



**Financial Services
Commission**

IMF Report

Update on Recommendations

Date of Paper : 3 March 2006



General Matters

Recommendation		Response
Resources Recommendation in paragraphs 93, 112, 152, 220 & 235.	The FSC should take on additional staff to assist in on-site inspections and other supervisory duties.	The FSC has recruited a significant number of additional staff and will consider recruiting more if that is necessary.
Fitness & Propriety Recommendation in paragraphs 115, 156 & 225.	The FSC should issue a guidance note setting out the fit and proper criteria.	Recommendation accepted. The FSC has issued a policy statement on the fit and proper test (FSC Newsletter No1 of 2002). This enables prospective applicants and authorised firms to better understand the criteria they must satisfy.
Civil Sanctions Recommendation in paragraphs 49, 100 & 133.	The FSC should consider a regime of monetary sanctions that would provide more flexibility to impose penalties and in amounts high enough to serve a deterrent for serious violations.	The Government is in favour in principle of extending monetary sanctions. Any such extension will of course have to take into account any administrative structures required to provide for appeal etc.
Removal of Officers from Authorised Firm Recommendation in paragraphs 52 & 238.	The FSC should seek explicit legal power to suspend, remove or bar from working in the financial services industry an officer or director of a regulated entity.	FSC considers that it has the necessary powers to take action against individuals in the circumstances described in the report and have exercised these powers in the past. However, it has proposed the introduction of an "Approved Persons" regime to Government which will cover this area
Statutory Duties Recommendation in paragraph 148.	The statutory responsibilities of the FSC should be amended to include specifically i. protection of investors, ii. ensuring markets are fair, and iii. reduction of systemic risk.	The FSC has adopted these as regulatory objectives and included them as part of its suggested changes to the Financial Services Commission Ordinance which is with Government
Petitioning for Winding up of Firms Recommendation in paragraph 236.	Legislation should be introduced to provide for the petitioning of the winding up of a regulated entity.	This has been agreed by Government and FSC has included this as part of its suggested changes to the Financial Services Commission Ordinance which is with Government.



Recommendation		Response
Protection of FSC Staff from Civil Suits Recommendation in paragraph 94.	Legislation should be amended to provide for the protection of FSC's staff against civil suits and indemnifying them against the costs associated with such suits.	The FSC has included this as part of its suggested changes to the Financial Services Commission Ordinance which is with Government
On-site Visits Recommendation in paragraphs 131 & 157.	The FSC should institute a structured programme of on-site visits.	As part of its risk assessment programme the FSC has implemented a structured programme of on-site visits across all sectors.
Manuals Recommendation in paragraphs 156, 226, 230 & 234.	The FSC should use on-site and off-site inspections manuals as well as procedures and applications manuals to provide qualitative guidance.	Recommendation accepted. Procedures manuals have been in existence for several years, for instance for banking and insurance supervision. The FSC has also drafted similar manuals for the remaining sectors which codify existing practices and procedures. Additionally a practice document has been rolled out to all regulatory staff on effecting on-site work.
Liaison with GFIU Recommendation in paragraph 135.	The FSC should hold regular meetings with the Financial Intelligence Unit in order to exchange information.	The FSC works closely with GFIU as and when necessary via the regular channels of communication. There is also an enforcement committee on which the FSC and GFIU participate
Financial Services Ombudsman Recommendation in paragraph 129.	Gibraltar should seek to employ a financial services ombudsman.	The matter is being considered by Government.
Corporate Governance Recommendation in paragraph 98 & 116.	The FSC should be given direct powers to specifically deal with corporate governance issues.	The FSC is of the view that adequate powers exist but has proposed the introduction of an "Approved Persons" regime to Government which sets out senior management responsibility



Investment Services

Recommendation		Response
Self-Regulatory Organisations Recommendation in paragraph 153.	The FSC should take into account the manner in which self-regulatory organisations could augment its own efforts in securities regulation.	The FSC does not consider the industry is large enough to make self-regulation viable. The FSC works closely with the industry associations and consults them on regulatory changes as a matter of course.

Controlled Activities

Recommendation		Response
Revised Conduct of Business Regulations Recommendation in paragraphs 204 & 245.	The FSC should implement the draft Conduct of Business regulations which are specifically directed towards the controlled activities sector.	Proposed revised regulations have been submitted to Government.
Extension of Scope to Regulated Activities Recommendation in paragraphs 224 & 227.	Current proposals to amend the legislation to extend the types of activities constituting licensable company management services should be implemented.	Changes to the legislation to bring company formation agents and registered office providers within the definition of regulated activities have been put in place.
Flee Clauses Recommendation in paragraph 196.	Trust legislation should be amended to restrict the use of flee clauses.	The Government's stance, based on legal advice, is that although there are no restrictions on any specific events that might trigger a flee clause, there are certain events that were they to be included, would render it as unenforceable as contrary to public policy, for instance if the flee clause were to be triggered by the occurrence of a criminal act or fraud. Notwithstanding this fact, the Government is considering the recommendation.