



**Financial Services
Commission**

Banking Guidance Note No. 8

Fiduciary Deposits

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Introduction

This Guidance Note deals with the treatment of fiduciary deposits and forms part of the FSC's efforts to address supervisory issues and enhance supervision through guidance that encourages sound practices.

Basis of applicability

This Guidance Note applies to all EEA branches under the provision of General Good under the Banking Consolidation Directive (2000/12/EC) to locally incorporated credit institutions and third country branches.

Definition of a Fiduciary Deposit

Fiduciary deposits are a financial product which have been primarily developed in Switzerland but which are also available to customers of Gibraltar-based banks. A fiduciary deposit is a deposit placed by a customer with a third bank (recipient bank) through an agent bank.

The recipient bank pays the agent bank the interest on the deposit which is then passed onto the depositor. The analogy that best describes the arrangement is that of an Investment Management Agreement but instead of securities the Fiduciary Agreement gives the agent bank power to manage a deposit. The recipient bank treats the incoming deposit as an interbank placement, not a customer deposit.

Treatment of Fiduciary Deposits

Fiduciary deposits are treated as inter-bank placements which places the ultimate depositor at a serious disadvantage over other depositors of the same bank. When entering into the fiduciary agreement the depositor assumes the risk of the recipient bank failing, yet has little or no control over which recipient bank his deposit is placed with.

In the event of a failure of the recipient bank, the depositor has no right to make a claim under the Gibraltar Deposit Guarantee Scheme as the agent bank has not defaulted on a payment, the deposit not being on the balance sheet of the agent bank in the first place.

Secondly, the recipient bank would not necessarily be located in Gibraltar and would therefore not form part of any local deposit guarantee scheme arrangements. Even if the recipient were located in Gibraltar the deposit would be excluded from cover as it would be treated as an interbank placement.

In addition, if the agent bank were to subrogate its rights to a claim to the depositors, the liquidators and scheme administrators have no way of establishing the size of the depositor's claim. The agent bank itself would be treated as the creditor and would stand in line after the bank's own depositors, despite the amounts in question belonging to the agent bank's customers who have assumed the same risk as a normal depositor of the bank.

Customer's Understanding of Risk

The FSC requires banks to ensure that customers fully understand the potential risks when entering into a fiduciary deposit. It is necessary for banks to adequately inform their customers that they will have no recourse to the Gibraltar Deposit Guarantee Scheme or any other deposit insurance arrangement when entering into a fiduciary deposit arrangement. The contract or bank mandate must contain a suitable clause highlighting the risks



and requiring the customer to sign as having understood these before entering into the transaction.

KYC/Due Diligence Requirements

The KYC/Due Diligence obligations regarding the depositor rest with the agent bank. The recipient bank has no obligation to conduct KYC on the underlying depositor as its applicant for business is the agent bank. This is to say that Gibraltar banks entering into fiduciary deposits with customers have to conduct full KYC/Due Diligence checks as if the deposit were being placed on balance sheet.

However, although there is no obligation to conduct KYC/Due Diligence when a Gibraltar bank acts as a recipient bank. Gibraltar banks should make all reasonable efforts to ensure that when they are the recipients of fiduciary deposits, confirmation must be obtained from the agent bank that all the necessary KYC/Due Diligence checks have been conducted by them on the underlying customer base to standards equivalent to those in force in Gibraltar or higher.