

International Monetary Fund's Financial Sector Stability Assessment and Caribbean Financial Action Task Force Report

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International Monetary Fund's Financial Sector Stability Assessment



| Issue | Recommendation | Remarks | Agency Responsible | Action |
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| <p>The Regulatory Code, while in force needs to be amended to include the section that covers investment business. Further action is required from the FSC to ensure effective implementation of the RC.</p> | <p>Prompt and full implementation of the Regulatory Code, for all sectors should be carried out.</p> | <p>The Regulatory (Amendment) Code has been drafted and submitted to the industry for consultation. The consultation period ended 31st August 2010. It is now in the final stages of review and should be issued by the end of 2010. The Regulatory Code, 2010 is now being fully implemented and the amendments will be taken on board once enacted.</p> | <p>Financial Services Commission</p> | <p>The Regulatory Code has been in effect since February, 2010 in relation to banks and company service providers, and insurance business; and since March in relation to financing and money services business. The Regulatory (Amendment) Code has now been finalised and covers matters related to investment business as well as other general aspects relating to all sectors of the financial services industry. The Regulatory (Amendment) Code is scheduled to take effect from 31st March, 2011.</p> |



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| <p>The effectiveness of the implementation of SIBA could not be assessed as it was passed on the first day of the IMF mission.</p> | <p>Prompt and full implementation of the new Securities and Investment Business Act should be carried out.</p> | <p>Since the IMF's visit, SIBA has been brought into force and is currently being implemented.</p> | <p>Financial Services Commission</p> | <p>SIBA is now fully operational and is being fully utilised. Other relevant subsidiary legislation with respect to public funds will be issued before the end of December 2010 to become operational on 31st March 2011. Work on the development of a Public Issuers Code will begin and be completed by the first half of 2011.</p> |



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| <p>Given the size and importance of the trust and corporate services provider sector, the assessors felt that a greater number of inspections might be undertaken. The frequency of inspections appeared low (although the quality of examinations appeared high), given the size of the regulated population and the importance of the sector to Government's revenues.</p> | <p>Provide additional resources for on-site review of corporate and trust service providers.</p> | <p>A dedicated on-site inspection unit has been established within the Commission which will take lead responsibility for coordinating and conducting all on-site reviews. The unit is currently staffed with a senior regulator from each division and is led by the on-site inspection coordinator. Additional resources will be added as necessary.</p> | <p>Financial Services Commission</p> | <p>On the basis of the action already undertaken as identified in the third column, no further action is required. However, a full inspection programme for 2011 and subsequent years will continue to be developed and implemented by the Commission.</p> |



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| <p>The prohibition on the conduct of unauthorised banking and trust business under the BTCA attracts fines of not more than \$50,000 or a prison term not exceeding two years, or both. This fine appeared to the examiners to be very low, given the importance of both the banking and trust company business to the jurisdiction and the considerable damage that could be done to the economy from unlicensed business. The examiners also noted that other notable offences attracted fines that appeared low.</p> <p>The examiners recognised that the fines under SIBA are higher than those under the Financial Services Commission Act, 2001 (maximum of \$2,000 to \$20,000) or the Mutual Funds Act, 1996 (maximum \$5,000 to \$50,000), but still only range from a maximum of \$15,000 to \$75,000, which they did not consider to be large sums of money for entities engaged in the financial services business.</p> <p>The report also noted that one of the deficiencies in AML/CFT came in the form of the dissuasiveness of penalties.</p> | <p>It is recommended that the fine amounts contained in financial services legislation be increased.</p> | <p>This recommendation continues to run across all assessment reports of the Territory (CFATF & IMF). If the Territory is to be seen to be serious in effectively combating financial crime and deter the abuse and misuse of the financial structures of the jurisdiction, the penalties prescribed in the following legislation must be reviewed and enhanced: Financial Services Commission Act, 2001, Banks and Trust Companies Act, 1990, Company Management Act, 1990, Insurance Act, 2008, Insolvency Act, 2003, Proceeds of Criminal Conduct Act, 1997, Securities and Investment Business Act, 2010 and Financing and Money Services Act, 2009 and all related subsidiary legislation.</p> <p>The Territory stands to be severely criticised if by the next round of mutual evaluations/assessments if enhanced penalties are not prescribed and may well (for AML/CFT purposes at least) subject the Territory to an International Cooperation Review Group (ICRG) referral with negative consequences.</p> | <p>Government Ministry of Finance & Attorney General's Chambers</p> | <p>AGC and MOF will liaise with key stakeholders to conduct a review of the penalties regime and recommend appropriate enhancement; appropriate legislation to follow thereafter.</p> <p>Projected Date: 30th November, 2011</p> |



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| <p>Currently audited financial statements must be filed with the FSC within six months of a licensee's year end, which is very slow by international standards.</p> | <p>The six-month time frame for both the submission and the publication of annual audited accounts should be shortened to three and, at most, four months.</p> | <p>This issue is being reviewed by the Commission in an effort to determine how best to comply with the requirement without making the conditions too onerous on its licensees. A reform would require effecting amendments to current relevant financial services legislation.</p> | <p>Government – on the advice of the Financial Services Commission</p> | <p>The matter is being reviewed and the Commission hopes to consult with the private sector on it and have the recommendation fully complied.</p> <p>Projected Date: second half of 2012</p> |



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| <p>The decisions of the Enforcement Committee are not required to be made public. Additional transparency would engender a greater understanding of FSC policy through the community and apply an additional discipline to the market place.</p> | <p>Enhance transparency of enforcement actions by requiring publication of enforcement decisions.</p> | <p>The Financial Services Commission Act, 2001 (as amended) empowers the Financial Services Commission to publish enforcement actions taken against its licensees. The Commission is reviewing the process for properly engaging that power.</p> | <p>Financial Services Commission</p> | <p>The Commission has already taken a decision on the process of publishing enforcement decisions. To make the financial services industry aware of this a notice to this effect has been posted on the Commission's website.</p> <p>Projected Commencement: January, 2011</p> |



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| <p>The absence in legislation of stated reasons for the removal of the Managing Director from office lacks transparency and could give rise to his dismissal for reasons that might not be in the best interests of banking supervision.</p> | <p>Public disclosure of reasons for removal of FSC Board members, including the managing director should be instituted.</p> | <p>Currently the Financial Services Commission Act, 2001 (as amended) provides for the giving of reasons for the termination of appointment of a Board member and the Managing Director; this does not extend to publishing the reasons for public information. This will require an amendment to the FSCA.</p> | <p>Government</p> | <p>This recommendation is being reviewed along with other corporate governance issues related to the Financial Services Commission Act.</p> <p>Projected Date: 30th June, 2012</p> |



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| <p>Crisis management planning for the local banking system should be addressed for consumer protection. It should also include provisions for emergency lending, and contingent credit lines.</p> | <p>Develop a crisis management plan for the jurisdiction focused on the local banking system.</p> | <p>As this is a matter that needs to be addressed at a national level it will require policy decision at the highest level, taking into account public interest matters. The establishment of a national crisis management committee/group comprising all relevant stakeholders to develop a national crisis management plan, piloted by the Ministry of Finance, may be a practical place to start.</p> | <p>Government</p> | <p>Government, through the Ministry of Finance, to establish a National Crisis Management Group to monitor issues of relevance, including international matters that may affect the stability of the jurisdiction.</p> <p>Projected Date: 31st March, 2011</p> |



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| <p>There are no formal institutional arrangements in place for the regular coordination or oversight of the financial sector to be discussed with the Ministry (of Finance) or Government, for example, the Cabinet. A longer-term potentially strategic view underpinned by more formalised regular coordination with Government may broaden awareness of the strengths and risks of the financial sector beyond the FSC and MoF.</p> | <p>FSC should include a discussion of financial stability issues as part of regular reporting to government.</p> | <p>This subject is to be considered by the Financial Services Commission to develop appropriate strategies for effectively communicating financial stability issues and discuss with the Ministry of Finance an appropriate reporting mechanism (namely periodic reporting). It is considered that such communication should extend to the Cabinet during its annual joint meeting with the Commission's Board.</p> | <p>Financial Services Commission in cooperation with the Ministry of Finance</p> | <p>Quarterly meetings to be established between the FSC and the MoF to discuss the impact of the financial services sector in relation to financial stability issues.</p> <p>Projected Commencement: 31st March, 2011</p> <p>This subject will now also be a feature of the annual meetings held between Cabinet and the Commission's Board.</p> |



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| <p>The Report indicated that there may be interest from market participants for licensing under one or more of the listed market intermediary categories fairly soon. As such, the need to draft and implement necessary instruments may become pressing in the near term and may require further resources - both more staff and additional training for current staff - to address these new areas.</p> | <p>The FSC should develop a plan to put human resources in place to respond to new market intermediary business models under SIBA, should the demand arise.</p> | <p>The Financial Services Commission is cognisant of the challenges that the new SIBA legislation may present and has already increased the staff complement of its Investment Business Division. Whenever the need for additional resources arises, the Commission has the power to engage relevant services, including recruiting relevant human resource talent.</p> | <p>Financial Services Commission</p> | <p>The Commission has committed resources to ensure the full and effective implementation of business models under SIBA. As the need arises, additional staff will be sourced and appointed.</p> |



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| <p>The implementation of a system to follow up on inspection report recommendations to ensure that licensees fulfil their obligations in a timely fashion would assist the effectiveness of the inspection programme.</p> | <p>A centralized, automated tracking system to follow up on recommendations made during inspections should be developed.</p> | <p>The Financial Services Commission accepts that this recommendation will greatly facilitate follow-up actions following the conclusion of on-site inspections and the tendering of reports for remedial action. The Commission will undertake the implementation of this recommendation; the on-site Inspection Unit is already centralised for purposes of inspections only and a centralised automated tracking system would logically fit within that Unit.</p> | <p>Financial Services Commission</p> | <p>With the establishment of the Inspection Unit, an automated tracking system will be developed and implemented.</p> <p>Projected Date: first half of 2011</p> |



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| <p>The FSC needs to be ready and able to use its powers to prevent the up-streaming of deposits by the subsidiaries and branches in the BVI to their parent entities and to require branches to maintain net “due to head office” positions as soon as signs of pressure on parents or groups emerge. Particular attention should be given to reviewing liquidity policies and ensuring that contingency liquidity arrangements are in place.</p> | <p>FSC should require banks to formulate contingency planning arrangements.</p> | <p>The Financial Services Commission will formulate appropriate policy in this regard in consultation with its licensed banks. Such a policy would place emphasis on liquidity and financial stability as well as contingency planning in the event of a financial crisis.</p> | <p>Financial Services Commission</p> | <p>A consultation process with the Bankers’ Association will be instituted, following the development of a draft policy by the Commission.</p> <p>Projected Date: Third quarter of 2011</p> |



Caribbean Financial Action Task Force Report



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| <p>There is no requirement for a financial institution to immediately obtain from all third parties necessary information concerning certain elements of Customer Due Diligence (CDD) process.</p> | <p>Financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning certain elements of the CDD process.</p> | <p>While section 31 of the Anti-money Laundering and Terrorist Financial Code of Practice, 2008 had been amended to strengthen the third party introducer element, it is recognised that the interpretation of Recommendation 9 (3) is not uniform with regard to its scope. None of the competitors of the Virgin Islands (onshore and offshore) appears to agree with the literal interpretation of this Recommendation which is currently the subject of review by a working group of the FATF. It is therefore considered prudent to await the outcome of the review before the Virgin Islands seeks to fully implement the scope of the Recommendation.</p> | <p>Financial Services Commission</p> | <p>Recommendation 9 is currently under review by the FATF. Once this review process is complete and the conclusions published, the Commission will review the current position with respect to the jurisdiction's full compliance with the recommendation as amended (the Recommendation is only partially complied with).</p> <p>Projected Date: Ongoing</p> |



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| <p>The effective implementation of the AMLTFCOP and AMLR in relation to designated non-financial businesses and Professions (DNFBPs) cannot be assessed.</p> | <p>The DNFBPs should be fully monitored for AML/CFT compliance.</p> | <p>The DNFBPs concerned in this regard are the Lawyers, Accountants, Real Estate Agents and Dealers in Precious Metals and Stones. The Joint Anti-money Laundering and Terrorist Financing Advisory Committee (JALTFAC) is currently pursuing this matter and advising the Commission accordingly. Meetings have so far been held with all of these stakeholders with a view to establishing the need for self-regulation (for Lawyers, Accountants and Real Estate Agents) to ease the pressure on the FIA (which has multiple other AML/CFT and proliferation financing duties). Each of these professions requires an appropriate legislative framework in order to properly and effectively self-regulate (as is the case in other jurisdictions) and would therefore require support in that regard from the Government. As the Fourth Round of Mutual Evaluations is scheduled to commence in early 2012 this process would need to be completed no later than October 2011.</p> | <p>JALTFAC, the Financial Services Commission and the Government (with the latter supporting the creation of the relevant legislative regimes).</p> | <p>The Government will lend maximum support to the development of appropriate legislation for accountants, lawyers and real estate agents as advanced by the associations of those professions. In addition, the Government will support the enactment in the HOA of the relevant legislative framework.</p> <p>Projected Date: October 2011</p> |



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| <p>The sanctions imposed in the PCCA, AMLTFCOP and AMLR are not dissuasive.</p> | <p>Amendments to the PCCA, AMLTFCOP and AMLR need to be effected to enhance the penalties.</p> | <p>While the PCCA had been amended to enhance the penalties regime to a maximum of \$40,000 fine, this is still considered too low by the CFATF, following a review of the second Virgin Islands Follow-up Report of 2009. This is consistent with the IMF observation which also concluded that the current penalties regimes need to be enhanced considerably.</p> | <p>The Government (through the Attorney General's Chambers).</p> | <p>AGC and MOF will liaise with key stakeholders to conduct a review of the penalties regime and recommend appropriate enhancement; appropriate legislation to follow thereafter.</p> <p><i>Projected Date:</i> 30th November, 2011</p> |



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| <p>The Convention on Organised Crime (Palermo Convention) and Convention on the Suppression of Terrorist Financing have not been extended to the Virgin Islands.</p> | <p>These conventions need to be extended to the Virgin Islands.</p> | <p>The Report acknowledges that all the provisions of these conventions have been incorporated into Virgin Islands law. All that is now required to attain full compliance is for the ratification of or accession to these conventions by the UK Government on behalf of the Virgin Islands.</p> | <p>The UK Government (acting on the advice of the local Government).</p> | <p>The Government will continue to liaise with His Excellency the Governor to push for UK Government ratification/accession as a matter of urgency.</p> <p>Projected Date: 30th June, 2011</p> |



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| <p>There is no evidence of review of the adequacy of laws and regulations that relate to Non-Profit Organisations (NPOs) or of periodic reassessments of the sector's potential vulnerabilities to terrorist activities.</p> | <p>The adequacy of laws relative to NPOs should be reviewed and the sector's potential vulnerabilities to terrorist activities reassessed. In addition, an outreach programme to the NPO sector should be undertaken and a supervisory programme be developed to identify non-compliance and violations.</p> | <p>The report highlights the fact that this area of the law in the Virgin Islands remains very weak. There is a need to establish an appropriate legislative framework for the registration and supervision of NPOs either by a separate body or subsumed in an existing body within the Government.</p> | <p>The Government.</p> | <p>The Government will develop appropriate legislation for the regulation and supervision of NPOs.</p> <p>Projected Date: 30th June, 2011</p> |

