

# Gibraltar Association of Compliance Officers

## RESPONSE TO THE CONSULTATION PAPER ON AN APPROVED PERSON REGIME

### Introductory Overall Comment

In general terms there is considerable concern amongst our membership as to why there is a need to expand the gambit of the approved persons regime. If the directors of a regulated firm are suitably approved and it is they who appoint all of the other positions referred to in this consultation paper, then the need to further approve all those other positions (apart from being impractical and costly) implies that the directors are not capable of doing the jobs they have been approved for. It is in the interests of those approved directors to have good compliance officers to protect and monitor the controls they have put in place, just as it is to ensure they have decent client relationship officers who will not mis-sell products to the general public. The view, therefore, is that there are already sufficient levels of controls and responsibilities so as to make the proposed consultation paper un-necessary.

Subject to the above, we have the following specific comments:

Controlled functions are divided into a, b, c, and d, and then sub-divided into 1,2,3,4 etc. (Part IV, S7). Do the Prescribed Fees Rules 2(b) apply to changes in controlled functions at the a,b,c and d level or the 1,2,3 sub level because if it is the second one most firms would have will have problems.

Page 9 (6) states that “in consideration of the fitness and propriety for an application by a person to conduct a controlled function within an EEA firm, the authority will not have regard to that person’s competence and capability.” Why and what then is the value of having these individuals apply as we are in effect saying that if you work for an EEA firm you will be approved?

Appendix 1 Section 9 (1), Removal from the Register: should read “person or entity” presumably entities will also be licensed as approved persons, if not then Section 9 (1) , (b), (c), and (d) do not apply and should be removed. There should, however be further reasons for removal such as convicted of a criminal offence (except minor motoring offences) and anyone incapacitated due to health or mental problems

The FSC will be providing guidance in respect of this legislation. Will this include the format for the annual report?

If you are grandfathered can the GOG confirm that we don't have to pay the £100 application fee? If an individual applies for more than one function will the fee still be £100 or will it be £100 per function? If a person who is already approved for a function, subsequently applies for another function, will they have to pay the £100 application fee?

In our view the processing time of three months, as proposed in the legislation, is totally unacceptable. Most of the functions are critical and in some instances, like the MLRO, are existing legal requirements. If for any unforeseen circumstances a firm should find itself without a MLRO, it could not wait three months for an application for an approved person to be processed because during that period the firm would be in breach of its obligations under the AML & CFT Guidance Notes.

Once a person is approved to perform a governing function such as director, does this mean that under the new proposed legislation that person will no longer be required to give the FSC prior notice of his appointment to the board of a licensed entity?

There is no mention of the maintenance of a public record for persons who have been disqualified from performing these regulated functions. Will there be one, should there be one?

There is some concern as to the maintenance of a public record of the names of individuals performing "required functions" such as compliance officers and MLRO because there is a possibility that the persons performing these functions in a financial institution may be targeted for coercion by criminals. This could also be the case wealthy directors/controllers.

There is no specification of the criteria that the FSC will use to approve a person (or otherwise) or how future changes in this criteria will be communicated. Will it be totally at the discretion of the FSC or are there at least basic benchmark requirements that must be met that the FSC could provide details of?

It is not considered appropriate that a fee should be charged for removal of persons from the register. Concern was also expressed that a fee may be charged for changing details on the register, such as a change of name following marriage or divorce.

Part IV Section 7 (d) Managerial Functions requires further clarification.

Re Page 34, we cannot see why it is necessary to provide a person's social security number and that certainly should not be included on the web page.

We feel that consideration should be given to grandfathering MLROs and Compliance Officers. All of them expect to undergo periodic assessments and will have at least a dotted reporting line to those whom will be grandfathered plus a solid reporting line (for larger firms) to their head offices. If they are not performing effectively they should not be in the role.

We believe that given the current issues with claims of mis-selling etc, we would have expected investment advisors, treasury functions and mortgage advisors to have been caught by the APR.

We feel that there should be some form of appeals process.

Part VI Section 18 seventh word should read "conduct" not "conducted".