

**PROGRESS REPORTS ON REVIEW OF FINANCIAL REGULATION IN THE  
CARIBBEAN OVERSEAS TERRITORIES AND BERMUDA  
(THE “KPMG REVIEW”)**

**ANGUILLA**

*Press Release*

The Government of Anguilla advises that it continues to work towards implementing the recommendations of the KPMG Review of Financial Regulation in Anguilla conducted in 2000. The three major recommendations are:

- the implementation of anti-money laundering legislation and practices. This recommendation, which Anguilla sees as an ongoing exercise, has largely been implemented. This development was recognised in a mutual evaluation report concluded last year by the Caribbean Financial Action Task Force – CFATF.
- the setting up of an independent body to regulate financial services. This recommendation is already in the form of a draft legislation and is being reviewed by the appropriate authorities and
- the introduction of compulsory powers legislation. This legislation will be included in the proposed Financial Services Act setting up the independent regulatory body.

A number of other recommendations covering amendments to existing financial services and corporate legislation are now in process of being drafted. The Minister of Finance, the Honourable Victor F. Banks, stated:

‘It is important that Anguilla meets international standards of regulation as recommended by the KPMG Review and in anticipation of a similar review to be conducted by the IMF later this year’.

**BERMUDA**

*Press Statement by Minister of Finance, the Hon. C. Eugene Cox, JP, MP on behalf of the Government of Bermuda*

The Ministry of Finance has today released an updated report on Bermuda’s progress in implementing various changes to legislation and practice arising out of the recommendations in the KPMG Review.

Introducing the report, the Minister of Finance, the Hon. C. Eugene Cox, JP, MP commented: "This updated report confirms Bermuda's commitment to ensuring that its financial regulation continues to meet international standards. It also makes clear the sustained progress being made by Government on the wider review and upgrading of Bermuda's suite of financial regulatory information to which we are committed.

I am particularly pleased to highlight the developments and timely action in the three areas previously identified by the United Kingdom for priority action – that is to say, the establishment of independent regulatory authorities, completion of anti-money laundering regimes and legal powers to enable us to assist overseas regulators by obtaining information to assist with legitimate investigations. It is particularly noteworthy that, following Government's decision last year to merge the functions of the Supervisor of Insurance into the Bermuda Monetary Authority, this major change was brought into effect on 1 January 2002. As a result, Bermuda now has a single financial regulatory body which meets all the requirements of an independent and fully effective regulator.

The updated report also confirms the very real progress made by Bermuda on the other two key objectives. As regards the Proceeds of Crime Act and Regulations, the National Anti-Money Laundering Committee, in full consultation with industry and other stake-holders, is currently carrying forward a detailed review of Bermuda's present controls with a view to introducing certain amendments later in the present Parliamentary session. Similarly, as regards information sharing capabilities, amendments to the Bermuda Monetary Authority Act and the Insurance Act, approved in the latter part of last year, have already provided many of the relevant powers. Further provisions will be included in the forthcoming Companies Act amendments in order to deal with the remaining aspects."

## **BRITISH VIRGIN ISLANDS**

*Statement by Ralph T O'Neal, Chief Minister and Minister of Finance, BVI*

The BVI has made considerable progress in advancing the KPMG recommendations. With the coming into force on 1 January 2002 of the Financial Services Commission Act (FSC) No. 12 of 2001, BVI has fully met the three priority recommendations identified by the KPMG Report and subsequently followed up by FCO/HMT. BVI has continued to progress the report and a suite of amendment Bills are slated to be introduced in the BVI Legislative during the forthcoming 2002-2003 session to give full effect to the KPMG report.

Already a comprehensive draft Insolvency Bill has been finalized following an exhaustive consultative process between the Government and the BVI private sector. Amendment Bills which *inter alia*, incorporate recommendations of

KPMG as well as others from the trade industry and the regulators, have been prepared in respect of the Banks and Trust Companies Act, The Company Management Act, The Insurance Act and the Mutual Funds Act. These Bills are expected to be introduced during the 3<sup>rd</sup>/4<sup>th</sup> quarters of 2002 following the usual consultation process with the private sector. The Bills will ensure that from a regulatory perspective BVI regulatory legislative regimes comply with KPMG.

On the companies front, a specialist drafting consultant has been obtained to prepare draft legislation that would combine BVI corporate laws into one statute. Given the complexity of this project, in terms of the scope and scale of issues to be covered, it is envisaged that the Bill will be introduced in 2003. However, it is proposed that an interim Bill aimed at immobilizing Bearer Shares by requiring that they be held under custodian arrangements by authorized/approved custodians in designated countries will be finalized and introduced in the BVI legislature during the 2002-2003 session. The Bill will also ensure that information on those who control BVI companies is readily accessible to the BVI authorities.

With the enactment of the FSCA, BVI now has a well established and comprehensive legislative and regulatory infrastructure to fully effect all the international cooperation recommendation. That said it must be agreed that the FIU needs greater operational independence and resources to more effectively discharge its international cooperation mandate. Efforts will intensify in the next three months to make this a reality. The Attorney General's Chambers have long been seized of the urgency and priority the Government attaches to Financial Services Legislation. Accordingly, the chambers are committed to ensuring that the legislative needs of this sector occupy a premier position within/on the legislative agenda. It is in this regard that we are confident that the ambitious agenda will be realized.

Efforts are continuing to ensure that the FSC is properly resourced and staffed to ensure that its statutory mandate of regulating the BVI Financial Services Industry in compliance with agreed international standards are fulfilled. This will be a top priority of the recently appointed Board of Commissioners of the Financial Services Commission.

The FSC proposes to issue during the course of the year a series of policy directives, guidance and interpretation notes and other briefings to clarify areas of existing regulations including anti-money laundering and terrorist financing compliance, offsite procedures and international cooperation norms and procedures.

The 2002 Budget included provision for the establishment of a Financial Services Marketing and Promotions Unit with the Government thus formally freeing up the FSC from Marketing and Promotions.

## **CAYMAN ISLANDS**

In respect of matters requiring a legislative response, since the previous update, the following progress has been achieved:

i) **The Securities Investment Business Law, 2001.** This Law was passed in January 2002 and provides appropriate regulatory coverage for brokers, investment advisors and investment managers. This Law completes the suite of regulatory laws, and will be brought into effect by order of the Governor in Council when the operational arrangements and the subsidiary legislation have been finalised (expected to be during the first half of 2002). In the interim, securities investment business is already covered under the Money Laundering Regulations.

Criminal offences in the Law include market manipulation and insider dealing. The effect will be to make such behaviour criminal conduct for the purpose of international co-operation under the PCCL, as well as predicate offences for the existing money laundering crimes.

ii) **The Insurance (Amendment) Law, 2001.** This amendment brings the enforcement powers in the Insurance Law into alignment with the other regulatory laws, and also provides for the approval of auditors and appointment of actuaries, approval of share transfers, and the surrender of licences.

iii) Significant progress has been made on the independence legislation for the Monetary Authority, which is currently with Executive Council for approval. The legislation is to be taken to the Legislative Assembly during its June meeting.

The KPMG recommendations relating to the Companies Law, the only remaining legislative area of significance, are being rolled into the consultation process and preparation for the impending IMF review.

## **MONTSERRAT**

*Press Release by the Financial Services Commission*

Montserrat continues to respond and to implement recommendations made by KPMG following the 2000 Review of Financial Regulation in Montserrat. The major recommendations are:

***The implementation of anti-money laundering legislation and practices.*** Montserrat is pleased to advise that the Proceeds of Crime Act 1999 has been implemented followed by the issuance of The Money Laundering Regulations 2000 and the Practice Code on The Prevention of Money Laundering. All banks

and service providers are fully aware of the requirements under these Regulations.

***The setting up of an independent regulatory body.*** The Financial Services Commission Act 2001 was passed into Law on 20 December 2001 and the new Financial Services Commission was established and commenced as an independent body on 1 January 2002. The Commission is now responsible for all licencing, regulation and compliance issues.

***The introduction of compulsory powers legislation.*** Montserrat's Exchange of Information Act 1999 meets the KPMG recommendation.

A number of other recommendations requiring amendments to existing legislation are being reviewed and these will be drafted as soon as manpower resources permit.

Although the level of activity in Montserrat is small the Commission is committed to ensuring that Montserrat operates its business of licensing and regulation to international standards.

Montserrat anticipates a similar review by the IMF in October of this year and is confident that IMF will find our regulatory standards in a stronger position having undergone the KPMG review and the subsequent implementation of its major recommendations.

## **TURKS AND CAICOS ISLANDS**

The Financial Services Commission became a statutory body on enacted of the Financial Services Commission on 21 May 2001. The Board was appointed with effect from 17 December 2001 and become operational on 20 March 2002.

The Board has passed a resolution to ratify the operations of the FSC since it became a statutory body until the date the Board came into operation.

The Board has passed a resolution to second the present employees from the civil service pending the recommendations of a working party set up to advise the Board on staffing issues.

The financial provisions in the Ordinance have not yet come into force. In this regard the TCIG will provide a subvention to the FSC Board to meet recurrent expenses. Revenue from the FSC will continue to be into Government's Consolidated Fund.

### **Banking**

An amendment to the Banking Ordinance to effect the changes recommended in the Report was presented to Legislative Council in February 2002 and we are now awaiting assent of the Bill.

Outstanding items from the recommendations relate only to amendments to prudential limits which are scheduled to be included when Regulations to the Amendment to the Ordinance is introduced.

The amendments include provisions:

- for prior approval to be obtained before changes to beneficial owners,
- explicit requirement that applicants for bank licence be fit and proper persons;
- maintenance of minimum share capital and introducing capital adequacy requirement;
- provision to give powers to replace a director or officer
- express powers to police the perimeter;
- provision to provide gateways for auditors to disclose information to FSC.

There are also guidance notes to be issued to financial institutions on evaluating the quality of assets and risk management. These are presently being at consultative stage with members of the Bankers' Association.

### **Insurance**

An amendment to the Insurance Ordinance to effect the changes recommended in the Report was presented to Legislative Council in February 2002 and we are now awaiting assent of the Bill. These include:

- requirement for credit life companies to submit annual financial statements which prepared by the primary writers and are accepted by US Insurance Regulators and the IRS;
- clause defining Producer Own Reinsurance Companies (PORCs)
- FSC Procedural Guidelines on credit life companies will be made into Regulations.

The FSC recognises its obligation to carry out on-site visits. However, due to lack of resources a full programme has not been prepared, but the Superintendent of Insurance intends to carry out limited inspection this year.

### **Securities/Investments**

The Ordinance was enacted in May 2001. However, we are awaiting the introduction of Regulations before commencing the process of applications for licences.

### **Mutual Funds**

The legislation has been introduced. To date we have received only four applications, but no licences have been recommended. (The form of applications did not meet the required standard and were returned).

### **Companies**

The major changes to Ordinance have been the immobilisation of bearer shares and the provision in the Company Management Ordinance for service providers to keep a record of beneficial ownership of companies.

All other items are outstanding. It is intended that a comprehensive review of the Ordinance be carried out especially in light of our commitment to the OECD Harmful Tax Initiatives.

### **Company Service Providers**

The only outstanding items appear to be access by the regulator to client files without a court order and the inspection of client files for the purpose of on-site inspection. These items will now be considered with recommendation to the Board that consultative paper be prepared for discussion.

The Superintendent is to prepare a paper for the Board with regard Superintendent's access to clients' files. Once approval has been received a consultative document will be issued before recommendations are made for changes to the legislation.

### **Partnerships**

No changes have been implemented as a result of the review. However, there are no issues in the recommendations. It is intended that full examination of partnership legislation will take place when the Companies Ordinance is reviewed.

### **Trusts**

No changes have been implemented. But again there are no major issues in the recommendations only enhancements.

### **Trust Service Providers**

The major issues in the recommendations are those relating to anti-money laundering measures and these are already covered in the Proceeds of Crime Legislation. There no changes envisaged in this respect.

The FSC has now produced a manual for processing applications.

The Superintendent is to prepare a paper for the Board with regard Superintendent's access to clients' files. Once approval has been received a consultative document will be issued before recommendations are made for changes to the legislation.

All other recommendations are regulatory matters are scheduled to be undertaken this year.

### **International co-operation**

Legislation has been passed to implement the recommendations in the review report.

### **Anti-money laundering**

There are no outstanding issues.

