



## Financial Services (Information Gathering and Co-operation) Act

HM Government of Gibraltar has today published and given effect to a new Act called the Financial Services (Information Gathering and Co-operation) Act (the "Act"). This newsletter is a brief summary of its provisions.

The Act has as its goal, two main objectives. The main objective of HM Government of Gibraltar has been to provide a legislative framework that will be in compliance with the International Organisation of Securities Commissions' (IOSCO) Multilateral Memorandum of Understanding (MMoU) on the exchange of information and international co-operation. The Act, by removing any EU-centric language in the FSC's previous powers, paves the way for the FSC's application to become a signatory to the MMoU. Because any application assessment is based on legislation that is in force, there may still be a need to make some amendments to the Act, to bring it fully into compliance with the MMoU requirements. These, however, are not expected to be major in their nature.

The second objective has been to harmonise the existing supervisory powers of the FSC to gather information for its own regulatory purposes, as well as to be able to share this information with other authorities both locally and internationally. The present FSC powers are spread over seven primary acts, each with their own inconsistencies of approach. The Act therefore gives the FSC the same powers irrespective of the type of authorisation held by a firm. This has been welcomed by the FSC.

All information and document requests by the FSC will from now on, be made using the powers of this Act and not the underlying Supervisory Acts.

### The premise that all information is confidential

The Act is no different in its approach to any of the principles that underpin a sound regulatory structure worldwide - all information held by the regulatory authority is required to be treated as confidential, except as the legislation itself may provide. This is consistent with EU requirements as well as international standards, including those of the MMoU. There are criminal penalties for those who breach such provisions in the legislation.

The exceptions to when information can be disclosed must be provided for in the legislation. Colloquially these are known as "gateways" through which information can be shared with persons outside of the FSC. The full list of these gateways is contained within Section 3 of the Act, but essentially disclosure is permitted to enable the FSC to carry out its duties under the Supervisory Acts, to prevent or detect crime, to comply with international obligations or to assist fellow regulators outside of Gibraltar and certain Gibraltar authorities, as well as auditors and liquidators.



## **An obligation to provide assistance**

The Act, for the first time, imposes an obligation upon the FSC to provide regulatory assistance to a domestic authority or foreign counterpart, but only for the purposes of the functions that are specified in sub-section 4(4) and only if the FSC is satisfied that the recipient authority is subject to the same confidentiality provisions as the FSC is itself bound by.

The obligation to provide assistance therefore cannot be used as ‘fishing expeditions’ by foreign counterparties for non-regulatory matters.

## **The powers to obtain information and documents for the FSC’s own purposes**

Sections 6 to 11 of the Act deal with various ways in which the FSC can request information or documents from regulated entities for its own regulatory and supervisory requirements. These powers are drawn from existing Supervisory Acts and cover the appointment of Skilled Persons as well as the appointment of Inspectors. The Act achieves a harmonisation of these powers across all regulated activities and to all relevant persons.

## **Who is a relevant person?**

The term “relevant person” is an important one for the purposes of this Act as it defines persons from whom information or documents can be asked from by the FSC. The definition in Section 2 provides greater clarity on the matter but essentially the relevant person definition refers to a regulated firm (or an applicant firm), its directors and shareholders or any person directly or indirectly financially involved with such a firm or a person who is or has been employed by such a firm.

Importantly, the term “relevant person” is widened to apply to “a person who is, or has been, directly or indirectly involved in a transaction which the Authority [the FSC] considers relevant to the pursuit of its obligations under this or any of the Supervisory Acts”. This is purposely drawn up as wide as possible and could include, for example, a pizza delivery boy who overhears insider information when making a delivery to an office and uses that for his own gain. Similarly it could include an ISP or telecomms provider and requests for records relating to a transaction.

## **Provision of assistance to other authorities**

Any of the powers the FSC itself possesses to obtain information or documents, can also be exercised by the FSC in order assist another authority which has regulatory or supervisory responsibility over a relevant person. It should be noted that if there is no such responsibility, the FSC is under no obligation to provide such assistance even though it may provide information or documents already in the FSC’s possession.

The FSC will only provide such assistance when specific conditions are met (Section 12) and it may refuse to provide such assistance when this would be contrary to Gibraltar law; where criminal proceedings against that person have already been instituted; if the request is not made under an MMoU; or on public or national interest grounds.



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