



Government of Gibraltar



Financial Services Commission

IMF Report

Response to Recommendations

11th April 2002

The IMF team made several recommendations covering basically the same point applicable to all sectors covered by the FSC's operations. For ease of reference, and to minimise repetition, where possible these points have been grouped together under generic headings as set out below.

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. | Recommendation accepted. The FSC has already recruited additional enforcement and supervisory 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 recently 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, the need to keep these powers under review is noted. |
| 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 report recognises that these objectives are already subsumed within the language of the Gibraltar statute and that FSC staff bear them in mind when performing their duties. However, consideration will be given to making them explicit if an appropriate opportunity arises. |
| 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. | The Government is agreeable in principle to introduce the necessary powers to allow the FSC to petition the court for the winding up of (a) regulated firms, and (b) companies carrying on or holding themselves out as carrying on regulated business without authorisation. |

| | | |
|--|---|---|
| <p>Protection of FSC Staff from Civil Suits Recommendation in paragraph 94.</p> | <p>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.</p> | <p>The Government will consider what changes it requires to make to the Financial Services Commission Ordinance to give this recommendation effect.</p> |
| <p>On-site Visits Recommendation in paragraphs 131 & 157.</p> | <p>The FSC should institute a structured programme of on-site visits.</p> | <p>Recommendation accepted. On-site visits have been taking place for some time in respect of the banking and controlled activities sector. The FSC is now implementing a structured programme of on-site visits across all sectors.</p> |
| <p>Manuals Recommendation in paragraphs 156, 226, 230 & 234.</p> | <p>The FSC should use on-site and off-site inspections manuals as well as procedures and applications manuals to provide qualitative guidance.</p> | <p>Recommendation accepted. Procedures manuals have been in existence for several years., for instance for banking and insurance supervision. The FSC is currently drafting a similar manual for the remaining sectors which will codify existing practices and procedures.</p> |
| <p>Liaison with GFIU Recommendation in paragraph 135.</p> | <p>The FSC should hold regular meetings with the Financial Intelligence Unit in order to exchange information.</p> | <p>Recommendation accepted. The FSC already works closely with GFIU as and when necessary via the regular channels of communication.</p> |
| <p>Financial Services Ombudsman Recommendation in paragraph 129.</p> | <p>Gibraltar should seek to employ a financial services ombudsman.</p> | <p>The matter is being considered by Government.</p> |
| <p>Corporate Governance Recommendation in paragraph 98 & 116.</p> | <p>The FSC should be given direct powers to specifically deal with corporate governance issues.</p> | <p>The FSC is of the view that adequate powers exist but is exploring with the Government whether these powers can be drafted more explicitly.</p> |

Anti-Money Laundering Issues

| <i>Recommendation</i> | | <i>Response</i> |
|---|---|--|
| Revision of Anti-Money Laundering Guidance Notes Recommendation in paragraphs 56, 58 & 240. | Various amendments should be made to the Anti-Money Laundering Guidance Notes in order to clarify several issues and the implementation of the consultation paper. Also recommended that the AMLGN be available on the FSC's website. | Recommendation accepted. Part IV of the Anti-Money Laundering Guidance Notes has been redrafted. Consideration has been given to the use of the Recommendation wording in the re-drafting. Amendments arising from the consultation process will take into account recommendation in paragraph 58 in full. It is intended that a copy of the revised Anti-Money Laundering Guidance Notes be made available on the FSC's website. Hard copies will also continue to be made available. |
| Anti-Money Laundering Arrangements Recommendation in paragraph 99. | The FSC should adopt a more structured approach to overseeing compliance with anti-money laundering procedures. | Recommendation accepted. Scopes for Reporting Accountants Reports for 2001/2 for banking institutions has been issued and concentrate on anti-money laundering procedures and KYC. |

Banking

| <i>Recommendation</i> | | <i>Response</i> |
|---|--|--|
| Guidance Note on Loan Principles Recommendation in paragraph 95. | The draft guidance notes addressing loan principles should be adopted. | Recommendation accepted. Guidance Note on provisioning policy statements has been finalised and issued to industry. |
| Loan Classification & Country Risk Regime Recommendation in paragraphs 96 & 97. | The FSC should require banks to introduce a loan classification regime that would reflect best international practice. | The FSC accepts the principle . However, the loan book composition of the majority of banks is currently very straightforward and uncomplicated. Likewise bank lending is mainly of a personal nature or for private investment and consequently banks in Gibraltar do not run sovereign debt positions. |

Insurance

| <i>Recommendation</i> | | <i>Response</i> |
|---|---|---|
| Underwriting of Insurance Business Recommendation in paragraph 115. | The FSC should introduce a more structured approach to determining exposure on the insurance business underwritten. | Recommendation accepted. The FSC will adopt techniques to assist in determining the exposure on insurance business underwritten. |
| Reasons for the Revocation or Removal of a Licence under the Insurance Companies Ordinance Recommendation in paragraph 115. | Reasons for refusal or revocation of licence should be expanded on at next review of Insurance Companies Ordinance. | This recommendation is made in the context of a future review of the Insurance Ordinance. Although the FSC considers it already has sufficient powers in this regard it will consider the point carefully when such a review takes place. |
| Insurance Groups Directive Recommendation in paragraph 117. | Gibraltar should implement the EU Insurance Groups Directive as soon as possible. | Recommendation accepted. Legislation is in final stages of drafting. |
| Review of Market Conduct Issues Recommendation in paragraph 129. | The FSC should conduct a full review of market conduct issues. | Recommendation accepted. The FSC is to review market conduct issues and current division of responsibilities between Insurance Supervisor and Investment Services Supervisor. |

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 accepts the principle but doubts 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. | The Government accepts the recommendation and the relevant regulations will be introduced as soon as the current consultative process ends. |
| 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. | Recommendation accepted. Changes to the legislation, which would bring company formation agents and registered office providers within the definition of regulated activities, are currently being drafted. In practice most lawyers and auditors conduct professional trustee work and company management via special purpose companies duly licensed by the FSC. |
| 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. |