

Offshore Group of Banking Supervisors
MUTUAL EVALUATION REPORT ON
GIBRALTAR

I. Introduction

1. This report summarizes an evaluation of the anti-money laundering environment in Gibraltar. The evaluation was conducted under the aegis of the Offshore Group of Banking Supervisors (OGBS).

2. The report is organized as follows:

- X Part I describes the evaluation process.
- X Part II provides background information, including a brief description of the financial sector, and the respective roles of the authorities which have responsibility for the anti-money laundering regime in Gibraltar. It concludes with the evaluators' assessment of the nature of the threats posed by money launderers.
- X Part III provides a description and assessment of the legal provisions in place in Gibraltar to counter money laundering.
- X Part IV provides a description and assessment of the role of the financial regulatory regime;
- X Part V evaluates the response by the law enforcement authorities;
- X Part VI presents conclusions and recommendations; and,
- X Part VII is a summary, intended for publication.

3. The evaluation team comprised:

- **Stephen Baker**, Barrister at Law, Legal Adviser to the Attorney General of Jersey, JERSEY (Law Enforcement Expert)
- **Sofia Leite Borges**, Senior Counsel, Portuguese Securities Markets Commission, Market Supervision Division, Investigation Department, PORTUGAL (Financial Expert)

- **Susan L. Smith**, Senior Trial Attorney, Asset Forfeiture and Money Laundering Section, Department of Justice, UNITED STATES (Legal Expert)
- **Nan Donnells**, Senior Policy Advisor, Money Laundering and Financial Crimes Section, Department of the Treasury, UNITED STATES (Secretary)

4. The team visited Gibraltar on April 25-27, 2001, and met with representatives of each of the authorities listed in Part II, paragraphs 19-30, below. In advance of the meetings, the team had received a full response to the evaluation questionnaire, which was supplemented by copies of legislation, regulations, guidance notes, and other detailed material provided before, during, and after the visit. The team also held discussions with representatives of the financial sector.

5. The team would like to express its appreciation for the hospitality extended to its members during their visit to Gibraltar, for the comprehensive materials provided by the authorities before, during, and after the visit, and for the forthright and open way in which everyone involved approached the evaluation. The team further expresses its apologies for the delay in completion of the report, which was due to conflicting priorities and work assignments imposed on several of the team members upon their return to their offices, and is in no way a reflection of any lack of cooperation on the part of any of the Gibraltar authorities.

II. Overview of Gibraltar's Anti-Money Laundering Environment

Background

6. Gibraltar is located in southwestern Europe, bordering Spain and the strait of Gibraltar, with a total land area of 6.5 square kilometers, and a population of approximately 27,650. Gibraltar is an overseas territory of the United Kingdom; it was ceded to Great Britain by Spain in the 1713 Treaty of Utrecht. However, Gibraltar has experienced difficulties with Spain as a result of Spanish attempts to obstruct Gibraltar's efforts to participate in the Egmont Group of Financial Intelligence Units and other international bodies, as well as in other matters. Gibraltar has been a member of the European Union since 1973, and is, therefore, covered by the EU Money Laundering Directive. Gibraltar has been a member of the OGBS since 1980.

7. Gibraltar is self-governing, except for defense, and is substantially independent of the United Kingdom. The UK's Parliament has no authority in Gibraltar, however, as a matter of policy, Gibraltar models much of its legislation and regulations on the UK's, and tends to amend its legislation in response to developments in the UK. Precedent set by English Common Law has influence in Gibraltar's courts, but is not regarded as binding. Gibraltar has its own direct and indirect tax system, although indirect taxes are generally set in line with, and subject to, similar rules and procedures as in the UK. The system of financial regulation and the powers of the law enforcement authorities are different from those that apply in the UK, although there are close linkages.

Financial Services Sector in Gibraltar

8. Gibraltar has a diversified economy and its international financial center is considered by the authorities to be a small one. Only approximately 25% of the GDP (estimated as US\$500 million for 1997) is attributed to financial services, whereas in Jersey the percentage amounts to 55%, in the Isle of Man it amounts to 39% and in Guernsey to 60%. In Gibraltar, the financial sector generates less than £6 billion per year. There are approximately 2,000 people currently employed in financial services.

9. The financial services offshore customer base is international in nature and consists of both private and corporate clients. Major markets include the UK, Iberian Peninsula, Switzerland, and others. The majority of transactions are conducted with and between non-residents.

10. According to the authorities, the nationality of people holding bank deposits in Gibraltar-based banks cannot, however, be accurately determined as deposits are reported to the FSC per institution and not on a country ownership basis.

11. Table 1 provides statistical information about Gibraltar's financial services sector.

<i>Table 1. A summary of Gibraltar's financial services sector*</i>	
Banks	
Number of licensed banks	19
Banks incorporated in Gibraltar	10
Value of assets	,5,204,138
Liabilities	,5,204,138
Insurance	
Insurance Companies	17
Insurance Intermediaries	27
Insurance Managers	7
Investment Services	
Collective investment scheme operators	1
Investment services companies	**24
Broker/Dealers	8
Companies	28,000
Qualifying Companies	146
Exempt Companies	8,800
Company Managers and Professional Trustees	83
Bureaux de change	15
% of GDP attributed to financial services	***25% to 30%

*Information gathered at the FSC website (updated 31 March 2001)
**Information last updated in 1998. According to the FSC, there are currently 33 authorized companies.
*** Value estimated by the FSC.

Banks

12. There are currently 19 authorized banks in Gibraltar. Total deposits as of 7 May 2001 were £2.48 billion¹. Ten of the banking institutions were incorporated in Gibraltar, whereas the remaining nine are subsidiaries or branches of international banks².

Non-Bank Financial Institutions

13. According to the authorities, Gibraltar has very small investment business and collective investment sectors³. There are only 33 companies authorized to conduct investment services business. Some of the small companies do not have any clients and are in Gibraltar for accountancy purposes only, carrying out intra-group transactions. There is only one collective investment scheme operator.

14. Gibraltar has a very small insurance sector and the anti-money laundering legislation applies only to life insurance companies. Currently there is only one life insurance company in Gibraltar and it has not entered into any new contracts since the end of 1999. There are 17 licensed insurance companies, of which two are dormant. There are 37 insurance intermediaries in Gibraltar.

15. There are 328 individual licensees authorized by the FSC to provide company management and/or professional trusteeship services in or from within Gibraltar. Gibraltar has 15 operational bureaux de change, which are licensed by the Financial and Development Secretary. The number of bureaux de change has been steadily decreasing from 26 in 1998 to 15 at the current time. There is only one casino in Gibraltar.

Non-Financial Professions

16. There are 115 lawyers in Gibraltar, 85 of which are in private practice, and 28 accountancy firms. Under the Auditors Registration Board, there are three parts to the register for accountants in Gibraltar⁴:

- Part 1: Individuals, of which there are 107
- Part 2: Firms, of which there are 23, as before mentioned
- Part 3: Individuals not falling under Part 1, of which there are 14

¹ Information provided by the Gibraltar Financial Services Commission.

² Please see list attached.

³ Please see list attached.

⁴ For further detail, see <http://www.gibraltar.gi/arb/legislation.htm>.

Lawyers and accountants are supervised by their own professional bodies that do not have disciplinary powers over their members. Lawyers are subject to disciplinary powers under the Supreme Court Ordinance. Similarly, accountants are subject to disciplinary powers under the Auditors Registration Board.

Companies and Trusts

17. Gibraltar is a center for the incorporation and management of both companies and trusts. There are 28,000 companies in Gibraltar, of which 8,800 are tax exempt companies and 146 are qualifying tax status companies, which means they pay less tax.

18. As in the United Kingdom, there is no requirement to register trusts in Gibraltar. There is a voluntary system of registration, which does not provide an accurate picture of the number of trusts in Gibraltar. However, the FSC records an accurate picture of trusts managed in or from within Gibraltar and this information is published on their web-site and in annual reports.

Roles of Organizations and Entities Involved in Combating Money Laundering

19. The **Financial Services Commission** (FSC) is responsible for the supervision and regulation of financial services providers operating in or from within Gibraltar. This includes banks, insurance companies, investment firms, insurance intermediaries, company managers, professional trustees, and insurance company managers.

20. Whilst the Government of Gibraltar is responsible for financial services policy, the Commission is a statutory body corporate established by the Financial Services Commission Ordinance, 1989. It consists of the Commissioner, as Chairman, and seven other persons. The Commissioner is appointed by the Governor, acting with the approval of the UK's Foreign and Commonwealth Secretary, and the other members are appointed by the Governor, acting with the approval of the Foreign and Commonwealth Secretary, after consulting with the Commissioner. Commission Members are not appointed as representatives of a constituency. They are appointed as individuals to bring their personal qualities and experience for the benefit of the Commission.

21. The Commission keeps under review the operation of Gibraltar legislation and the effectiveness of supervision of financial services, particularly in the context of European Union obligations. It seeks to protect the public against financial loss arising out of dishonesty, incompetence or malpractice. The Commission is also statutorily required to advise both the UK Government and the Gibraltar Government on matters concerning financial services.

22. The Commissioner, who is also the Commissioner of Banking and the Commissioner of Insurance, is the chief executive officer of the Commission and is charged with the responsibility of supervising institutions carrying on financial business in or from within Gibraltar. He is required to ensure that such supervision complies with any applicable obligation Gibraltar has as a constituent part of the European Union and to establish supervisory standards that match those required by legislation and supervisory practice governing the provision of financial services within the United Kingdom. The UK authorities periodically review the supervisory activities of

the Commission and Commissioner under the provisions of Section 12 of the Financial Services Commission Ordinance 1989.

23. The Commission is independent from government. It plays no role in the marketing of the jurisdiction (the Gibraltar Finance Centre Director is charged with this task) and thus its supervisory decisions are not influenced by the need to attract business to Gibraltar.

24. The Commission is charged under the Criminal Justice Ordinance 1989 with the publication of Guidance Notes for regulated activities in relation to money laundering offences, procedures, detection and reporting. The first of these notes was published in September 1996; they were revised in September 1999, with three updates having been published since.

25. Additionally, the Commission conducts interviews with the management of regulated entities in which anti-money laundering procedures are discussed and reviewed. Locally licensed banks are subject to annual reports by external accountants commissioned by the Commission on a variety of aspects of their internal control systems and procedures. These have concentrated on the bank's anti-money laundering systems and controls.

26. The **Gibraltar Finance Centre** has four responsibilities: (1) marketing and promotion of Gibraltar as an international financial centre; (2) the licensing of tax exempt and qualifying tax status companies; (3) liaison between Government of Gibraltar and the private sector; and, (4) providing input as to the international initiatives facing Gibraltar.

27. The **Attorney General** is Gibraltar's senior legal officer. He has statutory powers for the prosecution of all offences, including money laundering offences and fraud. His chambers acts as the Central Authority in cases of mutual legal assistance, although it is not specifically appointed as such.

28. The **Gibraltar Co-ordinating Centre for Criminal Intelligence and Drugs (GCID)** has a co-ordinating role on drugs intelligence with the **Gibraltar Financial Intelligence Unit (GFIU)** acting as a focal point for financial intelligence. The GFIU is the central agency for receiving, analyzing, and disseminating financial disclosures/suspicious transaction reports.

29. The **Royal Gibraltar Police Force** is comprised of 210 officers and 11 civilian support staff with an annual budget of around £7M. The police service has a front line responsibility in the enforcement of the law concerning drug trafficking, money laundering and other illicit activities. The Drugs Squad targets suppliers and traffickers both locally and at an international level with outside law enforcement agencies. The Financial Investigations Unit is a stand-alone unit dedicated to conducting financial investigations of suspected/convicted drug traffickers and of money laundering operations with a view to asset identification and removal. The Marine Section patrols the territorial waters off Gibraltar and is actively engaged in preventing the transportation of drugs across the Straits of Gibraltar between Morocco and Spain.

30. The **Customs Department of the Government of Gibraltar (Customs)** enforces the Imports and Exports Ordinance. Customs is comprised of 102 officers with four civilian support personnel, and has an Investigation Branch, a Marine Section, and Drugs Dogs Section that play

a central role in the prevention and detection of crime related to drug trafficking and other illicit activity, whether into Gibraltar or in the surrounding area. Customs plays an important role in international efforts against drug trafficking, money laundering, and other illicit activity in close co-operation with foreign agencies.

The Money Laundering Threat

31. While Gibraltar has a low crime rate, there are isolated examples of the Straits of Gibraltar being used as a transit point for illegal drugs between Morocco and Spain. There is no evidence to substantiate that drugs are landed in the territory of Gibraltar for onward transshipment into Spain or Europe. Statements by the Gibraltar authorities and intelligence suggests that the degree to which Gibraltar's financial institutions are used to launder the proceeds of crimes committed locally is small.

32. Placement by money launderers was thought by the authorities in Gibraltar to be a negligible risk. Because of the nature of the financial business conducted in Gibraltar, few of its financial institutions (with the exception of those serving the local community) routinely take cash deposits. The authorities argue that any attempt to lodge even a modest amount of cash into the financial system is likely to be regarded as suspicious. However, cash placement is a fairly substantial risk through cross border transportation of cash from Spain and then the exchange of that cash through the fairly unregulated bureaux de change. Nevertheless, paragraphs 46 and 47 of this report consider the case for further steps to prevent cash placement.

33. While the risk at the placement stage is low, there is relative risk at the layering and integration stages. The nature of the business conducted in Gibraltar as well as Gibraltar's relationship to the major financial centers in the UK, and throughout the European Union, make Gibraltar a potential staging point for funds at the layering stage. Its good reputation among offshore centers, and the respectability provided by its political and constitutional status, makes Gibraltar potentially useful at the integration stage, when money launderers seek to add apparent legitimacy to their funds.

34. Regarding the laundering of proceeds from crimes committed outside Gibraltar, local authorities and intelligence stated that there is no evidence of major or systematic money laundering taking place in Gibraltar. Nevertheless, there are currently two money-laundering cases before the United Kingdom Courts, involving persons or entities based in Gibraltar.

35. In the opinion of the Evaluation Team, the Gibraltar authorities have a realistic understanding of the risks that their jurisdiction faces from money launderers. There was no indication of complacency by the authorities, nor by the representatives of the private sector whom the Evaluation Team met. Nor was there any attempt on the part of anyone interviewed to play down the risks.

III. Anti-Money Laundering Legislation and Legal Framework

36. The legislation criminalizing money laundering has evolved over time -- developing from the recognition of drug trafficking offences as predicate offences and to the new all-crimes primary and secondary legislation. In each case, these steps have followed very similar legal developments in the United Kingdom.

37. The most important statutes are:

∃ **Drug Trafficking Offences Ordinance 1995** -- introduced powers to restrain and confiscate the proceeds of drug trafficking, and made it an offence to conceal or transfer, or to launder the proceeds of drug trafficking. The Law made it an offence to fail to disclose to a police or customs officer knowledge or suspicion of drugs money laundering, or to tip-off a third party, and provided protection from civil or criminal action to those who disclose a suspicion of an offence.

∃ **Criminal Justice Ordinance 1995** -- criminalises the laundering of the proceeds of all serious crime, as well as requiring financial businesses to adopt measures to deter money laundering.

∃ **Evidence Ordinance** -- allows for evidence to be obtained for use in overseas jurisdictions in civil and criminal cases (although for drugs offences, the Drug Trafficking Offences Ordinance 1995 powers are used). This applies to all types of criminal cases (not just drug trafficking matters) provided that the request for assistance is from or on behalf of a court or tribunal and that criminal proceedings have been instituted in that jurisdiction. Assistance is limited to the taking of oral testimony and production of documents (including bank records).

38. Conduct captured by the Drug Trafficking Offences Ordinance 1995 and the Criminal Justice Ordinance 1995: It is an offence (a) to acquire, possess or use, and (b) to conceal, disguise, convert, transfer or remove from the jurisdiction the proceeds of criminal conduct, knowing or suspecting them to be so. The offence covers laundering one's own proceeds, and can be applied to bodies corporate. The maximum penalty is 14 years imprisonment and/or an unlimited fine.

39. Predicate offences: The predicate offences for money laundering extend to all indictable offences. Overseas offences are covered where, had the equivalent conduct occurred in Gibraltar, it would have been a predicate offence. There is no exemption for fiscal offences.

40. Confiscation: Gibraltar is able to restrain property when proceedings are underway or likely to be brought, to prevent the dissipation of property and to freeze bank accounts, following an application to the Court made by the Attorney General. Under the drug trafficking legislation, cash can be seized at the border if it is suspected to be associated with drug trafficking. Aside from these provisions, confiscation procedures follow a criminal conviction. The burden of proof is the standard applicable in civil proceedings. Property owned or held by a third party can be confiscated. There are no legal impediments to the sharing of proceeds with other

jurisdictions, but it has never been done and would have to occur on an ad hoc basis.

International mutual legal assistance to confiscate criminal assets is currently possible for drug and money laundering offences. The Drug Trafficking Offences Ordinance enables Gibraltar to extend its power to register and enforce external confiscation orders only to Anguilla, Australia, the Bahamas, Bahrain, Barbados, Bermuda, Canada, Cayman Islands, Denmark, Guernsey, Hong Kong, India, Isle of Man, Italy, Jersey, Malaysia, Montserrat, Netherlands, Nigeria, Saudi Arabia, South Africa, Spain, Sweden, Switzerland, United Kingdom, United Mexican States and the United States.”

41. Tipping off: It is an offence, with a maximum sentence of six months, to prejudice an investigation by tipping off a suspect or third party.

42. Reporting obligations: Under the earlier Laws covering drugs and terrorism offences, all citizens who suspect that a transaction represents the proceeds of drugs trafficking or funding for terrorism have an obligation to report their suspicions to the Police or Customs. (The obligation is not limited to particular categories of institution or individual). The maximum sentence is 5 years imprisonment. In contrast, the 1995 Criminal Justice Ordinance creates an indirect obligation to report. The Law criminalises money laundering, but provides an absolute defence where knowledge or suspicion has been promptly reported. The authorities, and indeed the private sector, interpret this as a firm legal reporting obligation.

43. Responsibilities of the Financial Sector: The 1995 Criminal Justice Ordinance introduces new and wide-ranging obligations on the financial sector to maintain effective anti-money laundering systems. These provisions are discussed in detail in paragraphs 64-69.

International Cooperation

44. Gibraltar does not require a treaty or agreement or reciprocity for the giving of mutual legal assistance. Under the Drug Trafficking Offences Ordinance 1995, mutual legal assistance can be provided in the investigation and prosecution of drug trafficking cases to countries to which the Vienna Convention applies. The registration and enforcement of external confiscation orders is only available to designated countries, those being Anguilla, Australia, the Bahamas, Bahrain, Barbados, Bermuda, Canada, Cayman Islands, Denmark, Guernsey, Hong Kong, India, Isle of Man, Italy, Jersey, Malaysia, Montserrat, Netherlands, Nigeria, Saudi Arabia, South Africa, Spain, Sweden, Switzerland, United Kingdom, United Mexican States, and the United States.

45. However, the Criminal Justice Ordinance 1995 does not enable the Gibraltar authorities to provide effective mutual legal assistance in the investigation stage relating to non-drug related money laundering. The proposed Mutual Legal Assistance Law will go a long way towards addressing the most significant deficiencies in Gibraltar’s ability to cooperate effectively with criminal enquiries at an investigative stage. Currently, cooperation on criminal matters at an investigative stage is only possible where the relevant offence was drug trafficking. In other cases, cooperation is only possible where court proceedings have already been initiated. Once the proposed Law is enacted, Gibraltar will be able to cooperate with foreign enquiries on the full range of money laundering issues. It will allow information to be exchanged with foreign

authorities (administrative, law enforcement and judicial) at the intelligence-gathering, investigation and prosecution stages in respect to all criminal offences. It is recommended that the government of Gibraltar enact this proposed legislation as soon as possible.

Cross-Border Cash Movements

46. Paragraph 32 discusses the authorities' view that cash placement is not now a significant money laundering problem in Gibraltar. The evaluators accept the representations by the authorities and the financial industry representatives that if a customer arrived at a bank with a large amount of currency it would be regarded as so unusual that it would generally result in notification to the authorities. In line with FATF Recommendation 22, the evaluators considered whether enhanced powers to monitor all cross border cash movements was likely to be necessary, but ultimately agreed with the Gibraltar authorities that cross border currency reporting would not strengthen significantly existing anti-money laundering measures. Nevertheless, Customs is encouraged to continue to monitor the situation, and to continue to apply regular checks

47. Under the Drug Trafficking Offences Ordinance 1995, Customs has the power to seize cash which they believe to be, directly or indirectly, the proceeds or instrument of drug trafficking. The cash can be retained and, where a case can be demonstrated to the civil standard, the cash can be forfeited. Since 1995, approximately a quarter of million Gibraltar pounds (U.S. dollar equivalent of \$379,575) has been seized at the border and forfeited to the General Treasury. Although these powers are clearly helpful in respect of drug trafficking, they do not extend to other crimes. This creates a loophole in cases where Customs officials suspect that cash is the proceeds of crime - but cannot tie their suspicious to drug trafficking offences. The effectiveness of this power would therefore be significantly enhanced if it applied on an all-crimes basis.

IV. Financial Regulation

48. This section of the report considers financial regulatory issues, including regulations and guidelines and the efforts of the authorities to ensure that such regulations and guidelines are complied with by financial institutions and other regulated entities. In Gibraltar, the regulatory standards for the prevention and combating of money laundering are defined by:

- The Drugs Trafficking Offenses Ordinance 1995
- The Criminal Justice Ordinance 1995
- The Anti-Money Laundering Guidance Notes

49. Recently a Consultation Paper on Proposed Amendments to the Anti-Money Laundering Regime was issued and is taken into account in this report.

The Role of the Gibraltar Financial Services Commission

50. The Gibraltar Financial Services Commission (FSC) is an independent statutory body, whose responsibilities include the licensing and regulation of banks, insurance companies, investment firms, insurance intermediaries, insurance companies managers, company managers and professional trustees, operating in or from within Gibraltar. The FSC was established by the Financial Services Commission Ordinance, 1989 and currently has a staff of 15 people.

51. Concerning the licensing of entities, representatives of the FSC stated that the FSC holds preliminary informal meetings with prospective licensees to discuss the business to be conducted. Only after this stage, are the formal applications filed. Under the applicable legislation, the FSC will turn away those prospective applicants who are not regarded as fit and proper, for lack of qualifications, experience, or reputation.

52. Regarding the regulation of the licensed entities, the FSC will conduct an on-site visit upon licensing of a new entity whilst other visits will be conducted on occasion. During its visits, the FSC checks records, pulls files, and makes random checks. According to the authorities, the FSC intends to initiate a risk-based form of supervision within the next year. This will involve on-site inspections by the FSC apart from those carried out by external/internal auditors and the reporting accountants, where appropriate.

53. No licenses have yet been suspended, cancelled or revoked for non-compliance with the anti-money laundering requirements. The two money laundering cases presently being tried in the UK involving persons or entities based in Gibraltar do not involve entities supervised by the FSC. The FSC feels it has the necessary powers to supervise compliance with the anti-money laundering regulations.

54. During the Evaluation Team's visit, it was also mentioned that the UK-based Compliance Institute is establishing a regional centre in Gibraltar with the support of the FSC and the Finance Centre of the Department of Trade, Industry and Telecommunications. Its aim is to promote discussion and understanding of regulatory compliance in general. Subject to availability of UK trainers, the Committee plans to arrange a one-week Foundation Course in the autumn, followed by a winter/spring programme of further courses and events, some of which will necessarily be adapted to reflect Gibraltar's regulatory requirements.

55. The FSC is also charged, under the Criminal Justice Ordinance 1995, with the publication of Guidance Notes for regulated activities in relation to money laundering offences, procedures, detection and reporting. Some details of licensing and regulation of entities by the FSC are set out below.

56. **Banks:** As mentioned previously, the Gibraltar banking sector comprises 19 banks of which 10 are incorporated in Gibraltar and licensed by the FSC. Seven are branches of European Economic Area (EEA) authorized banks and operate in Gibraltar under their home country authorizations. The remaining two are branches of non-EEA authorized banks and are also licensed in Gibraltar by the FSC.

Table 2. *Branches of EEA authorized banks operating in Gibraltar under their home country authorization*

NAME OF INSTITUTION	HOME SUPERVISOR
Barclays Bank PLC	Financial Services Authority
Banco Central Hispano Americano S.A.	Banco de España
ABN AMRO NV	De Netherlands Bank NV
Newcastle Building Society	Financial Services Authority
Norwich & Peterborough Building Society	Financial Services Authority
Lloyds TSB Bank PLC	Financial Services Authority
Credit Agricole Indosuez	French Banking Commission

57. The criteria for granting banking licenses, the indication of minimum capital levels and the requirements regarding single European Passports for banks authorized within the EU, are set out in the Banking Ordinance 1992, that implements EU legislation on the matter – the EU First Banking Coordination Directive and the EU Second Banking Coordination Directive. There is a single license for both onshore and offshore services.

58. According to the authorities, all EEA branches receive at least one prudential on-site inspection per year. All other non-EEA branches and local subsidiaries have at least two per year. These include one prudential visit and a follow up visit to discuss the reporting accountant’s report (approximately 22 visits).

59. The FSC may request that the bank’s management ask the bank’s reporting accountants to produce a report on any aspect of the bank’s internal control systems and procedures, including money laundering. The process is known as the Reporting Accountant’s Regime (“RAR”).

60. Investment Firms: Under the Financial Services Ordinances 1989 and 1998 and the Administrative Notice number 1 issued by the FSC in June 1998, investment firms authorized to carry on a particular range of business are subject to a fit and proper criteria and are required to maintain adequate levels of capital. The 1998 Ordinance implements the Investment Services Directive.

61. Insurance Companies: The main requirements for the licensing and regulation of insurance companies are set by the Gibraltar Insurance Companies Ordinance 1987 that mirrors the European Directives on the matter (Life and Non-Life). Regulation of Insurance Companies includes a program of on site visits to the supervised companies.

62. Company Managers and Professional Trustees: Company managers and professional trustees are licensed and regulated by the FSC under the Financial Services Ordinance 1989. Company managers and professional trustees are subject to fit and proper requirements and must have a physical presence in Gibraltar. Licensees must submit to the FSC their audited financial

statements and their auditors must make an autonomous report to the FSC. There are periodic on-site visits to the licensees.

63. Bureaux de Change: The FSC does not supervise bureaux de change, which are licensed by the Financial and Development Secretary. According to the authorities, three licenses are presently suspended as a result of police enquiries in the UK regarding alleged money laundering activities.

Legal and Regulatory Framework

64. Part III of the Criminal Justice Ordinance 1995 – *Measures to Prevent the Use of the Financial System for Purposes of Money Laundering* (Sections 6 to 22) – which imposes obligations on financial institutions to obtain evidence of the identity of their customers, keep proper records, set up procedures for the reporting of suspicious transactions and undertake staff training, applies to the following entities:

- Credit institutions;
- Persons authorized to conduct investment business under the Financial Services Ordinances 1989 and 1998;
- Bureaux de change;
- Insurance companies covered by the EC Life Directives; and,
- Solicitors and accountants when undertaking relevant financial business.

65. Company managers, professional trustees, general insurance brokers, and insurance managers are not covered by Sections 6 to 22 of Part III of the Criminal Justice Ordinance 1995, although a proposed amendment to the Ordinance, which will be further discussed below, if approved, will extend the definition of relevant financial business to include company management and professional trusteeship.

66. As it stands, Part III of Criminal Justice Ordinance 1995, is restricted to persons who, in the course of relevant financial business carried on in or from Gibraltar, form a business relationship or carry out a one-off transaction with or for another. The term “business relationship” is defined by Section 7 (2) of the Criminal Justice Ordinance 1995 as being any arrangement between two or more persons where:

- the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis;
- the total amount of any payment or payments to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

67. Section 7 (1) of the Criminal Justice Ordinance 1995 provides that references to an arrangement between two or more persons is a reference to an arrangement in which at least one party is acting in the course of a business, which excludes only private arrangements entered into by individuals other than in the course of business.

68. Section 6 (1) of the Criminal Justice Ordinance 1995 defines “one-off transactions” as being any transactions other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant financial business.” Even if the relevant financial business does not amount to a “business relationship” under Section 7, it will still be covered by Part III if it constitutes a “one-off transaction.”

69. Failure to comply with any of the requirements of Part III of the Criminal Justice Ordinance 1995 constitutes an offense punishable by a maximum of 2 years imprisonment or a fine, or both. According to Subsection 9 (2), penalties will be applicable irrespective of whether money laundering has actually taken place.

70. The Anti-Money Laundering Guidance Notes (AMLGN) were issued by the Financial Services Commission and the Financial and Development Secretary and were first published in September 1996, revised in September 1999, with three updates published since. Although this guidance is not legally binding, a court can give regard to a best practice followed as a defense, as reflected in the guidelines, when considering a prosecution brought under the Criminal Justice Ordinance 1995. The guidelines also provide a framework for assessing regulatory compliance by the industry.

71. The AMLGN cover bureaux de change -- as they conduct relevant financial business as defined in the Criminal Justice Ordinance (see paragraph 64) -- and they are subject to a licensing procedure by the Financial and Development Secretary, but there is no day-to-day supervisory oversight such as exists for financial services providers regulated by the FSC. Accordingly, while the FSC monitors compliance with the anti-money laundering regulations by credit institutions, investment businesses, life insurance companies, and even company managers and professional trustees, compliance with the anti-money laundering requirements by bureaux de change is not monitored by the FSC. However, according to the authorities, the Inspections Officer appointed under the Bureaux de Change Ordinance, the head of the Customs Investigations Department, effects visits to the bureaux de change, at least annually, to ensure compliance with anti-money laundering procedures as defined in the Criminal Justice Ordinance and AMLGN.

72. The fact that bureaux de change are not supervised by the FSC is a source of concern. Gibraltar’s Chief Minister, the Hon. Peter Caruana QC, recognized that bureaux de change are a concern and suggested that perhaps they could be supervised and regulated by the FSC as are other financial institutions. Since the on-site visit, the authorities have informed the Evaluation Team that the Government of Gibraltar asked Gibraltar agencies, including the FSC, to explore various possibilities for the future supervision of this sector (including direct supervision by the FSC). The Gibraltar authorities have also stated that they consider that Customs’ involvement in the supervision of anti-money laundering controls “is sufficient to mitigate any risks of money laundering whilst these options continue to be explored.” Nevertheless, the Evaluation Team feels that prompt action should be taken to place the bureaux de change under the supervision of the FSC.

Amendments to Gibraltar's Anti-Money Laundering Regime (1 March 2001)

73. In March 2001, a consultation paper discussing proposed amendments to Gibraltar's Anti-Money Laundering Regime was issued, with the agreement of the Government of Gibraltar, for consultation with the industry. The proposed amendments cover the following issues:

- Introducer certifications;
- Extension of the provisions of the Criminal Justice Ordinance 1995 to company managers and professional trustees, as mentioned above;
- Extension of the provisions of the Criminal Justice Ordinance 1995 to include mandatory requirement to report on suspicious transactions relating to all indictable offenses;
- Simplification of Part IV of the Anti-Money Laundering Guidance Notes regarding identification procedures and extension of such measures to pre-1995 accounts.

74. Part IV of the AMLGN allows a financial institution to initiate a business relationship with a person whose identity they do not know if a certificate of introduction is provided by a business introducer (paragraphs 4.105 to 4.113). The proposed amendment to the AMLGN would abolish all introducer certifications with the exception of group introductions, where the identity of the customer has been verified by the introducing parent company, branch, subsidiary or associate in line with the Gibraltar anti-money laundering requirements, or equivalent standards, and provided that those identification records are retained for the necessary period in accordance to the Criminal Justice Ordinance (paragraph 4.107).

75. As a result of the FATF NCCT review of Gibraltar during which it was pointed out that the provisions of the Criminal Justice Ordinance do not impose an explicit obligation to report a suspicious transaction which is not drug related, it is now proposed that the Criminal Justice Ordinance be amended to include an explicit requirement to report all suspicious transactions relating to all serious criminal offenses. Non-disclosure of a suspicious transaction would be an offense, similar to the one established under Section 57 (1) of the Drug Trafficking Offenses Ordinance 1997.

76. The proposed amendments to the Anti-Money Laundering Regime of Gibraltar also include extending the provisions of the Criminal Justice Ordinance 1995 to include company management and professional trusteeship, an aspect that was already covered by the AMLGN.

77. The Team welcomed the proposed measure of abolishing most introducer certifications. However, the maintenance of group introductions does not seem advisable, especially in light of the discretion financial institutions have in obtaining additional information about the regime on bank secrecy, record keeping and data protection applicable in the jurisdiction where the part of the group making the introduction is localized (Paragraph 4.108 of the AMLGN), "The Gibraltar institution should determine as far as practicable that there is no bank secrecy or data protection legislation that would restrict access to the records either by the institution freely on request or by Gibraltar law enforcement agencies under court order or relevant mutual assistance

procedures to the extent that they are required pursuant to an investigation. If it is found that such restrictions apply, copies of the underlying records of identity should, wherever possible, be sought and retained within Gibraltar.” Notably, subsequent to the on-site visit, the Gibraltar authorities informed the Evaluation Team that they have taken forward the concept of abolishing introducer certificates entirely from the AMLGN, including group introductions, in amendments to the AMLGN.

78. Subsequent to the on-site visit to Gibraltar, the AMLGN have been amended and reliance on third parties to conduct “know your customer” (KYC) procedures regarding customers (introducer certificates) has been severely limited.

79. According to sections 4.95 to 4.101 of the revised AMLGN, the following rules now apply:

- (1) Even when relying on an introduction from a group company or an intermediary, institutions must have copies of all documentation in their possession or have ready access to such documentation (section 4.95).
- (2) Eligible introducers (group companies or intermediaries) must meet all four of the following conditions (section 4.97):
 - it must be regulated by the FSC, or an equivalent institution if it carries on business outside Gibraltar;
 - it must be subject to equivalent, or more stringent, anti-money laundering legislation than that in place in Gibraltar;
 - it must be based in Gibraltar or a country listed in Appendix I of the AMLGN as having equivalent anti-money laundering legislation; and,
 - there must be no secrecy or other obstacles which would prevent the Gibraltar institution from obtaining the original documentation if necessary.
- (3) Whenever the introducer is not "eligible" KYC procedures will apply and original documentation must be provided.
- (4) KYC procedures will not, however, have to be conducted regarding one-off transactions from overseas (even if the transaction exceeds 15,000 Euros), as long as an eligible introducer has provided the name of the customer and given the firm a written assurance that evidence of identity has been taken and recorded. If the person being introduced is forming a business relationship with the institution, then evidence of identity must be obtained (sections 4.100 and 4.101).

The Evaluation Team welcomes the amendments made and finds them satisfactory.

80. Simplification of Part IV of the AMLGN (Identification Procedures), in what regards client accounts and trust structures deserved the acquiescence of the Evaluation Team, especially in what concerns the identification of the beneficial owners of the funds and the proper identification of customers whose accounts were opened before 1 April 1995 – the date on which

the law and procedures regarding customer identification were put into place. Subsequent to the on-site visit, the Gibraltar authorities have informed the Evaluation Team that the AMLGN have been revised requiring a full review of “know your customer” documentation for all business relationships entered into prior to 1 April 1995. Under section 9.90 of the revised AMLGN, this review must be completed by 31st January 2003.

The Anti-Money Laundering Regime

Customer identification

81. Under the legal framework mentioned above, financial institutions and non-financial entities when undertaking relevant financial business are required to identify and record details of customers when establishing business relationships. If evidence of the applicant for business identity is not obtained, the business relationship or one-off transaction shall not proceed any further. For the purpose of Part III of the Criminal Justice Ordinance 1995, evidence of identity is satisfactory if it is reasonably capable of establishing that the applicant is the person he claims to be and if the person who obtains the evidence is satisfied that such evidence does establish that fact.

82. Under the AMLGN, regarding the identification of natural persons, normal checks, on the address, photograph and signature, must be carried out on documents that produce evidence of the customer identity or indicate proof of residency. If the proposed amendments to Part IV of the AMLGN are approved, the identity of a customer must be ascertained with a valid photo ID document and his address must be verified with proof of residency from two sources. It is also provided for in the proposed amendment to Part IV of the AMLGN that, regarding bodies corporate, partnerships or unincorporated associations, the records required by financial institutions of its customers, will include:

- the certificate of incorporation, business name registration, Memorandum & Articles and any other evidence required to establish that the body is properly formed or incorporated;
- a company/business search in the appropriate jurisdiction; and, most importantly,
- the nature of the activity to be conducted by the company through the account and the identity of the directors, partners, beneficial owners, holders of powers of attorney and authorized signatories verified in accordance with the requirements for natural persons.

83. Representatives from the Gibraltar Bankers Association stated that when the company objects are broad banks, they will have a very detailed, deep, customer profile and will determine exactly what activity is performed by the company, inquiring as to the nature of services rendered and evaluating the credibility of the cash flow in the account.

84. Concerning trusts and foundations, the proposed amendments to the AMLGN would impose a requirement that financial institutions, and also non-financial professionals such as

accountants and solicitors, when undertaking relevant financial business, record the identity of the trustee(s), settlor(s) and protector(s) verified in accordance with the requirements for natural persons.

85. Paragraphs 4.49 to 4.51 of the AMLGN state that the procedures to be followed when there is no face-to-face contact between the financial institution and its customers, especially with respect to financial services on the Internet, should be the same as for postal/telephone banking customers. When read with paragraph 4.47 of the AMLGN, however, this concession (for reduced documentary evidence) is not available for the purposes of opening any bank or building society account or for the purchasing of any investment that offers money transmission facilities or enables the transfer of money to be made to third parties. Gibraltar authorities report that no institution offers the opportunity to open bank accounts via the Internet and that on-line banking services are only offered to existing customers.

86. Regarding online banking, representatives from Gibraltar's Bankers Association stated that banks do not take clients unless they have a chance to meet them face-to-face upon the opening of an account and that on-line banking facilities are reserved for established clients. It was also mentioned that only a minority of the banks established in Gibraltar provide on-line banking services.

87. Financial institutions are also required to identify the beneficial owners of accounts or transactions. In the Evaluation Team's opinion, the problems financial institutions might face in doing so concern the following situations:

- Availability of share warrants to bearer
- Accounts held by lawyers and other intermediaries
- Trusts
- SWIFT messages

Share warrants to bearer

88. Share warrants to bearer are available in Gibraltar. According to the authorities a few hundred companies exist that have issued share warrants to bearer, although they are not very prevalent. If the companies are tax exempt or qualifying tax status companies, the share warrants to bearer must be deposited in a bank and transactions are restricted because the Government of Gibraltar must approve of their beneficial owner at all times.

89. The Government of Gibraltar also stated that consideration is being given to abolishing share warrants to bearer, although no practical action has yet been taken. According to the representatives of the Bankers Association, the practice of bankers is either to take physical possession of the warrants or to ask the prospective customer to open the account in a jurisdiction outside of Gibraltar. Further, the Government of Gibraltar has publicly committed itself to the abolition of share warrants to bearer as part of its commitment to the OECD initiative on harmful tax practices.

90. Mechanisms for achieving anonymity, such as share warrants to bearer, can be -- and often are -- misused for illicit purposes, such as money laundering; therefore, the Evaluation Team welcomes the commitment given by the Government of Gibraltar to eliminating these mechanisms⁵.

Accounts held by legal professionals and other intermediaries, such as stock brokers, fund managers, accountants and estate agents

91. Under the AMLGN, client accounts are permitted in Gibraltar (paragraph 4.92). Such accounts may be general omnibus accounts holding the funds of many clients or they may be opened specifically for a single client. In each case, it is the intermediary who is the institution's customer and due diligence is carried out on the intermediary, not on his client.

92. The only exception occurs when the intermediary is from a country without equivalent money laundering legislation, in which case reasonable measures must be taken to verify the identity of the underlying client. If it becomes apparent that the intermediary is playing little or no role beyond providing a "front", full verification procedures will be necessary if the account opening is to proceed.

93. However, if unusual transactions take place in such accounts, financial institutions must report them to the Gibraltar Financial Intelligence Unit, which might be difficult for the financial institutions involved that do not have enough information to profile the intermediary's client and will have difficulties in detecting something suspicious about the transactions being carried out.

94. Although intermediaries must know their clients and will be liable for transactions involving the account, it is the Evaluation Team's opinion that, in accordance with Recommendations 11 and 14, at least the nature of the activity to be conducted by the intermediary, on behalf of its customer, through the account, should be disclosed to the institution opening the account.

Trusts

95. Being influenced by UK law, Gibraltar broadly accepts trusts. Blind trusts, for instance, where the real purpose of the trust or of its beneficiaries can not be identified from the trust deed itself, are not prohibited in Gibraltar although, according to the authorities and to the representatives of the Gibraltar Financial Centre Council they would be regarded with suspicion.

96. In the same way, flee clauses, which are provisions in the trust document that provide for the automatic transfer of the trust to another jurisdiction if the trust becomes subject to any sort of enquiry, are also allowed in Gibraltar. However, the representatives of the Gibraltar Financial Centre Council feel that if the enquiries are in the context of a criminal investigation it would be contrary to public policy to allow the trust to flee. This position is derived from a legal opinion obtained that states, "Although there are no restrictions on any specific events that may trigger a

⁵ The misuse of corporate vehicles for illicit purposes has been addressed by the OECD Steering Group on Corporate Governance (Report on the Misuse of Corporate Vehicles for Illicit Purposes - April 2001) and is currently being discussed within the FATF.

“flee clause”, there are certain events that, if they were to be included, would likely be unenforceable as being contrary to public policy, for example, if the “flee clauses” were to be triggered by the occurrence of a criminal act or fraud.”

97. Asset protection trusts that permit the settlor to keep control over the trust assets by being named as the beneficiary, are allowed in Gibraltar although they must be registered with the FSC. Representatives from the Bankers Association stated that most banks will not accept trust accounts, because they feel that carrying out due diligence on trusts is a very difficult task. However banks do take trust accounts, especially when they feel it is easy to identify all the persons involved.

98. The Evaluation Team feels that the proposed amendments to Part IV of the AMLGN regarding the identification of trusts will enable financial institutions to address some of their main concerns when handling trust or foundation accounts, although the fact that there is no public or central record of trust beneficiaries remains an issue of concern.

SWIFT Messages and Electronic Funds Transfers

99. There is no consistent practice in Gibraltar in which financial institutions require, on a mandatory basis, that a SWIFT message indicates the originator of the funds. According to the representatives of the Bankers Association, all but two banks out of 16 identify the originator of the funds. Some banks in Gibraltar, upon receiving a SWIFT message that does not indicate the originator of the funds, will send the funds back immediately, some will wait for five days and make enquiries, some will keep the funds if they are satisfied that the funds come from a reputable institution.

100. Although there is awareness that financial institutions must be careful when handling electronic funds transfers, the Evaluation Team feels it would be preferable that the authorities give a clear and consistent indication regarding the handling of such instruments when the originator of the funds is not disclosed.

Record-keeping

101. With respect to record-keeping, financial institutions and non-financial entities, when undertaking relevant financial business, are required to maintain transaction records for at least 5 years. They are also required to maintain account opening and customer identification records for 5 years after the account is closed. The record keeping requirements are in full compliance with Recommendation 12.

102. According to representatives of the Gibraltar Bankers Association, information concerning the identification of clients and the profile of the account is updated regularly, at least on an annual basis.

Recognition and Reporting of Suspicious Transactions

103. Under Part II of the Criminal Justice Ordinance 1995 and Part V of the Drugs Trafficking Ordinance 1995, businesses must report details of suspicious transactions to the GFIU when there is a belief that proceeds of drug trafficking or other offenses may be involved. Failure to report suspicious or unusual transactions is punishable by up to 14 years imprisonment and fines of unlimited amount.

104. All reporting institutions are encouraged to submit their disclosures to the GFIU in writing in a standard format, reproduced in the AMLGN. Police and Customs are required to provide feedback to the GFIU on the progress of their enquiries. According to the authorities and to the representatives of the industry, the GFIU provides excellent feedback to the disclosing institution and instructs it in what to do with the suspicious account or accounts. It may advise the disclosing institution either to terminate the account or to continue operating it, so that the Police or Customs can follow the trail of the money. Sometimes, with the agreement of the GFIU, the disclosing institution will decide to close the account.

105. According to the representatives of the Bankers Association, there is generally very good communication with the authorities and the sense that the fight against money laundering is an issue that concerns all.

Bank Secrecy

106. Although there is no statutory bank confidence in Gibraltar, the law relating to the financial institution's duty of confidence towards a customer is case law-based. Other than the reporting to Police, Customs or the GFIU, of suspicions that any funds or investments are derived from or may be used in connection with criminal conduct or the disclosure of any matter on which such suspicion is based, financial institutions are not required by law to provide information and records to criminal investigators (section 2(3) (a) of the Criminal Justice Ordinance 1995 and Section 55 (3) (a) of the Drugs Trafficking Offenses Ordinance 1995).

107. As a matter of practice, however, financial institutions do provide such information and records to the authorities when requested. The GFIU, the Royal Gibraltar Police and Customs stated that there is a close relationship between the authorities and the industry and advised that information can be obtained from banks, trusts, companies and other institutions, on a voluntary basis.

108. The Evaluation Team feels that it should be mandatory, by law, to provide such records to the authorities rather than leaving the issue on a voluntary basis.

Internal Anti-Money Laundering Programs and Staff Training

109. According to Part III of the AMLGN, all financial institutions are required to have internal anti-money laundering programs in place and a compliance/reporting officer. The training and education of a financial institution's staff is provided for in Part VII of the AMLGN.

110. Regarding staff training, representatives of the Bankers Association mentioned that employees in charge of opening accounts and accredited to deal with business introducers are

subject to a high level of training. It was also mentioned that with respect to the reporting of suspicious transactions, staff is encouraged to report his/her suspicions to a senior person in the bank before the matter is forwarded to the GFIU. According to the authorities and to the representatives of the Bankers Association, there is high awareness among the staff concerning the fight against money laundering. It was also mentioned that, on a senior level, there are frequent meetings with the FSC, to discuss any problems or situations.

V. Law Enforcement

111. The following agencies are involved in combating money laundering in Gibraltar:

- Royal Gibraltar Police Force
- Customs Department of the Government of Gibraltar
- Gibraltar Co-ordinating Centre for Criminal Intelligence
- Gibraltar Financial Intelligence Unit, and
- The Attorney General's Chambers.

The Royal Gibraltar Police Force (RGP)

112. The RGP is the principal law enforcement agency in Gibraltar. Its overall strength is 210 officers and 11 civilian support staff, with its rank structure largely following the British model. The RGP is charged with a wide spectrum of law enforcement responsibilities from the investigation of most serious crimes and matters relating to security to traffic enforcement.

113. The Financial Investigations Unit is a specialized unit that is responsible for the investigation of money laundering offenses created by the Drug Trafficking Offences Ordinance and the Criminal Justice Ordinance. The unit also works to identify assets for possible seizure and forfeiture.

114. Police are provided with wide powers of arrest and detention, entry, search and seizure. Undercover operations and the use of informants can be employed. The RGP is empowered by the Drug Trafficking Offences Ordinance to assist foreign countries with drug investigations.

115. The Financial Investigations Unit currently undertakes a wide variety of mostly fraud and money laundering investigations. However, the police do not have the power to compel production of financial and bank account records in the investigation stage. Currently, if a bank or other financial institution makes a disclosure under the Criminal Justice Ordinance, then the police can only invite the financial institution to show them the relevant account records and documentation. The police and financial community have a comfortable and cooperative relationship, and the police rely on this relationship to obtain financial information. However, if for some reason, a financial institution chooses not to be cooperative, the police may be able to seek to obtain a search warrant for the records, if this authority exists. Even if it does, it is unlikely that a court would grant a search warrant based only on the limited information contained in a suspicious transaction report.

116. Additionally, the police's ability to obtain the details of the beneficial ownership of companies is overly burdensome. In cases where a search warrant is not applicable, an application may be made to the Governor/Government by the Attorney General to appoint an Inspector under the Companies Ordinance. Such an appointment may only be made where it is in the public interest. The Inspector would then report to the Governor. A general power to order the production of financial documentation and information would bypass this cumbersome and potentially problematic area.

117. It is imperative that the government of Gibraltar amend its legislation to empower the police to obtain a production order for bank and other financial documents from the Court in the early stages of a money laundering investigation. These powers will greatly assist the Gibraltar law enforcement authorities in their investigation and prosecution of money laundering and other serious crime.

118. The Evaluation Team was impressed with the professionalism and commitment of the RGP. It appears that the RGP is committed to enforcing the anti-money laundering legislation.

The Customs Department of the Government of Gibraltar (Customs)

119. Apart from its normal customs responsibilities of collection and enforcement of duties and taxes, Customs also has a role in drug enforcement and the prevention of general smuggling.

120. Customs has both investigative and intelligence capabilities and employs up-to-date methods of conducting drug investigations. Customs has the power to seize cash from persons crossing the border when that cash is believed to be, directly or indirectly, the proceeds of drug trafficking. Since 1995, approximately a quarter of a million Gibraltar pounds (U.S. dollar equivalent of \$379,575) has been seized by Customs and ultimately forfeited to the General Treasury.

Gibraltar Financial Intelligence Unit (GFIU)

121. The GFIU is responsible for the receipt, analysis and dissemination of disclosure reports made to it by the reporting institutions. It is based upon the model of the United Kingdom's National Criminal Intelligence Service (NCIS) and has no investigative role.

122. The GFIU is staffed by investigators seconded by the RGP and Customs. While the current staffing levels appear to be appropriate, the GFIU is aware that staffing issues must be reviewed periodically as the workload of the GFIU is likely to increase over time.

123. The GFIU is well equipped with a modern computer system with the I2 Analyst's Notebook program that enables a careful analysis and linkage of the information the unit receives. The system would be the envy of many larger financial intelligence units.

124. Upon analysis of the suspicious transaction reports, a decision is made as to whether further investigation is needed. If further investigation is necessary, the information is

disseminated either to the RGP or Customs, as appropriate. Most often, the information is disseminated to the Financial Investigations Unit of the RGP for further investigation.

Suspicious Transaction Reporting

125. There were 220 suspicious transaction reports filed with the GFIU in 2000. The majority of the reports were made by banks and building societies. Statistics regarding the number of reports and the reporting entities is contained in Table 3.

Table 3. GFIU Statistics for 2000

Banks and building societies	153
Bureaux de change	9
Company management	12
Supervisory bodies	5
Lawyers	2
Accountants	2
Investment consultants	3
Financial advisors	3
Government departments	3
Car dealers	1
Private mail boxes	0
Couriers	1
Money transfer services	4
Telecommunications	18
Private investigators	2
Shipping agents	1
Individuals	1
Grand Total	220

126. Of the 220 disclosures, 88 disclosures were passed on to the police and 49 to Customs for further investigation. To date, none of the disclosures have resulted in any arrests or prosecutions for money laundering in Gibraltar.

127. The GFIU does have the power to exchange information with similar financial intelligence units in foreign jurisdictions. Oftentimes, the officers of the GFIU share the information directly with their colleagues in other jurisdictions. Additionally, the GFIU uses its contacts with NCIS to facilitate information in response to overseas enquiries and other information sharing.

128. The GFIU maintains an informal relationship with the Financial Services Commission (FSC). The Head of the Commission and the head of the GFIU meet regularly and share information. Both the FSC and the GFIU considered the system to work well. In the view of the Evaluation Team, it would be wise to establish a more formal group charged with analysing

trends in reporting and the issues raised by particular cases. This would enable trends to be identified and plans to be reached as to how to meet the challenge of any particular trend.

129. Gibraltar has applied for membership in the Egmont Group of Financial Intelligence Units, the worldwide network of FIUs. Its last application for membership was vetoed by Spain's FIU. Gibraltar might consider supplementing its next application for membership with formal letters of support from other members. The Evaluation Team saw no reason for Gibraltar's FIU to be excluded from membership in the Egmont Group and felt that the Egmont Group could benefit from the participation of the GFIU.

Attorney General's Chambers

130. The Attorney General has full discretionary powers in the prosecution of money laundering offenses, and as such will obviously play a significant role in money laundering and forfeiture investigations. To date, there have been no money laundering prosecutions conducted in Gibraltar. However, the RGP has cooperated in a major money laundering prosecution in the UK involving Gibraltar bureaux de change.

131. The attorneys of the Attorney General's Chambers have quite wide ranging powers, particularly under the Drug Trafficking Ordinance and the Criminal Justice Ordinance. Such powers include investigation powers, the obtaining of information through production orders and various powers concerning seizure, freezing and forfeiture.

132. The Attorney General's Chambers acts as the Central Authority for the provision of mutual legal assistance. While there is a clear willingness to cooperate with requests for assistance from foreign authorities, the Attorney General is limited in his ability to cooperate to only drugs trafficking matters and non-drugs trafficking matters where criminal proceedings have been instituted and the request is from or made on behalf of a court or tribunal and the request is solely for the taking of oral testimony and/or the production of documents. The absence of legislation authorising mutual legal assistance at the investigative stage in non-drugs trafficking matters is a major deficiency in Gibraltar's anti-money laundering regime. This lack of authority has prevented Gibraltar from providing assistance to a number of jurisdictions, most particularly the United States, in non-drug investigations.

133. It is the Evaluation Team's impression that the Attorney General's Chambers is a professional organization, staffed by well trained professionals who are committed to their responsibilities.

VI. Conclusions and Recommendations

134. Gibraltar has a comprehensive legal framework in place concerning the fight and prevention of money laundering. Both the authorities and the representatives of the financial sector seem committed to preventing and fighting money laundering. Although there seems to be acute awareness that if something goes wrong in Gibraltar it can have a disproportionate

reputational impact, the authorities appear to feel that money laundering is not a problem in Gibraltar.

135. The authorities clearly demonstrate the political will to ensure that their financial institutions and the associated professionals maximise their defences against money laundering, and cooperate effectively in international investigations into criminal funds. The standards set by Gibraltar are close to complete adherence with the FATF 40 Recommendations with a few remaining areas where the appropriate changes will allow these standards to be met.

136. Gibraltar ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1994, and, in 1996, extended its legislation on money laundering to all serious crimes. The money laundering offences are broad, and cover a wide range of offences (all offences with a maximum of over one year imprisonment). There is a requirement to report suspicious transactions, backed up with effective measures to prevent tipping off, and to provide the necessary protections to those who submit reports.

137. Current law places significant constraints on cooperation between Gibraltar and other jurisdictions in relation to non-drug related money laundering offences. Despite these constraints, Gibraltar authorities have a good record of cooperation with overseas requests for assistance, on both regulatory and criminal matters. The wide range of predicate offences in Gibraltar law should prevent the requirement for dual criminality from hindering cooperation, including cases involving tax crimes. The evaluators recommend the enactment of the proposed Mutual Legal Assistance Law as soon as possible.

Financial Issues

138. Gibraltar has adequate rules for the licensing and creation of financial institutions, and the FSC assesses the background of their managers and beneficial owners. Gibraltar has adequate regulations and supervision of financial institutions, with the exception of bureaux de change. Although acknowledging that, according to the Gibraltar authorities, Customs effects visits to the bureaux de change, at least annually, to ensure compliance with anti-money laundering requirements, the Evaluation Team feels that the fact that bureaux de change are not supervised by the FSC is a source of concern.

139. At the time of the on-site visit, the Evaluation Team welcomed the proposed measure contained in the Consultation Paper – Amendments to the Anti-Money Laundering Regime (1 March 2001) – of abolishing most introducer certificates. However, the Team felt that continuing to allow group introductions might not be advisable, especially in the light of the discretion financial institutions have in obtaining additional information about the regime on bank secrecy, record keeping and data protection applicable in the jurisdiction. Notably, since the on-site visit, the Gibraltar authorities informed the Evaluation Team that the AMLGN have been amended to disallow the use of introducer certificates entirely, including group introductions.

140. Subsequent to the on-site visit to Gibraltar, the AMLGN have been amended and reliance on third parties to conduct “know your customer” procedures regarding customers (introducer

certificates) has been severely limited. The Evaluation Team welcomes the amendments made and finds them satisfactory.

141. There are adequate customer identification requirements.

142. Mechanisms for achieving anonymity, such as share warrants to bearer, can be – and often are – misused for illicit purposes, such as money laundering. Therefore, the Evaluation Team welcomes the commitment given by the Government of Gibraltar to eliminating these mechanisms.

143. Regarding client accounts held by legal professionals and other intermediaries, such as stock brokers, fund managers, accountants, and estate agents, although the before-mentioned persons or entities must know their clients and will be held liable for account activity, it is the Evaluation Team's opinion that, in accordance with Recommendations 11 and 14, at least the nature of the activity to be conducted by the intermediary, on behalf of its customer, through the account, should be disclosed to the institution opening the account. In fact, under paragraph 4.68(ii) of the AMLGN, if unusual transactions take place in such accounts, financial institutions must report them to the Gibraltar Financial Intelligence Unit, which might be difficult since the financial institutions involved might not have enough information to profile the intermediary's client and, as such, will have difficulty detecting suspicious activity involving the transactions being carried out.

144. The Evaluation Team feels that the amendments to Part IV of the AMLGN regarding the identification of trusts will enable financial institutions to more easily meet their requirements when handling trust or foundation accounts, although the lack of a public or central record of trust beneficiaries remains an issue of concern.

145. The Evaluation Team feels that it should be mandatory, by law, for financial institutions to provide information and records to the authorities, when money-laundering cases are being investigated, not leaving the issue on a voluntary basis.

Legal Issues

146. Gibraltar needs to expand its ability to provide mutual legal assistance for all types of crimes in the investigative and prosecution stages by enactment of the proposed Mutual Legal Assistance Law.

147. Gibraltar should provide for powers to seize cash at the border on an all-crimes basis, apply random checks, and monitor the need for additional measures.

148. Currently, cooperation at the investigative stage in criminal matters is only possible where the relevant offence was drug trafficking. In other cases, cooperation is only possible where court proceedings have already been initiated. Once the proposed Law is enacted, Gibraltar will be able to cooperate with foreign enquiries on the full range of money laundering issues. It will allow information to be exchanged with foreign authorities (administrative, law enforcement and judicial) at the intelligence-gathering, investigation and prosecution stages in

respect to all criminal offences. It is recommended that the government of Gibraltar enact this proposed legislation as soon as possible.

149. Current law places significant constraints on cooperation between Gibraltar and other jurisdictions in relation to non-drug related money laundering offences. Despite these constraints, Gibraltar authorities have a good record of cooperation with overseas requests for assistance, on both regulatory and criminal matters.

Law Enforcement Issues

150. Other than the reporting to Police, Customs or the GFIU, of suspicions that any funds or investments are derived from or used in connection with criminal conduct or the disclosure of any matter on which the such suspicion is based, financial institutions are not required by law to provide information and records to criminal investigators. The GFIU, the Royal Gibraltar Police and Customs stated that there is a close relationship between the authorities and the industry and advised that information can be obtained from banks, trusts, companies and other institutions, on a voluntary basis.

151. The GFIU reported that there is no statutory authority gateway at present for the GFIU to share information with external income tax authorities. It would seem desirable that, at the very least in the case of fraudulent evasion of tax, that policy should be reviewed. There is a government commitment to the OECD to exchange information on criminal and civil tax matters.

152. There is an informal relationship between the FSC and the GFIU; the heads of the two entities meet regularly and share information. Both the GFSC and the GFIU considered the system worked well. In the view of the Evaluation Team, it would be wise to establish a more formal group charged with analysing trends in reporting and the issues raised by particular cases. This would enable trends to be identified and strategies to be developed on how to meet challenges posed by emerging trends.

153. At the time of the on-site visit, the Attorney General's Chambers indicated that statistics were not maintained as to the number of incoming requests or whether the letters of request were acceded to or refused. Gibraltar authorities report that while there are no central records kept of the number of requests received and acceded to, the Royal Gibraltar Police, Customs, and the Attorney General's Chambers each maintain their own records of such requests. Until October 2001, no records were kept by the Attorney General's Chambers. However, recently, data on requests received has begun to be collated by the Attorney General's Chambers. Without such information, it is difficult to judge what level of co-operation is being given to the international community.

154. The absence of a law allowing evidence to be obtained at an investigatory stage other than in drug cases is a serious gap in the legislation. It seems that formal requests for evidence at this stage are turned down relatively frequently.

155. Additionally, the police's ability to obtain the details of the beneficial ownership of companies is overly burdensome. In cases where a search warrant is not applicable, an application may be made to the Governor/Government by the Attorney General to appoint an Inspector under the Companies Ordinance. Such an appointment may only be made where it is in the public interest. The Inspector would then report to the Governor. A general power to order the production of financial documentation and information would bypass this cumbersome and potentially problematic area.

156. A power to compel production of records is required. This would be an invaluable investigatory tool for the police and it would protect financial institutions providing the information. The Court needs to be able to order the production of documents for two purposes:

(i) to investigate whether a person has benefited from the proceeds of crime, i.e., tracing the proceeds for the purposes of confiscation; and,

(ii) to investigate substantive criminal offences such as money laundering.

157. The overall number of disclosures is encouraging. There has been a careful analysis of the type of institution making disclosures reflecting very few disclosures by professionals. Steps can be taken to remedy this imbalance by a process of education. This could involve, at a basic level, liaison between the law enforcement agencies and the professional associations inviting those associations to educate their members as to their responsibilities under the legislation.

VII. Summary (for publication)

Gibraltar has in place a robust arsenal of legislation, regulations and administrative practices to counter money laundering. The authorities clearly demonstrate the political will to ensure that their financial institutions and associated professionals maximise their defences against money laundering, and cooperate effectively in international investigations into criminal funds. Gibraltar is close to complete adherence with the FATF 40 Recommendations. Once the appropriate changes are made to the few remaining deficient areas, these standards will be fully met.

Gibraltar has a comprehensive legal framework in place for preventing and combating money laundering. Gibraltar ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1994, and, in 1996, extended its legislation on money laundering to all serious crimes. The money laundering offences are broad, and cover a wide range of offences (all offences with a maximum of over one year imprisonment). There is a requirement to report suspicious transactions, backed up with effective measures to prevent tipping off, and to provide the necessary protections to those who submit reports.

Current law places significant constraints on cooperation between Gibraltar and other jurisdictions in relation to non-drug related money laundering offences. Despite these constraints, Gibraltar authorities have a good record of cooperation with overseas requests for assistance, on both regulatory and criminal matters. The wide range of predicate offences in Gibraltar law should prevent the requirement for dual criminality from hindering cooperation,

including cases involving tax crimes. The evaluators recommend the enactment of the proposed Mutual Legal Assistance Law as soon as possible. Once the proposed Law is enacted, Gibraltar will be able to cooperate with foreign enquiries on the full range of money laundering issues. It will allow information to be exchanged with foreign authorities (administrative, law enforcement and judicial) at the intelligence-gathering, investigation and prosecution stages in respect to all criminal offences.

The degree to which Gibraltar's financial institutions are used to launder the proceeds of crimes committed locally appears to be small. Because of the nature of the financial business conducted in Gibraltar, few of its financial institutions (with the exception of those serving the local community) routinely take cash deposits. However, cash placements and the exchange of that cash through the fairly unregulated bureaux de change could pose a fairly substantial risk of money laundering. In addition to its powers to seize currency believed to be drug proceeds, Customs should be provided with the powers to seize cash on an all-crimes basis, apply random checks, and monitor the need for additional measures. Regarding the laundering of proceeds from crimes committed outside Gibraltar, there is no evidence of major or systematic money laundering taking place in Gibraltar.

The Financial Services Commission (FSC) is responsible for the licensing, supervision and regulation of financial services providers operating in or from within Gibraltar. This includes banks, insurance companies, investment firms, insurance intermediaries, company managers, professional trustees, and insurance company managers. Gibraltar has adequate rules for the regulation and supervision of its financial institutions, with the exception of bureaux de change, which are licensed by the Financial and Development Secretary and are not supervised by the FSC. Although the Gibraltar authorities report that Customs visits the bureaux de change at least annually to ensure compliance with anti-money laundering requirements, the Evaluation Team feels that the fact that bureaux de change are not supervised by the FSC is a source of concern.

There are adequate customer identification requirements. Subsequent to the on-site visit to Gibraltar, the Anti-Money Laundering Guidance Notes have been amended and reliance on third parties to conduct "know your customer" procedures regarding customers (introducer certificates) has been severely limited. The Evaluation Team welcomes the amendments made and finds them satisfactory. Regarding client accounts held by legal professionals and other intermediaries, such as stock brokers, fund managers, accountants, and estate agents, although the before-mentioned persons or entities must know their clients and are liable for account activity, the Evaluation Team recommends that, in accordance with FATF Recommendations 11 and 14, at least the nature of the activity to be conducted by the intermediary, on behalf of its customer, through the account, should be disclosed to the institution opening the account.

Although financial institutions must report suspicious transactions to the police, Customs, and the GFIU, the police do not have the power to compel production of financial and bank account records in the investigation stage without a court order. Currently, if a bank or other financial institution makes a disclosure under the Criminal Justice Ordinance, then the police can only invite the financial institution to show them the relevant account records and documentation. The relevant authorities indicated that there is a close relationship with the industry and advised that information can be obtained from banks, trusts, companies and other institutions, on a

voluntary basis. However, the Evaluation Team feels that it should be made mandatory, by law, for financial institutions to provide information and records to the authorities, when money-laundering cases are being investigated. A power to compel production of records is required. This would be an invaluable investigatory tool for the law enforcement authorities and it would protect financial institutions providing the information.

There were 220 suspicious transaction reports filed with the Gibraltar Financial Intelligence Unit (GFIU) in 2000. The overall number of disclosures is encouraging. There has been a careful analysis of the type of institution making disclosures reflecting very few disclosures by professionals. To remedy this imbalance, liaison between the law enforcement agencies and the professional associations could include inviting those associations to educate their members as to their responsibilities under the legislation.

There is no statutory authority gateway at present for the GFIU to share information with external income tax authorities. There is a government commitment to the OECD to exchange information on criminal and civil tax matters.

There is an informal relationship between the FSC and the GFIU; the heads of the two entities meet regularly and share information. Both the GFSC and the GFIU considered the system works well. The Evaluation Team recommends establishment of a more formal group charged with analysing trends in reporting and the issues raised by particular cases to enable strategies to be developed on how to meet challenges posed by emerging trends.

Gibraltar authorities report that while there are no central records kept of the number of international requests received and acceded to, the Royal Gibraltar Police, Customs, and the Attorney General's Chambers each maintain their own records of such requests. Until October 2001, no records were kept by the Attorney General's Chambers. However, recently, data on requests received has begun to be collated by the Attorney General's Chambers. Such information will provide an important statistical tool regarding the level of co-operation given to the international community.

The Evaluation Team considers that Gibraltar has established a comprehensive anti-money laundering system, and that adoption of the proposals contained in this mutual evaluation report will ensure that it complies with the best international anti-money laundering standards. Finally, the Evaluation Team would like to again express its appreciation to the authorities of Gibraltar for the constructive manner in which they participated in the mutual evaluation process.