

# Banking Newsletter

Number 2 Year 1997



**Financial Services  
Commission**

## Compliance Requirements

Licensed banks are reminded of the importance of complying with the various requirements of the Banking Ordinance and the series of Administrative Notices issued by the Commissioner of Banking. Regular failures to comply with important requirements may call into question whether a bank continues to meet the criteria for licensing under the Ordinance.

The areas in which mistakes are most commonly made at present are as follows. Licensees are advised to re-read the relevant sections of the Ordinance or Notices.

## Directors and controllers

- Section 36(1)(a) and (b) of the Ordinance requires the Banking Supervisor to be informed in writing within 21 days of changes in directors, controllers and managers. She will then make any inquiries necessary to determine whether the changes call into question the bank's fulfilment of the criteria for licensing. NB Banks which are also licensed under the Financial Services Ordinance must seek prior approval of such changes (see the Notifiable Events section in FSC Newsletter No. 1 of 1997).
- Section 36(3) of the Ordinance requires an annual return of controllers from all locally-incorporated banks (see Banking Newsletter No. 2 of 1996). More than a third of such banks failed to submit their 1997 returns within the required deadline and a number of others did not take account in their returns of mistakes in interpretation of the Ordinance pointed out by the FSC in previous years.
- Section 53 of the Ordinance prohibits any person from becoming a shareholder controller, parent controller or indirect controller of a locally-incorporated bank unless he has served written notice of his intention on the Commissioner of Banking and the latter has either given his approval or allowed three months to pass without serving a notice of objection. NB This important requirement applies to technical changes in such controllers as well as to substantive changes in ownership.

## Subordinated loans

Banks with subordinated loans which count as capital are reminded that, under the terms of Administrative Notice No. 2A, no early repayment of this debt may be made without the prior written consent of the Commissioner of Banking.



## Large exposures

Locally-incorporated banks must comply with the terms of Administrative Notice No. 3 on the monitoring and control of large exposures, especially with regard to the general prohibition on exposures of 25% or more of large exposures capital base (other than exempt exposures). Any inadvertent breaches of these rules should be reported to the Commissioner of Banking as soon as they come to light, together with details of the corrective action being taken.

## Marketing of collective investment schemes

It has come to the FSC's attention that a number of banks have been marketing collective investment schemes (funds) which are neither authorised nor recognised. In the main, these have been 'group' funds but other cases indicate that third party funds have also been marketed.

Section 16 of the Financial Services Ordinance states that :

**"Promotion of schemes.**

16. (1) Subject to sub-section (2) a person shall not -

(a) issue or cause to be issued whether in Gibraltar or elsewhere any advertisement inviting persons to become, or offer to become, participants in a collective investment scheme in Gibraltar or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in such a scheme; or

(b) advise or procure any person in Gibraltar or elsewhere to become, or offer to become, a participant in a collective investment scheme in Gibraltar.

(2) Sub-section (1) shall not apply to an authorised scheme or a recognised scheme."

FSC Newsletter No. 1 of 1991 covers the compliance aspects of the marketing of overseas schemes. Banks which are not licensed under the Financial Services Ordinance can obtain a copy of this newsletter from the offices of the FSC.

In general terms 'marketing' is deemed to have occurred if the institution conducts any of the following :

- Advises a non-discretionary management client to buy units or shares in a scheme;
- Makes available to the public or non-discretionary management clients, brochures, prospectuses or other similar publications either by way of mail shot or by having these on display at the bank's premises; or
- Causes to be issued an advertisement promoting the funds in question.

As soon as any of the above takes place, the fund is required to be recognised in Gibraltar.

However, funds are not required to be recognised if the bank acts on an execution only basis for clients or invests client funds where a discretionary management agreement is in effect between the bank and its client.



Recognition of a fund requires the completion of FORM CIS3 in respect of a UCITS fund or FORM CIS5 in respect of other funds. A one-off recognition fee is also payable to the Financial Services Commission of £250 and £500 respectively. The criteria that have to be met for a scheme to be recognised are set out in sections 24 and 26 of the Financial Services Ordinance and in regulations 84 and 85 of the Financial Services (Collective Investment Schemes) Regulations.

## Memoranda and Articles of Association

Banks are reminded to check that the above adequately cover their current and prospective activities.

## Class A and B Licences

Class A and B banking licences ceased to exist with effect from the implementation of the Banking Ordinance 1992. These are still being referred to in some banks' audited financial statements. Banks affected should draw this to the attention of their auditors.

## Compliance officers

In view of the number of changes in supervisory requirements in the pipeline, including new reporting forms and a Reporting Accountants Regime, and the current less than satisfactory compliance record, the Commissioner of Banking plans shortly to ask all authorised banks to designate a member of staff as the compliance officer; he or she should not be the bank's chief executive. (Some banks have already made such an appointment on their own initiative.) Questions relating to supervisory requirements can then be handled more efficiently and quickly than at present, and expertise in this important area will be enhanced.

The compliance officer should report, and be accountable, directly to the chief executive in respect of compliance matters. He or she should understand and make themselves fully aware of what is needed and have the necessary power and authority to ensure that events which are notifiable under relevant ordinances and regulations are properly dealt with.

## New appointments and reorganisation within the FSC

The recruitment of new supervisors within the FSC has led to a reorganisation of duties previously undertaken by the Banking Supervisor and the Assistant Banking Supervisor. Banks may therefore wish to take note of the new persons responsible for different financial services businesses so that a direct line of contact can be established. This will enable answers and queries to be handled more efficiently by the FSC.

Name	Title	Activities Covered	Tel
Ms Jean Cooper	Banking Supervisor	Banking Ordinance	40284
Mr David Parody	Assistant Banking Supervisor		41062
Mr Brian Morris	Investment Services Supervisor	Financial Services Ordinance (Investment Business, including Life Assurance Broking and Funds)	41062
Mr Michael Baker	Controlled Activities	Financial Services	41062



	Supervisor	Ordinance (Company Management, Professional Trusteeship, General Insurance Broking)	
Mr Jim Costin	Insurance Supervisor	Insurance Companies	40283
Mr Norman Ritchie	Assistant Insurance Supervisor	Ordinance, Financial Services Ordinance (Insurance Managers)	40283

At present, the Commission is also recruiting a Banking Analyst who will be the initial point of contact between the banks' compliance officers and the FSC.

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