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To: Members of the Executive Board

From: The Secretary

Subject: **British Virgin Islands—Publication of Financial Sector Assessment  
Program Documentation—Detailed Assessment Report on Basel Core  
Principles of Banking Supervision**

Attached for the **information** of Executive Directors is the detailed assessment report on Basel core principles of banking supervision that was completed in connection with the Financial Sector Assessment Program (FSAP) assessment of the British Virgin Islands.

It is intended that this paper will be published on the Fund's external website, together with the Financial System Stability Assessment, after Friday, October 22, 2010.

Questions may be referred to Ms. Elliott, MCM (ext. 38804).

This document will shortly be posted on the extranet, a secure website for Executive Directors and member country authorities.

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Department Heads



FINANCIAL SECTOR ASSESSMENT PROGRAM

# BRITISH VIRGIN ISLANDS

BASEL CORE PRINCIPLES OF BANKING SUPERVISION

# DETAILED ASSESSMENT REPORT

OCTOBER 2010

INTERNATIONAL MONETARY FUND

MONETARY AND CAPITAL MARKETS DEPARTMENT

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**GLOSSARY**

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BCP	Basel Core Principles for Effective Banking Supervision
BCBS	Basel Committee on Banking Supervision
BCA	Business Companies Act
BTCA	Banks and Trusts Companies Act
CAR	Capital adequacy ratio
CFATF	Caribbean Financial Action Task Force
CGBS	Caribbean Group of Banking Supervisors
CIS	Collective Investment Scheme
CMA	Company Management Act
DCS	Depositor Compensation Scheme
FATF	Financial Action Task Force
FIA	Financial Investigations Agency
FSAP	Financial Sector Assessment Program
FSSA	Financial System Stability Assessment
FSC	Financial Services Commission
FSCA	Financial Services Commission Act
GDP	Gross Domestic Product
IAIS	International Association of Insurance Supervisors
IBC	International Business Corporation
ICP	Insurance Core Principles
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
LOLR	Lender of last resort
MOU	Memorandum of understanding
NAV	Net asset value
OFC	Offshore Financial Center
OGBS	Offshore Group of Banking Supervisors
RA	Registered Agent
RC	Regulatory Code
ROSC	Reports on Observance of Standards and Code
SIV	Structured investment vehicle
SPV	Special purpose vehicle
TCSP	Trust and Corporate Service Providers

## I. SUMMARY, KEY FINDINGS, AND RECOMMENDATIONS

### A. Introduction

1. **The banking system in the BVI is small and focused on a limited range of local services.** The system has a total of \$2.5 billion in assets. Banking services are limited to deposit taking and direct lending (mortgages and consumer credit). There is no payment system and given the use of the US dollar in the jurisdiction, no connection to monetary operations. The system is dominated by branches and subsidiaries of foreign banks (mostly Canadian and Puerto Rican). There is one small local bank, which is government owned. Unlike other offshore financial centers, the authorities have taken the view that there the banking system should remain very limited and conservative.
2. **BVI has a solid legal basis for an effective banking supervisory regime, particularly after the recent enactment of the Regulatory Code, 2009.** The challenges facing the FSC lie in the implementation of the rules and regulations under this legislation. Although elements of the Regulatory Code were largely in place in the form of guidance, there are many additions bringing the framework into compliance with Basel II. While the FSC appears to have sufficient resources to oversee the current (limited) range of banking operations, it should keep resources, both in terms of numbers and expertise, under constant review, given the increased workload on foot of the new legislation and the increasing complexity of banking supervision. Should the jurisdiction make a decision to allow expansion of the range and size of the banking, there would be a need for additional resources.

### Information and methodology used for assessment

3. **The legal structure for banking supervision is based on three principal enactments: Banks and Trust Companies Act, 1990, as amended; Financial Services Commission Act, 2001, as amended; and the Regulatory Code, 2009.** The Regulatory Code, which is derived from the Financial Services Act, 2001 has full statutory backing. Between them, they provide the FSC with sufficient powers to implement an effective banking supervisory regime. This legislation is supported by the issue of guidance notes from time to time (e.g., on licensing policy).
4. **The assessment was based on the above. It was also based on a self-assessment prepared by the FSC, together with responses to specific questions raised with the FSC in advance of the visit.** During the assessment, the assessors met with all relevant staff in the FSC, representatives from the licensed banks, the Bankers Association, and representatives from the legal and accounting professions. They also met with representatives of the Financial Investigation Agency (FIA) to which reports of suspicious transactions relating to money laundering and terrorist financing are sent.

5. **The assessors were Jose Tuya, Expert; and Michael Deasy, Central Bank of Ireland.**

#### **Institutional and macroeconomic setting and market structure—overview**

6. **BVI law provides for three classes of banking license: a general banking license, a restricted Class I banking license, and a restricted Class II banking license.** A general banking license permits the holder to conduct banking business within and outside the BVI. A restricted Class I banking license and a restricted Class II banking license do not allow the respective holders to take deposits or make loans to BVI residents except in the case of corporations. (The difference between a Class I and Class II license relates to the manner in which they can deal with BVI corporations.)

7. **There are six general banking licenses, one Class I license and no Class II license.** Two other Class I licenses have or are in the course of surrendering their licenses. Of the six general licenses, three are branches of overseas banks and three are locally incorporated. Of the three locally incorporated, two are subsidiaries of overseas banks and one is a BVI government owned bank.

8. **The three branches are Banco Popular de Puerto Rico, First Bank Puerto Rico, and First Caribbean International Bank.** The two subsidiary banks are Scotia Bank BVI Limited (Canada) and VP Bank (Liechtenstein). The government-owned bank, National Bank of the Virgin Islands Limited (NB), was formerly the Development Bank of the Virgin Islands. NB has been in existence for many years, but only came within the regulatory remit of the FSC since 2006, when it was issued a banking license and changed to its present name.

9. **The Class I bank is London International Bank and Trust Limited.** It operates a type of group treasury activity for its industrial parent group. It has no deposits and its entire share capital is invested with group companies. The two other Class I licensees in the process of winding down are Rathbone Bank (BVI) and Bank of East Asia (BVI) Limited (Hong Kong). The former is closing down following a strategic decision by the parent to close down all its offshore operations and the latter because it did not feel the need any more for a banking presence in the BVI.

10. **The type of business undertaken by the banks is traditional and conservative (deposit-taking from and lending to BVI residents), although FirstCaribbean International Bank, Scotiabank, and VP Bank do have some interaction with the offshore activities conducted in the BVI.**

11. **The banking system in the BVI has been left untouched, relatively speaking, by the recent turmoil in the banking markets.** All are well capitalized and all have been profitable in recent years. At end-December 2009, total assets for all the banks amounted to nearly US\$2.5 billion, almost all of which related to the general banks. Total capital amounted to US\$402 million and total pretax/post tax profits to US\$59 million.

12. **As five of the six general license banks are branches or subsidiaries of major banks, their banking systems, internal control systems, accounting standards, etc., are based on group practice.**

13. **The aggregate balance sheet size for the six operational banks amounts to US\$2.5 billion.** There is little or no off-balance sheet activity. Of the figure of US\$2.5 billion, US\$1.5 billion relates to the assets/liabilities of the three branches, US\$0.9 billion to the two subsidiaries, and US\$98 million to the only true BVI bank, National Bank of the Virgin Islands Limited. Consequently, the FSC is the ultimate supervisor for one bank only, which represents about 4 percent of the banking assets of the jurisdiction. The FSC is the primary supervisor for banks representing 36 percent of the banking assets and has a collaborative role for the supervision of banks representing 60 percent of the banking assets, along with the primary and ultimate supervisors of these branches.

14. **The banking system is well capitalized; the aggregate equity to total assets is 16 percent.** The system is also highly liquid; of the aggregate balance sheet size of US\$2.5 billion, US\$927 million (37 percent) takes the form of liquid assets. Almost all of these liquid assets are placed with the head office/parent bank overseas, as there is no interbank bank market on the BVI.

15. **The FSC has detailed knowledge of the banking system.** Because of the small size of the banking market in the jurisdiction; the static nature of its activities; and the fact that no new banks have been authorized in recent times, the number of banks is continuously falling and none of the banks has overseas subsidiaries or branches, the system is very simple in supervisory terms.

### **Preconditions for effective banking supervision**

16. **The preconditions for effective banking supervision, including a well-developed public infrastructure, are present in the BVI.** A legal and accounting regime heavily influenced by international best practice is in place. (Three of the four main auditing firms have representation in the jurisdiction.)

### **Main findings**

#### **Objectives, independence, powers, transparency, and cooperation (CP1)**

17. **In general, the FSC has sufficient autonomy, powers, and resources with clear responsibilities and objectives.** However, the appointment terms for the Managing Director should be re-examined. The Managing Director's term of employment is not fixed nor are there stated reasons for his dismissal. Both the Basel Core Principles and international best practice require that reasons for dismissal be made transparent to the public.



18. **The FSC should keep the level and training needs of its staff under constant review.** While resources appear adequate at present, the FSC's workload is increasing as a result of the introduction of the Regulatory Code and the increasing complexity of banking supervision.

19. **There should be explicit provision for the payment by the FSC of costs incurred by staff in defending their actions and/or omissions in performing their duties in good faith.**

#### **Licensing and structure criteria (CP 2 to 5)**

20. **These criteria are adequate.** This represents an improvement over the previous assessment (2004) when it was noted that there were no legal or regulatory rules dealing with major acquisitions by banks. This deficiency was addressed in the Regulatory Code, 2009.

#### **Prudential Regulation and Requirements (CP 6 to 18)**

21. **Capital adequacy rules meet the 1988 Basel Accord standards. Current revisions to the RC will add elements of the 1996 Amendment.** The FSC is working with the Caribbean Group of Banking Supervisors (CGBS) to implement Basel II. The region will implement the standardized approach. The region had originally planned to implement by 2011, but that date may be revised at the next meeting of the CGBS in May. The foreign-owned branches and subsidiaries that operate with a general license are already implementing Basel II in compliance with home-country requirements.

22. **Risk management regulations address BCP criteria; however, loan provisioning rules should address general provisions and provisions for expected losses.** The FSC requires banks to follow IAS 39 to recognize impaired debt but has not issued guidelines for prudential reserves. In its 2010 revisions to the RC, the principles on provisioning from the Basel Committee on Banking Supervision (BCBS) 2006 paper "Sound Credit and Risk Assessment and Valuation for Loans" will be incorporated.

23. **The FSC does not generally impose specific limits on investments but reviews bank-imposed limits.** While lending limits and limits for investment in fixed assets are specified in the RC, for other limits such as open foreign exchange positions or interest rate repricing gaps, the FSC requires banks to establish them and for the Board to approve and review annually. During its onsite inspections and offsite reviews, the FSC opines on the adequacy of the limits established and requires changes if determined to be inadequate.

#### **Methods of ongoing banking supervision (CP 19 to 21)**

24. **The FSC has a well developed system of on-going supervision in place.** There is a full on and offsite inspection program in place and a number of skilled staff to undertake this work. The FSC has displayed a readiness and willingness to enforce against non compliance.

### **Accounting and disclosure (CP 22)**

25. **The FSC should seek to shorten the six-month time frame for both the submission to the FSC and the publication of annual audited accounts to three and, at most, four months.** It is understood that the reason for the six-month timeframe relates to the workload of auditors, given that most regulated firms share the same financial year-end: December 31.

### **Corrective and remedial powers of supervisors (CP 23)**

26. **The FSC has broad enforcement powers that facilitate prompt remedial action; however, the RC (effective March 31, 2010) is currently in the transition period for implementation and an end-date to the period has not been specified.** The FSC is monitoring banks' compliance with the RC and could issue directives if a bank is considered to be seriously lagging in implementation. The RC is being amended this summer and it is recommended that a definite transition period be established with a clear end-date when enforcement becomes mandatory.

### **Consolidated and cross-border banking supervision (CP 24 and 25)**

27. **The FSC has broad powers to conduct consolidated supervision and for exchanging information with foreign supervisors; however, of the four locally-incorporated banks in the BVI, none operates subsidiaries or has cross-border operations.** The FSC participates in supervisory colleges hosted by the Canadian supervisors (home to one branch and one subsidiary in BVI) and visits Puerto Rico, which is home to two of the local branches.

**Table 1. Summary Compliance with the Basel Core Principles—Detailed Assessments**

Core Principle	Grading	Comments
1. Objectives, independence, powers, transparency, and cooperation	LC	
1.1 Responsibilities and objectives	C	
1.2 Independence, accountability and transparency	LC	<p>The absence in legislation of a fixed term of office for the Managing Director and lack of transparency of the reasons for his removal from office could give rise to his dismissal for reasons that might not be in the best interests of banking supervision. It is recommended that the Managing Director should be subject to the same terms and conditions as apply to commissioners as a whole in this respect.</p> <p>The FSC should keep the level and training needs of staff under constant review, given its increased workload and the increasing complexity of banking supervision.</p>
1.3 Legal framework	C	
1.4 Legal powers	C	
1.5 Legal protection	LC	While the FSC may, in fact, pay the costs of staff in defending their actions and/or omissions in performing their duties in good faith, it is suggested that the payment of such costs be explicitly provided for.
1.6 Cooperation	C	
2. Permissible activities	C	
3. Licensing criteria	C	
4. Transfer of significant ownership	C	
5. Major acquisitions	C	
6. Capital adequacy	C	
7. Risk management process	LC	Rules need to be expanded to provide guidance on market risks related to trading. Also guidance on provisioning needs to be expanded to allow general reserves and reserves for expected losses. Amendments to the RC are being drafted.

Core Principle	Grading	Comments
8. Credit risk	C	
9. Problem assets, provisions, and reserves	LC	Provisioning will be expanded to include principles from the BCBS paper on "Sound Credit and Risk Assessment and Valuation for Loans"
10. Large exposure limits	C	
11. Exposure to related parties	C	
12. Country and transfer risks	C	
13. Market risks	LC	Guidance being developed on trading accounts based on the 1996 amendment to the Basel Capital Accord is being incorporated into amendments to the RC.
14. Liquidity risk	C	
15. Operational risk	C	
16. Interest rate risk in the banking book	C	
17. Internal control and audit	C	
18. Abuse of financial services	C	
19. Supervisory approach	C	
20. Supervisory techniques	C	
21. Supervisory reporting	C	It is suggested that the six-month deadline for both the submission to the Commission and for the publication of financial statements be reduced to three or, at most, four months. (It is understood that the reason for the six-month time frame relates to the work load of auditors given that most firms share the same financial year end, i.e., December 31.)
22. Accounting and disclosure	C	
23. Corrective and remedial powers of supervisors	C	
24. Consolidated supervision	N/A	Banks in BVI operate as solo units without subsidiaries or cross border activities.
25. Home-host relationships	C	
<i>Aggregate:</i> Compliant (C) – #, Largely compliant (LC) – #, Materially noncompliant (MNC) – #, Noncompliant (NC) – #, Not applicable (N/A) – #		

## Recommended action plan and authorities' response

### *Recommended action plan*

**Table 2. Recommended Action Plan to Improve Compliance with the Basel Core Principles**

Reference Principle	Recommended Action
CP 7 – Risk Management Process, CP 9 – Problem Assets, Provisions and Reserves, CP 13 – Market Risks	Complete process already initiated to amend the RC to include provisions on market risk of trading accounts and provisioning to address possible losses and general reserves.
CP1- Resources	Keep level and training needs of staff under constant review, given FSC's increasing work load and increasing complexity of banking supervision.
CP 1- Appointment of Managing Director	Fix term of appointment and introduce stated reasons for his dismissal.
CP 1- Legal protection for staff	The FSC should ensure that staff has their costs paid in the defense of their actions and/or omissions in carrying out their supervisory functions in good faith.
CP 22 - Accounting and disclosure	The FSC should seek to have shortened the six-month time frame for both the submission to the FSC and the publication of annual audited statements by regulated firms to three or at most four months.

### *Authorities' response to the assessment*

28. The FSC welcomes the IMF's assessment of its compliance against the BCP. The Commission wishes to commend the assessors for their efforts to understand the BVI regulatory framework and thanks them for their skill and diligence in conducting the exercise. The review validates the hard work and progress made by the Commission in strengthening the entire regulatory framework since the last assessment in 2004. The Commission is committed to fully considering the recommendations made and acting accordingly.

## II. DETAILED ASSESSMENT

**Table 3. Detailed Assessment of Compliance with the Basel Core Principles**

<b>Principle 1.</b>	<b>Objectives, autonomy, powers, and resources.</b> An effective system of banking supervision will have clear responsibilities and objectives for each authority involved in the supervision of banks. Each such authority should possess operational independence, transparent processes, sound governance and adequate resources, and be accountable for the discharge of its duties. A suitable legal framework for banking supervision is also necessary, including provisions relating to authorization of banking establishments and their ongoing supervision; powers to address compliance with laws as well as safety and soundness concerns; and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	In general, the system of banking supervision in the BVI provides the FSC with clear responsibilities and objectives. The FSC has all necessary autonomy, powers, and resources to be an effective banking supervisor with the exceptions as specified in Principles 1 (2) and 1 (5) below. Principle 1 (2) deals with the terms of appointment of the Managing Director and Principle 1 (5) relates to the fact that there is no explicit legal provision for the reimbursement to FSC staff for costs incurred in defending their actions and/or omissions in performing their duties in good faith.
Assessment	Largely compliant
Comments	See Principles 1 (2) and 1(5) hereunder.
<b>Principle 1(1).</b>	<b>Responsibilities and objectives.</b> An effective system of banking supervision will have clear responsibilities and objectives for each authority involved in the supervision of banks.
Description	<p>Banks in the BVI first came to be authorized under the Banks and Trust Companies Act, 1990, as amended (BTCA). Under the Act all regulatory functions were carried out by the government. On 1 January 2002, the Financial Services Commission Act, 2001(FSCA) came into effect. It established the Financial Services Commission (FSC) as an autonomous regulatory authority responsible for the regulation, supervision, and inspection of all financial services conducted in and from within the BVI. As a result of the FSCA, all regulatory functions previously carried out by the government were transferred to the FSC.</p> <p>Pursuant to Section 41 of the FSCA, the FSC issued a Code in 2009, the Regulatory Code 2009, which elaborated upon the two previously mentioned Acts and set down detailed regulatory requirements for all supervised entities, including banks. The Code has full statutory backing and it, together with the Acts, establish an effective banking supervision system with clear responsibilities and objectives.</p> <p>The FSC makes information on the state of the banking system available on its website. This includes information with respect to licensees, statistics and its annual report on compliance related activities.</p>
Assessment	Compliant
Comments	The legislative framework provides for an effective banking system with clear responsibilities and objectives.

<b>Principle 1(2).</b>	<b>Independence, accountability and transparency.</b> Each such authority should possess operational independence, transparent processes, sound governance and adequate resources, and be accountable for the discharge of its duties.
Description	<p>The FSC is constituted as an autonomous body. It is overseen by a Board of Commissioners, the members of which are appointed by the Cabinet. No less than four and no more than six commissioners constitute the Board plus the Managing Director, who is an <i>ex officio</i> member; one of the commissioners must be from outside the BVI and have a financial services background. In terms of independence, Section 8.5 of the FSCA states, "A Commissioner shall not act as a delegate of any government, commercial, financial or other interest with which he may be connected and shall not accept directions from any person or authority in respect of his duties."</p> <p>The FSC publishes an annual report, which it presents to the House of Assembly. It also prepares annual strategic work plans and objectives. It confers annually with the Cabinet on matters pertaining to its performance.</p> <p>While commissioners are appointed for a fixed term and can only be removed from office for stated reasons, there are no such provisions for the Managing Director, who is an <i>ex officio</i> member of the Board. Under Section 10(1A), the Board may remove him from office pursuant to the terms and conditions of his appointment (which are not published), and the Board shall provide in writing the reason for the removal.</p> <p>Under Section 20 of the FSCA, the FSC retains between 7 and 15 percent of the total annual revenue that it collects from regulated entities. The actual percentage is negotiated annually and to date appears to have been adequate to enable the FSC to meet its remit.</p> <p>Given the small number of banks (7 in all), the current level of resources appears adequate. In view, however, of the increasing complexity of banking regulation and the increased work load brought about by new legislation (e.g. ensuring compliance with the provisions of the Regulatory Code, 2009), the FSC should keep its level of resources and the training needs of its staff under constant review.</p>
Assessment	Largely compliant
Comments	<p>The absence in legislation of a fixed term of office for the Managing Director and the lack of transparency of the reasons for his removal from office could give rise to his dismissal for reasons that might not be in the best interests of banking supervision. It is recommended that the Managing Director should be subject to the same terms and conditions as apply to commissioners as a whole in this respect.</p> <p>The FSC should keep the level and training needs of staff under constant review given its increased workload and the increasing complexity of banking supervision.</p>
<b>Principle 1(3).</b>	<b>Legal framework.</b> A suitable legal framework for banking supervision is also necessary, including provisions relating to authorization of banking establishments and their ongoing supervision.
Description	The BTCA, the AML/CFT regime, the FSCA and the Regulatory Code provides for a detailed framework for the authorization and ongoing supervision of banks. Section 14 of the FSCA establishes a Licensing and Supervisory Committee which is comprised of senior executives of the FSC and whose function it is to receive, review and determine

	<p>applications for licenses and to supervise licensees to ensure that they continue to satisfy the fit and proper criteria for the conduct of financial services business. Part 2, Division 1 of the Regulatory Code sets down detailed requirements relating to the granting of a license. Apart from these, the FSC issued guidelines for banking licensing. The main thrust of these guidelines is that only branches and subsidiaries of banks with a well established and proven track record and which are subject to effective consolidated supervision by their supervisory authority will be allowed to be established in the BVI.</p> <p>On ongoing supervision, Section 32 of the FSCA provides the FSC with the power to require any information that may be reasonably required for the purpose of discharging its functions and ensuring compliance with all financial services legislation. Section 20 of the BTCA provides specific powers to the FSC to take all necessary remedial action, including license revocation.</p> <p>The Regulatory Code sets down detailed requirements relating to ongoing supervision, including provisions relating to capital adequacy, risk management, large exposures, compliance and auditing as it relates to banks.</p> <p>The Regulatory Code grants the FSC wide powers to set prudential rules. It is the FSC's policy to consult with the industry on proposed legislative changes and focus groups are often established to consult on the development of new legislation. It has recently carried out this consultation in the case of the Regulatory Code.</p>
Assessment	Compliant
Comments	A suitable legal framework for banking supervision exists.
<b>Principle 1(4).</b>	<b>Legal powers.</b> A suitable legal framework for banking supervision is also necessary, including powers to address compliance with laws as well as safety and soundness concerns.
Description	<p>Both the FSCA and the Regulatory Code provide the FCS with sufficient powers to address compliance with laws as well as safety and soundness concerns. Section 37 of the FSCA permits the FSC to take enforcement action against a regulated person who, in the opinion of the FSC, has contravened any financial services legislation or is carrying on business in a manner detrimental to the public interest.</p> <p>Section 35 of the FSCA grants the FSC comprehensive access powers for the purpose of assessing a licensee's internal procedures and compliance with its statutory obligations.</p> <p>Section 37 of the FSCA provides the FSC with a broad range of enforcement actions, including revocation or suspension of the bank's license; appointment of an examiner to investigate the affairs of the bank; appointment of a "qualified person" to advise the licensee on the proper conduct of its affairs and report to the Commission on the licensee's business and affairs; issue a directive to the bank; apply to the court for a liquidator for the bank.</p>
Assessment	Compliant
Comments	The various pieces of legislation provide the FSC with extensive powers to address compliance with laws and regulations as well as safety and soundness concerns.



<b>Principle 1(5).</b>	<b>Legal protection.</b> A suitable legal framework for banking supervision is also necessary, including legal protection for supervisors.
Description	<p>Section 50 of the FSCA “ No action shall be brought against the Commission or any Commissioner... or an employee or agent of the Commission for anything done, in good faith, in the exercise of powers or performance of duties conferred or imposed by this Act or any financial services legislation.”</p> <p>No statutory protection exists for FSC staff against costs of defending their actions and/or omissions in performing their duties in good faith.</p>
Assessment	Largely compliant
Comments	While the FSC may, in fact, pay the costs of staff in defending their actions and/or omissions in performing their duties in good faith, it is suggested that the payment of such costs be explicitly provided for.
<b>Principle 1(6).</b>	<b>Cooperation.</b> Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	<p>Section 33 of the FSCA allows for the provision of assistance to foreign supervisors upon the latter’s written request. The law requires that the information provided to the foreign regulatory authority be used only for the purpose of its regulatory function and must not be shared without the written consent of the FSC.</p> <p>Section 4 of the FSCA provides for the FSC to maintain contact and develop relationships with foreign regulatory authorities. It also provides for the FSC to enter into memoranda of understanding with regulatory and law enforcement agencies. The FSC had MOUs with 14 countries and two organizations.</p>
Assessment	Compliant
Comments	The FSC has clear authority to share information with other regulatory authorities and require that information to be kept confidential unless it agrees otherwise.
<b>Principle 2.</b>	<b>Permissible activities.</b> The permissible activities of institutions that are licensed and subject to supervision as banks must be clearly defined and the use of the word “bank” in names should be controlled as far as possible.
Description	<p>While the term “bank” is not defined, the BTCA defines “banking business” as the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice, by check or otherwise and the employment in making or giving loans advances, etc.</p> <p>Section 16 of the BTCA limits the use of the word “bank”, “savings”, “savings and loans” and related terms and their derivatives. The section also prohibits the solicitation or receipt of deposits from the public without a license.</p> <p>A draft amendment to the BTCA “Banks and Trust Companies (Amendment) Act, 2010” is currently before the Assembly. It proposes a definition for the term “bank”, viz, “a person that is licensed to carry on banking business.” It is expected that the proposed amendment will be adopted by mid 2010.</p>
Assessment	Compliant
Comments	Only banks may carry on banking business and the use of the term “bank” and its derivatives is prohibited

<b>Principle 3.</b>	<p><b>Licensing criteria.</b> The licensing authority must have the power to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the ownership structure and governance of the bank and its wider group, including the fitness and propriety of Board members and senior management; its strategic and operating plan; internal controls and risk management; and its projected financial condition, including its capital base. Where the proposed owner or parent organization is a foreign bank, the prior consent of its home-country supervisor should be obtained.</p>
Description	<p>Part II of the BTCA sets down the general licensing requirements. These are elaborated upon and expanded under Part II, Division I of the Regulatory Code. Three types of licenses are provided for: a general banking license, a restricted Class I banking license and a restricted Class II banking license. A general banking license permits the holder to conduct banking business within and outside the BVI. A restricted Class I and restricted Class II does not allow the respective holders to take deposits from any BVI residents or make loans to BVI resident except in the case of corporations. (The difference between a Class I and Class II license relates to the manner in which they can deal with BVI corporations.) There are six general, one restricted Class I and no restricted Class II license holders.</p> <p>Part II of the BTCA states that no person shall carry on any kind of banking business in or from the BVI unless that person holds a valid license authorizing him to carry on that type of banking business. It further states that the Commission may issue a license to the applicant it is satisfied that:</p> <ul style="list-style-type: none"> <li>• the applicant satisfies the requirements of that Act and the Regulatory Codes in respect of the application and will, upon issuance of the license, be in compliance with this Act and the Regulatory Code;</li> <li>• the applicant satisfies the Commission's fit and proper criteria;</li> <li>• the organization, management and financial resources of the applicant are adequate for the carrying on of the business in respect of which a license is sought; and</li> <li>• issuing the license is not against the public interest.</li> </ul> <p>Part II, Division I of the Regulatory Code establishes the detailed requirements which applicants must meet: submission of a detailed business plan; suitability of directors, senior management, significant owners and certain functionaries; financial resources; management and operation structure; compliance with regulatory and AML/CFT obligations, etc.</p> <p>A banking license will not be granted unless direct confirmation has been received from the supervisory authority in the jurisdiction in which the applicant or its parent is incorporated.</p> <p>Section 4 of the BCTA establishes the broad power to refuse to grant a license which is not subject to appeal.</p>

	<p>In addition to the above, the FSC issued guidelines in respect of bank license applications in November 1993. Among the guidelines is one which states that licenses will only be issued to branches and subsidiaries with a well established and proven track record and which are subject to effective consolidated supervision by their supervisory authority.</p> <p>Under Section 16 of the FSCA the FSC has responsibility “ to supervise licensee to ensure that they continue to satisfy the fit and proper criteria for the conduct of financial services.” Furthermore, Section 4 of the BTCA provides that the FSC may grant a license if the applicant has satisfied the requirements of the BTCA, the Regulatory Code and the FSC’s fit and proper criteria. It also requires that the management and resources are adequate and that issuing the license is not against the public interest. Section 76 of the Regulatory Code specifies that a bank holding a general banking license must hold minimum tier 1 capital of US\$ 2 million and a bank holding a restricted Class 1 or Class 11 banking license a minimum capital of US\$ 1 million.</p>
Assessment	Compliant
Comments	The legislation provides comprehensive powers regarding the licensing of banks.
<b>Principle 4.</b>	<b>Transfer of significant ownership.</b> The supervisor has the power to review and reject any proposals to transfer significant ownership or controlling interests held directly or indirectly in existing banks to other parties.
Description	<p>Section 14 of the BTCA prohibits a person owning or holding a significant interest in a bank from selling, transferring, charging, or otherwise disposing of his interest in the bank , or any part of that interest, unless the prior written approval of the Commission has been obtained. “Significant interest” means a holding that controls five percent or more of the voting rights of the bank. (Note, in a proposed amendment to the BTCA “Banks and Trust Companies (Amendment) Act, 2010,” which is expected to be enacted by midyear 2010, the figure of 5 percent is to be replaced by 10 percent – this is in keeping with other international norms, e.g. the European Union).</p> <p>The FSC has the power to reject any proposal for a change in ownership of a significant interest in a bank if it is not satisfied that, after the acquisition or disposal, the bank will continue to meet the original licensing criteria, (Section 4 of the BTCA) and/or any person who would acquire a significant interest satisfies the FSC’s Fit and Proper criteria (Section 14 of the BTCA).</p> <p>Section 14 provides that any person who contravenes the above provisions commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. Additionally, under Section 37 of the FSCA, the Commission can take enforcement action against any contravention of financial services legislation, which could include issuing a directive requiring the disposal of a significant interest illegally acquired.</p>
Assessment	Compliant
Comments	The FSC has sufficient powers to accept or reject, as appropriate, any proposal for a transfer of significant ownership of a bank.
<b>Principle 5.</b>	<b>Major acquisitions.</b> The supervisor has the power to review major acquisitions or investments by a bank, against prescribed criteria, including the establishment of cross-border operations, and confirming that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.
Description	Under Section 122 of the Regulatory Code, a bank must obtain the prior approval of the FSC to make any investment/acquisition of 10 percent or more in value of the

	<p>bank's capital base. Furthermore, the maximum holding it can have in shares or interests in a company that is not a subsidiary is 25 percent of the capital base; in immovable property, also 25 percent, and in equipment and other personal property, 5 percent.</p> <p>The Commission will not grant its approval to an investment /acquisition as described above unless it is satisfied that:</p> <ul style="list-style-type: none"> <li>the investment or acquisition does not expose the bank to undue risks or hinder the Commission's effective supervision of the bank; and</li> <li>the capital, and financial and other resources of the bank are adequate to enable it to support the investment or acquisition.</li> </ul> <p>In determining whether or not to grant approval for an investment or acquisition that exceeds the 10 percent threshold, the Commission will take into account all factors that it considers to be relevant on a case-by-case basis.</p>
Assessment	Compliant
Comments	<p>In the last assessment of the BCPs (February 2004), this Principle was rated noncompliant as there were no legal or regulatory rules dealing with major acquisitions. The above requirements, which were introduced in the 2009 Regulatory Code and became effective as and from March 31, 2010, meet the necessary criteria. As at that date, i.e., March 31, 2010, no bank was in breach of the requirement, given the almost total absence of investments in the balance sheets of the BVI banks. Consequently, the rules will only apply to any new acquisition by the banks.</p>
<b>Principle 6.</b>	<b>Capital adequacy.</b> Supervisors must set prudent and appropriate minimum capital adequacy requirements for banks that reflect the risks that the bank undertakes, and must define the components of capital, bearing in mind its ability to absorb losses. At least for internationally active banks, these requirements must not be less than those established in the applicable Basel requirement.
Description	<p>Existing laws and regulations require all banks to consistently maintain a minimum capital ratio. In addition, the standard recognizes the conditions under which the banking system operates and has established a minimum risk-weighted ratio of 12 percent and has established a minimum ratio of 14 percent for a higher risk-profile bank. Section 12 of the BTCA establishes the requirement for banks to be adequately capitalized. The RC section 76 establishes the requirements and capital definition in compliance with Basel requirements (1988). Section 37 (1) grants the FSC broad enforcement powers to correct noncompliance with laws and regulations.</p>
Assessment	Compliant
Comments	<p>Rated materially noncompliant in the 2004 BCP assessment due to the lack of legal and regulatory requirements to require adequate capital. These deficiencies have been addressed. On branches the FSC has opted for requiring a capital equivalent account maintained at head office and consisting of liquid assets. The amount is 12 percent of assets. On Basel II; plans are to implement the standardized approach. A timetable has not been fully established.</p>

<b>Principle 7.</b>	<b>Risk management process.</b> Supervisors must be satisfied that banks and banking groups have in place a comprehensive risk management process (including Board and senior management oversight) to identify, evaluate, monitor, and control or mitigate all material risks and to assess their overall capital adequacy in relation to their risk profile. These processes should be commensurate with the size and complexity of the institution.
Description	Banks are required to have in-place comprehensive risk management policies and processes to identify, evaluate, monitor and mitigate risks. Section 26 of the RC sets out the requirements for the risk management framework. The requirements address country and transfer risk, market risk, liquidity risk, credit and counterparty risk and operational risk. The FSC has the ability to take enforcement action (section 37 of the FSCA) if a bank does not meet the requirements. Through its onsite supervisory process the FSC monitors compliance with applicable regulations. The onsite procedures cover all the areas highlighted in the essential criteria. The RC requirements encompass all Basel issued guidance and best practices for risk management. Although the RC has been implemented (March 31, 2010) and inspections to monitor for compliance with the risk management requirements, the RC is considered to be in a transition period until it is enforced. During the transition period the FSC reviews compliance and monitors progress. The FSC can issue directives to a bank that during transition is not making adequate progress. However, given that most banks are subsidiaries or branches of major banks, compliance with the RC is already largely in place. The end of the transition period has not been set given that the RC is currently being revised to incorporate risk management requirements for market risk (paralleling the Basel 1996 amendment) and credit risk to implement principles in the BCBS 2006 credit risk paper. Revisions to the RC are to be completed in 2010.
Assessment	Largely Compliant
Comments	This area was rated materially noncompliant in 2004, due to the lack of specificity in risk management requirements and the lack of depth of the onsite reviews. These deficiencies have been addressed by the introduction of a detailed onsite inspections procedures manual in 2004 and revised in 2010. The Largely Compliant is based on the yet-to-be completed amendments for market risk derived from trading accounts and a need to expand loan loss provisioning to include provisions for expected losses and general reserves. Although required by Section 107 of the RC detailed guidance has not been issued on provisioning for expected losses and provisioning is along with accounting requirements. This is being addressed by amendments to be incorporated in 2010 or early 2011.
<b>Principle 8.</b>	<b>Credit risk.</b> Supervisors must be satisfied that banks have a credit risk management process that takes into account the risk profile of the institution, with prudent policies and processes to identify, measure, monitor and control credit risk (including counterparty risk). This would include the granting of loans and making of investments, the evaluation of the quality of such loans and investments, and the ongoing management of the loan and investment portfolios.
Description	The FSC onsite inspections require the inspectors to confirm compliance with credit risk management guidelines established by the Board of the banks. These include reviews to determine that a well documented strategy and sound policies and processes for assuming credit risk are in place.  Support for the supervisory requirements is provided by RC section 104 that requires in

	<p>part that: the bank document the creditworthiness of the borrower, the purpose of the credit, and the source of repayment. This is an ongoing process and loans are classified for credit risk. The RC also requires the bank to establish credit limits, and groups or related parties, guidelines on restructuring. The RC also addresses connected lending and requires arms-length-transactions.</p> <p>Section 32 of the FSCA requires banks to provide the FSC all information required to perform its duties and grants the FSC powers of enforcement for failure of a bank to provide the information.</p>
Assessment	Compliant.
Comments	Rated materially noncompliant in 2004, due to the lack of asset evaluation and review by the FSC. Currently, the FSC conducts credit reviews, monitors asset quality and reviews adequacy of loan loss reserves and provisioning.
<b>Principle 9.</b>	<b>Problem assets, provisions and reserves.</b> Supervisors must be satisfied that banks establish and adhere to adequate policies and processes for managing problem assets and evaluating the adequacy of provisions and reserves.
Description	<p>Section 107 (1) of the RC states that the board and senior management of a bank shall ensure that the bank has appropriate credit risk management and controls to, on an ongoing basis, consistently determine appropriate provisions for loan-losses in accordance with the bank strategies and international accounting standards. Off-balance sheet credit risk and collateral are reflected in the loan classification and required provisions. The section also requires that loan loss provisions be adequate to absorb estimated losses.</p> <p>Sections 37 and 40 of the FSCA provide the FSC with broad powers to require adequate provisioning and implement enforcement action.</p> <p>The onsite inspections manual provides guidance on reviewing the loan portfolio and the reserve for loan losses. Provisioning is done on the basis of IAS 39 and there is no general provisioning or provisioning for expected losses. The RC is being amended to incorporate loan provisioning principles from the June 2006 paper from BCBS; "Sound Credit and Risk Assessment and Valuation for Loans."</p>
Assessment	Largely Compliant
Comments	The FSC has not implemented a regime of provisioning to fully covers expected losses or establish general reserves. Amendments to the RC will address this deficiency and are expected to be made in 2010.
<b>Principle 10.</b>	<b>Large exposure limits.</b> Supervisors must be satisfied that banks have policies and processes that enable management to identify and manage concentrations within the portfolio, and supervisors must set prudential limits to restrict bank exposures to single counterparties or groups of connected counterparties.
Description	Section 96 of the RC establishes an aggregate exposure limit to counterparty (aggregating related parties) of 25 percent of capital and an aggregate limit of 800 percent for large credits. Prior approval of the FSC is required to exceed those limits. Section 94 defines group of connected parties. Section 99 defines concentrations by region/country, source of repayment, industry. The sections also define Board responsibility in setting limits, monitoring and reporting.

	Section 95 of the RC defines exposure which includes all claims and transactions and off-balance sheet items. The FSC verifies compliance during onsite inspections and monitors concentrations through offsite reviews of bank filings.
Assessment	Compliant
Comments	Existing regulations and supervisory requirements require banks to have systems and policies that enable management to identify and manage concentrations.
<b>Principle 11.</b>	<b>Exposures to related parties.</b> In order to prevent abuses arising from exposures (both on balance sheet and off balance sheet) to related parties and to address conflict of interest, supervisors must have in place requirements that banks extend exposures to related companies and individuals on an arm's length basis; these exposures are effectively monitored; appropriate steps are taken to control or mitigate the risks; and write-offs of such exposures are made according to standard policies and processes.
Description	Section 102 of the RC defines connected parties including companies that may be owned by those connected to the bank. Section 104 (f) requires that connected lending be on an arms-length basis, approved by senior management or the board if exceeding certain levels set by the bank. Section 104 requires that connected lending be at arms-length, mandates that those seeking credit must be excluded from the approval process, and requires that the loan receive senior management and Board approval as appropriate. The large exposure limits apply to connected lending and the FSC has the power to set lower limits or to require deduction from capital when determining capital adequacy. Section 105 (b) (1) requires that a bank's system provide reports on connected lending. Banks report connected parties lending to the FSC on a regular basis.
Assessment	Compliant
Comments	The FSC has the regulatory authority to supervise connected lending and the regulatory framework to support it.
<b>Principle 12.</b>	<b>Country and transfer risks.</b> Supervisors must be satisfied that banks have adequate policies and processes for identifying, measuring, monitoring and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining adequate provisions and reserves against such risks.
Description	Section 108 of the RC covers country and transfer risk. Section 108 (2)(a) requires banks to set country risk limits. The FSC monitors compliance with board set guidelines during onsite inspections. The country risk management policies must be approved and reviewed by the board on an annual basis. The country risk of BVI banks is limited to the home country of the subsidiaries/branches (Puerto Rico, Canada, Liechtenstein) as a result of head office transactions. NB does not have cross-border exposure.
Assessment	Compliant
Comments	The compendium of regulation and supervisory oversight adequately meet the minimum requirements of the CP. The FSC monitors country risk posed by home countries and meets/communicates with home country supervisors to remain informed.
<b>Principle 13.</b>	<b>Market risk.</b> Supervisors must be satisfied that banks have in place policies and processes that accurately identify, measure, monitor and control market risks; supervisors should have powers to impose specific limits and/or a specific capital charge on market risk exposures, if warranted.
Description	The BVI has not implemented the 1996 Basel Accord market risk amendment due to the low level of market risk as measured by the amendment. Although the amendment

	has not been implement, the FSC is including implementation of the amendment in its 2010 additions to the RC and current supervision and RC requirements fully address market risk. For example, the onsite inspections cover a thorough analysis of market risk that includes a review of risk management, compliance with internal position limits. There is also offsite monitoring based on quarterly prudential filings. In general, market risk in the BVI is limited to traditional banking exposures such as open foreign exchange positions and interest rate risk but no trading accounts. Banking in the BVI is the traditional deposit-taking and mortgage and commercial lending. In addition, the banks are subsidiaries or branches of major banks that are subject to consolidated supervision in their home countries and must abide by internal limits that meet international standards.
Assessment	Largely compliant
Comments	The FSC in its supervisory process monitors the market risk prevalent in BVI. The FSC also closely cooperates with home country supervisors to determine support available from head office. However, given that NB may be expanding its activities and has already experienced losses from MBS investments, the FSC should codify capital-specific market risk guidance related to trading.
<b>Principle 14.</b>	<b>Liquidity risk.</b> Supervisors must be satisfied that banks have a liquidity management strategy that takes into account the risk profile of the institution, with prudent policies and processes to identify, measure, monitor and control liquidity risk, and to manage liquidity on a day-to-day basis. Supervisors require banks to have contingency plans for handling liquidity problems.
Description	Section 109 of the RC requires banks to establish liquidity management strategies and policies. The policies should address composition of assets and liabilities (including off-balance sheet) managing cross-currency liquidity, asset liquidity and market access to liquidity. Section 110 of the RC requires the board to review and approve policies and oversee the management of liquidity risk. Banks must file liquidity reports with the FSC and the onsite inspection procedures include a review of internal reports, ensuring that bank staff is qualified to manage liquidity, determine whether management is adequately planning for long-term liquidity. Stress testing is required for (at a minimum) economic or industry slowdown, market risk events and liquidity conditions.
Assessment	Compliant
Comments	The RC provides detailed guidance and establishes requirements for the management and control of liquidity risk. In its onsite inspections the FSC reviews liquidity risk management by the banks.
<b>Principle 15.</b>	<b>Operational risk.</b> Supervisors must be satisfied that banks have in place risk management policies and processes to identify, assess, monitor and control/mitigate operational risk. These policies and processes should be commensurate with the size and complexity of the bank.
Description	Section 118(1) of the RC requires banks to establish and maintain strategies and policies appropriate to its size and complexity for the monitoring and controlling of operational risk. The board must approve and review such policies on an annual basis. Section 119(1) of the RC requires that a management structure be in place to effectively implement the operational risk management policies. Section 27 of the RC requires the establishment of business continuity plans. The plans must address losses to its functions due to interruptions in the functioning of its management information systems, including the monitoring of AML/CFT risk. The FSC reviews business continuity plans as part of its onsite inspections. Section 119(3) of the RC requires the



	banks to file with the FSC operational risk management reports that are submitted to the board that reflect a significant change in operational risk. Legal risk is required to be addressed in the operational risk policy. Sections 51 and 52 of the RC establish requirements for the bank's outsourcing policy.
Assessment	Compliant
Comments	The existing regulatory framework and supervisory processes meet the requirements of this CP.
<b>Principle 16.</b>	<b>Interest rate risk in the banking book.</b> Supervisors must be satisfied that banks have effective systems in place to identify, measure, monitor and control interest rate risk in the banking book, including a well defined strategy that has been approved by the Board and implemented by senior management; these should be appropriate to the size and complexity of such risk.
Description	Section 116 of the RC requires banks to establish risk management strategies and policies for interest rate risk management. Section 115 requires that policies be approved and reviewed by the board on a regular basis. The section also provides guidance on the issues that should be addressed by the policy. The policies are required to establish IRR limits, contingency planning, stress testing and Board reporting. During its onsite inspections the FSC reviews compliance with existing policies and reviews the banks' interest rate risk positions. Through its offsite monitoring the FSC also tracks interest rate risk.
Assessment	Compliant
Comments	The framework of regulations and supervisory monitoring meets the requirements of this CP.
<b>Principle 17.</b>	<b>Internal control and audit.</b> Supervisors must be satisfied that banks have in place internal controls that are adequate for the size and complexity of their business. These should include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding the bank's assets; and appropriate independent internal audit and compliance functions to test adherence to these controls as well as applicable laws and regulations.
Description	<p>All but one of the banks are either subsidiaries or branches of international banks benefiting from the internal audit and internal control systems of the parent/head office. In addition local offices are subject to external audits. Section 30 of the RC requires banks to put in place a strong internal control system. Section 29(2) provides a detailed listing of items considered essential to a bank's internal control system. Sections 29(2) (g) and (h) require to regularly assess all risks so that identified risks can be measured and controlled. Also ensure that losses and provisions for doubtful and bad debt are adequate for on and off-balance sheet assets. Sections 37 and 40 of the FSCA give the FSC the power to take enforcement action on banks that are determine to have inadequate internal control and audit functions. Sections 34 and 35 of the RC set-out requirements for the establishment of a compliance function. Section 34 of the RC requires banks to appoint one or more persons as internal auditors. Section 35 sets-out the requirements for an adequate internal audit function. During its onsite inspections, the FSC verifies compliance with the internal audit and internal control requirements.</p> <p>Section 30 of the Regulatory Code sets out corporate governance requirements. The FSC has the ability to remove a member of the board if he or she is no longer qualifies</p>

	as fit and proper.
Assessment	Compliant
Comments	The framework of regulations and supervisory oversight in addition to controls of the parent provide the elements to achieve compliance with this CP.
<b>Principle 18.</b>	<b>Abuse of financial services.</b> Supervisors must be satisfied that banks have adequate policies and processes in place, including strict “know-your-customer” rules, that promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities.
Description	<p>The CFATF carried out an inspection in the BVI of its observance of Standards and Codes for the Financial Action Task Force 40 Recommendations for Anti-Money Laundering and 9 Special Recommendations on Combating the Financing of Terrorism. The inspection was carried out in February 2008 and the resulting Mutual Evaluation Report was adopted by the CFATF Plenary held during November 2008.</p> <p>Among the key findings of the report were the following:</p> <ul style="list-style-type: none"> <li>• The BVI’s legal framework for combating money laundering and terrorism financing was comprehensive. It noted that while money laundering offences were applicable to all indictable offences, insider dealing and market manipulation were not specifically criminalized.</li> <li>• The FSC was the competent authority that monitors AML/CFT compliance by financial institutions.</li> <li>• Customer-due-diligence measures are generally comprehensive and include customer identification, beneficial ownership requirements, ongoing due diligence, and measures for politically exposed persons and corresponding banking.</li> <li>• Record-keeping requirements are extensive and generally observed. Financial institutions are required to maintain records on the activities relating to complex or unusually large or unusual patterns of transactions, which do not have any apparent economic or visible lawful.</li> <li>• While most of the competent authorities involved have adequate resources to carry out their functions, it was noted that the FSC had quantitatively inadequate resources.</li> </ul> <p>This present BCP assessment is based on the CFATF assessment as well as on discussions with relevant FSC and FIA staff. The FSC said that the reference in the CFAFT assessment to inadequate levels of staff in the FSC relates to trust companies rather than banks. Banks are inspected on a two yearly basis and AML/CTF assessments are part of these inspections. Trust companies are inspected on a risk assessment basis (also including AML/CTF) and, consequently, some at least would not be inspected at such frequency.</p> <p>Under the Proceeds of Criminal Conduct Act, 1997 the FSC is legally obliged to report to the FIA all instances of suspicious transactions it comes across while carrying out its supervisory function. In 2009, 11 such reports were made, 9 in respect of companies and trusts, 1 for insurance, 1 for investment firms, and none for banks.</p>

Assessment	Compliant
Comments	The law and practices relating to AML/CTF in the banking sector appear adequate in the BVI.
<b>Principle 19.</b>	<b>Supervisory approach.</b> An effective banking supervisory system requires that supervisors develop and maintain a thorough understanding of the operations of individual banks and banking groups and also of the banking system as a whole, focusing on safety and soundness, and the stability of the banking system.
Description	<p>Given the small number of banks, seven in all, and the relatively unsophisticated nature of their business, the FSC has a detailed knowledge of these banks and their operations. The FSC meets each bank at six-monthly intervals to discuss their operations and at other times if the need arises. (For example, where there is a variance of 4 percent or more in a balance sheet item in a quarterly return, compared to the previous return, a meeting is held with the bank in question to discuss the reasons for the variance). It also meets the banks collectively at quarterly intervals to discuss issues of common concern.</p> <p>Each bank submits a detailed quarterly return to the FSC providing a detailed profit and loss account and balance sheet, as well as details of largest loans and deposits, solvency and liquidity calculations, nonperforming loans, and off-balance sheet items, etc. These data form the basis of a detailed report prepared for the Board of the Commission, and provide the input for the FSC Quarterly Bulletin which is based on aggregate figures and which is posted on the FSC Website.</p> <p>The FSC participates in annual College of Regulators meetings in respect of the two Canadian banks operating in the BVI and six-monthly meetings are held with the Puerto Rican regulatory authorities in respect of the two Puerto Rican banks operating in the BVI.</p> <p>The FSC carries out on-site inspections of the seven banks on a two-yearly cycle. These inspections are supported by a detailed on-site inspection manual. The banking supervisory team with the FSC comprises a director of Banking, a senior regulator, and three regulators who have responsibility for the oversight of the seven banks. They are supported by an inspection unit comprising four people who are responsible for the inspection of all the entities supervised by the FSC.</p> <p>The FSC has a detailed knowledge of the BVI banks and their operations, particularly given the small size of the banking market there. The FSC has full access to all bank officials including board members. Apart from inspections which occur on average every two years, the FSC meets each bank at six monthly intervals to discuss their operations and at other times if the need arises. (For example, where there is a variance of four percent or more in a balance sheet item in a quarterly return compared to the previous return a meeting is held with the bank in question to discuss the reasons for the variance). It also meets the banks on a quarterly basis to discuss issues of common interest.</p> <p>Assessments are made on the quality on the Board and management. FSC staff evaluates and rely on the work of the internal auditor. There is a separate paragraph in its On-site Inspection Manual specifically dealing with this issue. The FSC prepare reports on their findings from inspections and follow-up letters are sent to the banks.</p>

	(Copies of such reports and the subsequent letters were reviewed by the IMF assessors)
Assessment	Compliant
Comments	An effective banking supervisory system exists in the BVI. There is a full system of on-site inspections and off-site reporting. The FSC has demonstrated its willingness and ability to enforce against non compliance. For example, the FSC has recently moved to remove the managing director of the national bank for lack of qualification after a long effort to remediate failings in risk management and internal controls in that bank (which only came under FSC supervision in 2007). The effort to remove the MD is still pending court action (on appeal) but the FSC has been successful in effecting better compliance with standards inside the bank.
<b>Principle 20.</b>	<b>Supervisory techniques.</b> An effective banking supervisory system should consist of on-site and off-site supervision and regular contacts with bank management.
Description	<p>The FSC operates a system of on-site and off-site supervision to oversee its banks and banking system. Its offsite regime is supported by an off-site monitoring manual, which explains the role of the regulator (“to maintain a high level of familiarization with the operation and performance of each bank....the early detection of weaknesses in banks”) and the objectives of off-site monitoring (“review, understand and explain the genesis of all significant matters disclosed by the financial statements...ensure a systematic and consistent approach to monitoring banks... serve as an early warning of potential problems in banks”). The manual goes on to discuss in detail the approach to ratio analysis and trend analysis.</p> <p>To facilitate off-site analysis, the FSC receives quarterly returns from banks as described under Principle 19.</p> <p>On-site inspections are carried out on a two-yearly cycle basis. A detailed inspection manual (K Review) is used for this purpose. This manual sets out the purpose, objectives, and types of on-site inspections. It deals with the planning of the inspection and the areas to be examined during the course of the inspection (e.g., solvency risk, liquidity risk, credit risk, market risk, foreign exchange risk, operating risk, and off-balance sheet risk, etc.).</p>
Assessment	Compliant
Comments	The FSC operates an effective system of on-site and off-site supervision. This is a major improvement since the 2004 report. The K review system has created a thorough and effective process, recruitment and training of skilled staff and the increase in resources generally have increased capacity.
<b>Principle 21.</b>	<b>Supervisory reporting.</b> Supervisors must have a means of collecting, reviewing, and analyzing prudential reports and statistical returns from banks on both a solo and a consolidated basis, and a means of independent verification of these reports through either on-site examinations or use of external experts.
Description	Section 30 of the FSCA provides that the FSC may, for the purpose of ensuring the discharging of its functions, request any person engaged in or related to any financial services business to furnish the Commission with such information as the Board may specify. The main information provided by the banks is the detailed quarterly return described in Principle 19. These figures are verified by means of the on-site inspection regime. In addition, all incorporated banks must submit annual audited accounts to the FSC and those operating on a branch basis are required to submit annual audited

	accounts for the bank as a whole.
Assessment	Compliant
Comments	The FSC has sufficient powers to collect, review, and analyze prudential reports and also a means of independent verification. FSC staff demonstrated skill and understanding in reviewing these reports.
Principle 22.	<b>Accounting and disclosure.</b> Supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with accounting policies and practices that are widely accepted internationally, and publishes on a regular basis, information that fairly reflects its financial condition and profitability.
Description	<p>Section 17 of the BTCA requires each bank to maintain financial records that are accurate, sufficient to show and explain its transactions and to be audited in accordance with the BTCA and the Regulatory Code. The audited accounts must be prepared in accordance with recognized international standards as may be approved by the Commission on a case-by-case basis (IFRS, US GAAP, UK GAAP, Canadian GAAP are specifically mentioned in this respect.) Each bank must submit its annual audited accounts within six months of its financial year-end to the Commission.</p> <p>Section 17 also requires each bank to publish its financial statements, together with the auditor's report, within six months of the end of the financial year to which they relate, in at least two newspapers published and circulated in the BVI.</p> <p>The FSC publishes aggregate statistical data of the banking industry in its quarterly statistical bulletin, which is posted on its website. These data include aggregate balance sheet figures, income and expenditure figures, and statistics relating to solvency, asset quality, liquidity, profitability, and exposures.</p> <p>Section 17 of the BTCA states:</p> <p>A license holder shall keep financial records that:</p> <ul style="list-style-type: none"> <li>(a) Are sufficient to show and explain its transactions;</li> <li>(b) Will, at any time, its financial position to be determined with reasonable accuracy;</li> <li>(c) Will enable it to prepare the financial statements and make the returns required under the Act and any Regulatory Code; and will enable its financial statements to be audited in accordance with the Act and the Regulatory Code.</li> </ul> <p>A licensee that contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$25, 000 or to imprisonment for a term not exceeding one year or to both.</p> <p>The financial statements referred to above must be signed by a director of the bank and submitted to the FSC within six months of the end of the financial year end to which they relate, accompanied by a directors' certificate and an auditor's report. A licensee that contravenes this Section commits an offense and is liable to on summary conviction to a fine not exceeding \$10,000.</p> <p>Section 17 of the BTCA states that where the FSC is satisfied that the auditor of a licensee has failed to fulfil his obligations under the Act or any Regulatory Code, or is otherwise not a fit and proper person to act as auditor of a licensee, it may, by written notice to the licensee, revoke the approval of the appointment of the auditor and the</p>

	<p>licensee shall appoint a new auditor in accordance with Section 17 of the BTCA.</p> <p>Audited accounts disclose both qualitative and quantitative information on a bank's financial performance.</p>
Assessment	Compliant
Comments	The FSC meets the requirements relating to adequate record keeping by banks, appropriate accounting policies, and practices and disclosure. However, it is suggested that the six-month deadline for both the submission to the Commission and for the publication of financial statements be reduced to three or at most four months. (It is understood that the reason for the six-month time frame relates to the work load of auditors, given that most firms share the same financial year end, i.e. December 31.)
<b>Principle 23.</b>	<b>Corrective and remedial powers of supervisors.</b> Supervisors must have at their disposal an adequate range of supervisory tools to bring about timely corrective actions. This includes the ability, where appropriate, to revoke the banking license or to recommend its revocation.
Description	Section 37 of the FSCA provides the FSC with broad enforcement authority. The FSC may revoke or suspend a license, appoint an examiner to conduct an investigation, require the bank to appoint an administrator, issue directives addressing specific areas in need of correction, and impose penalties. The FSC has the authority to issue directives (section 40) to require prompt remedial action to address capital deficiencies. The FSC has the power to apply penalties to the bank and its management.
Assessment	Compliant
Comments	The FSC has broad enforcement powers and has demonstrated the willingness/ability to enforce them.
<b>Principle 24.</b>	<b>Consolidated supervision.</b> An essential element of banking supervision is that supervisors supervise the banking group on a consolidated basis, adequately monitoring and, as appropriate, applying prudential norms to all aspects of the business conducted by the group worldwide.
Description	The banks in BVI are either branches or subsidiaries that operate without subsidiaries. The one locally-incorporated bank for which the FSC would be home-country supervisor does not have cross-border operations. Therefore, currently, the FSC does not need to perform consolidated supervision. As a host supervisor the FSC coordinates with home supervisors.
Assessment	Not Applicable
Comments	The RC in section 127 states that banks must provide the FSC with the information required with respect to its branches and subsidiaries, so the FSC can conduct consolidated supervision of the bank and its group. Currently all banks are solo-units without subsidiaries or cross-border activities.
<b>Principle 25.</b>	<b>Home-host relationships.</b> Cross-border consolidated supervision requires cooperation and information exchange between home supervisors and the various other supervisors involved, primarily host banking supervisors. Banking supervisors must require the local operations of foreign banks to be conducted to the same standards as those required of domestic institutions.
Description	Sections 33C and 33D of the FSCA provides the FSC broad powers to exchange information and collaborate with home country supervisors. Cooperation may include sharing of documents and information. Section 35 of the FSCA states that the FSC may allow a foreign regulator to participate in an inspection. In determining whether to

	provide information the FSC ensures that the information is needed to exercise the requestor's supervisory functions and that proper confidentiality protections for the information provided are available. The FSC maintains contact with home supervisors through supervisory colleges with Canada, visits to Puerto Rico and through correspondence as needed with Liechtenstein. Under section 10 of the RC it states that a banking license will not be granted unless the home supervisor consents to the establishment, performs consolidated supervision and will share regulatory information with the FSC. Shell banks are not permitted in the BVI (Anti-money Laundering and Terrorist Financing Code of Practice section 34).
Assessment	Compliant
Comments	The FSC has demonstrated a willingness and ability to exchange information with home supervisors. Although the FSC can exchange information without an MOU, it has signed MOUs with 14 countries and two with organizations.