



**Financial Services
Commission**

Policy Paper

Functions of the Financial Services Commission and exercise of delegated authorities by the Chief Executive

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Purpose

This paper describes the statutory functions of the Financial Services Commission under Section 6 of the Financial Services Commission Act 2007 ("FSCA") and describes where the responsibility for this function has been retained by the Commission or where this has been delegated to the Chairman, Chief Executive, Committee or Officers of the Commission.

This paper formally documents the process of delegation of powers under the FSCA as well as the roles and responsibilities of the Chairman and Chief Executive under the Act. Ratification of this paper at a meeting of the Commission will be evidence of its formal adoption and may be amended or substituted, as required, at subsequent meetings.

Under the regime created by the FSCA the "Authority" as defined under the Financial Services Act 1989 ("FSA89") moved from the Commissioner to the Commission. This paper therefore covers the delegation of these powers on a day to day basis to the Chief Executive. Additionally a number of powers are exercisable under other Acts, such as the Banking and Market Abuse Act. It is likely that, as these are amended, the opportunity will be taken to bring them into line with the new approach. As this occurs this policy will need to take account of the changes.

Role of the Commission

The functions of the Commission are contained within Section 6 of the FSCA. Section 9 of the FSCA permits the delegation of these functions to the Chief Executive appointed under Section 8 or, with the consent of the Minister, to another person.

In carrying out the statutory duties (Section 7), the Commission shall discharge its obligations in such a manner (so far as is reasonably possible) which;

- (i) is compatible with the regulatory objectives, namely ;
 - (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.
- (ii) has regard to generally accepted principles of good corporate governance, and
- (iii) the Commission considers most appropriate for the purposes of meeting those objectives; and

The Commission shall have regard to;

- (i) the need to use resources in the most efficient and effective way;
- (ii) the principle that the duty to manage a business falls upon the senior management of that business;
- (iii) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (iv) the desirability of facilitating innovation in connection with financial services business;

- (v) the international character of financial services and markets and the desirability of maintaining the competitive position of Gibraltar;
- (vi) the desirability of minimising, as far as reasonably practicable, the adverse effects of regulation on competition and consumer choice;
- (vii) the need to maintain the good international reputation of Gibraltar generally and as a jurisdiction for the conduct of financial services business;
- (viii) the policy of the Government, as advised to the Commission by the Minister, where it relates to matters of general application regarding the authorisation, licensing, recognition and registration of financial services business which, in the judgement of the Minister, affects or relates to the macro economic or other public interest of Gibraltar.

Responsibilities of Chairman & Chief Executive

The FSCA provides for the appointment of separate Chairman and Chief Executive

The key responsibilities of the Chairman are to:

- Preside over each meeting of the Commission.
- Ensure the maintenance of an effective Board.
- Ensure that the FSC maintains effective and appropriate standards of corporate governance: (including the annual assessment of the performance of the Commission members).
- Ensure the Commission maintains a feasible long term strategy.
- Plan and manage the Commission Meetings in order to ensure Commission Members receive accurate, timely and clear information, as well as determine and manage the Board agenda.
- Maintain and develop a productive relationship with the FSC Chief Executive.
- Chair the Nominations Committee (other than when a successor to the Chairman is being considered).
- Establish and maintain high level contacts with the most important stakeholders.
- In the absence or incapacity of the Chief Executive, the Chairman will appoint the Deputy Chief Executive Officer to act on behalf of the Commission until the permanent appointment of a suitable Chief Executive.
- Ensure the appointment of an acting Chief Executive in the event of the departure of the Chief Executive until a permanent replacement can be recruited.

(Apart from the final two bullet points, the Chairman has no executive responsibility for the day to day running of the Commission)

The key responsibilities for the Chief Executive are to:

- lead the day to day work of the FSC, including ensuring that the strategic plan is developed and implemented and that the FSC meets its business plan;
- supervise authorised persons;
- determine applications for authorisations, licences, recognitions and registrations made under the supervisory Acts;
- monitor compliance by authorised persons with such Legislation, Rules, Codes and Guidance made under this Act or any supervisory Acts;
- monitor compliance by authorised persons with such Legislation, Rules, Codes and Guidance relating to the prevention of financial crime;
- monitor financial services business carried on in or from Gibraltar and taking action against persons carrying on such business without the necessary authorisation, licence or registration;
- prepare the annual budget for consideration by the Commission;

- develop the FSC's strategy for approval by the Commission;
- contract with any person for the supply to, or by, the Commission of any goods, services or personnel;
- pay expenses properly incurred by the Commission;
- employ such persons (including advisors and consultants) as thought fit for the proper discharge by the Commission of its functions;
- manage the compiling, preparing, printing, publishing, issuing, circulating and distributing, whether in paper or in electronic form and whether for payment or otherwise, such papers, leaflets, magazines, periodicals, books and other literary matter, as may be conducive to the attainment of the functions of the Commission;
- maintain proper accounting records and financial controls;
- build and maintain the culture necessary to enable the FSC to operate effectively;
- ensure the FSC's resources are used effectively and efficiently;
- formulate policies and planning recommendations to the Commission;
- act as the primary interface between the FSC and its stakeholders;
- act as the Competent Authority under the Market Abuse Act 2005;
- act as the Competent Authority under section 2(1) of the Financial Services (Collective Investment Schemes) Act 2005;
- perform such other functions, and exercise such powers as are conferred upon him, but not limited to, by the FSCA or any other Act or regulation or are delegated to him by the Commission;
- draw up and implement codes, with the approval of the Commission, for regulating the terms of service, discipline and training of all staff.

Matters reserved for the Commission

The Commission shall conduct the following matters in such a manner (so far as is reasonably possible);

- To ensure that in respect of those areas of financial services business where Community law applies, that the FSC supervises and regulates 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.
- To provide the challenge and oversight process for the operation of the functions of the Chairman and Chief Executive's functions.
- To collectively take responsibility for all authorities and powers vested upon it by the FSCA including those formally delegated to the Chairman or Chief Executive;
- To monitor that the powers exercised by the Chairman or Chief Executive have been exercised with proper authority and due regard to the legislative provisions as well as the moral and ethical values of the organisation;
- To ensure that all actions and decisions of the Commission, its Chairman or Chief Executive are intra-vires.
- To identify and makes recommendations to the Minister whenever a vacancy exists for a Commission Member or Chief Executive;
- To ensure that the Commission is properly staffed, financed and has the necessary resources and expertise to conduct its affairs effectively and efficiently;
- To maintain good stakeholder relationships;
- To maintain proper books of accounts and upholds the best market practice in relation to its corporate governance;
- To inform the Minister where resourcing, skills or knowledge do not permit it to conduct its affairs in the manner prescribed by the legislation.

Detailed table of Compliance with the Statutory Functions of the Commission - Section 6

Function	Delegated (Y/N)	If 'Y', To whom?	How is this function being performed?	How is the Commission monitoring this function?
(a) to supervise authorised persons in accordance with this Act and the supervisory Acts;	Y	Chief Executive	Through the risk assessment programmes of each division.	By assessment of divisional papers at Commission meetings
(b) to consider and determine applications for authorisations, licences, recognitions and registrations made under the supervisory Acts;	Y	Chief Executive	Applications are processed by each Division. Recommendations are made by Heads of Division to the Chief Executive's Committee who will make a collective recommendation to the Chief Executive. Decisions of the Chief Executive, conditions, restrictions etc are recorded and actioned by Heads of Division. Chief Executive signs any authorisations, licences, etc.	Reporting at each of the Commission meetings of how each division is meeting its targets against the divisional business plans and reporting by exception on individual licence applications.
(c) to monitor compliance by authorised persons with such Legislation, Rules, Codes and Guidance made under this Act or any supervisory Acts;	Y	Chief Executive	Through a programme of risk assessment visits to all licensees.	Reporting at each of the Commission meetings of how each division is meeting its targets against the divisional business plans.
(d) to monitor compliance by authorised persons with legislation, rules, Codes and Guidance relating to the prevention of financial crime;	Y	Chief Executive	Compliance with legislation, rules and Guidance relating to the prevention of financial crime forms part of the FSC risk assessment programme of all regulated firms.	Reporting at each of the Commission meetings of how each division is meeting its targets.
(e) to monitor financial services business carried on in or from Gibraltar and to take such	Y	Chief Executive	The FSC proactively patrols "the perimeter" through the Fiduciary	The Board receives a briefing paper at each meeting on the cases being handled by this division. Names of

Function	Delegated (Y/N)	If 'Y', To whom?	How is this function being performed?	How is the Commission monitoring this function?
appropriate action as it is empowered to do against persons carrying on such business without the necessary authorisation, licence or registration;			Services and Enforcement Division.	cases are not generally included but are available to the Chairman who reports to the Commission as appropriate at each of its meetings.
(f) to carry out the duties and discharge the functions imposed on, or given to, it under this or any other Act;	N		Through the preparation and regular review of the functions.	This paper fulfils this purpose.
(g) to determine subject to the approval of the Minister of Finance the terms of service of the Chief Executive;	N		Undertaken by the Nominations Committee	Nomination Committee reports to Commission meetings
(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;	Y	Chief Executive	Through HR policies and practices that ensure that the FSC staff have opportunities to learn and develop and that this is conducted in a manner that is aligned to the FSC Strategy.	Through contact with FSC staff, reporting from the COO on operational and HR matters and review by the Commission of the effectiveness of its divisional business plans.
(i) to monitor and oversee the performance by the Chief Executive of all functions delegated to him by the Commission;	N		Through the regular formal assessment of the Chief Executive via the appraisal process.	Formal annual and six monthly reviews conducted by the Remuneration Committee who reports back to the Commission.
(j) To prepare annual estimates of income and expenditure	Y	Chief Executive	Prepared by the Financial Controller in conjunction with the Executive	Draft submitted to Board for approval
(k) to approve the annual estimates of income and expenditure to be furnished to the Minister of Finance under section 16(5); and	N		Formal presentation of the Board of its financial budget and divisional business plans.	Approval of annual budget and business plan.

Function	Delegated (Y/N)	If 'Y', To whom?	How is this function being performed?	How is the Commission monitoring this function?
(l) to supervise and regulate financial services business carried on in or from Gibraltar to match the standards and supervisory practices governing the provision of financial services within the United Kingdom.	Y	Chief Executive	In designing policy or legislative developments the Heads of Division and the Chief Executive ensure that the current UK supervisory practice is taken in to account.	When providing the Commission with copies of these papers for approval, reference must be made to how UK standards are being applied.

Other Functions

Function	Delegated (Y/N)	If 'Y', To whom?	How is this function being performed?	How is the Commission monitoring this function?
S3(2) The Commission shall appoint one of their members to be the Chairman	N		By way of vote of the Members	N/A
S3(4) On there being a vacancy at the Commission, the Minister of Finance to be informed within four weeks & nominate three suitable persons to the Minister	Y	Nominations Committee	Chairman maintains a register of appointment terms and ensures that succession planning is in effect.	Through reporting by the Nominations Committee at meetings of Commission.
S3(9) The Commission shall designate an employee of the Commission to be secretary to the Commission	N		COO designated as secretary	
S5(6) The Commission shall keep proper minutes of its proceedings	N		The Secretary keeps and maintains a minute book of meetings	Minutes are circulated amongst Members and approved at each Meeting of the Commission.
S12(1)(a) The Commission shall establish a committee for the purposes of reviewing the finances of the Commission (The Audit Committee)	N		An Audit Committee is established and meets regularly.	Regular reporting by the Committee to the full Commission.
S12(1)(b) May establish other standing or special committees	N		Remuneration and nomination Committees established.	Committees report to Commission
S12(2) The Commission shall establish rules of procedure for such Committees	N		Terms of Reference have been drawn up.	NA
S14(2) The Commission shall, publish the fees and charges levied under any Supervisory Act in	Y	Chief Executive	The Commission's fees and charges consist of application, annual and other fees which are contained in	The legislation is maintained and published by the Government of

Function	Delegated (Y/N)	If 'Y', To whom?	How is this function being performed?	How is the Commission monitoring this function?
the Gazette.			the legislation.	Gibraltar
S14(3) The Commission may increase or otherwise vary any fee or charge payable under any supervisory act with the consent of the Minister of Finance.	N		Executive to prepare paper for Commission to consider	Approval from the Commission must first be sought by the Executive before a submission is made to the Minister of Finance.
S14(4) The Commission may invest its surplus funds	Y	Chief Executive	The Financial Controller is responsible on a day-to-day basis for the management of the surplus funds of the Commission	Report to Commission via Report from the Executive
S15(1) Establishment of a general fund	Y	Chief Executive	The Financial Controller is responsible on a day-to-day basis for the management of the surplus funds of the Commission	Report to Commission via Report from the Executive
S15(2) The Commission shall be responsible for the management of the general fund	Y	Chief Executive	The Financial Controller is responsible on a day-to-day basis for the management of the surplus funds of the Commission	Report to Commission via Report from the Executive
S15(3) The Commission may borrow from the Government	N		The Commission presently does not borrow.	Commission approval would be required before it could borrow.
S16(1) The Commission shall keep proper accounting records	Y	Chief Executive	Accounting records are maintained by the Financial Controller and subject to external audit.	Via the audit committee reports and the external auditors report to the Commission.
S16(2) Annual appointment of Auditors	N		The Commission appoints auditors annually	
Financial Statements to be audited within four months	Y	Chief Executive	This is monitored by the Financial Controller	The Financial Controller reports to the Audit Committee who in turn reports up to the Commission.

Function	Delegated (Y/N)	If 'Y', To whom?	How is this function being performed?	How is the Commission monitoring this function?
Auditors to be rotated every five years unless approved by the Minister of Finance	N			Audit Committee recommends to Commission.
S16(5) Report on the activities and annual report should be submitted to the Minister of Finance within 5 months of the financial year end	N		The Chief Executive to draft report for agreement by Commission prior to submission	
S17(1) Preparation of annual estimates of income and expenditure 3 months before the start of each financial year	Y	Chief Executive	The annual budget is prepared by the executive within the time frame required.	Formal approval of the budget by the Commission.
S23 Confidentiality of information	Y	Chief Executive	All confidential information is treated confidentially and may only be released to third parties via an internal process lead by the Fiduciary and Enforcement Division which requires sign off by the Chief Executive.	Report to the Commission on an exception basis.
S24(1) Rules	N		Any rules to be issued under the FSCA or underlying supervisory acts will be issued by the Commission	
S24(3) Guidance	N	Chief Executive	Any Guidance to be issued by the Commission after approval from the Board	Copies of Guidance issued under this section will be tabled at the next meeting of the Commission and includes how the rules meet the statutory obligations. All Guidance must then be forwarded to the Minister of Finance for approval. The Minister may direct the Commission to amend or not to issue such.

Function	Delegated (Y/N)	If 'Y', To whom?	How is this function being performed?	How is the Commission monitoring this function?
				guidance.
S24(4) Consultation Processes	N	Chief Executive	The Commission already has a public consultation policy which is in operation.	Copies of Consultation Papers issued under this section are tabled at the next meeting of the Commission and includes how the rules meets the statutory obligations.
S25(1) Petitioning the court to wind up a Gibraltar company	Y	Chief Executive		Report to the Commission
S26 Application to de-register up a branch operating in Gibraltar	Y	Chief Executive		Report to the Commission

Powers of the Commission (Section 10(2))

Power	Delegated (Y/N)	If 'Y', To whom?	How is this power being performed?	How is the Commission monitoring this power?
(a) purchase, or otherwise acquire and hold any personal property and lease any real property required for the purposes of the Commission and dispose of any such property no longer required for such purposes;	Y	Chief Executive	Through the budgeting process and requests for approval by the Chief Executive from the Commission of major items of expenditure	Production of management account, budgets and report and review of the Audit Committee who reports to the Commission as appropriate.
(b) contract with any person for the supply to, or by, the Commission of any goods, services or personnel;	Y	Chief Executive	Professional support is contracted on a needs basis or in the case of legal advice, through a retainer with a firms of lawyers in Gibraltar.	Report from the executive and the production of management account, budgets and report and review of the Audit Committee.
(c) pay expenses properly incurred by the Commission;	Y	Chief Executive	Day-to-day budgetary control is exercised via the Financial Controller.	Production of management account, budgets and report and review of the Audit Committee as well as external auditors
(d) employ such persons (including advisors and consultants) as the Commission thinks fit for the proper discharge by the Commission of its functions;	Y	Chief Executive	Professional support is contracted on a needs basis or in the case of legal advice, through a retainer with a firms of lawyers in Gibraltar.	Report from the executive and the production of management account, budgets and report and review of the Audit Committee.
(e) establish and maintain schemes or make such other arrangements as it thinks fit for the payment of pensions or other benefits to its employees;	Y	Chief Executive	The Commission has established an occupational pension scheme for all full-time employees.	Review of the Pension Trustee's Annual Report
(f) compile, prepare, print, publish, issue, circulate and distribute, whether in paper or in electronic form and whether for payment or otherwise, such	Y	Chief Executive	The Heads of Division publish consumer guides on their industries. Guides for Insurance and Investments have already been published and a third one on	These are brought to the attention of the Commission at the meeting following publication.

Power	Delegated (Y/N)	If 'Y', To whom?	How is this power being performed?	How is the Commission monitoring this power?
papers, leaflets, magazines, periodicals, books and other literary matter as may be conducive to the attainment of the functions of the Commission.			Banking is due in 2007.	

Other duties of the Commission

(a)	Review and monitor divisional business plans	Y	Chief Executive	Reports on adherence to plans submitted to the Commission at their meetings
(b)	Develop Commission strategy	Y	Chief Executive	Strategy approved by the Commission