



Financial Services Commission

Gibraltar



Annual Report 2005

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### Our Mission Statement

*"To provide financial services regulation in an effective and efficient manner in order to protect the public from financial loss and enhance Gibraltar's reputation as a quality financial centre"*

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## Introduction from the Commissioner

Welcome to the Annual Report of the Gibraltar Financial Services Commission (the Commission). This report contains a description of the work of the Commission as well as its Report and Accounts.

The report varies from last year's, in a number of ways. This is because, during 2004, the Commission underwent an independent statutory review. Certain recommendations from that review concerned the content of the annual report. In implementing the recommendations this report now contains the following additional information:

- A statement on how we have conducted our statutory duties;
- An assessment of the extent to which we regard our statutory duty to match UK regulatory and supervisory practices is being met;
- An analysis of the implementation of EU Directives and a description of the action we have taken to monitor implementation;
- A list of those Directives that will require implementation in the forthcoming year.

The review also recommended that we assess how we meet the requirements of the Combined Code on Corporate Governance and publish our findings in this annual report. We have undertaken such a review. However, as we have committed ourselves to updating our self-assessment on a regular basis, we have decided to publish it on our website instead. Whilst other regulators have published an overview of their compliance with the Code, we believe we are the first to publish a 'criterion by criterion' assessment.

The Commission has achieved a great deal over the last twelve months, much of it detailed in the following report. It could not have done so without the skill and dedication of its staff. To them and my fellow Commission members, I extend my heartfelt thanks.

Marcus Killick

Commissioner and Chairman



## The Commission and its Statutory Duties

The Commission is organised by industry groups with separate divisions covering banking, investment services, insurance and fiduciary services. These are supported by an enforcement division whose prime role is to detect and take action against firms conducting unlicensed financial services activities. The divisions are also supported by both administrative and strong IT resources.

The work of the Commission is focused on fulfilling its statutory duties. These duties are set out in the Financial Services Commission Ordinance and include:

- (a) to keep under review both the operation of Gibraltar legislation relating to financial services and the effectiveness of the supervision of institutions licensed to provide any financial services.*
- (b) in respect of financial services in those areas where Community law applies, to monitor the extent to which Gibraltar legislation and supervision of licensed institutions –*
  - (i) comply with Community obligations; and*
  - (ii) establish and implement standards which match those required by legislation and supervisory practice governing the provision of financial services within the United Kingdom.*
- (c) to seek through the provision of effective services for the supervision of finance business to protect the public against financial loss arising out of dishonesty, incompetence or malpractice on the part of persons engaged in finance business in Gibraltar;*
- (d) to advise the Government of Gibraltar and the Government of the United Kingdom on matters concerning financial services, having regard, in particular, to any matter arising in the course of the discharge by the Commission of its duties under paragraph (b) above, and to the need for timely and effective implementation in Gibraltar law of Community obligations.*

In conducting its affairs, and particularly when

considering new regulatory requirements, the Commission also takes into account the following regulatory objectives:

- (a) To promote market confidence;
- (b) The reduction of systemic risk;
- (c) To promote public awareness;
- (d) The protection of consumers; and
- (e) The reduction of financial crime, including the funding of terrorism.

## “Matching” UK standards

The Commission interprets the statutory requirement to meet UK standards as meeting the regulatory objectives (which both the UK FSA and Commission share), to the same extent as the FSA does, but not necessarily in the same way.

Our focus is therefore upon the outcome of those processes - for example do they achieve the same level of market confidence and consumer protection as do the practices in the UK?

To focus on the processes themselves is not, in the Commission's view, a productive approach. Given the differences between the UK and Gibraltar markets and social environments, the simplistic replication of a regulatory process may, in fact, lead to the end objective being missed or achieved to a lesser degree.

The differences between the UK and Gibraltar environments will occasionally mean that supervision in Gibraltar is tighter than in the UK; for example the UK does not operate a programme of on-site visits to all its regulated firms, nor indeed does it regulate as wide a range of financial service providers as does Gibraltar. On other occasions the Gibraltar regime can adopt a case-by-case approach more often than the UK does but with no reduction in overall supervisory standards.

Our founding Ordinance, the Financial Services Commission Ordinance, requires that regular independent reviews are conducted of the Commission's work, to ensure that it is meeting its statutory duties. The review is also designed to assist the Commission by making recommendations on how it can enhance the quality of its regulatory supervision.

The Commission welcomes these reviews, indeed they form an important part of our continuous improvement process. We firmly believe that regulators, large and small should be subject to regular independent assessment, in the same way that regulators themselves conduct such assessments of those whom they regulate.

The independent statutory review conducted of the Commission in 2004 included an assessment on the extent to which we “matched” UK standards”. Whilst the review was extremely positive and held that we matched in respect of many areas, it concluded that in other areas some further enhancements were desirable. Many of these were in respect of issues the Commission was already in the process of acting upon; all others have either now been ac-

tioned or are in the process of being implemented.

As part of the Commission's commitment to transparency we have published our detailed response to the recommendations made and have committed to updating that response to reflect the progress we are making towards their implementation. This is available on our website. This shows that the Commission is close to matching the UK across the range of areas we supervise. Nevertheless as regulation in the UK evolves, so does that in Gibraltar, therefore future annual reports will contain our internal assessment of the extent to which we match the UK, in accordance with our statutory duty.

It should be noted, however, that a number of recommendations cannot be implemented by the Commission alone. For example some related to changes in primary or secondary legislation, which are Government of Gibraltar rather than Commission considerations. We have, nevertheless drawn these recommendations to Government's attention together with our advice on the action Government may wish to take.



## The work of the Commission

The main work of the Commission is of regulatory supervision. This includes the assessment of applications from firms wishing to conduct regulated activities, ongoing supervision of regulated firms (both through the review of returns and by a regular programme of on-site visits) and the taking of disciplinary or enforcement action where required. The Commission has a wide range of powers including the issue of directions or imposing conditions upon a licensee. In an extreme case a licence can be revoked.

It is important that the Commission uses its resources as efficiently and effectively as possible. In order to achieve this, we are now focusing upon the risks faced both by the Commission and the firms it regulates, and how these risks may be mitigated. As part of this process the Commission has completed its move to risk-based supervision and a regular programme of on-site visits to all licensed firms is now in place.

The initial visits form part of the risk assessment process and the firm is then placed on the appropriate cycle for future visits. These cycles are normally 12, 24 or 36 months.

Being on a short cycle does not automatically mean that the Commission has concerns with the firm. Its size, nature of business and customer type also impact upon how frequently we conduct our visits.

As part of our commitment to effective and efficient regulation we sought and attained ISO 9000 status. This status independently demonstrates the quality of our systems and procedures, including those aimed at continuous improvement. We believe we are the first regulator to achieve this status.

In addition to its supervisory duties the Commission performs a number of other tasks including advising Government on new financial services legislation introduced to comply with EU requirements. It also undertakes any additional tasks including preparation of Anti Money Laundering Guidance Notes as required under the Criminal Justice Ordinance.

The Commission has also continued to play its role in the development of international regulatory standards, through its participation in the International Association of Insurance Supervisors (IAIS) and the Offshore Group of Banking Supervisors (OGBS). This year, in addition, we achieved membership of the International Organisation of Securities Commissions (IOSCO).

Other work includes the giving of assistance where appropriate to other regulators in the conduct of their regulatory responsibilities. The Commission also "policing the perimeter," including monitoring of the media and the internet in order to identify possible unlicensed financial service activity. Where this is detected, swift action is taken to resolve the position. If necessary the Commission will seek the Attorney General's permission to bring criminal charges against those found to be conducting licensable activity without authorisation.

The Commission's regulatory supervision is assisted by the complaints it receives. In common with regulators in other jurisdictions, during the last year, the Commission saw a rise in complaints from consumers. These complaints are primarily related to alleged mis-selling of investment products.

The Commission's remit does not extend to adjudicating on complaints or indeed levels of compensation. Such action, under Gibraltar law, falls under the responsibility of the Courts and this action, of course, continues to be available to consumers. Notwithstanding this, the Commission takes an active interest in such complaints as these may point to regulatory breaches on the part of the firm.

## EU directives relating to financial services implemented during 2004-2005

During the period 1st April 2004 to 31st March 2005 the following directives relating to financial services were implemented by the Government of Gibraltar.

The Commission's role in implementing directives is, and should be, one of advice. It is a Government matter as to how it wishes to act in respect of the various directives.

To fulfil its duty in this regard, the Commission tracks the development of all relevant EU legislation and advises the Government accordingly. It also advises on deadlines and what we consider the risks would be if legislation were not implemented. Where so requested, the Commission also provides comments on the proposed action by Government to transpose the EU obligations into Gibraltar law.

Directive	Directive No	Implementation
Money Laundering II	2001/97/EC	Ord 14 of 2004 Implementation 22/7/2004
Reorganisation and winding up of Insurance undertakings	2001/17/EC	Ord 16 of 2004 Implementation 21/7/2004
Financial Collateral Arrangements	2002/47/EC	Ord 32 of 2004 Implementation 29/11/2004
Insurance Mediation Directive	2002/92/EC	Ord 1 of 2005 Implementation 15/1/2005
Accounting Valuation Rules	2001/65/EC	Ord 23 of 2005 Implementation 31/3/2005
European Company Statute	2001/86/EC	Ord 24 of 2005 Implementation 31/3/2005

## The year ahead

During the forthcoming year the Commission will continue its statutory duty to advise the Government in its work to transpose a significant new swathe of EU legislation relating to financial services.

The following directives, relating to financial services are required to be transposed in period from 1st April 2005 to 31st March 2006: Those marked in italics had already been transposed by 1st September 2005

Hopefully this will be the last year where such a volume of transposition will be required. Whilst some further directives such as the Markets in Financial Instruments Directive (MiFID) are due for transposition in future years, we welcome the approach taken in the recent EU Green Paper on Financial Service Policy 2005/2010 and its focus on consolidation and the enhancement of supervisory convergence.

This latter objective is of particular importance to the Commission. Whilst the introduction of so many directives under the initial Financial Service Action Plan has significantly enhanced the single European market and the economic benefits of the integration they have enabled is beyond doubt, the tendency of some jurisdictions to "gold plate" certain directives has created market distortions and so increased business costs. It is therefore good news that focus is being placed on ensuring that EU regulators adopt similar approaches to similar issues.

2006 is also likely to see the next visit to Gibraltar by an IMF team on the second round of its assessment of offshore financial centres.

In respect of our day to day supervisory role the Commission will continue with the implementation and enhancement of its risk based approach. We will also continue to build the strength of an already, internationally recognised regulatory team at the Commission through our participation in the pilot "Investors in People" programme.

Directive	Directive No
<i>UCITS II</i>	2001/107/EC
<i>UCITS III</i>	2001/108/EC
<i>Market Abuse Directives &amp; Regulations</i>	2003/6/EC 2003/124/EC 2003/125/EC 2004/72/EC 2273/2003
<i>Prospectus Directive</i>	2003/71/EC
Reorganisation and Winding up of credit institutions	2001/24/EC
International Accounting Standards Regs	N/A
Distance Marketing of Consumer Financial Services	2002/65/EC
Annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings	2003/51/EC
Occupational Pension Funds	2003/41/EC
Reinsurance	N/A
Securities Listing Information	2001/34/EC
Takeover Bids	2004/25/EC

## Statement of the Commission's responsibilities

The Commission is required by the Financial Services Commission Ordinance 1989 to keep proper books of account of its income and other receipts and expenditures during each financial year and to prepare accounts which give a true and fair view, in the case of the balance sheet of the finances as at the end of the financial year and in the case of the income and expenditure account, of the surplus or deficit for that financial year.

In preparing those accounts, the Commission:

- selects suitable accounting policies and then applies them consistently;
- makes judgements and estimates that are reasonable and prudent;
- states whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the accounts;
- prepares the accounts on the going concern basis unless it is inappropriate to presume that the Commission will continue in operation.

The Commission also makes available to the auditors, as and when required, all the accounting records and all other relevant records and related information, including minutes of all Commission meetings. It also safeguards the assets of the Commission and takes reasonable steps for the prevention and detection of fraud, error or non-compliance with law or regulations.

## Auditors

The auditors, PricewaterhouseCoopers, have indicated their willingness to continue in office, and a resolution concerning their reappointment will be proposed at the meeting where these financial statements are laid before the Commission for approval.

By order of the Commission.

Marcus Killick

Commissioner & Chairman

Financial Services Commission

Gibraltar

5 December 2005





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## **INDEPENDENT AUDITORS' REPORT TO THE FINANCIAL SERVICES COMMISSION**

We have audited the financial statements on pages 12 to 18.

### **Respective responsibilities of the Commission and auditors**

As described in the Statement of the Commission's responsibilities, the Commission is responsible for the preparation of the financial statements in accordance with applicable law.

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and United Kingdom auditing standards issued by the Auditing Practices Board. This report, including the opinion, has been prepared for and only for the Commission as a body in accordance with Section 15 of the Financial Services Commission Ordinance, 1989 and for no other purpose. We do not, in giving this opinion, accept or assume responsibility for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Financial Services Commission Ordinance, 1989. We also report to you on whether, in our opinion, the Commission has kept proper books of account, whether the Commission's balance sheet and accounts dealt with by this report are in agreement with the books of account, whether we have received all the information and explanations which to the best of our knowledge and belief we required for our audit, and whether the Commission has discharged with diligence its obligations in relation to the collection of its revenues.

### **Basis of opinion**

We conducted our audit in accordance with United Kingdom Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Commission in the preparation of the financial statements and of whether the accounting policies are appropriate to the Commission's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Directors : Edgar C Lavarello Colin P J Vaughan

Registered in Gibraltar : Number 94799



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## **INDEPENDENT AUDITORS' REPORT TO THE FINANCIAL SERVICES COMMISSION—(continued)**

### **Opinion**

In our opinion:

1. proper books of account have been kept by the Commission;
2. the Commission's Balance Sheet and Income and Expenditure account dealt with by this report are in agreement with the books of account;
3. we have obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purpose of our audit;
4. to the best of our information and according to the explanations given to us, the financial statements give a true and fair view, in the case of the Balance Sheet of the Commission's finances as at 31 March 2005 and in the case of the Income and Expenditure account, of the results for the year then ended; and
5. the Commission has discharged with diligence its obligations in relation to the collection of its revenues.

PricewaterhouseCoopers

Registered Auditors

Gibraltar

12 December 2005

Directors : Edgar C Lavarello Colin P J Vaughan

Registered in Gibraltar : Number 94799

The maintenance and integrity of the Gibraltar Financial Services Commission web site is the responsibility of the Commission; the work carried out by the auditors does not involve consideration of these matters and, accordingly, the auditors accept no responsibility for any changes that may have occurred to the financial statements since they were initially presented on the website.

Legislation in Gibraltar governing preparation and dissemination of financial statements may differ from legislation in other jurisdictions.

## Income and Expenditure Account

For the year ended 31 March 2005

	Notes	2005 £	2004 £
<b>INCOME</b>			
Fees receivable	3	1,285,790	1,033,331
Interest receivable		27,933	19,666
Gibraltar Government contribution	10	21,235	183,900
<b>TOTAL INCOME</b>		<u>1,334,958</u>	<u>1,236,897</u>
<b>EXPENDITURE</b>			
Staff expenses	4	821,901	758,105
Establishment costs		101,242	87,003
Other operating expenses		84,076	64,118
Commission members fees	5	68,000	70,000
Legal and professional fees		134,700	173,868
Auditors remuneration		2,400	4,900
Depreciation	6	27,810	19,507
Review team costs		80,104	48,000
Other professional charges		14,725	11,396
<b>TOTAL EXPENDITURE</b>		<u>1,334,958</u>	<u>1,236,897</u>
<b>RESULTS FOR THE YEAR</b>		-	-
<b>GENERAL FUND BROUGHT FORWARD</b>		117,790	117,790
<b>GENERAL FUND CARRIED FORWARD</b>	£	<u>117,790</u>	£ <u>117,790</u>

There are no recognised gains or losses other than as disclosed above and there have been no discontinued activities or acquisitions in the current or preceding year.

The notes on pages 14 to 18 form part of these financial statements.

## Balance Sheet

As at 31 March 2005

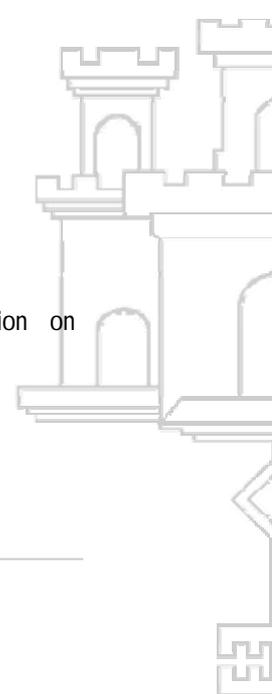
	Notes	2005 £	2004 £
<b>FIXED ASSETS</b>			
Tangible assets	6	<u>60,471</u>	<u>62,264</u>
<b>CURRENT ASSETS</b>			
Debtors and prepayments	8	44,013	47,217
Cash at bank and in hand		<u>483,949</u>	<u>373,726</u>
		527,962	420,943
<b>CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR</b>	9	<u>470,643</u>	<u>365,417</u>
<b>NET CURRENT ASSETS</b>		<u>57,319</u>	<u>55,526</u>
<b>NET ASSETS</b>	£	<u>117,790</u>	£ <u>117,790</u>
<b>FINANCED BY:</b>			
<b>GENERAL FUND</b>	£	<u>117,790</u>	£ <u>117,790</u>

The financial statements on pages 12 to 18 were approved by the Commission on 5 December 2005 and signed on its behalf by:

Marcus Killick

Financial Services Commissioner

The notes on pages 14 to 18 form part of these financial statements.



## Notes to the Financial Statements

### 1. PRINCIPAL ACCOUNTING POLICIES

#### Basis of accounting

The financial statements are prepared in accordance with United Kingdom applicable accounting standards. The particular accounting policies adopted by the Commission are described below.

#### Accounting convention

The accounts are prepared under the historical cost convention.

#### Income

Annual Renewal Fees due under the Banking, Insurance and Financial Services Ordinances are recognised on an invoiced basis, whilst all other fee income is recognised on a receipts basis.

Interest receivable is accounted for on an accruals basis.

#### Depreciation

Depreciation has been calculated so as to write off the cost of fixed assets on a straight line basis over their expected useful economic lives at the following annual rates:

Motor Vehicles		20%
Office Furniture and Fittings		20%
Office Equipment:	General	20%
	Computers	33 $\frac{1}{3}$ %

#### Pension costs

The Financial Services Commission operates a money purchase pension scheme called the Financial Services Commission Retirement Benefit Scheme on behalf of its employees. Costs are accounted for on an accruals basis and are recognised in the income and expenditure account in the year in which they are incurred.

#### Government contributions

Government contributions are recorded on a receipts basis. Contributions are released to the income and expenditure account only to the extent necessary to fund deficits in income over expenditure. Unutilised contributions are recorded as deferred income and are carried forward for future use (see note 10).

#### Gibraltar Fund

Capital grants received from the Gibraltar Fund are offset against the capital expenditure for which the grant was intended, in the year in which the items are purchased. The assets acquired are recognised as fixed assets at cost net of grants received. Revenue grants are recognised in the income and expenditure account by setting them off against the expenditure which they are intended to subsidise in the year in which the expenses are incurred.

## Notes to the Financial Statements

### 2. TAXATION

Under the provisions of the Financial Services Commission Ordinance, the income of the Commission is exempt from income tax.

### 3. FEES RECEIVABLE

	2005	2004
	£	£
Financial Services Ordinances	708,925	686,175
Banking Ordinance	109,000	106,000
Insurance Companies Ordinance	430,000	196,250
Others	37,865	44,906
	<u>£ 1,285,790</u>	<u>£ 1,033,331</u>

### 4. STAFF EXPENSES

	£	£
Salaries	705,155	672,821
Social security costs	21,673	18,370
Pension costs	41,837	34,474
Other staff costs	53,236	32,440
	<u>£ 821,901</u>	<u>£ 758,105</u>

Marcus Killick received total remuneration of £147,622 as Commissioner of the Financial Services Commission for the year ended 31 March 2005. (2004: £141,803)

The average number of employees for the year was 18 (2004: 15).

Regulatory	14	11
Administration	4	4
Total staff employed	<u>18</u>	<u>15</u>



## Notes to the Financial Statements

### 5. COMMISSION MEMBERS' FEES

Fees paid to the Members of the Commission were as follows:

	2005 £	2004 £
Oonagh McDonald	10,000	10,000
Terry Mathews (Deceased 27 November 2004)	8,000	10,000
Mark Boleat	10,000	10,000
Brian Hilton	10,000	10,000
James Neish	10,000	10,000
Joseph Caruana (Appointed 30 July 2003)	10,000	6,667
Franco Cassar (Appointed 1 October 2003)	10,000	5,000
James Galliano (Retired 30 July 2003)	-	3,333
Francis Isola (Retired 30 September 2003)	-	5,000
Alan Whiting (Appointed 27 January 2005)	-	-
	£ 68,000	£ 70,000

### 6. TANGIBLE ASSETS

	Office Furniture & Fittings £	Office Equipment £	Motor Vehicles £	Total £
<b>Cost</b>				
As at 1 April 2004	56,511	78,288	25,218	160,017
Additions	9,102	15,995	921	26,018
Disposals	-	-	(800)	(800)
As at 31 March 2005	65,613	94,283	25,339	185,235
<b>Depreciation</b>				
As at 1 April 2004	54,003	40,509	3,241	97,753
Charge for the year	2,098	20,736	4,976	27,810
Disposals	-	-	(799)	(799)
As at 31 March 2005	56,101	61,245	7,418	124,764
<b>Net book value</b>				
As at 31 March 2005	£ 9,512	£ 33,038	£ 17,921	£ 60,471
As at 31 March 2004	£ 2,508	£ 37,779	£ 21,977	£ 62,264

## Notes to the Financial Statements

### 7. GIBRALTAR FUND

	Revenue Grants £
As at 1 April 2004	25,000
Utilised in the year	(25,000)
As at 31 March 2005	£ <u>          -</u>

### 8. DEBTORS

	2005 £	2004 £
Other debtors and prepayments	£ 44,013	£ 47,217

### 9. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	£	£
Gibraltar Government (Note 10)	356,832	228,067
Trade creditors	18,695	23,256
Accruals and deferred income	82,704	103,355
Taxation and social security	12,412	10,739
	£ <u>470,643</u>	£ <u>365,417</u>

### 10. GIBRALTAR GOVERNMENT CONTRIBUTION

	£	£
Balance as at 1 April	228,067	-
Contributions advanced during year	150,000	411,967
	<u>378,067</u>	<u>411,967</u>
Contributions utilised during year	(21,235)	(183,900)
Balance as at 31 March	£ <u>356,832</u>	£ <u>228,067</u>

## Notes to the Financial Statements

### 11. LEASE COMMITMENTS

	2005	2004
	£	£
The Commission leases a property for its own occupation. Annual rentals payable under this lease are as follows:		
Operating leases which expire:		
In the second to fifth year inclusive	49,642	47,268
	<u>                    </u>	<u>                    </u>

### 12. RELATED PARTY TRANSACTIONS

James Neish is a Member of the Commission and also a partner of Triay Stagnetto Neish. During the year the Commission used Triay Stagnetto Neish to provide certain legal services. These were contracted on an arm's length basis, and are not considered to be significant in the context of the business of the parties.

