

Banking Newsletter

Number 1 Year 2000



**Financial Services
Commission**

Advertising

Currently, there is no specific legislation or regulations covering advertisements for deposits in Gibraltar. Neither has the Financial Services Commission to date issued any guidance for the form and content of such advertisements¹. Since advertisements by banks for pure deposit products are becoming increasingly rare, the FSC does not see the need to be unduly prescriptive in this area.

The FSC would, however, advise that as a matter of good practice banks advertising for deposits in or from within Gibraltar should follow the Code of Conduct for the Advertisement of Interest Bearing Accounts issued by the British Bankers' Association (BBA)². The Gibraltar Bankers' Association (GBA) has endorsed the BBA Banking Code.

In particular, the FSC would wish to see banks follow the principles outlined in the Code as they apply to deposit advertisements and the publication and the disclosure of the annual equivalent rate (AER) or compound annual rate (CAR).

Banks advertising for deposits in jurisdictions other than Gibraltar should take all necessary steps to inform themselves of the relevant legal requirements in those jurisdictions where the advertisement may be seen.

In advertisements for the provision of finance, if only one rate of interest is quoted that rate should be the annual percentage rate (APR) or, if another rate is quoted, the equivalent APR should also be stated.

Authorised Status : Banks wishing to refer to their authorised status under the Banking Ordinance 1992 may do so using the terms ".....an institution licensed by the Financial Services Commission under the Banking Ordinance 1992".

Gibraltar Deposit Guarantee Scheme : The FSC has approved standard forms of wordings which may be used when referring to the protection provided by the Gibraltar Deposit Guarantee Scheme. These wordings are set out in the Gibraltar Deposit Guarantee Board's website www.gibraltar.gi/gdgb.

Advertising on the Internet : The guidance on advertising set out in this Newsletter does not draw a distinction between the criteria for advertising on the Internet and conventional advertising through other media. Banks advertising their products on the Internet should be aware of legal requirements in other jurisdictions. It should be noted that some jurisdictions will interpret advertisements on the Internet as being targeted at their residents unless there are specific disclaimers contained in the advertisements.

Customer Complaints

The FSC has no statutory powers or responsibility to intervene in or arbitrate on commercial disputes between a bank and its customers. The FSC does, however, have a responsibility to ensure that banks meet the requirements of the relevant banking legislation and, therefore, on a few occasions, the issues

¹ There are specific legal requirements to be met in relation to investment advertisements. These are set out in the Financial Services (Advertisements) Regulations 1991 as amended by the Financial Services (Advertisements)(Amendment) Regulations 1993.

² A copy of the Code can be obtained from the BBA's website (www.bankfacts.org.uk)



raised by a commercial dispute may call into question whether these requirements are being met.

The FSC's initial response to any complaint that it receives from a bank's customer is to explain the limitations on its powers to become involved in commercial disputes. The FSC will normally direct the complainant to other appropriate channels of redress. In cases where there are no other avenues for redress available to the complainant and the complainant has been unable to receive satisfaction from the institution concerned, the FSC may consider intermediating on a voluntary non-statutory basis between the bank and the customer. However, in no case will, or can, the FSC act as the arbitrator in such matters. Should it appear to the FSC that the complaint has raised wider prudential issues, such as alleged fraud or a possible breach of the Banking Ordinance 1992, then it will investigate the matter fully with the bank concerned.

Complaints against European Authorised Institutions (i.e., branches of banks or building societies authorised in other EEA Member states) may be referred to the relevant home supervisor through offering the complainant a contact name and address. In general terms, the FSC will only pursue such complaints if they point to fraud or serious malpractice on the part of the branch.

Outsourcing

On the 31st January 2000 the Financial Services Commission issued a Guidance Note on Outsourcing. The Note applies to all banks that are licensed by the FSC. The principles contained in the Note include a requirement that the FSC is advised in advance of all outsourcing proposals. The principles contained in the Note will apply to all new outsourcing proposals and to existing arrangements as and when they are renewed.

Connected Lending

The FSC has also issued on the 31st January 2000 a Guidance Note on connected lending. The Note covers principles that will apply to lending proposals for persons connected with an institution, e.g., its shareholders, directors or managers and corporates that any of these may have a significant beneficial interest in. The guidance is an extension of the current requirement under Administrative Notice Number 3 issued under the Banking Ordinance 1992 on large exposures, as licensed institutions are already obliged to have internal policies and limits on such exposures. The FSC does not envisage the proposals contained in the Note causing difficulty for any of the licensed banks.

Bank Holding Companies

The question of the regulatory regime that should apply to bank holding companies registered in Gibraltar, which are not themselves licensed, is currently being considered by the FSC. As in most other jurisdictions, such holding companies are not currently required to be licensed or supervised in Gibraltar. The existence of such holding companies, however, raises issues of consolidated supervision and potential reputational risk for any jurisdiction in which they are located. The FSC would welcome any submissions on the subject that the industry or any other parties would wish to make.

Amendments to the Solvency Ratio Directive

Amendments to the EU Solvency Ratio Directive (89/647/EEC) and the EU Capital Adequacy Directive (93/6/EEC) - implemented in Gibraltar through



Administrative Notices Numbers 1 and 7 under the Banking Ordinance 1992, respectively – adopted in mid-1998 will be effected in revisions to the FSC's Notices in the coming months. The amendments to the Notices will not have serious implications for the operations of the licensed banks in Gibraltar.

New Capital Adequacy Framework

In June 1999, the Basle Committee on Banking Supervision (the international standard-setter for banking supervision) issued a consultation document entitled "Proposal for a new Capital Adequacy Framework" to replace the previous Capital Accord, issued in 1988. A copy of the document is displayed on the FSC's website (see below). In addition to soliciting the views of the banking supervisors, the Basle Committee is anxious to hear the views of licensed banks. The FSC would welcome comments from the banking industry on the proposals and these would be passed on to the Committee. The FSC would wish to receive any such comments by the end of February 2000 at the latest, as the consultation period expires on 31 March 2000.

Technical Papers

The FSC includes in its website (www.fsc.gi) certain technical papers (issued by bodies such as the Basle Committee on Banking Supervision). Only those papers that the FSC perceives to be of interest generally to the banks are included on the website. The FSC would advise banks to access, from time to time, the FSC's website and those of the Basle Committee, the Financial Stability Institute and the European Commission, as information on specific matters relevant to their particular institutions may be published.

Financial Services Commission
PO Box 940
Suite 943
Europort
Gibraltar

Tel : (+350) 40283
Fax : (+350) 40282

Http : www.fsc.gi
E-Mail : info@fsc.gi

January 2000