, or at any particular way, or at any particular time), or will refrain from doing any act.
6. Nevertheless, the parties are genuinely committed to pursuing the aims and purpose of this MoU in good faith, and intend to act in accordance with its terms on a voluntary basis.

Sharing information

7. It is recognised that the exchange of relevant information between the GFSC and the Board is of benefit to each party in the carrying out of their respective functions and assist the jurisdiction in the protection of consumers and the promotion of market confidence.
8. The GFSC and the Board are committed, in addition to their legal obligations, to share information regarding each GICS participant for the purposes of calculating insurance costs. The Scheme is principally funded by levying contributions from firms when needed to cover compensation cost if a failure occurred.
9. Where either party considers that information gathered or held by it would be of material interest to the other, it will actively offer such information.

10. Where the GFSC consider that it would be necessary to assist the Board to fulfil its function and there is no overriding reasons not to share information, the GFSC will notify the Board of any material investigation it intends to conduct or conducting into a relevant firm at an early stage.
11. The GFSC will notify the Board as soon as reasonably practicable upon becoming aware that a Scheme participant has financial difficulties or there is activity in the sector which may reasonably likely to require the Scheme intervention and provide all the relevant information reasonably available to enable the Board to plan accordingly.
12. During and/ or following the handling of a default (the inability to repay monies owed or belonging to an investor) the Board will report to the GFSC with regard to its progress. Both parties may jointly carry out lessons learned exercises following failures to identify whether the causes of failure and the specific nature of the failure might identify the need for future policy or rule changes or Scheme operational changes.
13. The Board will also inform the GFSC if the type and volume of enquires it receives indicates high or unusual concern about particular firms and notify the GFSC if it becomes aware of any problems.
14. The GFSC will keep the Board informed of any regulatory or market developments that may affect the current or future planning or operation of the Scheme. In times of market disruption, or as the likelihood of a specific firm failing increases, both parties acknowledge that information sharing will become more intensive.
15. The GFSC will promptly advise the Board of new investment firms (in terms of new Gibraltar firms, non-Gibraltar firms passporting in via branch, and Gibraltar firms passporting out of Gibraltar via branch) relating to the Investor Compensation Scheme.
16. Where a participant of the Scheme surrenders its MiFID authorisation, the GFSC should advise the Board of its resignation in advance.

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

Gibraltar Financial Services Commission
PO Box 940
Suite 3, Ground Floor
Atlantic Suites
Europort Avenue
Gibraltar
Email: information@gfsc.gi

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

Gibraltar Investor Compensation Scheme
PO Box 940
Suite 3, Ground Floor
Atlantic Suites
Europort Avenue
Gibraltar
Email: GICSEnquiries@fsc.gi

Pooling resources

18. Where it has been agreed or determined, the GFSC shall provide appropriate practical assistance for the Board in back office support, including but not limited to; information technology; Human Resources; finance, legal, and communications.

Funding

19. The GFSC will discuss in advance with the Board any issues with participants that could materially affect the Schemes' funding needs or ability to levy insurance contributions.

20. Where a shortfall arises in ex ante funding for the Scheme, the GFSC will be requested to provide confirmation regarding the ability of 'non troubled' firms to provide Extraordinary Contributions (as calculated by the scheme) within 1 month of the request.

Confidentiality

21. The Board and the GFSC recognise that information exchanged under the provision of this MoU is likely to be of a highly sensitive and confidential nature.
22. Both parties will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other party (including information received initially from third parties) in accordance with the Act.
23. No confidential information exchanged by the Board and the GFSC under the provision of this MoU will be passed on to any third party without the express consent of the sending party.

Policy making

24. Respecting each other's roles and experience, the parties will collaborate on policy matters of mutual interest. Where either party is engaged in domestic or international fora which will involve the discussion of policy, operational effectiveness or delivery, and planning, or testing, or matters of common interest which may impact either party's ability to deliver on their functions under the Act in respect of consumer protection, they should seek advice or views from the other party and share relevant information.
25. Both parties agree to allow reasonable time, where appropriate, for each other to provide considered comments on material policies, consultations, publications and rules, as well as press releases and announcements, before they are made public.

Review of MoU

26. The Parties will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters that arise.

Emergency action

It is important that the GFSC and the Board have the ability to act quickly where appropriate to advance their respective objectives. In that context, in particular, market conditions, 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, both parties will provide notice as soon as practicable of the situation and the action taken, or proposed to be taken.

Commencement and Termination

1. This MoU will take effect when the Parties have signed it and will continue to have effect until terminated by either party giving 30 days' advance written notice to the other Authority. It may be amended by agreement in writing.
2. In the event of the termination of this MoU, information obtained under this MoU will continue to be treated confidentially in the manner prescribed under the Act.

Publication

3. Either, or both, of the Parties may make a copy of this MoU, or the text of it, publicly available.

Signatories



For the Gibraltar Investor Compensation Board

Date: 17th September 2020

Name: MARK DELLIPIANI

Description: BOARD MEMBER GICS



For the Gibraltar Financial Services Commission

Date: 16/10/2020

Name: Kerry Blight

Description: Chief Executive Officer

