

FSC's Response to IMF Report's Recommendations



IMF Recommendation				Response
AML/CFT	R.05 & 8	Customer due diligence, including enhanced or reduced measures	<p>Review existing correspondent banking arrangements to ensure that the institution has gathered sufficient information on the reputation and supervisory arrangements for the respondent;</p> <p>Ensure effective implementation of the new language in the AMLGNs requiring that institutions carefully consider the risks associated with new technologies;</p> <p>Generally review the AMLGNs for language and tone which may read as permissive or informational in places.</p>	Revised Guidance notes (Dec 07) addresses the issue of correspondent banking relationships and permissive language.
	R.09	Third parties and introduced business	Require financial institutions relying on intermediaries to immediately obtain from that intermediary information on the identity of the customer, and beneficial owner of the account and the legal status of legal persons or arrangements. Beneficial ownership requirements	

AML/CFT	R.09	Third parties and introduced business	<p>should be included in law or regulation;</p> <p>Require that financial institutions have access, without delay, to the identification or other relevant documentation housed with the intermediaries;</p> <p>Require that institutions have processes to assess whether or not an institution within the EU may be accepted as an intermediary; and</p> <p>Determine to what extent the industry has been allowing intermediaries under the fourth scenario of the AMLGNs (paragraph 4-85) and ensure that all institutions are now obtaining the appropriate due diligence information.</p> <p>Ensure that the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party.</p>	<p>Because Gibraltar's introducer based business already requires that underlying documentation be supplied by the intermediary at the point where the relationship is commenced, the recommendation is already met.</p> <p>Before an intermediary can be used to introduce business a firm must satisfy itself that the introducer meets the criteria of eligible introducer. No action required.</p> <p>As compliance with the requirements of the Guidance Notes are on continual basis, when the changes are introduced which impose a higher standard, the firms are required to upgrade any existing relationships to ensure that these meet the revised standards.</p> <p>The Guidance Notes already make it a requirement that the financial institution remains responsible for the underlying customer identification documentation. No action necessary.</p>
	R.12	Customer due diligence and record-keeping	<p>Address the risks associated with new technologies and non face-to-face business</p> <p>Finalize the development and release of the regulations for the Conduct</p>	<p>The revised Guidance Notes have already been enhanced to tackle the risks of new technologies.</p> <p>The Conduct of Business (Fiduciary Services) Regulations have already been issued.</p>

AML/CFT	R.12	Customer due diligence and record-	of Business (Fiduciary Services)	The revised Guidance Notes have already been enhanced to tackle the risks of new technologies.
	R.13, 14, 19, 25 & SR.IV	Suspicious transaction reports and other reporting	Ensure that there are requirements in place to report suspicions on attempted transactions	Current re-draft of the Guidance Notes includes a specific requirement in relation to attempted transactions.
	R.15 & R.22	Internal controls, compliance, audit and foreign branches	Extend AMLGNs to include Terrorist Financing in the areas of controls and training; Ensure that financial institutions have an internal audit or other mechanism to check compliance with the AMLGNs in place, including bureaux de change and the stand-alone money transmitter; and Extend the standards for hiring to insurance firms, bureaux de change, and money transmitters.	The revised Guidance Notes encapsulate Terrorist Financing as a core issue throughout the notes. The requirements in relation to internal audit functions over AML/CFT processes has already been taken account for in the current revision of the Guidance Notes.
	R.23, 30, 29, 17, 25 & 32	The supervisory and oversight system-competent authorities and SROs Role, functions, duties and powers	Ensure that all financial institutions are subject to requirements that prohibit criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution; Extend the AMLGNs to focus not only on ML, but also on TF; and	The Guidance Notes published in July 2007 (and revised since) fully embrace TF concepts.

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Banking	BCP 01	Objectives, autonomy, powers and resources	<p>The FSC's objectives and responsibilities should be enshrined in law by amendment to the FSCO.</p> <p>The level of fees payable to the FSC should be fixed by the FSC.</p> <p>The term of office of the Commissioner and members of the Commission should be established in the FSCO.</p> <p>The amendment proposed by the FSC to FSCO Section 18 requiring the FSC to indemnify staff for costs that arise in defending themselves against legal action should be introduced.</p>	<p>The revised Financial Services Commission Act did not create greater autonomy in respect of fees. This is still an area for the Government to amend via legislation.</p>

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Banking	BCP 13	Other risks	The FSC should require banks that FSC assesses as having a high potential liquidity risk meet their liquidity mismatch ratio or provide information about liquidity positions on a daily basis and duly report whenever a breach occurs.	<p>Were there to be case where the FSC assessed a particular bank as having high potential liquidity risk then the FSC could request that bank to provide further information about liquidity positions on a more frequent basis than currently (quarterly). No such case has arisen.</p> <p>Liquidity monitoring ratios are not fixed limits over which a bank cannot operate at, but rather, trigger points which should prompt a call from the bank to provide, or for the FSC to seek, an explanation for the occurrence. Liquidity ratios should not therefore be seen as irrevocable, but instead, they should be perceived as malleable tools which will evolve as the business of a bank develops.</p> <p>Where a bank does not meet its liquidity mismatch ratio, an explanation is always sought regarding the reasons for this and a view is then taken on whether this raises any particular issues. In most cases, any mismatch is a result of business development and is actually a pointer to the need to reassess the liquidity ratios set with a view to determining whether still valid.</p> <p>During November 2007 the Commission issued a newsletter on Liquidity risk, which advises that the Commission will be adopting the Basle Core principles on Liquidity risk.</p>
Insurance	CP 07	Suitability of Persons	It is imperative that the introduction of the "Approved Persons Regime" becomes effective in 2006.	<p>IMF commented "In that area where the existing legislation is limited i.e., notification as required by ECg, the FSC has taken the initiative to introduce a "Approved Person's Regime." This has been drafted and is expected to be presented to the Gibraltar Assembly in 2006. ECg states: "Where the insurer becomes aware of circumstances that may be relevant to the fitness and propriety of its key functionaries, it is required to notify the supervisory authority as soon as possible."</p> <p>The Approved Persons Regime is still being considered by the Government of Gibraltar.</p>

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Insurance	CP 09	Corporate Governance	It is imperative that the introduction of the "Approved Persons Regime" becomes effective in 2006.	<p>The IMF Commented "Currently draft legislation is being considered by the Government covering 'Approved Persons Regime', which incorporates Corporate Governance Principles. The proposed legislation when introduced will confirm compliance with this principle. Until then specific reference will continue to apply to this principle in on-site inspections. In practice however it is expected that the majority of companies in Gibraltar would not require lengthy statements on Corporate Governance because of their size and nature."</p> <p>The Approved Persons regime is still being considered by the Government of Gibraltar.</p> <p>The FSC issued a Consultation Paper - Corporate Governance of Firms on 17th December, 2008. Feedback on the Consultation Paper should reach the FSC by no later than close of business on 31st March 2009.</p>
	CP 10	Internal Control	It is recommended that legal requirements should be strengthened in relation to the annual submission of detailed business plans.	The FSC considers that it already has sufficient powers and these are set down in the Notification of Requirements which accompanies each insurance licence issued. The powers are contained in sections 64,66 98 and 100 of the Insurance Companies Act.
	CP 11	Market analysis	Recommended that complete market statistics and detailed analysis should be compiled by the FSC and attention should be paid in detail to market analysis and trends both in Gibraltar and EU states, particularly the U.K.	The Gibraltar insurance market is very small and the FSC has obtained statistical information from licence holders when specific events have arisen. The FSC subscribes to and obtain reports on trends and developments in key markets in which Gibraltar insurers operate on a passporting basis.
	CP 12	Reporting to supervisors and off-site monitoring	It is recommended that reporting time, for annual financial returns, should be reduced to four months.	New Reporting Forms for General Insurers and Reinsurers were introduced in February, 2008. New returns are required to be emailed to the FSC. In addition many insurers continue to be required to submit quarterly returns to the FSC, enabling the prompt identification of any matters requiring regulatory attention.

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Insurance	CP 13	On-site inspection	It is recommended that the current program of on-site inspections be completed as soon as possible. The majority of the principles that are "Largely Observed" relate to fact that the current volume is less than that required to confirm observance of some ICP's.	The FSC has, since the review, initiated a comprehensive risk-assessment programme of all insurers which includes on-site visits by FSC teams.
	CP 18	Risk assessment and management	It is recommended that on site inspections be completed as soon as possible to confirm practical application of risk management systems.	The FSC has, since the review, initiated a comprehensive risk-assessment programme of all insurers which includes on-site visits by FSC teams.
	CP 19	Insurance activity	It is recommended that on site inspections be completed as soon as possible to confirm application of approved underwriting procedures and operational risk control.	The FSC has, since the review, initiated a comprehensive risk-assessment programme of all insurers which includes on-site visits by FSC teams.
	CP 20	Liabilities	It is recommended that on site inspections be completed as soon as possible to confirm practical application of declared policies on technical provisioning.	Risk assessments consider claims provisions, reserves and their adequacy. Where appropriate, this aspect of an insurer's business is reviewed in detail during an on-site inspection.
	CP 28	Anti-money laundering	It is recommended that on site inspections be completed as soon as possible to confirm that approved AML/CFT procedures are applied in practice.	AML controls and procedures have been checked during risk assessments/on-site inspections of life insurers and insurance managers. AML requirements do not apply to general insurers.