



**Financial Services  
Commission**

## **Guidance Note**

# **Money Services Business - The Application Process**

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## Introduction

The supervision of bureaux de change and money transmission services, referred to collectively as money services business, is to be undertaken on a day-to-day basis by the Financial Services Commission's Fiduciary Services & Enforcement Division. The regulatory regime for money services business will mirror in many respects those already in place for other well established financial services industries regulated in the jurisdiction. The focus, however, for money services business will be on the prevention of money laundering and financing of terrorism, together with the protection of customer assets (money transmitters only) and ultimately the enhancement and protection of Gibraltar's reputation as a leading finance centre.

The FSC follows a risk-based methodology for the supervision of the firms it licences. By using a risk-based approach, the Commission makes use of its resources in an effective manner, so minimising the regulatory cost to the firms themselves, whilst at the same time demonstrating compliance with international standards and EU requirements.

As most money services firms have not been previously regulated by the Commission, specific information will be requested to allow the FSC to build an accurate risk profile and corresponding supervisory cycle, commensurate with the nature and scale of each particular business. The risk assessment will include an understanding of the volume and nature of the business, customer base, physical location, destination of remittances (for money transmission), previous experience of firm etc.

## Purpose of Supervision

The regulation and supervision of money services business is primarily aimed at countering the risks of money laundering associated with such an industry and at the protection of customer assets (money transmitters). It should therefore be noted that the creation of a regulatory regime for money services has taken into account the following relevant elements of the FSC's regulatory objectives:

- The protection of consumers; and
- The reduction of financial crime, including the financing of terrorism.

In addition to the above, the regulatory regime is expected to improve the jurisdiction's reputation by focusing resources on non-compliant firms. Such an approach will inevitably mitigate the risks of authorised firms being used for illicit activity.

## What is Money Services Business?

The licensing and regulation of money services business falls under the Financial Services (Investment & Fiduciary Services) Act 1989. Money services business is defined under schedule 3, paragraph 6 of the Act as:

### **"6. Money Service Business.**

#### (1) Bureaux de Change

Carrying on, in or from within Gibraltar, as a business;

- (a) the buying, selling, or exchanging of foreign currency;

- (b) the buying, selling, or exchanging of precious metals; or
- (c) cashing cheques which are payable to customers or third parties.

#### (2) Money Transmitters.

Carrying on, in or from within Gibraltar, as a business, transmitting money, or any representation of monetary value, by any means.

#### **Note**

Save for the purposes of sections 32 to 38 of this Act, this paragraph does not apply –

- (a) to any person who is licensed under section 24 of the Banking Act 1992 to accept deposits or issue means of payment in the form of electronic money or is authorised under that Act for these activities; or
- (b) to electronically based foreign exchange trading platforms.”.

It should be noted that sub-sections (a) and (b) of paragraph 6 precludes operators from holding customer assets for future delivery.

## Obtaining a licence

In determining an application, the Chief Executive must be satisfied that the applicant firm is able to execute the proposed activity diligently and have sufficient resources (staff, systems and financial) to adhere to all relevant obligations. Applicants must also be able to demonstrate that the business can be managed in a sound manner with adequate internal controls and reporting commensurate with the size and complexity of the business. The applicant must also be able to demonstrate that these requirements can be met on a continuing basis.

## Established Operators

All firms operating money services business must apply to the Commission for a licence under the new regime. There are special provisions for firms that were conducting this business before the 27<sup>th</sup> August 2008 in that no application fee will be payable provided the application is made before 23<sup>rd</sup> February 2009.

## Application Criteria

### Fit & Proper

Before approving an application, the Chief Executive has to be satisfied that the applicant or any person associated with the applicant is "fit and proper" to provide the services specified in the application.

The "fit and proper" criterion includes, amongst other considerations, technical competence, integrity and sufficient relevant experience.

Competence, in this sense, means ability to successfully carry out a particular task or range of tasks and may be demonstrated by training, relevant experience, broader life skills experience, and where relevant, formal qualifications.

The fitness and propriety of all individuals in notifiable positions therefore needs to be established. This includes Directors, Managers, Shareholders/Controllers, Compliance Officers and Money Laundering Reporting Officers.

### “Four-Eyes” Principle

The Chief Executive must be satisfied that the applicant satisfies the "four-eyes" principle so that at least two competent individuals are involved in the decision making and day-to-day operation of the firm. The business must be adequately resourced and staffed and sufficient controls must be put in place to reduce the risk of error and fraud. It is essential that the business has a physical presence in Gibraltar, and that "mind and management" be located in Gibraltar.

### Financial Resources

Applicants are required to maintain and be able to demonstrate sufficient financial resources commensurate with the nature and volume of its business. This requirement extends to ensuring that the firm has sufficient financial resources to remain solvent and to be able to meet the risks which it faces. The measure of these financial resources shall be the net asset and net current asset figures in the licensee's balance sheet.

Applicants for a money transmission licence must be aware that the Chief Executive reserves the right, where appropriate, by virtue of the size and complexity of the business, to require subscription to a minimum level of fully paid up share capital.

In order to enable the Commission to monitor the financial position of firms on a continuing basis, firms will be required to submit annual audited financial statements four months after their financial year end.

### Financial Projections

Financial projections are also an integral part of the application. Although these are essentially estimates, they are used to help assess the viability, extent and nature of the proposed activity.

The financial projections should include an opening Balance Sheet, a forecast Profit and Loss Account for the first twelve months of authorisation, a forecast closing Balance Sheet and a Cash Flow Forecast for the same period.

As a minimum, the Profit and Loss Account should disclose on a monthly basis:

- Gross income, analysed where applicable between regulated and non-regulated business;



- Business expenditure, analysed over the major heads of expenditure, including any provision for claw-back of commission; and
- Profit before taxation.

Any assumptions underlying the preparation of the figures should also be clearly stated. Where necessary the applicant will be requested to provide projections to cover a period of 3 years.

## Insurance Cover

Money Services Businesses are required to maintain adequate insurance, the cover which will depend to a large extent on actual/expected trading volumes. Applicants will be required to provide adequate evidence of insurance cover.

## Ownership Structure

It is imperative that applicants provide an organogram which clearly sets out the various levels of shareholder up to and including the ultimate beneficial ownership. Appropriate Questionnaires are required for every party at each level.

Where trusts exist within the shareholding structure of an applicant, a copy of the trust deed is required in addition to the relevant questionnaire. The trustee will also be required to provide a letter of undertaking to the effect that the provisions of the trust in respect of beneficiaries, trustee and terms of settlement are as contained in the relevant settlement, and that no changes will be made to the provisions of the settlement, other than the settlement of further property, without the prior written approval of the Chief Executive.

## Application Process

In order to ensure that applicants meet all the regulatory and legal requirements, the forms required for applying for a licence are not available on the FSC website. Before application forms are provided the Commission will want to see a summary business plan.

As a general rule applications for a licence follow two stages :

### ***Consultation***

This is where the proposed applicant approaches the FSC, either directly or through professional intermediaries, with a view to informing us of its intentions. Normally this is a two-tier stage with the summary business plan being followed up by a meeting with the relevant supervisor.

### ***Submission***

Formal licence applications are submitted to the FSC with original, signed and dated documentation. More detailed plans are submitted to the FSC at this stage including proposed business plan, draft financial projections and details of the proposed management and systems. The FSC and the applicant may engage in detailed discussions on the information required and its format as well as requesting additional information that will enable the FSC to make an assessment of the application



The business plan should set out how the proposed activity is to be conducted. It should state which class(es) of licence is being applied for and then give a brief description of the structure of operations. If the applicant is part of a larger group, it should give a brief description of the group structure, and the activities undertaken within the group. A description of how the applicant is to conduct the business activity to which the application applies and details of the capitalisation, financial resources and operating systems to be put in place should then follow. The plan should set out the nature and manner of records that will be maintained.

#### *Pre-Licence On-site Visit*

As part of the application process, the FSC may wish to assess a firm's state of readiness by conducting an on-site visit on the applicant firm. Said visit may be conducted prior to the issue of a licence in order to test key areas and procedures considered fundamental to the operation. The scope of the visit will very much depend on the scale, nature and complexity of the proposed applicant. Any observations made as a result of the visit will have a bearing on the Chief Executive's consideration for the granting of a licence.