ASSESSMENT OF THE SUPERVISION AND REGULATION OF THE FINANCIAL SECTOR

VOLUME II: Detailed Assessment of Observance of Standards and Codes

British Virgin Islands

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GLOSSARY

AGC	Attorney General's Chambers
AML	Anti-Money Laundering
AMLCP	Anti-Money Laundering Code of Practice
ARA	Association of Registered Agents
BTCA	Banks and Trust Companies Act, 1990
BCP	Basel Core Principle for Effective Banking Supervision
BIS	Bank for International Settlements
BVI	British Virgin Islands
CA	Companies Act, 1885
CFT	Combating the Financing of Terrorism
CJIC	The Criminal Justice (International Cooperation) Act
CMA	Companies Management Act, 1990
CSP	Companies and Trusts Service Providers
EU	European Union
FATF	Financial Action Task Force
FIA	Financial Investigative Authority
FS(IC)A	Financial Services (International Cooperation) Act, 2000
FT	Financing of Terrorism
FCO	Foreign and Commonwealth Office
FSC	Financial Services Commission
FSCA	Financial Services Commission Act, 2001
FSD	Financial Services Department
IAE	Independent AML/CFT Expert
IA	Insurance Act, 1994
IR	Insurance Regulations, 1995
IBCA	International Business Companies Act, 1984
IOSCO	International Organization of Securities Commissions
JAMLACC	The Joint Anti-Money Laundering Coordinating Committee
KYC	Know Your Customer
MD	Managing Director of the Financial Services Commission
MFD*	Monetary and Financial Systems Department
MF Act	Mutual Funds Act, 1996
ML	Money Laundering
MLAT	Mutual Legal Assistance Treaty
MoF	Ministry of Finance
MOU	Memorandum of Understanding
OFC	Offshore Financial Center
OGBS	Offshore Group of Bank Supervisors
Police FINU	Police Financial Investigations Unit of the Royal Virgin Islands Police Force
PCCA	The Proceeds of Criminal Conduct Act
RA	Reporting Authority
RCA	Registry of Corporate Affairs

GOB	Government-Owned Bank
STR	Suspicious Transaction Report

*The IMF's Monetary and Exchange Affairs Department (MAE) was renamed the Monetary and Financial Systems Department (MFD) as of May 1, 2003. The new name has been used throughout the report, where necessary.

I. BASEL CORE PRINCIPLES FOR EFFECTIVE BANKING SUPERVISION

A. General

1. This report provides an assessment of the British Virgin Islands' (BVI) compliance with the BCPs. The assessment was undertaken as part of the IMF Module 2 for Offshore Financial Centers. The conclusions of this report are based on an initial self-assessment of the authorities, supplemented by additional discussions between the team and the authorities. This assessment was prepared by Mr. Joseph O'Neill.

Information and methodology used for assessment

2. The assessment of fulfillment of the core principles is not, and is not intended to be, an exact science. Banking systems differ from one country to the next, as do their domestic circumstances. Furthermore, banking activities are changing rapidly around the world and theories, policies, and best practices of supervision are evolving swiftly. Nevertheless, it is acknowledged internationally that the core principles are seen as minimum standards.

3. The assessment of compliance with each principle has been made on a qualitative basis. A five-part assessment system is used: compliant; largely compliant; materially noncompliant; noncompliant; and not applicable. To achieve a "compliant" assessment with a principle, all essential criteria generally must be met without any significant deficiencies. There may be instances where a country can demonstrate that the principle has been achieved through different means. Conversely, due to specific conditions in individual countries, the essential criteria may not always be sufficient to achieve the objective of the principle and, therefore, one or more additional criteria and/or other measures may also be deemed necessary by the assessor to judge that compliance is achieved. A "largely compliant" assessment is given if only minor shortcomings are observed and these are not seen as sufficient to raise serious doubts about the authority's ability to achieve the objective of that principle. A "materially noncompliant assessment" is given when the shortcomings are sufficient to raise doubts about the authority's ability to achieve compliance, but substantive progress had been made. A "noncompliant" assessment is given when no substantive progress toward compliance has been achieved or when insufficient information was available to conclude that substantive progress had been made toward compliance. An assessment of "not applicable" is rendered for a principle deemed by the assessors not to have relevance."[1]

4. The assessment has been carried out on the basis of the BTCA of 1990. The assessors had working sessions with representatives from the Financial Services Commission (FSC), various other governmental authorities, the bankers association, and commercial banks.

[1] Core Principles Methodology, Basel Committee on Banking Supervision, October 1999.

Market structure

5. The BVI banking system is composed of 11 banks with total assets amounting to approximately US$2.76 billion. All banks, except for the Development Bank of the Virgin Islands (DBVI), operate under the Bank and Trust Company Act (BTCA) and are subject to the supervision of the Financial Services FSC (FSC). Under the BTCA, entities that engage in the business of banking in the BVI must have a general banking license. The BTCA provides a restricted Class I Banking License, which limits deposit taking to persons outside the BVI and prohibits investing in assets that represent a claim on any BVI resident, with certain exceptions (Table 1).

Table 1. Banking System
As of June 30, 2002
(In millions of U.S. Dollars)

Type of Institution	Number of Institutions	Total Assets	Total Capital
General license:			
Subsidiary of foreign banks	3	$765	$123
Branches of foreign banks	3	834	
Restricted license:			
Subsidiary of foreign banks 1/	3	1069	7
Subsidiary of a foreign company 2/	1	39	38
Development Bank of the Virgin Islands	1	56	3
Total	11	$2,763	$171

Source: FSC.

1/ Excludes Disa Bank (BVI) Limited (a subsidiary of a Panamanian bank), which has been in receivership since 2001.
2/ This corporation is engaged solely in intercompany treasury operations.

6. General license banks are primarily subsidiaries or branches of highly reputable regional and international institutions, which are subject to strong prudential regulation and effective consolidated supervision from their country of origin. These include Banco Popular de Puerto Rico, Barclays (which is being restructured into a new regional banking group called First Caribbean International Bank), HSBC, and Scotia Bank.

7. The general license banks are locally engaged primarily in traditional deposit taking and lending activities (residential mortgage, personal, small business and local government). Close to 50 percent of the deposits in the general license banks are from foreign individuals and corporations. Foreign funding received by general license banks relates primarily to taxation strategies of individuals, and functions as a complement to international business companies, trust companies, and mutual funds licensed in the BVI.

8. Total loans outstanding in the general license banks as of June 30, 2002, amount to approximately US$500 million, or approximately 30 percent of their total assets. The portfolio consists mostly of residential, personal, small business, and government loans, and the vast majority of these are to BVI persons. Approximately, 60 percent of total assets (or US$1 billion) is placed in deposits and short-term instruments with other banks, the home office, parent bank or affiliates, which represents an unusually high level of liquidity and, in various cases, a significant credit concentration risk.

9. Total capital for general license banks amounts to US$123 million, which is deemed adequate.

10. The restricted bank activity is concentrated in the Bank of East Asia (BVI) Limited with total assets amounting to US$977 million. This bank engages in deposit taking from customers of its affiliates and redeposits all its funds with its parent bank.

11. The DBVI operates pursuant to the Development Bank of the Virgin Islands Ordinance of July 1974 (DBVI Ordinance), and is engaged in traditional retail and commercial banking activities, including accepting deposits from the public. Even though the DBVI is currently exempt from the prudential oversight, it provides periodic regulatory information to the FSC on a voluntary basis. It is expected that the DBVI Ordinance will be amended to place the DBVI under the FSC's regulatory jurisdiction.

General preconditions for effective banking supervision

12. In accordance with the core principle methodology, the preconditions for effective banking supervision include: (i) sound and sustainable macroeconomic policies; (ii) a well-developed public infrastructure; (iii) effective market discipline; (iv) procedures for efficient resolution of problems in banks; and (v) mechanisms for providing an appropriate level of systemic protection.

13. Generally, the BVI has in place the preconditions for effective banking supervision. Although the BVI lacks mechanisms for systemic protection, the composition of the onshore banking system (branches or subsidiaries of strong regional and international banks, which operate under systemic safeguards themselves) mitigate this shortcoming adequately. In addition, as discussed further in the following section, transparency in the system may be improved substantially. However, this deficiency is deemed not to have a significant adverse effect on the operations of the banking system, as the parent banking organizations are mostly publicly traded companies subject to strong transparency standards.

14. Accordingly, it is expected that international standards and best practices are applied by all participants in the BVI.

B. Detailed Assessment

Table 2. Detailed Assessment of Compliance of the Basel Core Principles

Principle 1.	**Objectives, Autonomy, Powers, and Resources** An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks. Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to the authorization of banking establishments and their ongoing supervision; powers to address compliance with laws, 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.
Principle 1(1)	An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks.
Description	The Financial Services Commission Act of 2001 (FSCA) in Section 4(1) establishes the functions of the FSC, which include the regulation and supervision of "regulated persons" pursuant to the BTCA. Section 4(2) of the FSCA, states that in performing its functions it shall have particular regard as to the protection of the public, including investors whether within or outside the BVI, against financial loss arising out of the dishonesty, incompetence, malpractice, or insolvency of persons engaged in financial services business in the BVI. The FSC, pursuant to Section 15 of the BTCA, has the function of "…satisfying [itself] that all provisions of this Act are being complied with and that the licensee is in a sound financial position and is carrying on its business in a satisfying manner…"
Assessment	Compliant
Comments	The essential criteria are met. Laws and regulations provide an adequate framework for prudential operation and supervision of banks.
Principle 1(2)	Each such agency should possess operational independence and adequate resources.
Description	The FSCA was created primarily to segregate the financial supervisor from the ministry of finance and provide the new entity budgetary and operational independence. The FSC reports to the Board of the FSC (the Board). The Board is composed of six members, which includes the managing director of the FSC as an ex-officio member. The Board members are appointed by the executive council for terms not to exceed three years. However, the appointment of the managing director of the FSC by the Board is not subject to a fixed statutory term, and just cause for termination is not required. The FSCA provides that, as agreed with the executive council, the FSC will retain between 7.5 percent and 15 percent of its collections, which includes all licensing charges relating to international business companies. The FSCA provides that if no agreement is reached, the FSC is to receive the same amount of funding as in the previous year.
Assessment	Largely Complaint
Comments	The segregation from the ministry of finance, combined with the term designation of the FSC's Board, provides a substantial degree of independence to the FSC. Furthermore, the budgetary concepts included in the FSCA provide adequate resources and safeguards to promote the stable funding of the FSC. However, to be fully compliant, it is deemed important that the person who is ultimately responsible for the supervision and remedial actions have a fixed statutory term to minimize the possibility of undue pressure.
Principle 1(3)	A suitable legal framework for banking supervision is also necessary, including provisions relating to authorization of banking establishments and their ongoing supervision.
Description	Part II of the FSCA covers the "Licensing and Supervisory Committee" (the Committee),

	establishing its composition, functions, and general procedures. The Committee is composed primarily by the FSC managing director, who chairs the Committee, the deputy managing director, and the heads of the regulatory and supervisory divisions of the FSC. The Committee's functions include to receive, review, and determine applications for authorizations and licenses of banks, and to supervise regulated institutions, including banks. 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 the specific powers to the FSC to take the necessary remedial actions, including license revocation. Section 29 of the FSC establishes broad powers to share information. In accordance with Section 41 of the FSCA, the FSC, with the approval of the executive council (cabinet of government ministers), may issue prudential regulations and codes. Nevertheless, the DBVI is not under the purview of a prudential supervision regulator.
Assessment	Largely Complaint—steps to become fully compliant are underway.
Comments	With the exception of the DBVI, the BVI complies with the criteria of this principle. Legislation is being drafted to bring the DBVI under its regulatory authority in the same manner as the nongovernmental banking institutions.
Principle 1(4)	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	The FSCA provides the FSC with broad supervisory powers to ascertain compliance with applicable laws and regulations and to ensure that the banks operate in a safe and sound manner. Section 37 of the FSCA establishes the FSC's power to take enforcement action against a regulated person who, in the opinion of the FSC, has contravened any financial services legislation (which includes the BTCA) or is carrying on business in a manner detrimental to the public interest. The FSC has unfettered access to banks' files in order to review compliance with internal procedures as well as applicable laws and regulations.
Assessment	Compliant
Comments	The FSCA and the BTCA provide the FSC with extensive powers to address compliance with laws and regulations as well as safety and soundness concerns.
Principle 1(5)	A suitable legal framework for banking supervision is also necessary, including legal protection for supervisors.
Description	Section 50 of the FSCA states: "No action shall be brought against (a) the FSC or any FSCer or member of the Committee or an employee or agent of the FSC for anything done, in good faith, in exercise of powers or performance of duties conferred or imposed by this Act or any financial services legislation …" There are no statutory provisions protecting supervisory staff from the costs of defending their actions in performance of their legitimate supervisory tasks.
Assessment	Compliant
Comments	The FSCA provides an adequate level of immunity. However, it would be desirable to introduce certainty into whether supervisory staff is covered for costs in defending their actions in performance of their legitimate supervisory tasks.
Principle 1(6)	Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	Section 29 of the FSCA establishes the restrictions on the disclosure of information. Among the various exceptions to the information disclosure restrictions is item (e), which permits sharing of information to assist foreign regulatory authorities with the prior approval of the Board. The Financial Services (International Cooperation) Act also provides multiple gateways for the flow of information among regulatory authorities. Both laws specifically require that the information provided be kept confidential, except with

	prior written consent of the Board.
Assessment	Compliant
Comments	The FSC has clear authority to share information with the other supervisors and require that such information is kept confidential.
Principle 2.	**Permissible Activities** 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	Section 2 of the BTCA defines the term "bank" as "a person carrying on a banking business." "Banking business" is defined as " the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or similar account money that is repayable by check or order and is capable of being invested by way of advances to customers …" Section 16 of the BTCA adequately limits the use of the word "bank", "savings", "savings and loans" and other terms and their derivates. Section 16 (c) prohibits the solicitation or receiving deposits from the public without a license.
Assessment	Compliant
Comments	The BTCA clearly requires that the activity of deposit taking be engaged solely in a bank, and adequately limits the usage of the term "bank" and its derivates.
Principle 3.	**Licensing Criteria** The licensing authority must have the right 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 banking organization's ownership structure, directors and senior management, its operating plan and internal controls, 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.
Description	Part II of the BTCA establishes the general licensing requirements. The Bank and Trust Companies Regulations, 1991 provides the detailed forms and information to be submitted for a bank or trust license. The information required includes the submission of the names of the directors, shareholders, officers, and managers. For the directors and officers extensive, detailed information must be provided that includes previous professional experience, previous addresses, education, criminal record, and disciplinary actions by any professional or regulatory body. On November 26, 1993, the executive council approved the "Guidelines for Banking Licensing." These guidelines include, among other provisions, the following requirements: (i) only branches of banks with "well established and proven track record and which are subject to effective consolidated supervision by their supervisory authorities" authorized; (ii) will grant licenses only if the place of incorporation, mind and management are within the same jurisdiction …;" (iii) will only permit management with proven experience; (iv) will only allow fit and proper people to undertake the functions envisioned; (v) requires filing an "appropriate and sustainable business plan;" (vi) requires adequate capital in relation to the business plan; and (vii) requires direct confirmation from the country in which the institution or its parent is incorporated that the authority: (a) consents to the establishment of the institution; (b) will exercise consolidated supervision, including the host BVI; and (c) will cooperate in the sharing of regulatory information. Section 4(5) of the BTCA establishes the broad power to refuse to grant a license, which is not subject to appeal. Section 12 of the BTCA establishes the minimum capital requirements. These requirements are US$2 million for a general banking license and US$1 million for a restricted banking license. Nevertheless, the FSC may require additional capital consistent with the nature of the business sought.

	Part II of the FSCA establishes the "Licensing and Supervisory Committee." Please refer to Principle 1(3). This Committee has the power to issue or not approve any application.
Assessment	Compliant
Comments	As part of our assessment, the team reviewed the licensing procedures for the change in control of two entities operating in the BVI. The procedures applied by the FSC for these applications, one of which includes a reorganization/creation of a new regional banking group, evidence compliance with this principle. The FSC may consider documenting their detailed evaluation of the laws/regulations and procedures of the home-country-consolidated supervisors.
Principle 4.	**Ownership** Banking supervisors must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.
Description	Section 14 of the BTCA prohibits the transfer of shares or beneficial interests without the prior approval written approval of the FSC. In accordance with the Guidelines and Operating Procedures of the Licensing and Supervisory Committee, approved by the Board of the FSC, all transfers above 25 percent of ownership are to be approved by the Licensing and Supervisory Committee, and the transfers of 25 percent or less by the head of the division. For transactions where a transfer of a controlling interest occurs, the FSC requires the bank to apply for a new license. Entities operating under a branch structure may request an exemption from Section 14. The FSC ascertains that the home country has adequate legislation and practices regarding changes in control before granting such exemptions.
Assessment	Compliant
Comments	The legal and administrative practices comply with the requirements of this principle.
Principle 5.	**Investment Criteria** Banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.
Description	Current laws and regulations do not cover limitations as to acquisitions and investments. Furthermore, there is no limitation currently as to placing risks with affiliated entities. The FSC has begun to inquire as to this issue through yearly prudential visits. Please refer to Principle 16.
Assessment	Noncompliant
Comments	The jurisdiction lacks legal and regulatory guidelines to comply with the requirements of this principle.
Principle 6.	Capital Adequacy Banking supervisors must set 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. For internationally active banks, these requirements must not be less than those established in the Basel Capital Accord.
Description	Section 12 of the BTCA establishes minimum capital requirements. These requirements are US$2 million for a general banking license and US$1 million for a restricted banking license. Nevertheless, the FSC may require additional capital consistent with the nature of the business sought. In practice, the FSC administratively requires general-license banks and most restricted-license banks to comply with an 8 percent leveraged capital requirement. This requirement is not applied to foreign banks that operate in the BVI as branches.

	In a recent transaction whereby the local operation of Barclays PLC is expected to be included within a new regional bank, the FSC required a capital assignment for the expected future branch. The DBVI is currently not legally subject to a prudential capital requirement, despite the fact that it accepts deposits from the public.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	Although the team recognizes the FSC's administrative procedures to require a leveraged 8 percent capital requirement, the lack of adequate legal and regulatory requirements applicable to the banking system causes the jurisdiction to be materially noncompliant. The team has been advised that the FSC intends to recommend an amendment to the BTCA to provide a 10 to 12 percent minimum capital requirement. Consistent with the concept applied to the license application of First Caribbean International Bank, the FSC may consider implementing for the local branches a net credit due to affiliate's requirement, akin to a capital requirement. Furthermore, the lack of restrictions as to placing funds with affiliates allows any capital requirement to be easily circumvented.
Principle 7.	**Credit Policies** An essential part of any supervisory system is the independent evaluation of a bank's policies, practices, and procedures related to the granting of loans and making of investments, and the ongoing management of the loan and investment portfolios.
Description	The FSC's independent evaluation of the bank's policies, practices, and procedures relating to granting loans and making investments is limited to prudential visits. The prudential visits consist of meeting with management and discussing the institution's operations and risk management. Such discussion includes a section on credit administration, measurement, and monitoring.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	The team recognizes and supports the progress recently achieved by the FSC in implementing its on-site prudential visits. However, the current legal and regulatory structure does not establish requirements for specific internal controls, and prudential visits lack the depth required to independently assess whether management representations are in fact in place. The FSC represents that it will soon issue a regulation requiring banks to submit copies of approved policies and procedures. Furthermore, the FSC intends to implement more in-depth, on-site examinations during the second half of 2003, which will address the requirements of this principle.
Principle 8.	**Loan Evaluation and Loan-Loss Provisioning** Banking supervisors must be satisfied that banks establish and adhere to adequate policies, practices, and procedures for evaluating the quality of assets and the adequacy of loan-loss provisions and reserves.
Description	The current laws, regulations, and practices do not provide for evaluating the quality of or providing reserves for specific assets. As detailed in the description of Principle 7, FSC staff discusses credit-related issues during its prudential visits, which include questions regarding credit administration, measurement, and monitoring. During such visits, inquires are posed as to delinquency, provisions, and reserves.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	The team recognizes and supports the progress achieved recently by the FSC in implementing its prudential visits. However, the current legal and regulatory structure does not establish requirements for specific reserves for credit risk, and prudential visits lack the depth required to independently assess whether the provision and reserve for credit exposure are adequate. The FSC intends to implement more in depth, on-site examinations during the second half of 2003, which should address the requirements of this principle.

Principle 9.	**Large Exposure Limits** Banking supervisors must be satisfied that banks have management information systems that enable management to identify concentrations within the portfolio, and supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.
Description	Form BS, a quarterly regulatory reporting (encompasses a balance sheet with additional detailed items), requires each bank to detail the 10 largest credit exposures to the "nonbank sector." The instructions for this regulatory reporting establish that credit exposure should aggregate all credit facilities granted to the same borrower and, subsequently, detail the exposure by individual companies. The current legal and regulatory framework does not establish prudential limits. The FSC represents that, administratively, 25 percent of the bank's capital is used as a lending limit. In addition, during prudential visits, the issue of credit concentration is discussed with management.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	The concept of prudential limit to a single borrower or groups of related borrowers is not addressed in the BTCA or in regulation. Furthermore, current supervisory practices allow unlimited exposure to banking institutions. The FSC intends to issue Guidance Notes in coming months, which should address a wide variety of prudential requirement issues including large exposures, connected lending, and related-party transactions.
Principle 10.	**Connected Lending** In order to prevent abuses arising from connected lending, banking supervisors must have in place requirements that banks lend to related companies and individuals on an arm's-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.
Description	As part of prudential visits the FSC inquires as to the procedures for extending credit to related companies and individuals. Currently no limits are established regarding maximum amount of exposure to related parties.
Assessment	Noncompliant—steps to become fully compliant are underway.
Comments	The FSC intends to issue Guidance Notes during in coming months which should address a wide variety of prudential requirement issues including large exposures, connected lending and related party transactions. The FSC advises that transactions with related parties will be subject to the same prudential limitations as transactions with third parties. The current legal and regulatory structure does not establish limits for related party transactions. Some banks have credit exposure to affiliates which exceed total capital.
Principle 11.	**Country Risk** Banking supervisors must be satisfied that banks have adequate policies and procedures for identifying, monitoring, and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining appropriate reserves against such risks.
Description	The current legal and regulatory structure does not contemplate country and transfer risk. Current prudential visits include issues relating to management of foreign exchange; however, they do not specifically include foreign country risk or transfer risk.
Assessment	Noncompliant—steps to become fully compliant are underway.
Comments	The current legal and regulatory structure, as well as the current supervisory practices, does not cover country risk.
Principle 12.	**Market Risks** Banking supervisors must be satisfied that banks have in place systems that accurately measure, monitor, and adequately control market risks; supervisors should have powers to impose specific limits and/or a specific capital charge on market-risk exposure, if warranted.
Description	The FSC lacks specific legal or regulatory requirements relating to market risk. During prudential visits, the FSC inquires on the management of multiple risks, including foreign exchange risk. The questionnaire that is currently employed does not specifically address

	other issues relating to market risk. Please refer to Principle 16. Currently, no capital charge is assessed in relation to market risk.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	The FSC has begun to assess a portion of market risk through the questionnaires employed during prudential visits. Through the questionnaire, the FSC obtains information on the internal controls, policies, and procedures, and inquires specifically as to management of foreign exchange risk and the overall interest rate management. However, the current supervisory model does not cover many issues linked to market risk and the FSC has yet to implement detailed testing techniques to assure that bank policies and procedures are properly followed and that such policies and procedures are effective. The FSC is expected to implement an on-site supervision module during the second half of 2003. Through such procedures the FSC's staff should be better able to assess and supervise market risk.
Principle 13.	**Other Risks** Banking supervisors must be satisfied that banks have in place a comprehensive risk management process (including appropriate board and senior management oversight) to identify, measure, monitor, and control all other material risks and, where appropriate, to hold capital against these risks.
Description	The supervision of risks encompasses the procedures described in Principle 16. These include detailed questions regarding liquidity, interest rate risk, operational risk, as well as comprehensive risk management practices. The quarterly reporting package of maturities is utilized as an instrument to help monitor liquidity risk. However, no specific regulatory requirements or limitations exist regarding interest rate risk, liquidity risk, foreign exchange risk or operational risk.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	The FSC has begun to assess most types of risk through the questionnaires utilized during the prudential visits. Through the questionnaire the FSC obtains information on the internal controls, policies and procedures, and inquires specifically as to management of liquidity, interest rate management, and operational risk. However, the FSC has yet to implement detailed testing techniques to assure that the banks' policies and procedures are properly followed and that such policies and procedures are effective. The FSC is expected to implement an on-site supervision module during the second half of 2003.
Principle 14.	**Internal Control and Audit** Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale 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 its assets; and appropriate independent internal or external audit and compliance functions to test adherence to these controls, as well as applicable laws and regulations.
Description	During the bank prudential visits, the FSC's personnel inquire as to the internal controls, policies, and procedures in place. The questionnaire includes detailed questions relating to the major risks, and the internal controls to administer and monitor such risks. The prudential visits also include detailed questions relating to the corporate governance structure, including a specific section on the internal audit function. The FSCA requires regulated persons, including banks, to designate one of its staff members as a Compliance Officer. Under the FSCA the Compliance Officer responsibilities include: (i) establishing and maintaining a manual of compliance procedures; (ii) ensure that the regulated

	entity's staff comply with the financial services legislation, the internal manual of compliance procedures and the Regulatory Code issued by the FSC; and (iii) act as a liaison with the FSC and prepare and submit the reports required by legislation, regulatory code or directive. The legal and regulatory structure does not specify the responsibilities of the Board of Directors. The FSC is in advance stages in implementing the "Compliance Officer" concept as established in the FSCA. In addition, the FSC intends to issue at the end of 2002 guidelines identifying the responsibilities of the board of directors of banks and regarding the internal audit function.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	The team recognizes the important steps taken by the FSC to implement prudential visits. However, given the lack of detailed review and testing, the FSC lacks certainty as to whether the internal controls and internal audit are appropriately implemented and are functioning adequately. The implementation of the "Compliance Officer" requirement, coupled with the implementation of corporate governance guidelines and in-depth on-site exams next year should significantly improve the FSC's oversight of the internal controls and corporate governance of the banks.
Principle 15.	**Money Laundering** Banking supervisors must determine that banks have adequate policies, practices, and procedures in place, including strict "know-your-customer" rules that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.
Description	The Anti-Money Laundering Code of Procedures (AMLCP) requires banks to have in place adequate policies, practices and procedures to prevent misuse by criminal elements, with particular focus on minimum customer due diligence requirements for new and existing business, ongoing monitoring of relationships, and procedures for suspicious transaction reporting. The AMLCP is supplemented by the Anti-Money Laundering Guidance Notes, which are incorporated by reference by the AMLCP to give the Guidance Notes legal effect. The AMLCP requires banks to identify customers on the basis of official identification documents, to obtain identification information of beneficial ownership, and to keep records of customer identification materials. If doubts arise concerning the identity of the customer, banks are obliged to obtain satisfactory evidence to substantiate the proposed relationship or one-off transaction. The AMLCP and Guidance Notes contemplate that customer due diligence requirements be carried out either directly by the bank or by eligible introducers, if the introducers meet minimum criteria. All banks are required to appoint a compliance officer for general prudential requirements under the FSCA, and are specifically required by the AMLCP to appoint a compliance officer with responsibility for ensuring AML/CFT policies and procedures are in place and required training is conducted. In addition, the AMLCP also requires appointment of a Reporting Officer with responsibility for ensuring suspicious transactions are reported within the bank and to the Reporting Authority. The Reporting Officer and Compliance Officer may be the same person, and appointment of the Compliance Officer requires the approval of the FSC, although the approval process has not yet begun. Under the PCCA, persons who report suspicious transactions are protected from liability for prosecution for ML and are protected from any breach of confidentiality for disclosure to the RA. Suspicious activity reporting is currently a voluntary system, although consideration of

	mandatory reporting is underway. Banks are required to provide information with sufficient quality and quantity to enable the investigative officer with sufficient information to determine the transaction and to obtain a court order, if necessary. Implementation of the full range of supervision for AML/CFT measures has not been completed, so it is difficult to ascertain the level of compliance within the banking sector. Of particular concern is the Development Bank of the Virgin Islands, which is not subject to AML/CFT measures under the AMLCP. The commercial banks in the BVI are all subsidiaries or branches of banks in jurisdictions that have had AML/CFT measures in place for a number of years, and the home state supervisors have authority to ensure compliance in the BVI branches and subsidiaries, as a general matter. Accordingly, the level of compliance can be surmised to be sufficient, although particulars of compliance cannot be known until on-site inspections involving file review and transaction testing is undertaken. Details concerning the scope of requirements applicable to banks can be found in the detailed AML/CFT assessment.
Assessment	Largely Compliant
Comments	No comments.
Principle 16.	**On-Site and Off-Site Supervision** An effective banking supervisory system should consist of some form of both on-site and off-site supervision.
Description	The bank supervision includes the combination of on-site and off-site procedures. The FSC receives on a quarterly basis a Form BS which is a balance sheet and income statement with additional memorandum information. In addition, the FSC requires the filing of a maturity analysis of assets and liabilities. The regulatory report Form BS is highly summarized and does not include sufficient detail (for example levels of delinquency) to make detailed qualitative judgments or assessments of the institutions assets, and accordingly it is of limited supervisory value. The FSC began its on-site prudential visits in 2001. These visits consist of a meeting with top management to discuss the operations, performance and management of the institutions. The meeting with management may last a few hours or up to an entire day. The FSC uses its "Bank Prudential Visit Questionnaire" as a basis to analyze the bank. The questionnaire includes inquires as to the bank's management of credit risk, liquidity, foreign exchange risk, interest rate risk, and AML The questionnaire also covers multiple general management issues including the evaluation of management, evaluation of the internal audit function and information technology. A review of various Bank Prudential Visit Reports suggests that the prudential visit procedures are under continuous development. The level of detail questioning, analysis and follow-up only provide a very high level perspective of the institution. Due to the lack of detail analysis and detail testing the supervisor does not have adequate independent verification of the bank management representations.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	The team recognizes the important steps take by the FSC to implement its prudential visits whereby the FSC makes high level assessments of the banking institutions. However, in order for the supervisory process to be highly effective more detailed information needs to be obtained and analyzed and independent testing must be performed. The FSC is expected to implement a much more comprehensive on-site supervision module during the second half of 2003. Through such procedures the FSC's staff will be better able to assess and supervise the various risks to which the banks are exposed. Furthermore, the FSC is

	in the process of modifying its off-site reporting package to include detailed information on: (i) Exposures to central governments; (ii) income and expense statements; (iii) securities subdivided by different categories (debt vs. equity and trading vs. investment/held to maturity), (iv) past due loans and other assets; (v) repricing maturities; (vi) off-balance sheet items; (vii) derivatives; and (viii) risk based capital calculation.
Principle 17.	**Bank Management Contact** Banking supervisors must have regular contact with bank management and a thorough understanding of the institution's operations.
Description	In practice, the FSC has regular contact with the institutions that it supervises through the prudential visit process. At a minimum, the FSC's staff meets with top management of the bank once a year. The Director of Banking and Fiduciary Services meets with the Banking Association on a quarterly basis. In addition, the FSC's managing director meets periodically with the Banking Association to discuss issues affecting the jurisdiction including legal and regulatory changes. For subsidiaries operating in the BVI the FSC staff meets with the Board the Directors.
Assessment	Compliant
Comments	Through the yearly prudential visits and the various efforts to continue collaborative efforts to improve the legal and regulatory framework, the FSC has ample contact with bank management.
Principle 18.	**Off-Site Supervision** Banking supervisors must have a means of collecting, reviewing, and analyzing prudential reports and statistical returns from banks on a solo and consolidated basis.
Description	Section 15(3)(c) of the BTCA establishes that the FSC may demand any information or explanation for performing its functions under the Act. Section 32 of the FSCA authorizes the FSC to require regulated persons, a person connected to a regulated person or any person reasonably believed to have relevant information to provide any information or documents as deemed necessary to discharge its functions and ensuring compliance with any financial services legislation. The FSC currently receives quarterly information as to banks balance sheet, income statement and a maturity analysis. The information currently lacks sufficient detail to perform adequate off-site supervision. Please see Principle 16.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	The FSC has explicit powers to require any relevant information. However, the information currently received is of limited supervisory value as it lacks sufficient detail. The FSC is in the process of modifying its quarterly regulatory reporting to include more in-depth regulatory information. Please refer to Principle 16 for further detail.
Principle 19.	**Validation of Supervisory Information** Banking supervisors must have a means of independent validation of supervisory information either through on-site examinations or use of external auditors.
Description	The FSC currently does not have a formal program to validate the supervisory information received. However, the supervisory information received in the last quarter from banks operating under a subsidiary structure is validated against the audited financial statements. As part of the implementation of an in-depth on-site examination program, the FSC should consider implementing steps with the on-site examination to verify the accuracy of the supervisory information received.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	The FSC currently only validates a small portion of the regulatory information received. As part of its implementation of its on-site examination program during 2003, it is expected that such exams will include the validation of supervisory information.

Principle 20.	**Consolidated Supervision** An essential element of banking supervision is the ability of the supervisors to supervise the banking group on a consolidated basis.
Description	Currently, there are no foreign subsidiaries or branches of a bank incorporated in the British Virgin Islands. Nevertheless, the FSC has the legal power to authorize foreign subsidiaries or branches. No limitations exist to its power in regard to foreign subsidiaries or branches.
Assessment	Not applicable
Comments	This principle does not apply as currently no bank incorporated in the British Virgin Islands has subsidiaries or foreign branches. All banks operating in the British Virgin Islands are either branches of foreign banks, subsidiaries of foreign banks, or stand-alone banks.
Principle 21.	**Accounting Standards** Banking supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business, and that the bank publishes on a regular basis financial statements that fairly reflect its condition.
Description	In accordance with Section 17 of the BTCA, the FSC requires the banks to file an audited financial statement three months after the end of the year. The licensing Guidelines establish in section 3(g) that "The applicant will appoint approved auditors who will perform that work according to internationally accepted auditing standards." The FSC accepts audited financial statements in accordance with the standards of a bank's country of origin. For example a Hong Kong based bank issues its financial statements based on generally accepted accounting principles in Hong Kong, while a Canadian subsidiary issues its financial statements in accordance with International Accounting Standards. The FSC does not require the branches to file audited financial statements. In addition, neither the FSC nor the banking industry publishes detailed information on the financial condition of the banks.
Assessment	Materially noncompliant—steps to become fully compliant are underway.
Comments	The FSC intends to modify the BTCA to establish clearly the accounting standards to be utilized. The branches operating in the British Virgin Islands, which account for more than half of the local banking operations, are not subject to independent external audits. Also, due to the lack of regulatory requirements, there is no transparency as to financial information of the local banking industry.
Principle 22.	**Remedial Measures** Banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances, this should include the ability to revoke the banking license or recommend its revocation.
Description	Section 20(2) of the BTCA empowers the FSC to take remedial actions when a licensee has: (i) ceased to carry on banking business; (ii) has gone into liquidation or is wound up or is otherwise dissolved; (iii) has made any arrangement or composition with its creditors; (iv) is unable or appears likely to become unable to meet its obligations as they fall due; (v) is carrying on business in a manner detrimental to the public interest, the interest of its depositors or the interests … of other creditors; (vi) has contravened any provision of the BTCA; or (vii) has failed to comply with a condition of its license, to (a) revoke the license, (b) impose new or additional conditions upon the licensee, (c) appoint an advisor to the licensee, (d) appoint a person to take control, or (e) any other action the FSC thinks fit.
Assessment	Largely Complaint—steps to become fully compliant are underway.
Comments	The FSC has adequate legal powers to take corrective action when deemed necessary. However,

	due to the shortfall in the on-site and off-site supervision and weakness in the prudential standards, in practice the remedial actions appear not to occur on a timely basis. As the FSC strengthens its prudential standard regime and its on-site and off-site supervisory program, any weakness in the banking system should be detected on a timely basis for early corrective action.
Principle 23.	**Globally Consolidated Supervision** Banking supervisors must practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organizations worldwide, primarily at their foreign branches, joint ventures, and subsidiaries.
Description	Currently, there are no foreign subsidiaries or branches of a bank incorporated in the British Virgin Islands. Nevertheless, the FSC has the legal power to authorize foreign subsidiaries or branches. No limitations exist to its power in regard to foreign subsidiaries or branches.
Assessment	Not applicable
Comments	This principle does not apply as currently no bank incorporated in the British Virgin Islands has subsidiaries or foreign branches.
Principle 24.	**Coordination with Other Supervisors** A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.
Description	The Head of the Banking Division, as part of his supervisory procedures meets sporadically with the foreign consolidated supervisor of each bank operating in the BVI. From reviewing license applications it is evident that there is considerable interaction with foreign regulators. However, documentation as to results of meeting with the consolidated regulator is limited. The FSC is in conversations with supervisors of other jurisdictions (Federal Reserve, FSA, Puerto Rico, Cayman, and Barbados) to sign a cooperation and information exchange agreement. The FSC appears to have practical relations with its counterparts and the team has been advised that substantial interaction occurs.
Assessment	Largely Complaint—steps to become fully compliant are underway.
Comments	Although this principle is primarily applicable to home supervisors and their coordination with their international host counterparts, an important aspect of the FSC's supervision should include the continuous evaluation of the parent banking organization and continuous communication with the consolidated supervisor to be abreast of the issues affecting the banking group. The FSC has taken an active approach in establishing and maintaining communication with its counterparts. The FSC should consider investing substantial resources in establishing intimate coordination with the consolidated supervisors to be adequately abreast of the dynamics of the consolidated banking organization and ascertain that the supervisory procedures and consolidated controls are applied appropriately in the British Virgin Islands. Also, through close coordination, the FSC may be able to coordinate limited scope joint examinations of the local operations.
Principle 25.	**Equal Treatment of Foreign Bank Establishments** Banking supervisors must require the local operations of foreign banks to be conducted with the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.
Description	The banking industry, with the exception of the Virgin Islands Development Bank, is entirely composed of foreign institutions. For prudential standards purposes different standards are applied depending on the type of license, however the same standards are applied to all banks with the same type of license. The Class I restricted licenses (which do not engage in business in the British Virgin Islands) in practice are not subject to the same administrative capital requirement.

Assessment	Compliant
Comments	The laws and regulations do not establish different regulatory treatment for foreign institutions as compared to local institutions. Please note that all banks operating in the BVI, with the exception of the DBVI, are of foreign origin.

Table 3. Summary Compliance of the Basel Core Principles

Core Principle	C[1/]	LC[2/]	MNC[3]	NC[4/]	NA[5/]
1. Objectives, Autonomy, Powers, and Resources					
1.1 Objectives	X				
1.2 Independence		X			
1.3 Legal framework	X				
1.4 Enforcement powers	X				
1.5 Legal protection	X				
1.6 Information sharing	X				
2. Permissible Activities	X				
3. Licensing Criteria	X				
4. Ownership	X				
5. Investment Criteria				X	
6. Capital Adequacy			X		
7. Credit Policies			X		
8. Loan Evaluation and Loan-Loss Provisioning			X		
9. Large Exposure Limits			X		
10. Connected Lending				X	
11. Country Risk				X	
12. Market Risks			X		
13. Other Risks			X		
14. Internal Control and Audit			X		
15. Money Laundering		X			
16. On-Site and Off-Site Supervision			X		
17. Bank Management Contact	X				
18. Off-site Supervision			X		
19. Validation of Supervisory Information			X		
20. Consolidated Supervision					X
21. Accounting Standards			X		
22. Remedial Measures		X			
23. Globally Consolidated Supervision					X
24. Host Country Supervision		X			
25. Supervision Over Foreign Banks' Establishments	X				

[1/] C: Compliant.
[2/] LC: Largely compliant.
[3/] MNC: Materially noncompliant.
[4/] NC: Noncompliant.
[5/] NA: Not applicable.

Recommended action plan and authorities' response to the assessment

15. Four major issues that cut across several core principles should be addressed promptly:

- Priority should be given to recruiting additional qualified staff. Current staffing levels are inadequate to perform in-depth effective supervision of the BVI's financial system. The FSC has adequate financial resources and has the flexibility adequately to compensate its personnel. The FSC may also consider utilizing consultants to perform various detailed testing procedures.

- The FSC, with the assistance of KPMG, is in the process of creating on-site supervision modules for multiple regulated persons including banks, trust and insurance companies. The successful implementation of these on-site supervision modules coupled with solving the staffing shortcomings will significantly influence the future effectiveness of the FSC's supervision.

- The head of the FSC currently lacks legislative certainty. Full regulatory independence would be provided if the person with the ultimate supervisory and enforcement responsibilities had a fixed term appointment and if greater transparency were provided in the event of separation.

- The jurisdiction generally lacks transparency as to financial information on the market participants. The FSC is encouraged to engage in a process to substantially increase the level of transparency.

Table 4. Recommended Action Plan to Improve Compliance of the Basel Core Principles

Reference Principle	Recommended Action	Response of Authorities
Legal framework for bank supervision(CP 1.3)	Place the Development Bank under the full authority of the FSC.	To be implemented by end-2003 or early 2004.
Prudential Standards (CP 5,6,7,8,9,10,11,12,13)	Implement prudential standards consistent with international standards and in manner to protect the safety and soundness of the system and the interests of depositors and creditors.	See comments below.
Internal Control and Audit (CP 13)	Implement Corporate Governance Standards and formal requirements for internal audit.	See comments below.
On-site and off-site supervision (CP 16,18)	Implement on-site supervisory program and implement changes to off-site supervisory reporting and analysis.	To be implemented.

Reference Principle	Recommended Action	Response of Authorities
Information Validation (CP 19)	As part of the implementation of on-site supervision, include the verification of regulatory reporting with bank records.	To be implemented.
Off-site supervision (CP 18)	Design methodology and add resources for effective and comprehensive understanding and analysis of audit and regulatory reports. Should continuously coordinate with home supervisor.	To be implemented.
Cooperation with Other Supervisors (CP24)	The FSC may consider increasing interaction with home country supervisors to increase understanding of the consolidated entity, risks assumed, and effectiveness of on-site/off-site supervision.	To be implemented.

Authorities' response

16. The FSC has recently signed off on the Fiduciary/Company Management On-site Monitoring Program and the Banking On-site Monitoring Program is expected to be signed off on shortly. Although the FSC has not had a formal on-site inspection program, because of the size and nature of the banking business in the BVI, the Bank Prudential Visit Questionnaire has proven to be a good source of gaining adequate insights into the banks' operations. A new Bank Prudential Visit Questionnaire will allow the FSC to assess banks assets quality amongst other things.

17. The FSC follows a risk based approach to supervision, which has led it to concentrate its supervisory work on, asset liability management, financial performance, capital adequacy requirements, and management of credit risk.

18. With regards to concentration and liquidity risks, draft guidelines developed along international standards are currently with the banking industry for consultation. The proposed standards for credit policies and large exposure were developed to be consistent with the BCP. Although no specific rules have been set for banks' loan, investment policies and practices, since these are considered management responsibilities, the FSC expect banks to identify, monitor and control credit risk. Clear and precise rules with regards to large exposure have been developed. No specific loan classification or provisioning rules have been issued but the FSC expects banks to have internal policies that are consistent with international best practice.

19. Banks are required by the FSC to take reasonable care to establish and maintain systems and controls as appropriate to the nature and scale of their operations. BIS papers on Internal Controls and Operational Risks were issued to the banks as well as Interest Rate Risk. The nature of the banking systems in the BVI is such that there is an independent internal audit function conducted by either head office or parent bank. The quality of banks systems and controls and internal audits will be tested on an on-going basis when the FSC commences on-site inspections.

20. Country risk is not significant for BVI banks as most loans are to domestic companies or individuals. Where there are country risks exposures, the exposures are to OECD and G-10 countries. Connected lending is monitored from the prudential returns through the sections titles Related Party Deposits and Related Party Loans and Advances. All banks licenses have been approved and granted on the explicit understanding that the banks would be regulated according to the BIS standards.

21. The FSC now requires all branches to file audited financial statements commencing end of financial year 2003. A proposed amendment to the BTCA will require all banks to publish financial statements in the local press.

22. Prudential guidelines on the following are being drafted and are due to be implemented by end-2004: bank licensing; large exposures (completed); liquidity management (completed); credit concentration limits; risk weighted capital adequacy ratio; credit classification for provisioning purposes and income recognition; general principles for maintenance of accounting and other records and internal control systems; internet banking; corporate governance; related party transactions; relationship between financial institutions and external auditors; public disclosure of information; interest rate risk; country risk; market risk; code of practice for banks; and prudential returns (completed).

II. Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism

A. General

Information and methodology used for the assessment

23. An IMF-led Offshore Financial Sector (OFC) assessment of the British Virgin Islands (BVI) was conducted November 11–23, 2002. As part of the OFC, a detailed assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime was prepared using the Methodology for Assessing Compliance with Anti-Money Laundering and Combating the Financing of Terrorism Standards (AML/CFT Methodology). The AML/CFT Methodology was endorsed by the Financial Action Task Force (FATF) in October 2002 and the Fund and Bank Boards in November 2002.

24. The AML/CFT assessment was conducted by a team of assessors under the supervision of the Fund staff and an independent AML/CFT expert (IAE), who was not

under the substantive supervision of Fund staff, and was selected from a roster of experts in the assessment of criminal law enforcement and non-prudentially regulated activities. IMF staff and experts reviewed the relevant AML/CFT laws and regulations, and supervisory and regulatory systems in place to deter money laundering (ML) and financing of terrorism (FT) among prudentially regulated financial institutions, including banking, insurance, and securities as well as measures relating to trust and company service providers (TCSPs), which are macro-relevant and vulnerable to money laundering. These aspects of the assessment were conducted by Ms. P. Moni SenGupta (LEG) and Ms. Marie-Christine Dupuis, a consultant from the United Nations Global Program Against Money Laundering.

25. Aspects of the capacity and implementation of the criminal law enforcement systems were assessed by Mr. Atle Roaldsøy, an IAE, from the Norwegian Ministry of Justice. Mr. Roaldsøy also completed the assessment of implementation of AML/CFT measures for money remitters, which are present in the BVI and vulnerable to ML but are not of macro-relevance to the financial sector. Aspects of the implementation and effectiveness of criminal justice measures are noted in italicized criteria in the assessment report. Aspects of implementation of preventive measures for money remitters are noted in specific line items in the discussion points for criteria 43 through 67, where necessary.

26. The assessment is based on a review of existing legislation, regulations, and supervisory guidelines and instructions that are currently in place. The authorities, in particular the FSC provided substantial supporting documentation, including responses to IMF questionnaires, independent research, and relevant aide-mémoires on AML/CFT progress that have been disseminated to the financial community and to other international bodies. The mission was advised of future and planned measures for changes in legislation and such measures are commented upon within the assessment report as a reflection of the response of authorities to self-identified needs and weakness, but do not constitute a basis of assessment ratings assigned.

27. The assessment is also based on meetings with various authorities, including the FSC, Attorney General's Chambers (AGC), the Financial Investigations Unit of the Royal Virgin Islands Police (Police FINU),[2] the Financial Secretary, Customs Office, and representatives of the private sector who are involved in implementation of AML/CFT measures. Authorities in the FSC and Police FINU also briefed the mission concerning upcoming proposals for which internal and confidential papers could not be disclosed. The mission found a generally satisfactory level of cooperation from authorities and the private sector and particularly appreciates the time committed and responsiveness of the FSC and Police FINU throughout the course of the mission.

[2] The acronym, FINU, is used to avoid confusion with Financial Intelligence Units or FIUs.

General situation of money laundering and financing of terrorism

28. The BVI's vulnerabilities to ML and FT arise primarily in two areas. First, as noted in the Review of Financial Regulation in the Caribbean Overseas Territories and Bermuda prepared by KPMG (the KPMG Report) and the CFATF's first round assessment of the BVI, BVI is located in an increasingly important transshipment corridor for the trafficking of cocaine from producer countries to the south and consumer countries to the north. In 1998, the CFATF found that the major problem being addressed by the police was drug trafficking. Second, the BVI is a major offshore financial center, with a dominant share of the global market for international business corporations (IBCs) that the CFATF concluded "given the robust financial activity in the country it is possible that incidences of money laundering do occur in the British Virgin Islands, particularly at the layering and integration stages." As with many offshore financial centers, the BVI has been under scrutiny because the proliferation of IBCs, which are susceptible for use in money-laundering schemes because they can provide a nearly "impenetrable layer of protection around the ownership of assets."[3] The IBCs, while serving many legitimate business purposes have come under criticism, primarily because the activities of the IBCs and the identities of those controlling them are frequently separated by location. The criticism stems from not infrequent instances where IBCs "are formed without commercial or financial justifications, except to conceal the origin and destination of goods in international commerce, to circumvent arms control laws and to evade taxes by moving profits and assets out of the reach of the tax collector."[4]

Overview of measures to prevent money laundering and terrorism financing

29. The primary legislative and supervisory regulations and guidelines for AML/CFT are the *Proceeds of Criminal Conduct Act, 1997,* (the PCCA), *the Anti-Money Laundering Code of Practice, 1999,* as amended in 2000 and 2001(the AMLCP), the *Reporting Authority (Constitution and Procedure) Order, 1998*, and the *Anti-Money Laundering Guidance Notes for the BVI Financial Services Sector* (Guidance Notes), which have been published since 1999 and are based on those of the United Kingdom. In contrast to the treatment of the Guidance Notes in the U.K. and other Crown and Overseas Territories, the AMLCP specifically incorporates the Guidance Notes into its requirements and renders the Guidance Notes subject to sanction for noncompliance, although the Guidance Notes themselves state

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[3] *Financial Havens, Banking Secrecy and Money Laundering,* Double-issue 34 and 35 of the Crime Prevention and Criminal Justice Newsletter, Issue 8 of the UNDCP Technical Series, 1998. The study was prepared on behalf of the United Nations under the auspices of the Global Program against Money-Laundering, Office for Drug Control and Crime Prevention, by Jack A. Blum, Esq., Professor Michael Levi, Professor R. Thomas Naylor, and Professor Phil Williams.

[4] Id.

these are not mandatory but represent best practices. Money laundering related to drug trafficking is captured by the *Drug Trafficking Offenses Act 1992,* as amended in 2000, and the *Drug Trafficking Offenses (Designated Countries and Territories) Order, 1996*.

30. In addition to these primary pieces of legislation directly focusing on ML, other legislation that establishes the framework for supervision also contribute to the supervisory measures for AML/CFT, which include *the Banks and Trust Companies Act 1990, as amended*, (BTCA), *the Financial Services Commission Act* (FSCA), *the Company Management Act, 1990, as amended* (CMA), *the Mutual Funds Act 1996, as amended* (MFA), and *the Insurance Act, 1994* (IA). Regulations governing these sectors are also relevant for AML.

31. The BVI has specific legislation governing international cooperation and mutual legal assistance that are used regularly for the effective and efficient delivery of mutual legal assistance and providing assistance for international supervisors. The BVI focuses on providing assistance to other jurisdictions in money laundering investigations because, as a general matter, larger and more complex investigations are often already underway in other jurisdictions and the nexus of the activities is frequently stronger abroad. On balance, the BVI does not make as many mutual legal assistance requests as it receives from abroad, although the Attorney General's Chamber advises that recent developments in the territory's law enforcement has witnessed a steady rise in the requests by the BVI for mutual legal assistance. However, specific figures on the increase in BVI requests to foreign authorities were not provided to the assessors. The main legislation are *the Criminal Justice (International Cooperation) Act, 1993* (CJIC) and *the Financial Services (International Cooperation) Act, 2000* (FSIC). The BVI has a specific *Mutual Legal Assistance (United States of America) Act, 1990*, with the United States.

32. With respect to the financing of terrorism (FT), the BVI is subject to two statutory instruments enacted by the United Kingdom that are applicable to Overseas Territories including the BVI. These are No. 3366 in 2001, The Terrorism (United Nations Measures) (Overseas Territories) Order, and No. 1822 in 2002, the Anti-Terrorism (Financial and Other Measure) Overseas Territories), which address the major requirements for FT under the 1999 United Nations Convention for the Suppression of Financing of Terrorism and the United Nations Security Council Resolution (UNSCR) 1373.

33. The BVI has taken a pragmatic approach to its legislative framework, designing its major AML/CFT supervisory legislation to apply broadly to banks and trust companies, insurance business, the business of company management, business of mutual fund or providing services as a manager or administrator of a mutual fund, money remittance or transmission, any activity in which money belonging to a client is held or managed by an attorney-at-law or accountant, and the business of acting as a company secretary. The Development Bank of the Virgin Islands is not yet subject to prudential supervision (although it is scheduled to be later in 2003) and is not yet subject to AML/CFT due diligence, record keeping, or internal controls requirements, although they are subject to the suspicious transaction reporting laws. Money remitters, of whom the FSC estimates three

known entities, are not subject to licensing of prudential supervision, but a proposed licensing and regulatory act is expected to be enacted in the first half of 2003.

34. A single supervisor, the FSC is responsible for both prudential supervision and ensuring compliance with AML measures. As the FSC was established by the FSCA in January 2002, there have been numerous tasks imposed on its Board and staff to address the statutory and regulatory remits. The managing director of the FSC is an experienced civil servant who was a former chair of the Caribbean Financial Action Task Force (CFATF) and he and other staff of the FSC have been actively involved in AML/CFT efforts in the region for several years. The FSC was created in part to respond to concerns about the independence and effectiveness of supervision arising out of the KPMG Report. The FSC is deliberately building its staff to cover the range of its mandates, including enhancing the staff for AML/CFT compliance, by filling vacancies in the Legal and Enforcement Division; such staff will have a significant role in implementing the legal and supervisory framework under the AMLCP and the Guidance Notes. Full implementation of on site supervision has not been completed and the depth of skill available currently is not yet at the levels necessary to ensure effective and comprehensive supervision for AML/CFT. Nevertheless, the mission notes significant progress in assembling the supervisory tools that are needed, to complete the internal manuals for inspection of the financial sectors, and to exercise the full range of the FSC's supervisory mandate that affect AML/CFT.

35. The FSC Board and Management exhibit strong commitment to ensuring that the FSC becomes an effective and well resourced regulator. Nevertheless, it is not unrealistic to expect that a period of implementation and structural enhancement is necessary to ensure that the international standards can be fully and effectively incorporated into the FSC's supervision. The FSC has a realistic understanding of the tasks that lay ahead in improving supervision, in particular the Director, Insurance Business, has agreed that on-site inspections of Insurance managers and their required compliance would provide evidence of alleged deficiencies. It was also agreed that as there were not yet IAIS principles specifically on AML/CFT, guidance notes based on IAIS principles would be suitable at this stage. The Director of Banking and Fiduciary Services has responded to the assessors' conclusion that both the FSC and the individual financial service sector participants should have procedures in place to test the due diligence that is undertaken outside of the BVI by affirmatively proposing that the FSC amend the AMLCP to require all due diligence to be kept in the BVI in line with the Basle CDD Paper.

36. The Reporting Authority (RA) was established under the Proceeds of Criminal Conduct Act and is the financial intelligence unit responsible for receiving and disseminating suspicious transaction reports (STRs). It is independent of the FSC and consists of three members appointed by the governor and drawn from different disciplines concerned with the financial services industry but is not a regulatory body. The head of the reporting authority is the managing director of the FSC, and its two other members are the head of the Financial Investigations Unit of the Royal Virgin Islands Police Force (Police FINU), which is the investigative arm of the RA, and a Senior Crown Counsel from the AGC. The deputy

managing director of the FSC is the Secretary for the RA. The RA has been a member of the Egmont Group since 1999.

37. The investigative authority of the RA is derived from the fact that the head of the Police FINU is also a member of the RA. The FSC, the AGC and the Joint Anti-Money Laundering Coordinating Committee (JAMLACC) are responsible for setting the AML laws, regulations, guidelines and codes of conduct. The JAMLACC is the committee charged with promoting AML guidance, training, and education and it is comprised of a cross-section of public and private sector representatives. The JAMLACC played a key role in the enactment of the AMLCP and prescribed the Guidance Notes, but is not active at present.

38. With respect to FT, the two Statutory Instruments passed by the United Kingdom vest responsibility for FT reporting and detection with the governor, however, the AGC provide support with respect to FT orders. Authorities advise that FT orders to date have not resulted in any identification or freezing of FT related assets.

39. The AGC has responsibility for prosecutions of ML and FT offenses, although prosecutions in the BVI are few and most resources are focused on developing usable evidence for prosecutions abroad. The AGC also has primary responsibility for international cooperation through mutual legal assistance. The mechanisms for mutual legal assistance are generally efficient and the quantity and quality of the mutual legal assistance provided by the BVI authorities is evidenced by the large number of requests received and processed. The authorities are to be commended on their efforts in supporting international investigations and prosecutions. Because of the focus on supporting international criminal investigations, it has not been considered to be a serious need for development of prosecutions in the BVI; nevertheless, the AGC has a dedicated Commercial Crimes Unit that has expertise in ML and financial crimes.

40. The authorities have advised of a proposal to restructure the functions of financial intelligence analysis and investigation of financial crimes by enacting a Financial Investigative Agency (FIA), which will be a separate statutory agency with full police powers. Although the mission did not have access to confidential governmental drafts on the proposed FIA, authorities advised that the FIA will have separate powers to conduct the financial intelligence and investigative functions necessary to process suspicious transaction reports (STRs) as well as to conduct financial investigations originating from mutual legal assistance requests and other international requests. The FIA will be comprised of staff seconded from the Police, Customs, Immigration, AGC, and other relevant agencies. The authorities advise that the FIA should be constituted by the second quarter of 2003.

B. Detailed Assessment

41. The following detailed assessment was conducted using the October 11, 2002 version of Methodology for assessing compliance with the AML/CFT international standard, i.e., criteria issued by the Financial Action Task Force (FATF) 40+8 Recommendations (the Methodology).

Assessing criminal justice measures and international cooperation

Table 5. Detailed Assessment of Criminal Justice Measures and International Cooperation

I—Criminalization of ML and FT (compliance with criteria 1–6)
Description
BVI criminal provisions for ML and FT are contained in a number of separate legislative instruments, including the PCCA, the Drug Trafficking Offenses Act (DTOA), 1992, and the two statutory instruments issued by the United Kingdom and applicable to overseas territories. These provisions have differing scopes and coverage. With respect to multilateral conventions and responses to United Nations Resolutions, the BVI is dependent on the United Kingdom. Accordingly, the BVI is not separately a party to any multilateral or bilateral conventions on money laundering because as an overseas territory the United Kingdom is the appropriate signatory on behalf of the BVI. Nevertheless, money laundering is criminalized in the BVI in accordance with the Vienna and Palermo Conventions. The BVI has not requested the U.K. to extend the Palermo Convention to the territory as yet because of issues surrounding provisions on wire tapping and surveillance. The Attorney General's Chamber advises that currently the Telecommunications Act (Cap. 171) and the Wireless Telegraphy Act, 1949 of the U.K. provide legal mechanisms for wire tapping but then authorization is placed in two different functionaries, namely the Governor in Council and the Governor, respectively. The objective is to consolidate the law on the subject with a single functionary performing the task of authorizing wire tapping and ensuring that there are adequate checks and balances to safeguard individual rights. Upon such consolidation, the BVI then may request that the U.K. extend the Palermo Convention. Two statutory instruments, No. 3366 in 2001, The Terrorism (United Nations Measures) (Overseas Territories) Order, and No. 1822 in 2002, the Anti-Terrorism (Financial and Other Measure) Overseas Territories) Order that apply to the overseas territories was passed by the U.K. As a result of these two instruments, the BVI is now in full compliance with the 1999 United Nations Convention for the Suppression of the Financing of Terrorism. There was a decision of the executive council on November 6, 2002 to officially ask the U.K. to extend the 1999 Convention to the BVI. The United Kingdom also responds to the UNSCRs on behalf of the BVI. Statutory Instrument 3366 authorizes the Governor of the BVI to issue orders necessary to implement the FT lists contained in the UNSCRs. The BVI's response to the questions posed in UNSCR 1373 was completed as part of the U.K.'s response. Money laundering is criminalized in Sections 28 through 30 of the PCCA on the basis of the Palermo Convention. Section 28 criminalizes enlisting another to retain the benefit of criminal conduct. Section 29 criminalizes acquisition, possession or use of proceeds of criminal conduct. Section 30 criminalizes concealing or transferring proceeds of criminal conduct. In addition, Section 31 criminalizes tipping off about the existence of a suspicious transaction report to the Reporting Authority or a money laundering investigation. Predicate offenses for Sections 28 through 30 of the PCCA extend to all serious offenses, meaning indictable offenses, which would be triable at the High Court before a jury. Generally, indictable offenses are subject to three years imprisonment at minimum, as advised by the AGC (Section 2(5)(d) of the PCCA). The PCCA predicate offenses do not, however, include drug offenses. Prior to enactment of the PCCA, money laundering was criminalized on the basis of the Vienna Convention in the Drug Trafficking Offenses Act, 1992 (DTOA), which captured proceeds of drug trafficking. Section 23B criminalizes concealing or transferring property representing the proceeds of drug trafficking. In both the PCCA and the DTOA, the predicate offense need not have occurred in the BVI so long as the offense constituted a predicate offense within the territory. (Section 2(1) PCCA and Section 2(1) DTOA). The AGC advises that the PCCA extends to persons who have committed money laundering as well as both money laundering and the predicate offense, and it is not necessary that a person be convicted of a predicate offense to establish that the proceeds originate from a predicate offense in order to prosecute for money

laundering.

The "proceeds of criminal conduct" are defined broadly in the PCCA and represent any property, benefit, or pecuniary advantage derived. Section 2(1) and 2(5) PCCA. Further, the offense of acquisition, possession, or use of proceeds of criminal conduct in Section 29 applies to property that directly or indirectly represents the proceeds of crime.

FT has been criminalized through two statutory instruments passed by the U.K. that are applicable to the overseas territories, including the BVI. Statutory Instrument 2002 No. 1822 criminalizes:

- Fundraising for terrorism (Section 6);
- Use and possession of money or other property that is known or there is a reasonable cause to suspect that it will be used for terrorism (Section 7);
- Entering into funding arrangements through which it is known or there is reasonable cause to suspect that the funds will be used for terrorism (Section 8);
- Money laundering by becoming involved in an arrangement which facilitates the retention or control of terrorist property by concealment, removal from the jurisdiction, transfer to nominees, or otherwise (Section 9); and
- Failing to disclose to a constable a belief or suspicion of a terrorist financing offense in Sections 6 through 9.

Statutory Instrument 2001 No. 3366 criminalizes:

- Collection of funds for the purposes of terrorism (Section 3); and
- Making funds available directly or indirectly to the benefit of a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism. (Section 4).

Section 4 of Statutory Instrument 1822 and Section 3 of Statutory Instrument 3366 specify that actions criminalized for FT include actions occurring outside the territory.

The offenses of ML and FT apply to all persons, including legal entities under the PCCA and Section 1(5) of Statutory Order No. 3366. However, the FT offenses in Statutory Order 1822 are not specifically extended to legal entities.

The intentional element of the ML offenses is satisfied if the defendant knows or suspects that the money, property or assets represents the proceeds of criminal conduct. The AGC advises that the intentional element may be discerned under a "should have known" standard by inferring knowledge from objective factual circumstances.

The criminal offenses for ML in PCCA Sections 28 through 31 carry penalties of imprisonment for a term not exceeding six months or to a fine not exceeding US$3,000 for a summary conviction. Conviction on these offenses on indictment carry penalties of imprisonment for a term not exceeding 14 years and a fine not exceeding US$20,000. (Sections 28(8), 29(11), 30(4) of the PCCA). Similar provisions are contained in the DTOA. Specifically, Section 23B imposes imprisonment of not more than six months or a fine of up to US$10,000 for summary conviction and imprisonment of up to 14 years or a fine of up to US$50,000 for a conviction upon indictment.

For FT offenses under Statutory Instrument No. 1822, conviction on indictment carry a penalty of imprisonment not exceeding five years, to a fine, and for summary conviction to imprisonment of up to six months and a fine, up to a statutory maximum. FT offenses under Statutory Instrument 3366 imposes imprisonment for a term not exceeding seven years or a fine for conviction upon indictment and imprisonment up to six months or a fine up to £5,000 (about US$7,890) for a summary conviction.

There appear to be effective legal means to carry out criminal prosecutions. The tools are being implemented in a manner to give emphasis to the BVI's role as a provider of effective evidentiary materials for investigations

and prosecutions abroad. As a result, the criminal provisions for ML and FT are not widely used within the BVI.

Efforts are underway to enhance resources for criminal investigations and prosecutions. A commercial crimes unit has been formed within the AGC to focus on economic crimes, including ML. There is a Police FINU, which is the white collar crime unit for investigations of economic crimes and ML. There is a proposal to have a separate statutory Financial Investigative Agency. See criterion 24, below for additional details.

Analysis of Effectiveness

The BVI criminal provisions are generally compliant with international standards, and consistent with the Vienna and Palermo Conventions. FT is criminalized consistent with the International Convention for the Suppression of the Financing of Terrorism. The criminal provisions for ML are not extensively used for prosecution because most investigative evidence developed for ML is provided for foreign prosecutions, where frequently the cases are stronger and there are more resources to conduct complex investigations and prosecutions. *Nevertheless, the criminal provisions could be put to greater use to open criminal cases within the BVI. Acting primarily as reactive provider of information for foreign prosecutors may not always allow for the best use of information developed. Opening more criminal files and beginning preliminary investigations will both increase the use of the BVI criminal provisions and will allow for more meaningful development of investigative evidence for use in foreign prosecutions as well.*

Recommendations and Comments

As written, the legal provisions for ML and FT appear to be adequate but these have not been effectively tested in criminal investigations and prosecutions. Further efforts should be made to increase prosecutions for ML and FT where the evidence exists to support domestic prosecutions.

Implications for compliance with FATF Recommendations 1, 4, 5, SR I, SR II

The BVI legal provisions for ML are largely compliant with the requirements for FATF Recommendations 4 and 5. The FT offenses in the two Statutory Instruments, as written, comply with the requirements for SR II.

II—Confiscation of proceeds of crime or property used to finance terrorism (compliance with criteria 7–16)

Description

Confiscation provisions in the PCCA are directed primarily to recovering a sum of money that represents the benefit derived from the ML offense rather than to confiscation of the property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any ML offense, although the value of the property laundered is used to determine the benefit to the defendant of the offense. The DTOA contains specific provisions for the confiscation of instrumentalities of ML associated with drug crimes but the PCCA forfeiture provisions do not contain similar language. Nevertheless, the AGC asserts that the inherent power of the courts allows for such confiscation, although actual cases of confiscation of property laundered or instrumentalities of non drug offense related ML have not been cited.

Sections 6 and 12 of the PCCA provide for confiscation of a sum of money determined by the court upon conviction for a money laundering offense. The amount confiscated represents the benefit derived from the ML offense by the defendant. Similar provisions are in the DTOA, Section 5. The PCCA confiscation provisions extend to the value of the property laundered but not to the instrumentalities used in or intended to be used to commit a ML offense or predicate crime. Forfeiture of cash is contained in the DTOA Section 35 for cash from drug offenses. Forfeiture of other property connected to the commission of an offense may be subject to the forfeiture provisions in Section 26 of the Criminal Code, if the property relates to specific offenses enumerated in the provision, specifically Sections 79, 80, 81, or 101 of the Criminal Code. Conviction for offenses under the Drugs (Prevention of Misuse) Act, (Cap. 178), authorizes forfeiture of all drugs and any instrumentalities associated with the offense. The PCCA does not contain a specific provision for forfeiture or assets laundered or instrumentalities of ML, although enforcement of confiscation orders under the PCCA may be effectuated against any realizable property that includes assets laundered. Accordingly, while there is no direct confiscation of assets laundered under Section 6 of the PCCA, effectively these can be confiscated in lieu of the confiscation payment.

The PCCA provides for provisional measures for the freezing/seizing of property that is or may become the subject of confiscation. (Sections 16, 17 & 18 of the PCCA). The application to freeze or seize property is made on an ex parte basis to a judge in chambers by a prosecutor, subject to giving notice to persons affected by the

order (Sections 17(4) and 18(2) of the PCCA.)

There is no provision in the PCCA for the confiscation of property of organizations that are found to be primarily criminal in nature, although Statutory Instrument 3366 authorizes the governor to freeze funds associated with terrorism and the financing of terrorism. Nevertheless, the AGC advises that Section 4 of the Public Order Act (Cap. 63) proscribes quasi-military organizations (whether corporate or incorporate) and empowers the High Court, upon an application by the Attorney General to direct an inquiry to be held and dispose of property of any such organization as the court deems fit, including forfeiting such property to the Crown. Section 16 of Statutory Instrument 1822 authorizes the forfeiture of terrorist cash, including cash that is intended to be used for the purposes of terrorism or is or represents property obtained through terrorism.

The AGC advises that property of equivalent value may be forfeited in the event that property subject to forfeiture is not available.

The AGC advises that civil forfeiture is contemplated under general common law principles and is an available tool upon application to the High Court.

The PCCA Section 36 authorizes a police officer to apply to the High Court for production orders for materials needed to investigate a ML offense. The AGC, advises that the scope of this provision is sufficiently wide to encompass orders to trace and identify property that may become subject to confiscation, even if these are not specifically listed in the production orders.

In addition, orders for tracing and identification of property are authorized by the PCCA Section 6(1) that requires the court to first determine whether the offender has benefited from any relevant criminal conduct, prior to ordering confiscation. To carry out this obligation, the court has wide authority to trace the proceeds of crime. In addition, there are general powers of a Magistrate to investigate all charges which he is not empowered to try summarily. (Section 22(c) MCP). On an administrative level, section 30(1) of the FSCA authorizes the Board of the FSC to request a person connected to a financial services business to provide the FSC with such information as the Board may specify. Similarly, section 32 of the FSCA authorizes the FSC to request information or the production of documents by issuing a notice. Moreover, in relation to or with respect to the commission of an offense under financial services legislation, section 32 of the FSCA authorizes the FSC to apply for a search warrant in order to discover material that may be removed, tampered with or destroyed or used in the commission of an offense. Thus, the AGC advises that these provisions, in addition to the FSC's authority to appoint examiners to conduct investigations on its behalf in relation to an enforcement action under Section 37 of the FSCA, have the cumulative effect of imbuing the FSC with statutory powers to trace and identify assets of a regulated person or other person thereto through well-established enforcement mechanisms. Nevertheless, specific administrative authority to identify and freeze assets for a short period would be helpful.

Section 4(3) of the PCCA specifically allows for voiding of gifts made by defendants convicted of a ML offense. In addition, the AGC advises that other orders to void contracts may be sought through application to the courts under the freezing and seizing provisional measures in Section 17(4) and 18(2) of the PCCA.

With respect to freezing and blocking of assets or funds associated with FT, section 5 of Statutory Order 3366 authorizes the governor to freeze funds where there is reasonable grounds to suspect that the funds are for, or being held on behalf of, a person who commits, attempts to commit, facilitates, or participates in acts of terrorism or a person controlled by a suspected terrorist.

The authorities have not compiled statistics on frozen funds, although the Attorney General advises that no funds have been frozen as a result of the UNSCRs.

See criterion 13. The governor's authority to freeze funds is not limited to lists provided by the U.N. under Section 5 of Statutory Order 3366.

With respect to confiscation, Section 4(3) of the PCCA requires the court to consider transfers of property by the defendant either in the form of outright gifts or where the consideration rendered is significantly less than the property transferred. In the latter case, the court must consider the rights of any bona fide or innocent third party recipient by taking into account the value of the consideration rendered by the third party. In addition, Section 3(5) concerning what seized property can be sold or realized requires a consideration of the effect of sale

on the value of any beneficial interest in the property held by a bona fide third party. Further, Statutory Instrument 1822 Section 5(7) allows a recipient of an order that freezes funds associated with terrorism to apply to the governor for an order setting aside the freezing.

With respect to the assertion of rights of bona fide third parties, the AGC advises that the party must make an affirmative application to the court by seeking a civil order to assert rights over the property forfeited or confiscated. The burden of proof falls on the applicant party.

As a general principle, the AGC advises that confiscated assets and forfeited property are divided among the jurisdictions involved. Compensation of innocent third party victims is also provided for.

BVI has asset sharing arrangements with the United States and is in the process of negotiating an arrangement with Canada through the Foreign and Commonwealth Office. As a general rule, the BVI shares confiscated and forfeited assets with other jurisdictions which have an interest in the property and criminal proceedings have been or will be initiated in the other jurisdiction. Assets confiscated or forfeited under mutual legal assistance requests are transmitted directly to the requesting jurisdiction.

Analysis of Effectiveness

Confiscation for proceeds of criminal conduct, including direct and indirect benefit derived from money laundering and provisional measures for freezing of assets are adequate. However, the forfeiture provisions applying to property laundered and instrumentalities of ML are not clearly defined in the law outside of the context of narcotics and a short list of relevant crimes. Nevertheless, the AGC advises that the courts have inherent power to forfeit instrumentalities to the Crown or in any manner considered fit and that the absence of specific forfeiture provisions in the PCCA does not mean that the laundered property cannot be the subject of forfeiture. The AGC further asserts that the PCCA regime authorizes the prosecutor to apply for a confiscation order in relation to laundered property connected to an offense that has been established. However, under Sections 15 through 20 of the PCCA, it appears that such authority applies to the property laundered or instrumentalities of ML only when these are being sought to enforce confiscation orders when the defendant fails to pay rather than to permitting direct forfeiture of proceeds laundered or instrumentalities of ML directly. It is not clear under what circumstances confiscation orders have been enforced against property or assets laundered under the PCCA authority.

There are specific provisions for the freezing, restraint and forfeiture of assets used to finance terrorism or intended to be used to support terrorist activities.

Authorities do not formally keep statistics, although they assert that the information is readily known. However, it would be beneficial to have formal, meaningful, and reliable statistics that will help them evaluate their resource and staffing needs, understand where to deploy their limited resources and enhance their reputation for effective confiscation controls in the world community.

Training regarding confiscation is addressed under general investigative trainings attended. There is an apparent lack of staff in the Legal and Enforcement section of the FSC to carry out the necessary control functions may require additional training when staffing is completed.

Recommendations and Comments

The PCCA or other legislation should provide for a specific forfeiture provision that allows for forfeiture of all property laundered and instrumentalities associated with a ML offense.

Additional authority should be provided to administrative bodies to identify and trace assets suspected of being ML or FT related.

Confiscation provisions in the PCCA and DTOA appear to have been put to limited use and as a result the level of assets seized and confiscated is not readily available. Systems for executing the confiscation authority and managing the disposition of confiscated assets are not fully developed in the BVI.

Comprehensive statistics on freezing, seizure, and confiscation should be compiled and maintained, including information on the types and amount of property frozen, seized and confiscated and information concerning the ML offense or predicate offense.

Implications for compliance with FATF Recommendations 7, 38, SR III
BVI's legal provisions for confiscation are largely compliant with the minimum requirements of FATF Recommendation 7 and SR III insofar the range of legal measures allow for confiscation upon conviction of the benefit of ML, and there are some provisions for instrumentalities as well as the possibility of *in rem* action for property laundered. Nevertheless, BVI's legal provisions for freezing, seizure, and confiscation of assets are limited on their face and, in practice, may not be sufficient to cover property laundered or instrumentalities of ML, except for those related to a limited list of predicate crimes. Additional authority for provisional measures and confiscation are needed to address the property laundered or instrumentalities used for ML and FT to achieve full compliance with FATF 7 and 38. In addition, the measures in place must be used to maximum effect to inhibit the movement of proceeds of crime, property laundered and instrumentalities of crime.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels (compliance with criteria 17-24)
Description
The Reporting Authority (RA) is the financial intelligence unit in the BVI, which was established under Section 27 of the PCCA and was constituted by the Reporting Authority (Constitution & Procedure) Order, 1998. The RA is comprised of the managing director of the FSC, who is also the head of the RA, the Head of the Police FINU, and a Senior Crown Counsel from the Attorney General's Chamber. The Deputy managing director of the FSC is the Secretary of the RA. The Reporting Authority has been a member of the Egmont Group since 1999. The RA is empowered to receive and disseminate STRs. The RA is also the conduit for exchange of information with counterpart FIUs abroad. As a matter of practice, STRs are distributed to all members of the RA. If needed, a meeting or consultation among the RA members will be convened. On a practical level, the head of the Police FINU frequently conducts the preliminary analysis for the RA and determines whether additional police investigative resources should be devoted. If the STR raises regulatory issues, in the view of the RA, the information may be disclosed to the FSC to be used for regulatory purposes. As both the managing director and the deputy managing director of the FSC participate in the RA, as a practical matter the FSC can decide whether the STR has a regulatory impact. Reporting parties are required to send all STRs to the RA, pursuant to Section 28(2) of the PCCA and Paragraph 14(1)(f) of the AMLCP. The STR form is not prescribed by law, but Appendix F of the Guidance Notes suggests the use of a standard form of disclosure of suspicious activity to the RA. The STR form represents the minimum content for STRs although other forms with equivalent information may be substituted. The BVI does not have mandatory currency transaction reporting. Guidance Notes for suspicious activity detection and reporting are the responsibility of the Joint Anti-Money Laundering Coordinating Committee (JAMLACC), which is comprised of private sector individuals representing both the industry and the public sector (including inter alia the heads of the FSC, RA and Customs). The chairman of the JAMLACC is the chairman of the RA. JAMLACC has issued the Guidance Notes, but is not very active. The Guidance Notes address the major indications and typologies of money laundering and suspicious transactions but do not purport to advise the reporting entities of the evolving typologies of suspicious or unusual transactions or provide alerts to the industry about known or suspected ML schemes. The Guidance Notes are in the process of being revised for terminology harmonization of wording into conformance with the AMLCP. These are expected to be completed by early 2003. The RA has final approval over the Guidance Notes. In addition, the RA issues from time to time alerts on scams or attempted fraud schemes, without the need for formal authority to issue these. The AMLCP provides that the managing director of the FSC of may issue guidelines concerning the standards of compliance expected. (Paragraph 20 of AMLCP). The current structure and operational mandate of the RA is somewhat uncertain. Because the RA is comprised of heads of other agencies, much of its power is derivative and the limits of the RA within this context are difficult to define. This has implications for understanding the scope of the resources needed, the extent of the mandate and budget implications. Additional structure, powers, and resources will enhance the RA's reputation among FIUs and may increase cooperation with its foreign counterparts.

The AMLCP requires reporting entities to establish and maintain internal reporting procedures for recognizing and reporting suspicious transactions. Paragraph 14(1) of the AMLCP.

The RA and FSC advise that the RA and the Police FINU have the authority to request additional information and documentation from reporting parties needed in the analysis of financial transactions. The basis of the RA and Police FINU authority in this respect is grounded in the fact that STR reporting is voluntary and any information supporting or needed to support the report is also presumed to be voluntarily disclosed. The STR form requests that the quantity and quality of data delivered to the RA be sufficient to indicate the grounds for suspicion, indicate any suspected offense, and to enable the Investigating Officer to apply for a court order, as necessary. If the information was not submitted with the initial STR filing, then the RA will ask the reporting party for more information before it could even be considered a completed STR. The limits of the authority to request additional information under this mechanism have not been challenged in court to date.

In addition, the FSC has authority to request any information by written notice needed to ensure compliance with any financial services legislation, including the PCCA and AMLCP, which are specifically incorporated pursuant to Section 32 of the FSCA.

Authorities advise that on a practical level, this arrangement has sufficed for the Police FINU to obtain all necessary supplemental information without difficulty. The authorities do not see the need for a specific legislative or regulatory basis for requesting additional information in this regard. However, there is a degree of legal uncertainty of the scope of information available to the RA or the Police FINU under this arrangement, because the current requirement places the judgment of the sufficiency of the information provided on the reporting entity rather than on the receiving entity. Although there is a high level of cooperation at present, the current status is vulnerable to challenge if the reporting entity believes that the scope of the requests for additional information are beyond the topics of the STRs.

It is advisable that administrative authority to obtain additional information necessary to analyze be more concrete in legislation or regulation.

The RA is comprised of three persons, each of whom has a separate portfolio of mandates that includes direct access to a variety of databases. The managing director of the FSC has direct access to the commercial registry and FSC databases, the Senior Crown Counsel has direct access to the court records and Attorney General's databases, and the head of the Police FINU has direct access to the police databases, including INTERPOL as well as domestic databases such as land registry and vehicles. Other databases, such as the Customs information is also available by request from the RA.

The RA has access to the Egmont Group encrypted database (ESW). There is an intelligence task force, the National Intelligence Committee, comprised of Customs, Immigration, Police and Drug officials that are charged with exchange of intelligence information.

Under the PCCA, filing of STRs is voluntary and filing protects the reporting entity from criminal liability for money laundering. Accordingly, there are no direct criminal sanctions for failure to comply with reporting obligations as there are no obligations in this regard. The impetus under this system is the potential for criminal prosecution for participation in a ML offense. Paragraph 18 of the AMLCP does impose sanctions for failure to establish procedures for recognizing and reporting suspicious transactions that include fines up to five thousand dollars for summary convictions and up to fifteen thousand dollars for convictions on indictment. Moreover, Paragraphs 88 through 90 of the Guidance Notes state that RO "should" file STR when the information substantiate a suspicion but this term in the Guidance Notes does not carry the same weight as "shall" in the law or regulations, and thus not read as mandatory by either the authorities or financial institutions. The FSC has not invoked enforcement measures to make this portion of the Guidance Notes mandatory. Moreover, implementation of the provisions in the Guidance Notes has not been fully implemented in the supervisory process. (See below, Table 2 Preventive Measures, Section V, Suspicious Transaction Reporting.)

The FSCA authorizes the FSC to take enforcement actions for contravention of the AMLCP, including revoking or suspending the license, appointing an examiner, issuing a directive to cease a class of business or not to enter into any new contracts for any class of business.

The direct gateway between the RA and domestic law enforcement authorities runs through the Head of the

Police FINU, who is also a member of the RA. Section 28(7)(a) of the PCCA authorizes the RA to disseminate information received to any law enforcement agency in the territory. There should be some monitoring, record keeping, and statistics with regard to the information passed from the RA to the Police FINU that is transformed into an official investigation. There is also a need for certainty in the disposition of STRs.

Section 28(7) of the PCCA authorizes the RA to disclose any information received to any law enforcement agency in any other country in order to report the possible commission of an offense, to initiate a criminal investigation respecting the matter disclosed, to assist with any investigation or criminal proceedings respecting the matter disclosed, or to generally give effect to the provisions of the PCCA. Disclosures to foreign law enforcement authorities require the consent of the Attorney General prior to disclosure. The Attorney General may impose conditions on further disclosure.

The RA advises that disclosures to counterpart FIUs, pursuant to the Egmont Group Principles Information Sharing, do not require approval of the Attorney General. The RA has an MOU with the Belgian FIU to facilitate the exchange of information.

The RA does not keep official or formal statistics on STRs received, transmitted to the Police FINU or other domestic law enforcement authority, to foreign FIUs or law enforcement, or to analyze the resulting disposition of STRs. There are general statistics available on mutual legal assistance requests executed by the Police FINU and other authorities dating back to 1992.

The authorities provided general statistics on STRs received. In 1998, 18 were received; in 1999, 27 were received; in 2000, 26 were received; and in 2001, there were 62 received. In 2002, to date 45 have been received. The increase between 2000 and 2001 is notable, but because there are no statistics on the basis of the suspicious transaction reports, the reason for the increase in not known. These statistics do not indicate whether there has been corresponding increase in the cases developed for investigation.

A rough estimate by the authorities suggests that about ¼ of the STRs are relevant in relation to cases handled by foreign jurisdictions. As regards investigations initiated and conducted in the BVI, only a handful of STRs have been used. The number of received STRs is recorded, and all information is scanned and secured in data-files. However, the material is not subject to a qualitative analysis for statistical or strategic intelligence purposes. Since 1998 the RA has received about 180 reports.

The RA advises that they can retrieve statistics as necessary. The RA has a database on STRs from which it could be possible to construct necessary statistics. The RA does not provide statistics to the government for information or reporting purposes, although some information is submitted through an annual report to the executive council. Such lack of statistics makes it difficult to ascertain the operational effectiveness of the RA and Police FINU in processing STRs and analyzing financial intelligence. Without statistics, feedback to the reporting institutions is limited, whereas greater feedback may encourage and motivate more meaningful and targeted STR reporting.

As established under the PCCA the RA falls under the ministry of finance, but currently the RA is budgeted through the FSC. The relationship between the RA and the Police FINU lacks formal structure, particularly with respect to analysis of financial intelligence. Although the authorities advise that the structure has been effective, there is a need for more certainty, both for managing operations and for outside perception. Currently, the authorities believe that the structure has enabled the RA and Police FINU to fulfill their functions. Nevertheless, it is unclear what constitutes pre-investigative analysis of the STRs and how it becomes a matter warranting police investigation. Additional structure may help alleviate this uncertainty. Much of the operations are conducted on an ad hoc basis, so the underlying operations and work plan are not formalized and where weaknesses may be is difficult to determine.

The head of the Police FINU (and member of the RA) is an experienced financial crimes investigator who has conducted internal financial investigation training for the Police FINU. The RA authority advises that members of the Police FINU are undertaking formal training for financial crimes, both for basic understanding and advanced financial crimes detection that are available in the U.K. and in regional Caribbean programs. The Police FINU members also attend training from the Egmont Group, and formal training with C.A.L.P. and FinCEN. It is planned that future Police/Customs and tax officers will be trained as financial investigators and

criminal analysts.

High on the list of priorities has been the integrity of the security of disclosures from STRs. The RA maintains a separate database, including a manual file of STRs. There is a secure back up record regularly made of information obtained through STRs. The electronic database contains scanned images of STRs and supporting documents. The database is indexed and checked against existing records. Additional information can be added to the file but the image of the STRs and supporting documents will remain unaltered. The database for STRs is secured and separated from the other operational databases of the Police FINU.

The RA should consider publishing an annual report of its activities, detailing the STRs received and disposition, although the mission was advised that an annual report is made to the executive council. As far as confidentiality is concerned, the FSC members are subject to an obligation of confidentiality under Article 49 of the FSCA. However, there is no specific provision governing confidentiality of the RA. The authorities advise that all persons, including the members of the RA and Police FINU are subject to the tipping off provision of the PCCA for unlawful disclosures.

The current structure of the RA makes it difficult to assess whether it comes under undue influence or pressure from the potential conflicts of interest among the members' mandates. There are no internal rules or guidelines for the RA's operations.

Analysis of Effectiveness

As a general matter, the RA is responsible for the receipt and processing of disclosures of suspicious financial transactions that are received in the form of STRs. The RA is a statutory body with limited primary powers, to receive STRs and to disseminate these to law enforcement both locally and abroad. Thus, the RA mainly derives its financial intelligence and investigative powers from its members, who are the managing director of the FSC, the Head of the Police FINU and a Senior Crown Counsel. It appears that the main financial intelligence analysis and subsequent investigations required are conducted on an integrated basis by the Police FINU.

The structure, while apparently working at present, is not formalized and the scope of the RA's mandate is therefore somewhat unclear, particularly how the tasks and powers are divided between the RA and the Police FINU. Currently, the information contained in the STR can be made available to the police force of the BVI, or used for regulatory purposes, although the latter use is not specified in the PCCA. There are no specific procedures in place as to how decisions on the use of STR are to be made.

Suspicious transaction reporting is voluntary in the BVI, which may be the reason for the relatively low numbers of STRs filed for the size of the financial sector. The RA has no systematic contact with the reporting institutions, but they do attend a number of meetings and issue from time to time alerts on scams or attempted fraud schemes.

Recommendations and Comments

The lack of a clear distinction between the responsibilities and mandates of the RA and Police FINU may pose some problems as more STRs are generated. Although the blurring of functions might have its practical advantages, it could be argued that the present arrangement might interfere with principles of independence and professional secrecy. Furthermore, this lack of clearly defined tasks and powers makes the system vulnerable and heavily dependent on the integrity and ability of the individual members of the RA.

The absence of detailed statistics that are adequately broken-down makes it difficult for the authorities to derive information of either a more general nature or with more strategic value. Thereby the authorities lose a possibility for feedback to the reporting institutions, and they are also hampered with regard to identifying areas of concern and potential improvement in connection with the reporting system.

The BVI authorities have been satisfied with the implementation and effectiveness of the current system of identifying and reporting suspicious transactions, which is predicated primarily on the FSC using its supervisory powers to enforce the Guidance Notes. The system has been especially effective in introducing the identification and reporting system to the industry in an adequate manner. The number of reports—and information given on their use—might indicate that there is a need for a more stringent identification and reporting system established by statute and which can also be enforced by criminal authorities. A statutorily mandated system is generally regarded as an important measure for protecting the financial industry from being misused for money

laundering purposes. Among necessary recommendations are:

- *The FIA should be established and made operational as soon as practicable;*
- *Clarify the division of tasks and powers between RA and the FIU to secure independence, integrity and confidentiality;*
- *Work out a data-based system for producing reliable and targeted statistics with regard to the contents and the follow-up of STRs;*
- *Further develop feedback routines and communication with the reporting institutions in order to identify trends and typologies and keep up motivation in the reporting institutions;*
- *Contemplate changes with respect to the status and staffing of the RA. The RA should have more clearly defined tasks and powers;*
- *Consider enacting a suspicious transaction reporting law;*
- *Consider enacting an obligation to provide additional material regarding a suspicious transaction report—both spontaneously and upon request—statutory or subject to explicit regulations; and*
- *The RA should be provided more authority and resources to increase its analytical function and to ensure that valuable financial intelligence received through STRs is properly analyzed, that supporting financial and law enforcement information can be obtained, and that the analysis conducted can be transmitted efficiently to law enforcement and regulatory authorities for maximum use.*

The RA should consider publishing an annual report, which in addition to statistical information, provides information on typologies and trends, relevant for the industry subject to the anti-money laundering regime.

Implications for compliance with FATF Recommendations 14, 28, 32

The role of the RA in the BVI is structurally limited and does not appear to be of significant impact in promoting financial institutions to pay special attention to complex or unusual transactions, to increase reporting of STRs, or in providing comprehensive analysis of financial intelligence obtained from STRs. The structural weakness of the RA and its limited access to financial information and indirect access to law enforcement information limits the usefulness of its activities. Guidelines for reporting of STRs are provided at only the most basic level, and further information on evolving typologies is not regularly conducted. The FIU lacks a proper status within the institutional framework of the BVI, which the proposed restructuring to create the FIA may alleviate. Clearer and more formalized processes for sharing and use of financial intelligence submitted to the RA should follow as well, to encourage the widest possible cooperation both domestically and internationally.

International exchange of financial information possessed by the RA should be enhanced to achieve full compliance with FATF Recommendation 32. The RA should share (and should be authorized to do so) nonpublic financial information with counterpart FIUs, subject to international provisions on privacy and data protection as elaborated upon in the Egmont Group Principles of Information Exchange.

IV—Law enforcement and prosecution authorities, powers and duties
(compliance with criteria 25-33)

Description

The Police FINU is responsible for investigating all financial crimes, including ML offenses disclosed through STRs. Reports of suspicions of FT are to be reported to the governor, who provides the information to the AGC for action.

The number of requests received from abroad and the limited resources and structure of the Police FINU have fostered a reactive approach to investigations. It is impractical to expect the Police FINU as currently staffed to initiate separate investigations when investigations are taking place abroad already. The focus has therefore been on providing investigative materials for investigations and prosecutions abroad. When the authorities receive requests for an investigation in the BVI, there appears to be sufficient attention given and effective delivery of necessary investigative materials, which suggests that the matters presented are properly investigated. The authorities advise that they received 791 requests dealing with IBCs intelligence in 2001.

The Magistrates' Code of Procedure, Article 22 provides for a wide range of orders for search, seizure, and interrogation of witnesses. There are provisions for wire tapping under both the Telephone Act and the Telecommunications Act. Authorities advise that controlled delivery is authorized under the Drug (Prevention and Misuse) Act.

To exercise authority needed for this array of investigative tools, there needs to be close cooperation of the Police FINU, RA, and other police and law enforcement officials, both domestically and abroad.

The proposed FIA should have clear procedures for exchange of information to enable the widest possible use of the investigative techniques necessary for prevention and detection of ML and FT offenses.

Section 36 of the PCCA authorizes the Police to obtain orders for the production of information if there are reasonable grounds to suspect that these are relevant to investigating the proceeds of criminal conduct.

The authorities have established a task force for intelligence that includes Customs, Police, Immigration, and the Drug Unit.

Once the FIA is constituted it should be an official member of any task force formed and should have access to all information available to the task force.

Currently, to fulfill their objective of providing efficient and effective investigative support for investigations and prosecutions abroad, the Police FINU and AGC appear to be adequately staffed and funded. Nevertheless, authorities recognize that additional staff and funds are needed, as evidenced by the budget already allocated for the new FIA. Once the FIA is established, authorities should review whether the resources and staffing are sufficient to fulfill the mandate of the FIA.

Statistics are available in some forms, although there is no program for regularly and formally updating the statistics on law enforcement activities. As stated in criteria 23, 25, and 35, there are statistics for the FIU. Statistics for mutual legal assistance are available from the AGC. There is a need for integrated and comprehensive statistics for all aspects of law enforcement investigation and prosecution. It would be advisable for the RA to maintain integrated statistics throughout the process beginning with STR filings and through the ultimate disposition of cases.

Within the domestic law enforcement community, there appears to be an adequate understanding and dissemination of typologies information.

Members of the Police FINU have regularly attended training programs on ML. It is planned that future Police/Customs and tax officers will be trained as financial investigators and criminal analysts. Appropriate training will be made available for other employees in computers and criminal analysis. A budget will be set to allow personnel to attend conferences and training to update the skills in their field of expertise.

Authorities are reviewing the legal framework to enhance necessary investigative tools. AGC advises that all laws concerning financial crimes are being reviewed under a regular rotation. There should be a corresponding review of the operational limits of the current structure. Attention should be paid to problems encountered under the current structure in establishing the operational framework of the FIA. Authorities should monitor the initial operations of the FIA closely to identify further refinements, which are needed on an operational basis.

Analysis of Effectiveness

As a general matter, the Police FINU are responsible for investigating all financial crimes, including money-laundering offenses. Reports on the financing of terrorism are to be reported to the governor, who provides the information to the AGC for action. The AGC is vested with prosecutorial responsibility and for providing mutual legal assistance from formal international requests and MLATs.

Because of the BVI's unique role in international business, the Police FINU spend considerable time in executing mutual legal assistance. As a consequence, domestically initiated investigations are few. Doubtlessly, the AGC and the Police FINU are well capable of conducting money laundering investigations, but resources are scarce and the number of domestic cases is very limited. The number of staff clearly puts limitations on the possibility of undertaking in-depth investigations both in relation to domestic and international cases. While the investigative powers available seem generally adequate, they could be extended. The authorities are currently

reviewing the legal framework with an eye to enhance investigative powers so as to expand the scope and effectiveness of investigative tools. *Some statistics on law enforcement activities in this area is available, but they are not comprehensive. Some statistics on seizures are developed by the Police FINU for internal purposes. According to information provided by the authorities, BVI has assisted foreign authorities in the freezing of substantial values over the last decade.* *The substantial number of requests for MLA strongly indicates that the present staffing of the FIU is not sufficient to take on a more pro-active approach with regard to ML/FT cases. The nature of these crimes is concealed/hidden, and sufficient and qualified manpower, as well appropriate technical means, are crucial in order to successfully reveal, investigate and prosecute cases.*
Recommendations and Comments
The BVI authorities advise that a decision has been taken by the executive council to establish the FIA, which will have responsibility for the investigative and administrative aspects of financial intelligence. A bill is being drafted. Although the mission did not have access to any specific information on the structure and status of the FIA, the authorities advise that there is already provisioning in the 2003 budget for the FIA. *The authorities have taken positive steps in proposing the formation of the FIA, which is expected to be a separate agency staffed from members seconded from the Police FINU, Customs, Tax, and Civil Service and the AGC. The FIA is expected to be subordinated to the RA and the expectation is to add eleven staff members to the FIA, in addition to the three current staff members of the Police FINU. As part of the FIA, there will be a need for some ad hoc powers to bring in expertise as necessary for deeper investigations such as forensic accounting. The proposal envisages that FIA will be independently funded and internally controlled but with a steering committee from the parent agencies and the governor's office. It is expected that the FIA will have the powers of the Police and Customs and other powers as may be necessary. These powers should be expressly delineated in the enabling legislation forming the FIA. Although the proposed FIA will be a hybrid of financial intelligence analysis and investigative functions, there should be clear procedures for distinguishing the financial intelligence analysis and the transformation of the intelligence into investigative evidence that is admissible in court proceedings. The Steering Committee should be given responsibility for ensuring that such necessary controls are implemented and maintained.*
At minimum, the FIA's internal procedures should have provisions to reduce potential conflicts of interest among the various bodies. An important dimension is the autonomy and integrity of the new unit. The relationship between the RA and the FIA must be clearly regulated, taking into account their partially different tasks and the need for limiting access to certain types of agency-specific information. Professional secrecy issues must be comprehensively addressed. Emphasis should also be put on clearly defining the authority of the body responsible for the deployment of FIA resources. Targeted statistics related to law enforcement activities, including the freezing, seizing, and confiscation of the proceeds of crime, should be developed.
Implications for compliance with the FATF Recommendation 37
For the purposes of FATF Recommendation 37, the provision of mutual assistance, including in criminal matters, is adequately addressed in the CJIC and the FSIC. However, execution of compulsory measures arising from mutual legal assistance requests is inconsistent in practice. The procedures for invoking and executing the CJIC and FSIC provisions should be made clearer and formalized to allow for effective use of law enforcement measures in response to foreign requests.
V—International Co-operation (compliance with criteria 34-42)
Description
The Criminal Justice International Cooperation Act (CJIC) is the major legislative basis for the range of mutual legal assistance in AML/CFT matters. Sections 5, 6, and 7 of the CJIC authorize providing evidence, including seizure of records, search of premises and seizure of evidence, and enforcement of foreign forfeiture orders. In addition, Sections 4 and 5 of the Financial Services (International Cooperation) Act, 2000 (FSIC), allow for the sharing of records in the possession of the FSC with foreign authorities. The PCCA provides specifically for the

enforcement of external confiscation orders for ML. The provision of mutual legal assistance is only limited insofar as the BVI requires dual criminality for the provision of evidence and records.

The AGC advises that amendments to the CJIC are contemplated to widen assistance delivered or sought, and to authorize police to interrogate witnesses directly under a mutual legal assistance request whereas currently, interrogation of witnesses under the CJIC may only be carried out by a court order.

In addition to mutual legal assistance in criminal matters, the Evidence (Proceedings in Foreign Jurisdictions), Act 1988 authorizes provision for assistance in civil matters, including examination of witnesses, production of documents, inspection, photographing, preservation or detention of property, or the medical examination of any person.

See also, discussion in criterion 22 regarding sharing of information by the RA.

Provision of mutual legal assistance is generally effective, efficient and timely. The BVI authorities appear well equipped for responding to a high level of requests that require exercising a number of investigative techniques. It should be noted that resources are likely to be strained if the number of requests continues to increase. The BVI authorities play a significant role in assisting other jurisdictions' investigations. Mutual legal assistance requests have tripled in the last seven years, and this has spurred the authorities to begin a review of the entire process for providing mutual legal assistance. To date, the BVI authorities generally do not request assistance from other jurisdictions, rather focusing on the delivery of assistance.

In the exercise of mutual legal assistance on behalf of the United States, based on the Mutual Legal Assistance (United States) Act of 1990, there is a confidentiality provision that prohibits a person subject to an order from disclosing the particulars of the request to any person for a period of ninety days from the date of receipt of the request.

Since 1992, authorities have compiled statistics on mutual legal assistance requests that are broken down by type of action necessary, entities involved, and other features. These statistics demonstrate an increasing number of enquiries. The increase supports the perception of the high level of cooperation of the BVI in the international community in providing mutual legal assistance.

BVI has a mutual legal assistance treaty with the United States. The FSC and AGC advise that mutual legal assistance may be provided directly under the CJIC and the FSIC without the need for treaties or agreements and any agreements entered into cannot exceed the scope of assistance contemplated by the CJIC. The mutual legal assistance laws and agreements are supplemented by the sharing of financial intelligence through the Egmont Group and participation in INTERPOL.

In addition to the gateway through INTERPOL, the Police FINU advise that there are gateways for the exchange of information directly with other police units, and that foreign law enforcement may make requests directly to the Police FINU. The Police FINU advise that there are no legal impediments to the direct sharing of information with foreign police. It is unclear whether exchange of information on a police-to-police basis encompasses full dissemination of case specific information or whether the transmittal of actual evidence requires a more formal mechanism.

It does not appear that statistics on direct exchange of information between law enforcement authorities is maintained. However, the usefulness of compiling such statistics is marginal, as many such contacts are informal and will be supplemented with more formal requests either through INTERPOL or mutual legal assistance at the stage when transmittal of usable evidence is needed.

Cooperative investigations are encouraged and supported. BVI law enforcement bodies are primarily focused on ensuring that all necessary cooperative measures are in place. Authorities advise that controlled delivery is authorized and undertaken. Authorities regularly coordinate cooperative investigations with the United States Customs authorities.

Extradition is permitted for individuals charged with crimes punishable by imprisonment of over twelve months. Extradition is specifically provided for in the Extradition Treaty (US/UK) of 1977 as amended by Supplemental Treaty of 1985, the Fugitive Offenders (Virgin Islands) Order of 1967, Extraditions Act of 1989 (UK) and the

Extradition (Overseas Territory) Order of 2002. The AGC advises that extradition of nationals is permissible.

In addition to extradition, persons connected with terrorism may be denied entry to the BVI, be deported, or be detained pending deportation. There is also provision to declare persons undesirable by placing names on a stop list at the ports of entries. Recently, the National Intelligence Committee (2001) was formed to enhance law enforcement and networking with other countries to target terrorists and other criminals.

Analysis of Effectiveness

International cooperation and provision of mutual legal assistance is highly effective in the BVI. The CJIC and the FSIC allow for broad exchanges of information, both for investigations and prosecutions and for regulatory matters. The BVI legislation requires dual criminality for the provision of evidence and records. The PCCA specifically provides for the enforcement of external confiscation orders for money laundering. Amendments to the CJIC are contemplated, in order to widen the scope of assistance and to authorize the police to interrogate witnesses directly under a mutual legal assistance request.

There are a substantial number of requests for assistance from foreign counterparts, as reflected in the available statistics. The statistics only give information on the number of requests in different categories, and do not highlight the efforts put into their execution. Many of the requests are handled by the police themselves (company enquiries and checks). Work connected to requests for assistance takes up the major part of the capacity of the Police FINU. The Head and the staff of the unit, as well as the AGC, seem very competent in this field and have accumulated considerable experience.

The authorities of BVI should be commended for the efforts put into international law enforcement cooperation.

The general impression is that requests for assistance are executed in a professional and timely manner. There is perhaps some strain on the limited number of staff to thoroughly follow up all requests in the desired detail. The importance of BVI as a financial centre strongly suggests that the number of requests for mutual assistance in criminal matters will remain at a high level. As money laundering operations often will involve several jurisdictions, the role of the BVI must be considered to be of great significance in the global efforts to fight money laundering and the financing of terrorism.

Recommendations and Comments

Further develop statistics in the area of international cooperation, including freezing, seizing, and confiscation of assets.

The contemplated changes to the CJIC and the establishment of the FIA would further enhance the ability of expediently executing requests for assistance.

Implications for compliance with FATF Recommendations 3, 32, 33, 34, 37, 38, 40, SR I, SR V

The legal provisions for mutual legal assistance in the CJIC and FSIC are sufficient to permit a wide range of mutual legal assistance for compliance with FATF Recommendations 3, 33, 37, 38 and 40 and the processes for effectuating mutual legal assistance appears to function well. Additional authority is required to achieve compliance with FATF 32 that ensures that there is substantive and effective exchange of information concerning suspicious transactions. Because most of the information on ML and FT discovered in the BVI relates to activities and investigations in the United States, the bilateral agreement between the two suffices to cover a large portion of the requests received in the BVI. Nevertheless, additional bilateral agreements should be considered to strengthen compliance with FATF 34. Additional legal provisions are necessary to ensure that the broadest possible scope of legal assistance can be offered in compliance with FATF Special Recommendation V.

Assessing preventive measures for financial institutions

Table 6. Detailed Assessment of the Legal and Institutional Framework for Financial Institutions and its Effective Implementation

I—General Framework (compliance with criteria 43 and 44)
Description
There is no confidentiality law or secrecy provision in legislation that would inhibit the implementation of necessary preventive measures for financial institutions. The FSC is responsible for ensuring the implementation of AML/CFT requirements by all financial institutions, pursuant to Sections 4, 37 and 38 of the FSCA. The PCCA and AMLCP are included into the schedule of the FSCA to ensure the coverage of AML/CFT. Specifically, Section 37(1)(a)(ii) incorporates both the AMLCP and any guidelines issued, including the Guidance Notes. The FSC is responsible for implementation across all financial sectors covered by the AMLCP, including, inter alia, banks and trust companies, mutual funds and mutual fund managers, insurance business, company management, money remitters or check encashment, and any activity in which money belonging to a client is held or managed by lawyers or accountants. Under Section 38 of the FSCA, the FSC has the authority to revoke licenses for violations of the AMLCP. Direct, on-site supervision has been in place for trust and company service providers and is being implemented more fully for banking, insurance, mutual funds and mutual fund managers, but the implementation has not been completed and the level of compliance cannot be readily ascertained as yet. Additional staffing resources and adaptation of inspection manuals for AML/CFT measures will be needed. While money remitters are not yet directly subject to licensing and supervision, a bill has been proposed to bring money remitters under the umbrella of FSC supervision, which would include supervision and inspection for AML/CFT preventive measures.
Analysis of Effectiveness
The general framework for AML compliance is contained in the AMLCP and the Guidance Notes, which provide for customer due diligence measures (KYC), record keeping, ongoing monitoring of relationships and transactions, and suspicious transaction reporting. They also impose minimum requirements for internal procedures, controls, and audit. The AMLCP and Guidance Notes provide sufficiently detailed legal requirements and clear instructions for reporting persons to establish effective internal controls and achieve compliance. The AMLCP and Guidance Notes apply consistently across a broad number of financial intermediaries which include banks and trust companies, insurance business, mutual funds and mutual fund managers, company managers (either eligible introducers or trust companies), money remitters, and any activity in which money belonging to a client is held or managed by an attorney or accountant. The FSC is the supervisory authority vested with the responsibility for ensuring adherence to the AMLCP and the Guidance Notes. The FSC has direct prudential supervisory authority, including assessment of fit and proper tests for management of banks and trust companies, insurance, mutual funds and mutual fund managers, and administrators. Currently, money remitters are not licensed and supervised. The FSC has on-site inspection powers as well as broad powers for approval of compliance officers. The FSC is in the process of completing the necessary inspection manuals and procedures needed to exercise its full range of supervisory functions. With respect to implementation, the strongest tool, on-site supervision, as such, is not yet fully in place, although there are visits to regulated persons, and questionnaires for compliance are required as part of these visits. However, transaction testing and file verification is not fully implemented. As a result of the stage of development of the FSC's supervisory tools, the effectiveness of implementation within the sectors cannot be accurately assessed. The FSC believes there is a high level of compliance across sectors, and that the industries have been responsive to adopting internal controls policies and procedures and adhering to KYC requirements. Of some concern is the reliance on eligible introducers (composed in the BVI of registered agents as well as lawyers and other firms both domestic and abroad) to conduct KYC on behalf of BVI financial intermediaries. Further

verification is needed to ascertain whether the supervisory controls in place are sufficient to test whether the eligible introducers are meeting the statutory requirements to qualify under the AMLCP, and adherence of the eligible introducers in performing the KYC requirements.

Money remitters are not subject to licensing and supervision, so implementation through supervisory measures is not completed as to these entities. Implementation in money remitters is therefore noncompliant.

Recommendations and Comments

Implementation must be completed and on-site inspections should be regularly used to verify the compliance programs for AML/CFT. Specific transaction testing should be implemented as part of both on-site inspection and as a requirement for internal audit testing by reporting persons. Supervisory controls should pay particular attention to adherence to KYC requirements by eligible introducers.

As an added measure to move forward with implementation, the FSC should consider requiring external auditors of financial intermediaries to provide certifications on AML/CFT compliance and to make direct reports to the FSC concerning AML/CFT internal controls and procedures, as well as specific file and transaction testing. Such a requirement will require legislative changes which are not in the control of the FSC to authorize direct communication between the FSC and external auditors, impose specific instructions for auditors, and allow for pre-audit and post-audit meetings between the FSC and external auditors.

Implications for compliance with FATF Recommendation 2

Financial secrecy is not an impediment to the implementation of FATF Recommendations concerning preventive measures for financial institutions, and therefore, the BVI laws and institutional framework are designed in a manner sufficient for compliance with FATF Recommendation 2.

II—Customer identification
(compliance with criteria 45-48 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 68-83 for the banking sector, criteria 101-104 for the insurance sector and criterion 111 for the securities sector)

Description

The FSC advises that anonymous accounts are not authorized in the BVI.

Reporting parties are required to identify their customers as soon as reasonably practicable after a continuing business contact is first made as well as occasional customers upon the production of satisfactory evidence of their identity (Paragraphs 4 and 5 of AMLCP). There is no threshold for requirements of customer identification in one-off transactions. Paragraph 4(5) of the AMLCP provides reverification of customer identification is required when doubts arise during the course of the relationship and additionally Paragraphs 4 provides that when satisfactory evidence is not obtained, the business relationship or transaction shall not proceed any further.

For introduced business, paragraph 6 of the AMLCP requires eligible introducers to conduct due diligence and to maintain records and when requested to supply the verification of the identity to the regulated persons in the BVI. When satisfactory evidence of identity is not obtained or produced, the business transaction or relationship shall not proceed any further (Paragraph 6(7) AMLCP). Appendix A of the Guidance Notes provides guidelines and information to be provided for introduction of clients by local reliable introducers. As a result, the regulated person does not have direct responsibility for conducting customer due diligence of introduced business, and may not know if the due diligence has been conducted properly unless the regulated person affirmatively requests the information.

Section 4(1) of the AMLCP requires establishment of identification procedures in relation to new and continuing business relationships, but Section 4(2) and 4(3) contain exceptions to the need for verification of identity under certain circumstances. Section 4(2) provides that the verification procedures do not apply if there are reasonable grounds for believing that the applicant for business is a regulated person, or an authorized financial institution in a FATF or CFATF country with AML/CFT laws at least equivalent to the BVI, or is an attorney or accountant. Section 4(3) provides that the identification procedures are not required if there are reasonable grounds for believing that the applicant for business acts in the course of a business relation to which a regulatory authority outside the territory exercises regulatory functions and is based in a FATF or CFATF country with AML/CFT laws at least equivalent to the BVI.

Paragraph 66 of the Guidance Notes provides that a valid passport, national identity card, armed forces identity card, or drivers license bearing a photograph is sufficient to establish the identity of individuals. Paragraph 72 of the Guidance Notes provides for documents that can verify the identity of companies, such as a certificate of incorporation, the name and address of beneficial owners or persons on whose instructions the signatories on the account are empowered to act, and memoranda and articles of association, among others. In addition, a resolution, bank mandate, signed application form or any valid account-opening authority, and copies of powers of attorney, among other documents, are acceptable.

The FSC advises that one bank has numbered accounts. However, this is not a commercial bank and the accounts require customer identification and due diligence in accordance with the AMLCP.

While only currently included in inspection procedures for trust and company service providers, the FSC advises on-site inspections of banks, insurance, and mutual funds will conduct sampling of customer identification requirements.

Paragraph 31 of the Guidance Notes addresses beneficial ownership information, by requiring that an institution carry out verification, which requires intermediaries to read the term "principals" in the widest possible sense, including beneficial owners. In addition Guidance Notes paragraphs 35 and 37 require verification of partnerships' and companies' ultimate beneficial owners. As a general matter, the FSC advises that satisfactory evidence of identity necessarily requires obtaining the true beneficial ownership information. Paragraph 41 of the Guidance Notes also provides that where an institution suspects that there may be an undisclosed principal, it should monitor the activities of the customer to ascertain whether the customer is in fact merely an intermediary.

If there are doubts concerning the true beneficial owner, Guidance Notes Paragraph 77 provides authority to suspend account relationships and funds held to the applicant's order (if any) may be returned until the customer provides sufficient information concerning the beneficial ownership.

Supervision of implementation has not yet been completed, and some concerns remain about whether beneficial ownership information is regularly obtained, particularly when the due diligence is being carried out by eligible introducers. Inspection procedures under development should assess whether information is obtained.

Paragraph 100 of the Guidance Notes requires that in the case of electronic transfers, institutions retain records of payments made with sufficient detail to enable them to establish the identity of the remitting customer and the identity of the ultimate recipient. Although money remitters are subject to the AMLCP, these are not regulated on a prudential basis. There is a proposed bill to regulate money remitters, including licensing and supervision.

Analysis of Effectiveness

The AMLCP and Guidance Notes set standards for financial institutions with regard to knowing the identity of all customers. Financial institutions are required to identify their customers and to record their identity. The AMLCP stipulates identification procedures in relation to new and continuing business relationships, as well as for one-off transactions and for introduced persons. Verification subjects encompass individuals, partnerships and companies (including corporate trustees), intermediaries, and other institutions (such as associations, foundations, charities, etc.).

The individual subject to diligence may be the account holder himself or one of the principals to the account. The Guidance Notes specify that an individual trustee should be treated as a verification subject unless the institution has completed verification of that trustee in connection with a previous business relationship or one-off transaction and termination has not occurred. When the applicant for business consists of individual trustees, all of them should be treated as verifications subjects (unless they have no individual authority to operate a relevant account or otherwise to give relevant instructions). Likewise, all partners of a firm which is an applicant for business, shall be treated as verification subjects. In the case of limited partnership, the general partner is to be treated as the verification subject and limited partners need not be verified unless they are significant investors. Unless a company is quoted on a recognized stock exchange or is the subsidiary of such a company or is a private company with substantial premises and payroll of its own, steps must be taken to verify the company's underlying beneficial owner(s), including any person(s) on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are accustomed to act.

The institutions undertaking verification should establish to their reasonable satisfaction that every verification subject relevant to the application for business actually exists and all the verification subjects on joint applicants for business should normally be verified. Institutions should carry out verification in respect of the parties operation the account.

Where there are underlying principals, the true nature of the relationship between the principals (including beneficial owners, settlers, controlling shareholders, directors, major beneficiaries, etc.) and the account signatories must also be established and appropriate enquires performed. It would be advisable for the Guidance Notes to specify that all information obtained on customer due diligence undertaken for introduced business be transmitted to the regulated entity for confirmation and to require that the customer identification information be accessible in the BVI offices of regulated entities. Risk-based procedures for banking KYC are not sufficiently developed at this stage. Specific procedures to incorporate the requirements of the Basel Customer Due Diligence Paper, including provisions for Politically Exposed Persons (PEPs) and enhanced procedures for higher risk customers and private banking are not in place.
Recommendations and Comments
Since implementations has not been achieved yet, it remains difficult to assess the level of compliance in the performance of KYC policy. When on-site inspections are fully implemented, the FSC advises that samplings of customer identification will be undertaken. Special attention should then be given to assess whether compliance is sufficient with respect to identification of the beneficial owner(s), and inspection procedures should provide for an assessment of the quality and validity of information obtained. The identification procedures for applying for business which is introduced to a person by a third party (the Introducer) require eligible introducers to conduct due diligence, including establishing and maintaining identification procedures as soon as reasonably practicable after contact is made between the relevant person and the introducer. Implementation of inspections done by the FSC should help determine whether the diligence performed by the introducers is satisfactory. When money is remitted through a financial institution, the institution is required to retain records of payments made with details sufficient to establish the identity of the remitting customer and as far as possible the identity of the ultimate recipient. However, independent money remitters are not subject to regulation yet, although the assessment team has been advised that a bill has been drafted to regulate the sector. Until it is enacted, there is no regulatory requirement to include originator information on fund transfers and regulated messages. The bill should include clear instruction regarding mandatory information which needs to be attached to fund transfers, and in particular the name, address, and account number (when being transferred from an account). Attention should be given to the FATF special recommendation VII and its interpretative note, once it is adopted.
Implications for compliance with FATF Recommendations 10, 11, SR VII
Legal provisions in the AMLCP and in the Guidance Notes provide details and requirements sufficient to prevent financial institutions from keeping anonymous accounts or accounts in obviously fictitious names, and require them to obtain information concerning the true identity of the customer. As a result, the legal provisions, as written, are sufficient to achieve compliance with the minimal requirements of FATF Recommendations 10 and 11. However, implementation is lagging, and to date the FSC is not yet conducting substantive inspections on compliance with KYC obligations in the financial sectors. Information about beneficial ownership is, thus, lacking in many cases. Accordingly, the institutional measures and implementation for KYC needs to be immediately and significantly improved to reduce the risks of misuse of BVI financial service providers. Of some concern is the reliance on eligible introducers to conduct KYC on behalf of BVI financial intermediaries. Verification is needed to ascertain whether the supervisory controls in place are sufficient to test whether the eligible introducers are meeting the statutory requirements to qualify under the AMLCP and their adherence in performing KYC requirements.
III—Ongoing monitoring of accounts and transactions (compliance with Criteria 49-51 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 84-87 for the banking sector, and criterion 104 for the insurance sector)
Description
Guidance Notes Paragraphs 78 through 95 detail recognition of suspicious customers and transactions, and the reporting of suspicions both to the intermediaries Reporting Officer and reporting to the Reporting Authority. Appendix D of the Guidance Notes further detail examples of suspicious transactions for money laundering, which

while detailed, are not intended to be exhaustive. These suspicious transactions cover using cash transactions, bank accounts, investment related transactions, offshore international activity, financial institutions' employees and agents, unsecured lending, and sales and dealings staff. There are specific guidelines for new business and intermediaries, and for dealing patterns of abnormal transactions and settlements (payment, registration and delivery and disposition). These guidelines also require scrutiny of company formation and management that involve suspicious circumstances relating to the customer's behavior, suspicious circumstances for groups of companies, and potentially suspicious secrecy.

The RA and FSC advise that there is a high level of compliance with these Guidance Notes and that the industries are aware of the need for ongoing monitoring and detection of suspicious transactions. Nevertheless, the low level of STRs filed in the jurisdiction given the size of the financial community calls into question whether implementation has been fully achieved. When inspection procedures and manuals are completed and on-site inspections have begun, authorities will have a better understanding of the true level of understanding of, and compliance with, the obligations to monitor relationships.

The AMLCP and Guidance Notes do not identify jurisdictions for which AML/CFT systems are weak. The FSC advises that the baseline level of scrutiny required under the AMLCP and Guidance Notes is sufficient to alert financial intermediaries of the need to monitor independently developments such as awareness of the FATF NCCT lists. The FSC further advises that if needed alerts on jurisdictions can be issued by the RA, however, there have been no specific alerts concerning jurisdictions with weak AML/CFT systems and the need for additional scrutiny.

The Guidance Notes do not yet specifically require for enhanced scrutiny for wire transfers that do not contain originator information. When the FATF completes the Interpretive Note on Special Recommendation VII, the authorities should consider a corresponding issuance alerting financial intermediaries of the need for enhanced scrutiny in accordance with the conclusions of the Interpretive Note.

Analysis of Effectiveness

Financial institutions are required to pay special attention to suspicious customers/transactions. The AMLCP and Guidance Notes specify when financial institutions must report unusual or suspicious transactions to the supervisor or other authority. Both the Code and the Notes also set regulations and guidelines issued to financial institutions regarding the recognition of unusual or suspicious transactions.

The Guidance Notes define a suspicious transaction as one which is inconsistent with a customer's known legitimate business or activities or with the normal business for that type of account. Therefore, an important precondition of recognition of a suspicious transaction is for the institutions to know enough about the customer's business to recognize that a transaction is unusual. The Guidance Notes classify the suspicious transactions into the following categories: any unusual financial activity of the customer in the context of his own usual activities; any unusual transaction in the course of some usual financial activity; any unusually-linked transactions; any unusual employment of an intermediary in the course of some usual transaction or financial activity; any unusual method of settlement; and unusual or disadvantageous early redemption of an investment product. Examples of common ML transaction typologies are given in appendix D attached to the Guidance Notes.

Recommendations and Comments

The Guidance Notes indicate that the Reporting Officer "should be well versed in the different types of transactions which the institution handles and which may give rise to opportunities for money laundering." The FSC and the RA advise that regular contacts are maintained with the financial industry to ensure that there is a thorough knowledge and understanding of the evolving patterns and trends of money laundering. The RA advise that they meet with the representatives of professional associations, or with the financial institutions on a individual basis, to exchange views on the issue. However, there has been no update of the ML transactions typologies since the Guidance Notes were issued. RA could consider supplementing these initial typologies with new trends and patterns, as they are emerging regionally and are discussed at C-FATF meetings, or have been detected on the BVI territory.

The AMLCP provides for a number of exemptions to the identification duties when the applicant for business is a regulated person or an authorized financial institution in a country or territory which is a member of the FATF or CFATF and which has AML laws at least equivalent to those of the BVI, or is an Attorney-at-Law or an accountant. There are no written guidelines to give special attention to business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT. However, the FSC advises that

financial institutions are aware of the necessity to scrutinize customers relationships or transactions in and out from jurisdictions that have been identified as weak in the international AML/CFT framework, in particular for those listed as non-cooperative countries and territories by the FATF.
Implications for compliance with FATF Recommendations 14, 21, 28, SR VIII
The level of scrutiny required by financial institutions, while in itself is adequate, is not sufficiently supported by a requirement to file an STR because financial institutions have the option of rejecting the transaction and returning funds to the client. The basis by which financial institutions examine the background and purpose of transactions is not sufficiently developed to allow for meaningful scrutiny or written analysis by the financial institutions. Therefore, compliance with FATF Recommendation 14 needs improvement.
IV—Record keeping **(compliance with Criteria 52-54 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 88 for the banking sector, criteria 106 and 107 for the insurance sector, and criterion 112 for the securities sector)**
Description
Paragraphs 7 and 9 of the AMLCP require financial institutions to maintain records on customer identity for at least five years. Paragraph 7 of the AMLCP requires that the records maintained indicate the nature of the evidence obtained and comprise a copy of the evidence, or where this is not reasonably practicable, contains such information as would enable a copy of the evidence to be obtained. Paragraph 9 of the AMLCP requires retention of records for five years from the date when all activities relating to an occasional transaction were completed, or when the business relationship ended, or where the business relationship was not ended, the last transaction was carried out. Section 35(2) of the FSCA authorizes the FSC to examine and make copies of documents belonging to financial intermediaries that relate to the carrying out of financial services business by the relevant person. Paragraph 97 of the Guidance Notes authorizes the RA to request an institution keep records for more than the five year period if an investigation into a suspicious customer or transaction has been initiated. Paragraph 8 of the AMLCP requires financial intermediaries to maintain records of all transactions carried out or on behalf of a customer for at least five years. Such records must be sufficient to identify the source and recipient of payments from which investigating authorities will be able to compile an audit trail for suspected money laundering. See also criterion 52. Paragraph 96 of the Guidance Notes provides further details on the audit trail and requirements for maintaining entry records, ledger records, and supporting records. Paragraphs 98 through 103 of the Guidance Notes detail the contents of the records to be maintained, including transaction specific records including details of personal identity and details of securities and investments transacted. Section 35 of the FSCA authorizes the FSC to inspect and obtain all records necessary and Section 36 of the PCCA authorizes law enforcement to obtain court orders for the production of material related to the proceeds of criminal conduct. With respect to records relating to FT, the governor is vested with the authority to direct any person to furnish to him any information in his/her possession or control, or to produce any document in his/her possession of control, which the governor may require for the purpose of securing compliance with or detecting evasion of the Statutory Order 3366.
Analysis of Effectiveness
Financial institutions are required to keep records in order to facilitate the investigation of any audit trail concerning the transactions of their customers. In particular, institutions should keep all account opening records, including verification documentation and written introductions. They should also keep all accounts ledger records, and all records in support of ledger entries, including credit and debit slips and checks. Records relating to verification generally comprise a description of the nature of all the evidence received relating to the identity of the verification subject, and the evidence itself (or a copy of it or, if that is not readily available, information reasonably sufficient to obtain such a copy). Records must be kept in a “readily retrievable” form, which may consist of an original hard copy, a microform, or electronic data. Records held by third parties would not qualify as readily retrievable unless the third party itself is an institution that is able and willing to keep such records and disclose them when required.

Recommendations and Comments
The BVI is compliant with respect to keeping of records. Material is to be made available for law enforcement purposes upon an order obtained from the court (PCCA), and for the purposes of the prudential supervision of a financial services business carried on in or from within the BVI, the FSC may examine and make copies of such records.
Implications for compliance with FATF Recommendation 12
The legal requirements for record keeping allow for recoverability of records and ensure that the records maintained are sufficient to permit reconstruction of individual transactions for adequate compliance with FATF Recommendation 12.
V—Suspicious transactions reporting **(compliance with Criteria 55-57 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 101-104 for the insurance sector)**
Description
Suspicious transaction reporting for money laundering is voluntary under the PCCA, and when an STR is filed with the RA, the person filing has a presumption of protection from criminal prosecution under the money laundering statutes. Filing of an STR mitigates the risk of that the reporting party will be implicated in a criminal prosecution for ML. In addition, pursuant to Statutory Order 1822, Article 12 and Schedule 1, impose mandatory reporting of FT offenses because failure to report knowledge or a reasonable grounds to suspect that came to the person in the course of a business in a regulated sector to a constable or a nominated officer, will result in criminal liability under the Statutory Order. Paragraphs 88 through 90 of the Guidance Notes indicate that financial institutions "should" file when information substantiates suspicion of laundering. This is not interpreted as elevating STR filing to a mandatory level. Further, the Guidance Notes paragraphs and the AMLCP only require financial institutions to adopt and implement a policy to report transactions that raise suspicions of money laundering. This means that the financial institution need not file any STR in cases where it suspects that the assets are criminal proceeds providing there is no suspicion of money laundering. Next, both the AMLCP and the Guidance Notes only require the financial institutions to adopt and implement a policy to report STRs that have in fact been completed. This means that the financial institution need not file an STR in cases where a transaction is suspicious providing that it does not complete the transaction. Paragraph 14(1) of the AMLCP requires STRs be filed with the RA and requires reporting parties to have written internal reporting procedures that enable their directors, partners, management, and key staff to know to whom they should report any knowledge or suspicion of money laundering. The procedures should ensure that there is a clear reporting chain under which suspicions of money laundering will be passed to the Reporting Officer (RO). However, the AMLCP does not specifically require that reporting entities establish procedures for management and key staff to identify suspicious transactions or to report such transactions to the RO. Nevertheless, Paragraph 84 of the Guidance Notes provides that institutions should ensure that key staff know to whom their suspicions should be reported and that there is a clear procedure for reporting such suspicions without delay. Appendix E of the Guidance Notes suggest a format for internal reporting and Appendix F sets forth the standard form for reporting to the RA. Reporting persons are protected under Section 28(2)(a) of the PCCA, which provides that where a person discloses to the RA a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct, or discloses to the RA any matter on which such a suspicion or belief is based, the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability. Section 31 of the PCCA prohibits tipping off concerning an investigation that is being or is about to be conducted into money laundering when such disclosure to any other person information is likely to prejudice that investigation or proposed investigation. Section 31 is broadly worded and applies as well to the authorities, so that unjustified or unauthorized disclosures of information would constitute an offense.
Analysis of Effectiveness
Currently, suspicious transaction reporting is voluntary and filing of STRs provides a safe harbor from liability for ML for the reporting person. While this has been sufficient for generating STRs for obviously suspicious transactions and activities, there may be some gaps in filing of reports for which the situation is questionable but the reporting party has refused the transaction rather than file an STR. On a systemic level, opportunities for detecting suspicious or unusual

activities in this vein may be lost. Tipping off is prohibited under the PCCA. The law does not provide for the RA or other competent authority to order blocking or freezing of transactions when a STR is filed. Authorities are hesitant to move toward such powers because of questions about becoming "constructive trustees" for the funds and being subject to liability for loss or damage for blocked or frozen transactions. While this concern is valid in a common law jurisdiction, temporary freeze measures are effective in other common law jurisdictions and corresponding provisions for immunity from liability can be enacted that provide a modicum of protection.

Authorities advise that mandatory STR reporting is contemplated.

Recommendations and Comments

To fully capture potential unusual and suspicious transactions reporting should be mandatory.

Increasing reporting that results will require additional specialized guidance on typologies and trends, and may require additional requirements for financial intermediaries to adapt their internal reporting procedures and controls.

Implications for compliance with FATF Recommendations 15, 16, 17, 28

STR reporting in the BVI is relatively weak and not sufficient to inform the FIU and law enforcement about potential criminal activities that may be misusing the financial sector. Of greatest significance is the voluntary nature of the suspicious transaction reporting requirement. Legal protections for financial institutions, directors and staff for the reporting of suspicious transactions, should be strengthened to provide an affirmative protection from liability for disclosing information through an STR, and for responding to requests for further information in support of the STR. Moreover, there should be a specific authority of the RA or the Police FINU to block transactions or accounts for a limited period of time after a SAR is received. The authorities' arguments concerning the creation of a constructive trust through such authorities are not persuasive—such authority can be designed in legislation to limit the liability for direct and consequential damages for any blocking.

VI—Internal controls, Compliance and Audit
(compliance with Criteria 58-61 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 89-92 for the banking sector, criteria 109 and 110 for the insurance sector, and criterion 113 for the securities sector)

Description

Programs for internal controls in financial institutions are provided for directly in the AMLCP, and are sufficiently detailed and clear to require financial institutions to construct written policies for suspicious transaction detection and for ensuring compliance with requirements in the AMLCP. Specifically, Paragraph 14 of the AMLCP requires written internal procedures for suspicious transaction detection and reporting. Paragraph 14 of the AMLCP also contemplates designation of a Reporting Officer, who is responsible for receiving suspicious reports internally and reporting STRs to the RA and who may be the same person as the compliance officer under Paragraph 12 of the AMLCP.

Paragraph 15 of the AMLCP requires relevant persons to provide training for all directors, partners, all persons involved in management, and all key staff to ensure they are aware of the PCCA, regulations made there under, and the AMLCP. Paragraph 16 of the AMLCP requires training for senior and specialist staff regarding the relevant person's internal policies and procedures to prevent money laundering, its customer identification, record keeping, and other procedures, and the recognition and handling of suspicious transactions. Paragraph 17 requires refresher training once every year to remind key staff of their responsibilities and to make them aware of any changes in the law relating to money laundering and the internal procedures of the relevant person.

Guidance Notes 105 through 107 provide further details on the duty to ensure that key staff receive sufficient training to alert them to the circumstances whereby they should report customers/clients and all their transactions to the internal compliance officer. This includes basic elements of the legislative and regulatory framework as well as the recognition and handling of suspicious transactions, and vigilance policies on systems. Paragraph 106 reminds key staff of the personal legal liability for failure to perform the duty of vigilance and to report suspicions appropriately. Paragraph 107 sets forth training programs for key staff in accordance with particular commercial requirements, including new employee training, cashiers/foreign exchange operators/dealers/salespersons/advisory staff, staff dealing with account opening and with accepting new customers or business, staff who process settled transactions, and staff with responsibility for supervising or managing new staff.

Paragraph 13 of the AMLCP provides for a due diligence audit to be conducted by the FSC or a person designated by

the FSC to verify compliance with the AMLCP or any other directive related to money laundering. However, there is no specific requirement for an audit testing function for AML/CFT measures under the institution's own audit mechanism, whether internal or external. It would be advisable for the FSC to prescribe audit procedures for internal or external audit of AML/CFT to test the compliance with the AMLCP and Guidance Notes. Such audit testing reports should be made available to the FSC for enhanced supervision.

Paragraph 12 of the AMLCP requires appointment of a compliance officer to be approved by the FSC for ensuring compliance with the AMLCP. The compliance officer must be a senior officer with relevant qualifications and experience to enable him to respond sufficiently well to enquiries relating to the relevant person and the conduct of its business. Article 34 of the FSCA requires the appointment of a compliance officer, who may with the approval of the FSC also be appointed a compliance officer for AML under Paragraph 12 of the AMLCP.

The FSC has drafted a form for the approval of appointment of a compliance officer, which requires specific and detailed background information prior to approval. To date, the FSC has not required submission of these approval forms. Paragraph 12(2)(b) and (c) require that the compliance officer be responsible for establishing and maintaining a manual of compliance procedures and ensuring compliance by staff. To do so, the FSC is to prescribe specific guidelines. The FSC has not yet invited reporting persons to submit appointment of compliance officers for approval under these provisions. The FSC should complete both the approval form for compliance officers and finalize guidelines for duties of compliance officers as soon as reasonably practicable. Financial institutions are not specifically required to put in adequate screening procedures to ensure high standards when hiring employees, outside of fit and proper tests and approval by the FSC of the compliance officer, which may pose a risk of abuse of financial institutions.

Guidance Notes paragraphs 5 and 157 remind regulated institutions in the BVI to ensure that their branches, subsidiaries, and representative offices operating in other jurisdictions observe standards at least equivalent to these Guidance Notes.

Analysis of Effectiveness

The legal provisions for internal controls are sufficient. The AMLCP specifically requires financial institutions to maintain procedures concerning client identification, record keeping and internal reporting; to establish internal controls to assist in preventing money laundering; to make staff aware of the requirements of the Code of Practice and the firm's compliance procedures; to train staff appropriately; to maintain a register of money laundering enquiries; and to appoint a compliance officer, approved by the managing director of the FSC. What is lacking is complete and thorough implementation and on-site and off-site supervision to ensure that regulated persons are in fact adhering to the requirements and have incorporated the required internal controls.

Financial institutions are required to establish and maintain internal procedures to prevent, detect, and report suspicious transactions. AML/CFT programs include internal procedures and policies and ongoing employee training. Institutions must perform their duty of diligence by having in place systems which enable them to verify the true identity of customers, keep records for the prescribed period of time, recognize and report suspicious transactions to the reporting authority, liaise closely with the RA on matters concerning vigilance policy and systems, train key staff, and ensure that internal auditing and compliance departments regularly monitor the implementation and operation of vigilance systems. Vigilance policy aims at guarding an institution against its business being used for laundering and/or the committing of any AML/CFT offence by the institution itself or its key staff.

The AMLCP requires that financial institutions appoint a senior staff to have the responsibility for the vigilance policy and vigilance systems, to act as internal focal point for receiving notification of suspicions, to decide whether suspicious transactions should be reported, and to report to the RA.

The Guidance Notes prescribe that key staff i.e. any employee of an institution who deals with customers/clients and/or their transactions should receive training. While each institution should design its training program in accordance with its particular commercial requirements, this training will generally aim at ensuring that key staff will react effectively to suspicious transactions and circumstances by reporting them to the relevant personnel. Guidance Notes require that at least, key staff should receive a copy of their company's current instruction manual(s) relating to entry, verification, and records based on the recommendations contained in the Guidance Notes. Training should also include making the key staff fully aware of the AML/CFT legal and regulatory framework. Refresher training is prescribed in the Guidance

Notes to ensure that key staff remain familiar with and are updated as to their responsibilities.

Financial institutions are required to ensure that their foreign branch and subsidiaries observe appropriate AML/CFT measures. The Guidance Notes specifies that where a group whose headquarters are in the BVI operates branches or controls subsidiaries in another jurisdiction, it should ensure that such branches or subsidiaries observe the Guidance Notes or adhere to local standards at least equivalent to the Guidance Notes, and it should keep all such branches and subsidiaries informed as to current group policy. Such branches or subsidiaries should also inform themselves as to their own reporting body and procedures for disclosing of suspicious transactions.

Recommendations and Comments

The AMLCP requires the appointment of a compliance officer responsible for ensuring compliance with the provisions of the BVI AML/CFT legal and regulatory framework, and prepare and submit to the FSC written reports on the financial institution's compliance to the AMLCP or any other relevant law or directive. This compliance officer may be the same person as the reporting officer. With respect to the implementation of this provision, the FSC advises that an application form for the approval of appointment of compliance officers has been drafted but not finally approved yet. It is advisable that the FSC finalizes the application process. Next steps should involve enacting guidelines for compliance officers, and possibly organizing targeted training for them.

Although the general framework for instructing financial institutions to set up internal vigilance systems and policies is sufficient and well defined, there seems to have been limited attention given by the FSC to the assessment of the efficiency of these systems and of the overall compliance to the AMLCP and Guidance Notes. In addition to due diligence audits which empower the FSC to conduct inspections to verify compliance with the AML/CFT Code, laws or directives, thoughts should be given to the possibility for the FSC to prescribe audit procedures for internal and/or external audit of AML/CFT. See Recommendation under 2.2/I.

Implications for compliance with the FATF Recommendations 19, 20

While the AMLCP and the Guidance Notes have imposed legal requirements on financial institutions to develop internal control programs, the level of implementation of these requirements by financial institutions, particularly outside of the banking sector does not appear to be sufficient and the effectiveness of financial institutions' programs is underdeveloped. Therefore, compliance with FATF Recommendation 19 is not complete. Of ongoing concern is that the BVI authorities do not verify that financial institutions ensure that the principles for internal controls are also applied to branches or subsidiaries outside of the jurisdiction, although the Guidance Notes do address this to some degree. Unlike other measures in the Guidance Notes, this requirement is not specifically tied to any provision in the AMLCP or the FSCA, so there is some concern that the application of AML/CFT controls to branches and subsidiaries operating abroad is not sufficiently defined in an enforceable legal instrument.

VII—Integrity standards
(compliance with Criteria 62 and 63 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion114 for the securities sector)

Description

Fit and proper tests are required for obtaining and maintaining licenses for regulated entities, including banking and trust companies, company managers, and for insurance, although mutual fund managers and investment managers are not currently subject to a fit and proper test. Section 16 of the FSCA empowers the Licensing and Supervisory Committee of the FSC to supervise regulated persons to ensure that they continue to satisfy the fit and proper criteria for the conduct of financial services business. The FSC advises that applications for licenses must be renewed annually.

Details on the scope of fit and proper requirements for each sector can be found in the BCP, IAIS, and IOSCO detailed assessments. The detailed review of best practices for trust and company services providers contains discussion on best practices and the requirements for fit and proper that are applicable to company managers.

The BVI authorities are aware of the vulnerabilities that exist with respect to the misuse of corporate vehicles, particularly companies with bearer shares. The current KYC requirements provide some mechanisms to obtain necessary information about beneficial owners and the principals of corporate entities.

Analysis of Effectiveness
The BVI has an adequate and established system of requiring fit and proper tests for directors and senior management of financial intermediaries that is applied to banks, company managers, and insurance, although mutual funds managers and investment managers are not currently covered. The FSC has broad powers to assess the fitness and properness of individuals, including aspects of reputation and prior criminal record. Licensing for regulated entities is renewed yearly and the FSC may deny renewal on a wide variety of factors, including whether the license has been properly used. There is some concern in the BVI about whether the companies registered, particularly those with bearer shares, are being misused for criminal purposes. As a result, the authorities are moving forward with a legislative proposal to immobilize bearer shares by requiring these be deposited with recognized financial institutions either in the BVI or abroad.
Recommendations and Comments
Fit and proper requirements should be required for mutual fund managers and investment advisers, and broker/dealers, as is contemplated to be introduced. The proposal for immobilization of bearer shares should be enacted and measures should be developed to ensure that company managers and other financial intermediaries transacting financial business for companies ascertain that the beneficial owners of these companies can be ascertained through this immobilization mechanism.
Implications for compliance with FATF Recommendation 29
Fit and proper tests must be applied to mutual fund managers and investment advisers for compliance with FATF Recommendation 29. FSC supervision of the application of the fit and proper tests appears to be generally adequate and ongoing monitoring is achieved by the annual requirement for relicensing. Nevertheless, compliance with FATF Recommendation 29 should be enhanced by incorporating supervision for fit and proper into the on-site and off-site inspection procedures.
VIII—Enforcement powers and sanctions **(compliance with Criteria 64 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 93-96 for the banking sector and criteria 115-117 for the securities sector)**
Description
Enforcement tools available to the FSC are broadly provided in the FSCA. A particular strength is that the enforcement actions in the FSCA may be applied for failure to follow the Guidance Notes. Section 37(1)(a)(ii) of the FSCA empowers the FSC to take enforcement action against a regulated person if the person has contravened or is in contravention of the AMLCP or such other enactments, or guidelines relating to money laundering. Section 38 authorizes the FSC to at any time revoke or suspend the license or certificate of a regulated person if the FSC is entitled to take enforcement action under Section 37. Section 39 authorizes the FSC to apply for a protective order preventing the regulated person or any person from transferring, disposing, otherwise dealing with property, or to appointing an administrator to take over and manage the financial services business, among other actions. Section 40 authorizes the FSC to issue a directive to a regulated person directing that person to cease engagement in any class or type of business, or not to enter into any new contracts for any class of business.
Analysis of Effectiveness
The legal provisions for sanctions and enforcement are adequate, but at this stage of implementation have not been applied for violations relating to ML/FT. Procedures for the FSC to invoke the enforcement tools and guidance on the application of specific sanctions to particular types of misconduct or to failure to comply remain incompletely defined.
Recommendations and Comments
Enforcement tools available to the FSC are compliant. Effective implementation of enforcement tools will require additional resources and development of internal procedures within the FSC, as well as additional training.

IX—Cooperation between supervisors and other competent authorities (compliance with Criteria 65-67 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 97-100 for the banking sector and criteria 118-120 for the securities sector)
Description
Currently, the FSC's Division for Legal and Enforcement is not adequately staffed, including vacancies for the Director, two deputy directors, and one enforcement officer. (Appendix 9 of the organizational chart of the FSC). Clearly, staffing needs to be more robust to effectively implement the requirements of the PCCA, AMLCP, and the Guidance Notes. Compliance levels within the financial sector cannot be properly monitored or ascertained until staffing is complete and such staff is properly trained. The managing director of the FSC advises that a number of these vacant positions will be filled in early 2003. Section 29 of the FSCA provides for gateways of disclosure and gathering of information. The FSC has authority to disclose any information, document, record, statement, or thing to other regulatory, judicial or law enforcement authorities both locally and overseas for purposes of a legal assistance in the investigation of a criminal activity upon prior written consent of the Board of the FSC. No court authorization is necessary. The FSIC governs the supervisory sharing of information with foreign regulatory authorities. The provisions in the FSIC must be read in conjunction with sections 30 and 32 of the FSCA. As stated above, Sections 4 and 5 of the FSIC allow for the sharing of records in the possession of the FSC with foreign authorities. The FSC advises that the procedures for exchange of information are formalized in the form of an undertaking to ensure compliance with the two laws on the subject. As a matter of practice, the FSC advises that all request received that reveal sufficient detail are immediately treated as formal requests for information and at which point the requesting authority is asked to sign the undertaking and return the original. Concurrently, FSC will use its compulsory powers under Sections 30 and 32 of the FSCA to obtain the necessary information. When the undertaking is signed, the information will be forwarded. The undertaking sets out the controls governing the requests including an appendix excerpting the relevant provisions of the law. As a general matter, the FSC advises that the party receiving the information from the FSC requires only the FSC Board's consent in order to further disclose the information. These further use provisions are set out in Sections 29 and 49 of the FSCA. If requests for information do not contain sufficient detail, FSC treats these as informal requests and will send the requestor all publicly available information it has. The requestor has the opportunity to provide more specific details in order to obtain non-public information under the formal process. At the time of the mission, only the managing director and the deputy director were authorized to decide upon requests, however, currently the director and deputy director of the Legal Services Division may also decide. The FSC advises that all requests are initially responded to within 1 week. Non-formal requests are completed within 1–2 weeks while formal requests are completed on average, within 2–3 months. From January 2002 through November 2002, the FSC had processed 9 of 13 formal requests and had completed a total of 30 informal requests. Additional specific provisions for information sharing with domestic competent authorities are found in Section 70(2) of the IA, Section 20 of the CMA, and Section 24 of the BTCA. These are discussed in detail in the BCP, IAIS, and IOSCO detailed assessments. The Financial Services (International Cooperation) Act Sections 4, 5, and 7 provide for information sharing with counterpart prudential supervisors. The FSC advises that generally they regularly provide more information than they request. See also criterion 66.
Analysis of Effectiveness
Legal requirements for cooperation at both the domestic and international levels are sufficient to efficiently ensure the exchange of information necessary. On the domestic side, implementation of cooperation with domestic competent authorities, including the Police and the AGC should be reviewed and experience in invoking the cooperative measures should inform potential enhancements to ensure that the broadest possible cooperation is being used. Efforts should ensure that the broadest exchange of information is executed, including the exchange of confidential supervisory information subject to adequate protections on confidentiality and data protection.

Recommendations and Comments
Unfilled positions in Legal and Enforcement should be filled immediately with qualified staff and training should begin immediately to ensure that the enforcement tools and sanctions available to the FSC are meaningfully invoked.
Implications for compliance with FATF Recommendation 26
The legal framework confers broad authority on the FSC to ensure that financial institutions subject to the AMLCP and the Guidance Notes adopt sufficient, in depth policies for internal controls, and to guard against money laundering. The AMLCP provisions are sufficiently detailed to permit the FSC to exercise a strong hand in ensuring that financial institutions have both adequate polices and procedures in place, follow these procedures, and guard against money laundering. At this stage, the FSC must focus on the effectiveness of the internal controls adopted by supervised financial institutions.

Description of the controls and monitoring of cash and cross-border transactions

Table 7. Description of Controls and Monitoring of Cash and Cross-Border Transactions

FATF Recommendation 22:
Description
The BVI does not have a specific system for detecting or monitoring the physical cross-border transportation of cash at present. Because the BVI uses the U.S. dollar, it would be difficult to estimate in absolute terms the appropriate level of cash movements across the border. The BVI does maintain statistics of liquidity in banks, which have the most cash intensive business. The Financial Secretary and Customs Service advise that a proposed customs form and declaration will require all persons entering BVI to declare cash of over US$5,000. Most cash entering outside of the banking system is seen to come through the airport and the West End seaport where ferries come in. The Customs Office advises that there are major cash seizures every few months, with amounts up to US$30,000 seized. BVI laws authorize the Customs Office to seize and hold cash for up to 72 hours without a court order and, if needed, a magistrate's order may be obtained. During the holding period the burden falls on the owner of the cash to prove that the funds derived from a legal source.
FATF Recommendation 23:
Description
Cash reporting is not feasible in the BVI, given the size of the jurisdiction and the limited resources available to law enforcement and other authorities. As a general matter, the authorities advise that cash is not the major basis for transactions within the BVI. Checks are most frequently used and credit cards are widely and increasingly relied upon for transactions. The very size of the jurisdiction makes large cash transactions notable when carried out, and the Guidance Notes specifically provide that reporting persons should pay particular attention to large and unusual cash transactions.
Interpretative Note to FATF Recommendation 22:
Description
N/A

Ratings of compliance with FATF recommendations, summary of effectiveness of AML/CFT efforts, recommended action plan, and authorities' response to the assessment

Table 8. Ratings of Compliance with FATF Recommendations Requiring Specific Action

FATF Recommendation	Based on Criteria Rating	Rating
1—Ratification and implementation of the Vienna Convention	1	Largely Compliant
2—Secrecy laws consistent with the 40 Recommendations	43	Compliant
3—Multilateral cooperation and mutual legal assistance in combating ML	34, 36, 38, and 40	Compliant
4—ML a criminal offense (Vienna Convention) based on drug ML and other serious offenses.	2	Compliant
5—Knowing ML activity a criminal offense (Vienna Convention)	4	Compliant
7—Legal and administrative conditions for provisional measures, such as freezing, seizing, and confiscation (Vienna Convention)	7, 7.3, 8, 9, 10, and 11	Largely Compliant
8—FATF Recommendations 10 to 29 applied to nonbank financial institutions; (e.g., foreign exchange houses)		See answers to 10 to 29
10—Prohibition of anonymous accounts and implementation of customer identification policies	45, 46, and 46.1	Compliant
11—Obligation to take reasonable measures to obtain information about customer identity	46.1 and 47	Largely Compliant
12—Comprehensive record keeping for five years of transactions, accounts, correspondence, and customer identification documents	52, 53, and 54	Compliant
14—Detection and analysis of unusual large or otherwise suspicious transactions	17.2 and 49	Materially non compliant
15 –If financial institutions suspect that funds stem from a criminal activity, they should be required to report their suspicions promptly to the FIU	55	Largely Compliant
16—Legal protection for financial institutions, their directors, and their staff if they report their suspicions in good faith to the FIU	56	Largely Compliant
17—Directors, officers, and employees should not warn customers when information relating to them is reported to the FIU	57	Compliant
18—Compliance with instructions for suspicious transactions reporting	57	Largely Compliant
19—Internal policies, procedures, controls, audit, and training programs	58, 58.1, 59, and 60	Largely Compliant
20—AML rules and procedures applied to branches and subsidiaries located abroad	61	Largely Compliant
21—Special attention given to transactions with higher risk countries	50, and 50.1	Materially non compliant

FATF Recommendation	Based on Criteria Rating	Rating
26—Adequate AML programs in supervised banks, financial institutions or intermediaries; authority to cooperate with judicial and law enforcement	66	Largely Compliant
28—Guidelines for suspicious transactions' detection	17.2, 50.1, and 55.2	Compliant
29—Preventing control of, or significant participation in, financial institutions by criminals	62	Largely Compliant
32—International exchange of information relating to suspicious transactions, and to persons or corporations involved	22, 22.1, and 34	Compliant
33—Bilateral or multilateral agreement on information exchange when legal standards are different should not affect willingness to provide mutual assistance	34.2 and 35.1	Largely Compliant
34—Bilateral and multilateral agreements and arrangements for widest possible range of mutual assistance	34, 34.1, 36, and 37	Compliant
37—Existence of procedures for mutual assistance in criminal matters for production of records, search of persons and premises, seizure and obtaining of evidence for ML investigations and prosecution	27, 34, 34.1, and 35.2	Compliant
38—Authority to take expeditious actions in response to foreign countries' requests to identify, freeze, seize and confiscate proceeds or other property	11, 15, 16, 34, 34.1, 35.2, and 39	Largely Compliant
40—ML an extraditable offense	34 and 40	Compliant
SR I—Take steps to ratify and implement relevant United Nations instruments	1 and 34	Compliant
SR II—Criminalize the FT and terrorist organizations	2.3, 3, and 3.1	Compliant
SR III—Freeze and confiscate terrorist assets	7, 7.3, 8, and 13	Compliant
SR IV—Report suspicious transactions linked to terrorism	55	Compliant
SR V—provide assistance to other countries' FT investigations	34, 34.1, 37, 40, and 41	Compliant
SR VI—impose AML requirements on alternative remittance systems	45, 46, 46.1, 47, 49, 50, 50.1, 52, 53, 54, 55, 56, 57, 58, 58.1, 59, 60, 61, and 62	Not applicable
SR VII—Strengthen customer identification measures for wire transfers	48 and 51	Non compliant

Table 9. Summary of Effectiveness of AML/CFT Efforts

Criminal Justice Measures and International Cooperation	**Assessment of Effectiveness**
I—Criminalization of ML and FT	Legal provisions for criminalization are in line with international standards. The weakness in criminalization is that these provisions are rarely used to pursue domestic prosecutions and the sufficiency of the criminal provisions has not been tested.
II—Confiscation of proceeds of crime or property used to finance terrorism	The authority for confiscation of a sum representing the proceeds of crime upon conviction is effectively used as are provisional measures for freezing and seizing of assets relating to both ML and FT. However, confiscation provisions for instrumentalities of crime and property laundered are more limited outside of the drug context. Comprehensive statistics are not maintained on confiscation.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	The FIU is functioning effectively for receiving and disseminating financial information and intelligence but is not imbued with optimum ancillary authority for effective analysis at the pre-investigative stage.
IV—Law enforcement and prosecution authorities, powers and duties	Law enforcement powers and prosecution authorities' powers are adequately provided in the legislative framework.
V—International cooperation	International cooperation is highly developed and is efficiently executed.
Legal and Institutional Framework for All Financial Institutions	
I—General framework	The legal and institutional framework is well designed in legislation to allow for optimum levels of effectiveness. Implementation remains to be completed and the FSC should note areas of refinement that may be needed in the legal and institutional framework. Of concern is the lack of coverage of money remitters and of the Development Bank of the BVI.
II—Customer identification	Customer identification is legally sound. The only potential gap, which must be verified through on-site inspections, is the effectiveness of customer due diligence undertaken on behalf of regulated persons by eligible introducers.

Legal and Institutional Framework for All Financial Institutions	
III—Ongoing monitoring of accounts and transactions	Monitoring of ongoing accounts and transactions is minimally set forth in the legislation and in supervisory materials, and would benefit from stronger affirmative requirements for the scrutiny of relationships. Moreover, the nature of suspicious transaction reporting allows for regulated persons to withdraw from the transaction without engaging in additional scrutiny or filing an STR. Specific insurance industry targeted and trust and company service provider guidance would enhance the monitoring efforts.
IV—Record keeping	Record keeping requirements are adequate.
V—Suspicious transactions reporting	STR reporting is comparatively weak both structurally and in the level of STR reporting given the marketplace and vulnerabilities of the territory. It is recommended that statutory suspicious transaction reporting be instituted.
VI—Internal controls, compliance and audit	The legislative and institutional measures for internal controls are adequate. At present, the relative infancy of the FSC and the need to implement on several fronts has not yet allowed for thorough, ongoing on-site supervision needed to ensure that internal controls, compliance, and audit are effectively implemented.
VII—Integrity standards	Fit and proper requirements are consistently applied to regulated persons with the exception of mutual funds and mutual fund managers.
VIII—Enforcement powers and sanctions	Sanctions and enforcement powers are adequate.
IX—Cooperation between supervisors and other competent authorities	Cooperation authority is adequate. At this stage implementation must be completed and experience in invoking the cooperative measures should inform potential enhancements to ensure that the broadest possible cooperation is being used. Unfilled positions in the Enforcement areas of the FSC should be filled.

Table 10. Recommended Action Plan to Improve the Legal and Institutional Framework and to Strengthen the Implementation of AML/CFT Measures in Banking, Insurance, and Securities Sectors

Criminal Justice Measures and International Cooperation	**Recommended Action**
I—Criminalization of ML and FT	
II—Confiscation of proceeds of crime or property used to finance terrorism	The PCCA or other legislation should provide for a specific forfeiture provision that allows for forfeiture of all property laundered and instrumentalities associated with a ML offence. Additional statutory authority for administrative bodies, such as the FSC or the RA, to identify or freeze assets for a short period a time, could be useful. Authorities should consider formally keeping statistics on the amounts of property frozen, seized, and confiscated relating to ML, the predicate offenses, and FT. Formal, meaningful and reliable statistics would help them evaluate their resources and staffing needs, understand where to deploy their resources, and enhance their reputation for effective confiscation controls within the international community.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	It is advisable that the authority of the RA or the Police FINU to obtain additional information be specified in legislation or regulation. The RA disseminates financial information and intelligence to domestic authorities for investigation or action through the Head of the Police FINU, who is also a member of the RA. There should be some monitoring, record keeping, and statistics with regard to the information passed from the RA to the Police FINU that is transformed into an official investigation. Records should similarly be kept with respect to the disposition of STRs. The RA should keep statistics on STRs received, STRs analyzed and disseminated, and STRs resulting in investigation, prosecution or convictions. It would be advisable for the RA to maintain integrated statistics throughout the process beginning with STR filing through the ultimate disposition of cases.

Criminal Justice Measures and International Cooperation	Recommended Action
IV—Law enforcement and prosecution authorities, powers and duties	A review of the current structure should be undertaken to determine its operational limits. Attention should be paid to the outcomes of this review in establishing the operational framework of the FIA. The initial operations of the FIA should be monitored closely to identify further refinements that may be needed on an operational basis. A review of the current structure should be undertaken to determine its operational limits. Attention should be paid to the outcomes of this review in establishing the operational framework of the FIA. The initial operations of the FIA should be monitored closely to identify further refinements that may be needed on an operational basis. In constituting the FIA, attention should be given to ensuring adequate structure for its operations. There should be clear procedures for distinguishing the financial intelligence analysis and the transformation of the intelligence into investigative evidence that is admissible in court proceedings. The FIA should have a clear gateway for the exchange of information to enable the widest possible use of investigative techniques necessary for preventing and detecting ML/FT offenses. When the FIA is established, authorities should review whether the resources and staffing are adequate to fulfill its mandate.
V—International cooperation	
Legal and Institutional Framework for Financial Institutions	**Recommended Action**
I—General framework	It is advisable that the FSC completes implementation of on-site inspections. Inspection procedures and manuals should be completed. Special attention should be given to assessing whether beneficial ownership information is regularly obtained and sufficient, particularly when due diligence is being carried out by eligible introducers. Regulation of independent money remitters should be completed, including licensing and supervision procedures. When the FATF completes the Interpretative Note on Special Recommendation VII, the FSC should consider a corresponding issuance alerting financial intermediaries on the need for enhanced scrutiny in accordance with the conclusions of the Interpretative Note.
II—Customer identification	Implementation of on site inspections is required.

Legal and Institutional Framework for Financial Institutions	Recommended Action
III—Ongoing monitoring of accounts and transactions	
IV—Record keeping	
V—Suspicious transactions reporting	Consideration should be given to enacting a mandatory suspicious transaction reporting system. Specific authority of the RA or FINU to obtain additional information after an STR is filed should be considered. Alternatively, such authority may be vested in the FSC. There should be consideration given to authorizing the RA or FSC with the authority to freeze or block transactions or assets for a brief period after an STR has been filed. To do so, additional protections for disclosure through STRs by reporting persons may be required.
VI—Internal controls, compliance and audit	There is no specific requirement for an audit testing function for AML/CFT measures under the financial institutions' own audit mechanism. Consideration should be given to the opportunity for the FSC to prescribe audit procedures for internal or external AML/CFT to test the compliance to the AMLCP and Guidance Notes. It is advisable that such audit testing reports should be made available to the FSC. The FSC should complete the form for approval of the appointment of the compliance officers. Guidelines for the duties of compliance officers should also be finalized.
VII—Integrity standards	The fit and proper tests should be applied to mutual funds and mutual fund managers, and to money remitters, when the specific sectoral acts are amended/enacted. Immobilization of bearer shares should help to limit misuse of corporate vehicles and should proceed expeditiously.
VIII—Enforcement powers and sanctions	Vacancies for positions with the FSC's Division for Legal and Enforcement should be filled as soon as reasonably practicable. Compliance levels within the financial sector cannot be properly monitored or ascertained until staffing is complete and the staff is properly trained. Staffing therefore needs to be more robust to effectively implement the requirements of the AML/CFT legal framework.

Legal and Institutional Framework for Financial Institutions	Recommended Action
IX—Cooperation between supervisors and other competent authorities	Efforts should ensure domestic cooperation procedures provide that the broadest exchange of information is executed, including the exchange of confidential supervisory information subject to adequate protections on confidentiality and data protection.

Authorities' response to the assessment

42. With reference to the recommended actions mentioned above, it is intended that they will to a large extent be fulfilled upon the enactment/amendment of key legislation as described below.

Criminal justice measures and international cooperation

43. Confiscation of proceeds of crime or property used to finance terrorism. The Proceeds of Criminal Conduct Act (PCCA) (1997) provides generally for the making of confiscation orders in relation to property that is income or profit derived from the proceeds of crime. There is no provision contemplated for the specific forfeiture of instrumentalities associated with a money laundering offence within the intended amendment to the PCCA.

44. The Financial Investigation Agency Act 2004 does in fact provide for the Reporting Authority to identify and freeze assets for a short period of time (five days). The section, 4(2)(c), contemplates such action when it is as a result of a request from a foreign investigation agency or law enforcement authority including the Commissioner of Police.

45. The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels. FIA Act Section 4 (2) (d) allows for the Agency to require the production of any information that it considers relevant to the performance of its functions. This would necessarily include the obtaining of additional information from financial institutions as a follow up to STRs.

46. The FIA Act does not establish procedures for distinguishing between financial intelligence analysis and the transmittal of the intelligence into investigative evidence but such guidelines do in fact exist in practice and section 5 of the FIA Act provides for the issuing of directions as to the policy to be followed by the Agency in the performance of its functions.

Legal and institutional framework for financial institutions

47. **General framework.** The proposed Money Services Act which would provide inter alia for the regulation, supervision and licensing along with the application of the relevant fit and proper tests should be enacted within the second quarter of 2004.

48. **Suspicious transactions reporting.** There are no specific statutory provisions which provide for a system of mandatory statutory reporting. The PCCA provides for a voluntary system. The recently enacted FIA Act however specifically provides (Section 20) that the FSC shall issue guidelines governing suspicious transaction reporting procedures.

49. Section 4 (2) (b) of the FIA Act allows the agency to direct any person to refrain from completing a transaction for a period of 72 hours subsequent to the receipt of a disclosure. Whilst this section does not specifically state that additional information could be obtained, the wide powers of the Agency generally and the import of the subsection allow for further and more detailed information to be obtained.

50. **Integrity standards.** The Mutual Funds (Amendment) Act has been drafted and has a time frame for enactment within the first quarter of 2004 and would provide for the relevant fit and proper tests to be applied.

III. IAIS INSURANCE CORE PRINCIPLES

A. General

51. This assessment was undertaken as part of the IMF Module 2 for offshore financial centers. The assessment of the FSC's compliance with the IAIS Insurance Core Principles was based on: (1) a self-assessment against IAIS Core Principles; (2) relevant laws and regulations; (3) analysis of FSC practices and procedures; and (4) discussions with supervisory staff of the FSC. This assessment was prepared by Mr. Tomas Power.

Information and methodology used for assessment

52. The standards and practices of the FSC and in particular the Directorate of Insurance were reviewed in comparison to the Insurance Core Principles Methodology promulgated by the International Association of Insurance Supervisors. We reviewed the FSC Act, the Insurance Act of 1994 and the Insurance Regulations of 1995 and we also discussed the draft amendments to those sector-specific matters. We also discussed the on-site inspection manuals that have been prepared and are awaiting implementation. We discussed with the director the level of training that has been offered to the staff and plans for recruiting and for additional training. We interviewed the largest insurance brokerage in the BVI in order to gauge industry reactions to the new legislation and planned additional standards, particularly in the area of the AML/CFT obligations that brokers will be responsible for monitoring and reporting to the FSC. We also met with the largest independent audit firm in order to determine the capacity of the accounting profession and its ability to adhere to new standards. Finally, we met with the largest captive insurer manager. It manages over 100 captives.

Institutional and macroprudential setting—overview

53. The insurance sector in the British Virgin Islands represents a significant element of the entire financial sector. The BVI has attempted to attract the nondomestic insurance industry to its shores more to produce revenue and create employment opportunities than to make insurance services available to its population. The BVI has made a concerted effort to attract so-called captive insurers.[5] The "market" for captive insurers and appropriate venues of registration was initially driven primarily by the passage of the Risk Retention Act in the United States in the mid-1980s. (In fact, to this date, 241 of the 263 captives are organized for US-based risks). Liability insurance for businesses was experiencing a cycle of very high premiums and greatly limited capacity. However laudable the intentions of the concept of encouraging alternative methods of risk management by businesses, the income tax and other tax advantages and opportunities to shelter assets in offshore captive insurers created opportunities for abuses in the insurance mechanism and also opened a wide gap in insurance prudential supervision.

54. The fact that the British Virgin Islands has such a large number of these companies presents a regulatory challenge respecting both resources and access. In striving to make the BVI an attractive offshore financial center, the laws and regulations applicable to the business of insurance are designed to promote the BVI as a comparatively advantageous place to do business. However, by passage of the Financial Services (International Cooperation) Act, 2000, the BVI has established a regulatory framework for the insurance sector as well as the rest of the financial sector that is designed to provide strong supervisory standards. The BVI also has in place the Insurance Act, 1994 and the Insurance Regulations, 1995. These will need amending in order to harmonize them with the Financial Services Act and eliminate any ambiguities that would defeat the purposes of the FSC Act. The FSC has already prepared a thorough analysis of necessary amendments to the 1994 and 1995 documents.

55. The latest available data indicate that there are 293 insurance companies licensed in the BVI. There are a total of 263 captive insurers. As noted, 241 of the captives are organized to insure US-based risks.

56. The domestic insurance activity generated approximately US$40 million in premium, while the captive industry wrote over US$400 million. Approximately 95 percent of the captive business is written by single-parent captives.

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[5] A captive insurer is one that is organized and operated primarily to insure the risks of the founders of the firm. Insurance is not sold to the public at large. Often, groups of similar businesses, presumably with similar risk exposures, will organize such insurers. Captive insurers generally have comparatively low capitalization requirements compared to standard commercial insurance companies. In some jurisdictions, capital does not have to be paid in, but can consist of letters of credit or other types of instruments.

57. There are 13 insurance agents, 11 insurance brokers, 12 insurance managers, and 7 loss adjusters.

58. As previously mentioned, the need or opportunity for business corporations to utilize risk financing or risk management mechanisms alternative to the traditional commercial insurance markets has created the demand for jurisdictions that will authorize formation of captive insurers under "user friendly" standards. The organizer of the captive gains the advantages to his business or his tax status that may arise from his own jurisdiction's laws and the BVI gains licensing revenue and creates jobs. The availability of a captive insurer facility also adds as to the attractiveness of the BVI for other Offshore Financial Center operations. There has been a steady growth of captives worldwide in the recent past of approximately 10 percent annually. The growth rate of the BVI captives closely tracks this global growth. It was noted in discussions with the private sector (as well as by the FSC professionals) that the fixed costs applicable to a BVI-based captive offer significant savings compared to other jurisdictions seeking captives. Also, some of the major market players offering management services to captives are beginning to establish a presence in the BVI. This signals a likely increase in the number of captives and not a battle for market share.

General preconditions for effective insurance supervision

59. Since the beginning of formalized insurance regulation (undertaken in the nineteenth century by Elizur Wright in Massachusetts in the United States) the major concern of insurance regulation has been protection of policyholders. While such concerns are certainly important in the twenty-first century, the nature of the insurance mechanism and the business of insurance have undergone fundamental changes in both scope of services and breadth of markets.

60. The International Association of Insurance Supervisors has recognized the preconditions for effective insurance supervision through the promulgation of the core principles. We have undertaken a comprehensive discussion and assessment of each of the core principles and we have noted the conformance of the BVI to them.

61. Generally, effective insurance supervision requires the existence of an agency charged clearly with the regulation of the business of insurance, such agency having sufficient independence and professional staff and resources in order to undertake its obligations. The mission of the insurance supervisory agency is the monitoring of the financial condition of insurers in order quickly to detect situations that may, presently or prospectively, prove hazardous or injurious to policyholders or the public; monitor compliance with applicable laws; and maintain an orderly, transparent and competitive marketplace. This organization also requires a statutory mandate clearly delegating to it such powers as are necessary to execute its mission ably and rapidly. The agency must have appropriate standards for licensing of those involved in the broad insurance industry and on-going monitoring of the fitness and capacity of market players. There must be prudential standards governing the actual operations and financial condition of insurance firms, and

opportunity for the supervisory authority to assess the performance of the various firms and take swift remedial actions where appropriate. The business of insurance being in many ways an international enterprise, there must be concerted efforts of the supervisor to cooperate with and share information with other organizations.

Effective supervision of captive insurers

62. Prudential rules for captive insurers often differ in material respects from those applicable to insurers marketing for the general public. However, these differences ordinarily pertain only to recognizing the fundamental differences between the two types of organizations and not to the necessity for monitoring solvency and assuring that proper care is taken in monitoring investments, asset and liability matching, and sufficiency of reserves.

63. At first glance, the need for regulatory oversight of captives may seem unnecessary in view of the fact that the "policyholder" is also the owner of the firm and the person whose interests are at stake. However, in many cases, the type of coverage applicable is liability insurance. In liability insurance, even though the tortfeasor, for example, is the insured and the obligation of the insurance company is to indemnify the insured for his losses (for example, having to pay a liability judgment) there is always a third-party beneficiary—the person damaged by the act of the insured.

64. While insurance attorneys may argue about the duty that an insurer owes to a third-party beneficiary, the duty of the insurance regulator clearly is to adopt standards that will maintain confidence that insurance companies can be expected to have the ability to meet their contractual obligations, irrespective of the ownership of the insurer. Also, being covered by particular types of liability insurance is often a prerequisite to practicing a profession. If the liability insurance being offered to meet that requirement is within the control of the insured through the mechanism of a captive insurer, sound public policy dictates that insurance regulators have an affirmative duty to exercise the same degree of care in supervising those types of entities that they have in supervising commercial insurance firms.

65. Accordingly, the mission has subjected the FSC's practices and procedures with respect to its captive industry to the same type of scrutiny that ought to be applied in the commercial insurance sector.

B. Detailed Assessment

Table 11. Detailed Assessment of Observance of the IAIS Insurance Core Principles

Principle 1.	**Organization of an Insurance Supervisor**
	The insurance supervisor of a jurisdiction must be organized so that it is able to accomplish its primary task, i.e., to maintain efficient, fair, safe, and stable insurance markets for the benefit and protection of policyholders. It should, at any time, be able to carry out this task efficiently in accordance with the Insurance Core Principles. In particular, the insurance supervisor should:
	be operationally independent and accountable in the exercise of its functions and powers;

	have adequate powers, legal protection, and financial resources to perform its functions and exercise its powers; adopt a clear, transparent, and consistent regulatory and supervisory process; clearly define the responsibility for decision-making; and hire, train, and maintain sufficient staff with high professional standards who follow the appropriate standards of confidentiality.
Description	The mission considers the organizational details and status (and authority) of the insurance regulatory authority to be of considerable importance in the foundation of effective supervision. Hence we have treated this core principle in great detail. *Responsibilities* The Financial Services Act, Section 4, provides the statutory predicates for the effective organization of the insurance supervisory authority: • to supervise and regulate regulated persons in accordance with the Act; • to monitor and regulate, in accordance with relevant financial services legislation, financial services business carried on in or from within the BVI; • to take such measures as it considers appropriate to develop the financial services industry in the BVI; • to monitor the effectiveness of the financial services legislation in providing for the supervision and regulation of financial services business in the BVI to internationally accepted standards; • to develop appropriate legal, regulatory, and supervisory mechanisms for the efficient and effective administration of the Commission and the financial services legislation; • to maintain contact and develop relations with persons engaged in financial services business in or from within the BVI; • to maintain contact and develop relations with foreign regulatory authorities and foreign international associations of regulatory authorities and to provide legal and regulatory assistance to foreign regulatory authorities in accordance with the act, or as may be provided in any other financial services legislation; • to develop a system of continuing education for practitioners in financial services business; • to adopt such measures as may be necessary to appropriately inform the general public on its functions and on matters relating to or affecting any financial services business; • to issue such advisories to investors, licensees, and the general public as it considers appropriate; • to monitor, in the public interest, promotional advertisements relating to any financial services business and give such advice relating to accuracy, fairness, and compliance with established laws and policies; • to enter into memoranda of understanding with regulatory and law enforcement agencies within and outside the BVI; • to promote and maintain a safe and sound financial services legislation in the BVI; • In performing its functions the Commission may take into account any matter which it considers appropriate including international initiatives geared towards establishing legal, business, and regulatory standards relating to financial services business, but shall, in particular, have regard to:

	(a) the protection of the public, including investors, whether within or outside the BVI, against financial loss arising out of the dishonesty, incompetence, malpractice, or insolvency of persons engaged in financial services business in the BVI; (b) the protection and enhancement of the reputation of the BVI as a financial services centre; and (c) the reduction of crime and other unlawful activities relating to financial services business. • With respect to insurance business, the FSC Act is supplemented by the Insurance Act of 1994 (as amended) which came into force in 1995. The Insurance Act sets out the framework for regulation, authorization and supervision of insurance business. *Organization and independence* The Financial Services Commission Act of 2001 (FSC Act) in Section 4(1) establishes the functions of the Financial Services Commission (the FSC), which include the regulation and supervision of "regulated persons." The FSC Act was created primarily to segregate the financial supervisor from the Ministry of Finance and provide the new entity budgetary and operational independence. The FSC reports to the Board of the Commission (the Board). The Board is composed of six members, which include the Managing Director of the FSC as an ex-officio member. The Board members are appointed by the Executive Council for terms not to exceed three years. However, the appointment of the Managing Director of the FSC by the Board is not subject to a fixed statutory term, and just cause for termination is not required. The FSC Act provides that the FSC will retain between 7.5 percent and 15 percent of its collections as agreed with the Executive Council, which include all licensing charges relating to international business companies. The FSC Act provides that if no agreement is reached, the FSC is to receive the same amount of funding as in the previous year. The segregation from the Ministry of Finance, combined with the term designation of the Commission's Board, provides a substantial degree of independence to the FSC. Furthermore, the budgetary concepts included in the FSC Act provide adequate resources and safeguards to promote the stable funding of the FSC. Part II of the FSC Act covers the "Licensing and Supervisory Committee" (the Committee), establishing its composition, functions, and general procedures. The Committee is composed primarily by the FSC Managing Director, who chairs the Committee, the Deputy Managing Director, and the heads of the regulatory and supervisory divisions of the FSC. The functions of the Committee include to receive, review, and determine applications for authorizations and licenses of insurance entities, and to supervise regulated institutions, including insurance entities. Section 32 of the FSC Act 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. *Accountability* With respect to public accountability, Part III of the FSC Act outlines financial and reporting provisions. Part III of the FSC Act also sets out the provisions dealing with the Commission's accounts and audit. It further sets out, under section 27 of that act, requirements for the completion of the Commission's audit and subsequent submission to the Executive Council along with a written report of the Commission's operations and activities for each financial year. These documents must then be laid before the Legislative Council within three months.

	Additional public accountability is achieved via provision for a Financial Services Appeal Board, to which appeals lie from decisions of the Commission and its organs. Specific information relating to the constitution of the Appeal Board, its functions, procedures, and decisions are outlined in sections 42 through 46 of the FSC Act. As a further safeguard of the Commission's independence from commercial pressures, the recent establishment of the Commission has coincided with the transfer of the function of marketing the financial sector to a newly established Financial Services and Promotion Unit, external to the Commission. *Principal adequate powers* The Commission has an array of powers set out mainly in the FSC Act. Under section 4(1)(f) of the FSC Act, the Commission has an overriding function of making recommendations to the BVI Government on any legislative measures necessary to develop the BVI's financial services industry. The FSC Act also confers broad power on the Commission's Licensing & Supervisory Committee to, among other things, review and approve or disapprove applications for authorizations and supervise regulated business. In addition, the FSC Act provides the Commission with an arsenal of specific regulatory, supervisory, and enforcement powers. Many of these are detailed under Part V of the act which, among other things: • pursuant to sections 30 and 32, confers power on the Commission or its Board to require persons engaged in financial services business or other persons to furnish information needed for the discharge of the Commission's functions; • pursuant to section 34, stipulates that every regulated person should appoint compliance officers and further describes the compliance officers' responsibilities and functions; • pursuant to section 35, establishes the Commission's ability to conduct compliance inspections of regulated persons; • pursuant to sections 36 to 40, gives the Commission various enforcement powers: to appoint investigating examiners, to revoke or suspend authorizations, to apply to the court for orders to protect the businesses or property of regulated persons, and to issue directives; • pursuant to section 41, gives the Commission powers to issue, with the approval of Council, such regulatory codes as it considers necessary for the conduct of regulated persons and officers and agents of regulated persons; and • pursuant to sections 53 through 56, details offenses which the Commission may prosecute and also compound. The Insurance Act details further aspects of the Commission's powers, in particular the powers of granting licenses and certificates and the power and grounds for canceling and varying licenses and certificates (sections 29 & 30). The Insurance Director is a seasoned professional with 40 years of international experience at all levels of the insurance business. *Supervisory processes* The relevant legislation and regulations pertaining to the regulation of the business of each functional area of the Commission outlines the regulatory processes. A review of each piece of legislation demonstrates that processes such as authorization, supervision, enforcement, and through to cancellation/revocation of authorization and appeals are clear and consistent. Additionally, each regulatory division has developed procedures manuals, which further elaborate

	internal practices and processes of review and analysis. Application forms clearly outline the requirements of the Commission and, in many cases, provide detailed guidance on how to meet the Commission's requirements. The Insurance Directorate has prepared various guidance notes for the firms it regulated and has prepared detailed inspection manuals for use on-site. Most regulatory processes are consistent (as far as possible and in accordance with regulatory requirements) across all divisions or functional areas. Further, with the recent establishment, under the FSC Act, of a Licensing and Supervisory Committee comprised of a cross functional team of full-time professional regulators, regulatory processes are being reviewed with increased technical depth and professional objectivity than in the past. This approach enhances consistency of regulatory decision making. *Decision making* The formation of the Licensing and Supervisory Committee has provided the BVI with a functional enforcement capacity that is empowered to make decisions rapidly yet in an informed manner. The fact that the LSC brings together all of the senior supervisory expertise in the financial sector provides a valuable resource. There is adequate power for convening emergency meetings of the LSC in order to expedite action. *Professional standards, competency and remuneration* Staff frequently attend conferences and seminars conducted by the FSA, the NAIC, the United Nations Conference on Trade and Investments and The Offshore Group of Insurance Supervisors. There is currently one vacancy in the staff of the Insurance Director. The FSC has exacting standards on confidentiality. With the creation of the FSC, The Director of Insurance has more flexibility in the hiring of professional staff at wages comparable to that of the financial services industry. *Flexibility of resources* The FSC has sufficient fiscal autonomy and budget size to discharge its statutory duties. However, with the planned introduction of on-site inspections, care must be taken adequately to provide the necessary resources. Additionally, as noted below, the FSC has the authority to contract for professional services should the need arise. *Access to contracted services* Section 12(1) of the Insurance Regulation 1995 gives the Commission the ability to appoint an accountant to examine the books and records. Also under Section 37 it can appoint an examiner to conduct an investigation on its behalf. *Additional criteria* The Commission is in the process of revising an employees' handbook which will address the issues of receiving gifts and invitations form license holders. FSC Staff are precluded from having financial interests in the firms they regulate. Section 3 of the Insurance Act was repealed and amended by the FSC Act as follows: "The Commission or any of its employees shall not directly or indirectly be interested (a) as a shareholder in any company that is licensed under this act as an insurer carrying on insurance business in or from within the BVI; or (b) as a shareholder in a company or a partnership that is authorized under this act to act as an insurance manager, agent, or broker."
Assessment	Observed
Comments	The Director of Insurance is planning to retire and steps must be taken to identify a successor

	with high qualifications given the relative inexperience of the existing staff—particularly with the introduction of an on-site inspection process being planned. While a conflict of interest would make it inappropriate that the funding of the FSC include penalties that it assesses, legislation precludes the FSC from receiving penalties that are judicially determined. Penalties such as these—removed from the direct authority of the FSC—may be suitable to include (in whole or in part as determined by the court) as a funding source for the FSC.
Principle 2.	**Licensing** Companies wishing to underwrite insurance in the domestic insurance market should be licensed. Where the insurance supervisor has authority to grant a license, the insurance supervisor: in granting a license, should assess the suitability of owners, directors, and/or senior management, and the soundness of the business plan, which could include proforma financial statements, a capital plan, and projected solvency margins; and in permitting access to the domestic market, may choose to rely on the work carried out by an insurance supervisor in another jurisdiction if the prudential rules of the two jurisdictions are broadly equivalent.
Description	The Insurance Act, Section 10 defines what is deemed to be carrying on insurance business and Section 11 provides that no person may carry on insurance business without a license. Section 57(i) also identifies the types of intermediaries which require a certificate of authority. Furthermore, amendments to the Insurance Act will expand the definition of intermediaries to encompass other individuals and companies such as insurance consultants. The act does not differentiate between captives, domestic companies, reinsurance companies, and credit life and disability companies in setting licensing standards. Part II of the FSC Act introduces The Licensing and Supervisory Committee as the authority responsible for licensing. The tasks of the committee are listed under section 16. Licensing requirements are defined in Part A of the Insurance Regulations. In addition, the Commission has detailed application forms for insurance and there is only one insurance company application form for captives, domestic companies, and reinsurance companies, and requirements for each are quite similar. Importantly, the standards are rigorous and emphasis is placed on fitness and propriety as well as demonstrated capacity. Perhaps more importantly, it appears that the standards are being applied both in form and in fact. Section 13 of The Insurance Act indicates that no insurer shall be licensed unless it is a body corporate or the unincorporated association of underwriters at Lloyds. The fit and proper criteria is not addressed in statute but in practice the principal of fit and proper has been adopted. No insurance company is allowed to issue bearer shares and for those with corporate shareholders, the ultimate beneficial owner must be disclosed. Shareholder questionnaires are required to be submitted and Directors' and Officers' Questionnaires are also required. These questionnaires provide a declaration that the owners, directors, and officers have not had any criminal proceedings brought against them. CV's are also required to be attached. A guideline to the business plan is provided in the application and calls for a five year projections. The business plan guide asks for a feasibility study, planned areas and type of business, method of solicitation, source of business, classes, underwriting details, claims and accounting techniques, deductibles, excess, retention, reinsurers and limits, proportion of unrelated business, underwriting guidelines, commission structure, dividend and loan policy, and projections. Capitalization is addressed in Section 14: $100,000 for general, $200,000 for life, and $300,000 for a company writing both general and long-term. The act also allows for the FSC to require an

	insurer to increase its fully paid up capital or reserve fund, as the case may be to such greater amount as the governor may determine for the nature and volume of the insurance business being or being sought to be carried on by the insurer. The Commission has the authority to request information on policy language and rates under section 32 of the FSC Act. However, the FSC currently does not regulate policy wording or premium rates. The amendments to the Insurance Act which should be in place at year's end will provide for policy specimens to be submitted with the application and the subsequent issuance of new types of policies. All companies must file formation documents (see section 13 of Insurance Act 1994) and actuaries and auditors are to be approved pursuant to section 42(1) and 22(a). Also, applications for both exist and are required to be completed and approved prior to authorization. In addition, the general language of the FSCA grants broad authority to the FSC in assessing the qualifications and competence of applicants. These matters have previously been discussed under Principle 1. *Additional criteria* Guidelines are available for financial reporting requirements with regards to the format of the accounts and the definition of admissible assets and its relationship to solvency. In addition, there are guidance notes to the applications as well as comprehensive application forms. As noted, Section 10 of the Insurance Act defines insurance business. The FSC in practice relies primarily on the reports of other authorities for much of the vetting of direct writers in the BVI. The requirements respecting conflicts in key positions are not applicable to most of the licensing activity because of the captive nature of the businesses. The FSC relies on the fact that a foreign insurer is supervised by its own jurisdiction and makes great use of the reports of the domestic supervisor. In so doing, the FSC has established excellent working relationships with the insurance supervisory authorities of the jurisdictions that have had insurers apply in the BVI.
Assessment	Observed
Comments	The mission agrees with the intention of FSC to further define additional types of intermediaries, particularly "insurance consultants." This term has been particularly nettlesome to regulators in the past and has prompted many jurisdictions to institute rigorous requirements for those who wish to hold themselves out to the public for hire as insurance consultants (or terms of similar import). The draft of the new Insurance Act will harmonize it's authorities and specific powers with those now in the FSCA. It would then be helpful for a full compilation of all requirements to be prepared. This would be useful not only for the industry but also would be an excellent checklist for the FSC and the LSC staff in particular. The FSC Act provides for formal Memoranda of Understanding between BVI and other jurisdictions. It may be useful to require that there be such an MOU between the BVI and the jurisdiction of the applicant's domicile as a prerequisite to application and approval. Alternatively, a detailed "Certificate of Good Standing" executed by the chief insurance supervisory official of the applicant's jurisdiction of domicile should be required.
Principle 3.	**Changes in Control** The insurance supervisor should review changes in the control of companies that are licensed in the jurisdiction. The insurance supervisor should establish clear requirements to be met when a change in control occurs. These may be the same as, or similar to, the requirements which apply in granting a license. In particular, the insurance supervisor should: require the purchaser or the licensed insurance company to provide notification of the change in control and/or seek approval of the proposed change; and

	establish criteria to assess the appropriateness of the change, which could include the assessment of the suitability of the new owners as well as any new directors and senior managers, and the soundness of any new business plan.
Description	Sections 25 (b) and 25 (c) (i) provide full authority for FSC to be informed of changes in control. The FSC Insurance Directorate ordinarily requires and obtains information respecting controlling persons on a yearly basis. The only weakness is that since on-site inspections are not yet performed, direct verification of compliance with these requirements (particularly by the insurance managers) is not achieved. As a practical matter in the context of the type of insurance transacted in the BVI (captives) there rarely will be a change in control. More often, the captive will cease to exist.
Assessment	Observed
Comments	The inspection manuals that have been developed will provide for verification of change of control matters. It would likewise be useful if a guidance note were issued to insurance managers so that any material changes in ownership, control, or partial control (for either the direct parent of the captive or of the "parent of the parent") must be reported immediately to the FSC.
Principle 4.	**Corporate Governance** It is desirable that standards be established in the jurisdictions which deal with corporate governance. Where the insurance supervisor has responsibility for setting requirements for corporate governance, the insurance supervisor should set requirements with respect to: the roles and responsibilities of the board of directors; reliance on other supervisors for companies licensed in another jurisdiction; and the distinction between the standards to be met by companies incorporated in his jurisdiction and branch operations of companies incorporated in another jurisdiction.
Description	The purpose of this IAIS Core Principle is to assure that the insurance supervisor is monitoring the extent to which insurance firms in its jurisdiction (and foreign-domiciled firms) are operating their business affairs with due diligence toward observance of the laws; protection of policyholder's contractual rights; the rights of shareholders; and solely for legitimate business purposes designed to benefit the firm. As for foreign-domiciled firms, the FSC to date relies upon the activities of the respective regulators of these firms. For its captive market, there are no corporate governance standards required. This is largely because the concept of corporate governance conflicts in some respects with the nature of the captive insurer. However, as noted below, that does not mean that captives (particularly their insurance managers) are exempt from all standards of sound corporate governance within the four corners of the objectives of captive insurers. The FSC will soon be addressing this deficiency through the launching of on-site inspections with protocols specifically designed to assess the standards of corporate governance adhered to by the captives through the activities of their respective insurance managers.
Assessment	Materially Nonobserved
Comments	The nature of the business of insurance in the BVI makes the issue of corporate governance one for which it will be difficult for the FSC to maintain first-hand and direct supervision of the corporate governance standards practiced by the industry. No companies have a physical presence in the BVI and captive insurers are really individual risk-transfer mechanism of each founder's individual insurable risks. However, the FSC does rely on the corporate governance standards applied by the country of jurisdiction of the insurers that write direct business in the BVI. As for the captives, the FSC might consider requiring insurance managers to establish corporate governance standards both for the manager's dealings with the FSC and for its dealings with the captive insurer itself. Additionally, when the on-site inspections begin, FSC will have the opportunity to observe the corporate governance standards of the managers and impose

	appropriate remedial action where necessary. It should also be noted that the on-site manuals include specific measures for assessing corporate governance procedures of the managers.
Principle 5.	**Internal Controls** The insurance supervisor should be able to: review the internal controls that the board of directors and management approve and apply, and request strengthening of the controls where necessary; and require the board of directors to provide suitable prudential oversight, such as setting standards for underwriting risks and setting qualitative and quantitative standards for investment and liquidity management.
Description	Internal controls are policies and procedures instituted by management that are designed to assure that firm policies are complied with; that financial and other transactions of the firm are accurately valued and properly recorded; that safeguards are in place to protect the assets and other information vital to the firm; that there is a segregation of responsibilities in the firm so that opportunities for defalcations are reduced; and that there is a process for monitoring the performance of management that has direct reporting access to the board of directors. Having no direct writing domestic insurers, the BVI has not had occasion to act in this area. Respecting foreign insurers licensed in the BVI, the FSC relies on the supervision of the respective foreign supervisory authority. The issue of captives, however, is a special issue that has yet to be addressed by the FSC. Much of the historical necessity for internal controls in the business organization are in direct conflict with or inapplicable to the captive insurers themselves.
Assessment	Materially Nonobserved
Comments	As noted in the discussion of corporate governance, the situation in the industry in the BVI does not easily lend itself to strong standards of internal control. However, the FSC will be requiring the insurance management firms to have appropriate procedures for management control of its functions as the nexus between the captive and the FSC, and adhere to quality assurance standards in performing its function as the management of the licensed entity. Additionally, the insurance managers are likely going to be filling the roles of compliance officers. It will be important for the FSC to adopt clear and unambiguous requirements for recordkeeping and reporting for the insurance manager/compliance officer. There will be a natural reluctance for the manager to report any noncompliance to the FSC (given its relation to the owner of the captive). This is why the planned institution of on-site inspections must be expedited. The knowledge of a certain inspection by the FSC will serve as a powerful incentive.
Principle 6.	**Assets** Standards should be established with respect to the assets of companies licensed to operate in the jurisdiction. Where insurance supervisors have the authority to establish the standards, these should apply at least to an amount of assets equal to the total of the technical provisions, and should address: diversification by type; any limits, or restrictions, on the amount that may be held in financial instruments, property, and receivables; the basis for valuing assets which are included in the financial reports; the safekeeping of assets; appropriate matching of assets and liabilities; and liquidity.
Description	The role and functions of the FSC in supervising investments and asset valuation procedures must be viewed from the point of view first of the captive insurers and secondly of the foreign insurers

	authorized to write direct business in the BVI. The captive insurers are subject to financial reporting standards and to solvency margin requirements as detailed under core principle 8. Moreover, Section 14 of the Insurance Act provides ample authority for the FSC to require prudent levels of surplus for captives. The foreign firms, while theoretically subject to the standards of the FSC, are supervised primarily by the respective jurisdictions of domicile and the FSC relies upon those good offices. Currently, the FSC has in place adequate standards respecting permissible investments, prohibitions respecting concentrations of investments in single entities, and required diversification by class of investment. Valuation standards are also provided in the Insurance Regulations.
Assessment	Observed
Comments	The prime consideration is not one of authority but enforcement. As the mission has noted, the FSC has sufficient authority to regulate the business of insurance. The manuals that have been prepared for on-site inspections and for the conduct of the on-site inspections will address the current deficiencies in actual use of the authority of the FSC. In other words, while the core principles are observed from the point of view of statutory authority, in some instances the enforcement mechanism has not yet been fully triggered due to a lack of inspections. Finally, any deficiencies in the FSC's observance of this core principle in practice would be a direct result of the current nonobservance of the core principles respecting Corporate Governance and Internal Control. The mission believes that the on-site inspection process will result in the opportunity for observance of these core principles.
Principle 7.	**Liabilities** Insurance supervisors should establish standards with respect to the liabilities of companies licensed to operate in their jurisdiction. In developing the standards, the insurance supervisor should consider: what is to be included as a liability of the company, for example, claims incurred but not paid, claims incurred but not reported, amounts owed to others, amounts owed that are in dispute, premiums received in advance, as well as the provision for policy liabilities or technical provisions that may be set by an actuary; the standards for establishing policy liabilities or technical provisions; and the amount of credit allowed to reduce liabilities for amounts recoverable under reinsurance arrangements with a given reinsurer, making provision for the ultimate collectability.
Description	The FSC has sufficient authority under Section 10 of the Insurance Regulations to require insurers to make sufficient provisions in their financial statements for reasonably ascertainable liabilities of the insurers. Again, the problem faced by the FSC, in practice, has been the means for credibly enforcing that authority. The lack of institutional capacity in the past to conduct on-site inspections has hampered its efforts. However, it should be noted that the FSC has made considerable improvements in the past years in obtaining the financial information that will permit it to conduct credible and productive on-site examinations or to request information necessary to conduct off-site financial condition analysis. Additionally, both the internal and external training for the Insurance Directorate's staff is producing more capacity for conducting both off- and on-site inspections.
Assessment	Observed
Comments	The FSC, after it institutes its formal on-site inspection program, should consider expanding the concept to include test-checks of particular insurers to determine if greater detail for internal (off-site) analysis would be useful. The FSC Act empowers the FSC to request virtually any information it desires from an insurer as long as it is reasonably related to the FSC's statutory obligations

Principle 8.	**Capital Adequacy and Solvency** The requirements regarding the capital to be maintained by companies which are licensed, or seeking a license, in the jurisdiction should be clearly defined and should address the minimum levels of capital or the levels of deposits that should be maintained. Capital adequacy requirements should reflect the size, complexity, and business risks of the company in the jurisdiction.
Description	Capital adequacy is primarily the obligation of an insurer's management. Insurance regulators need to monitor capital adequacy in relation to exposures, of course, but the supervisor's tools are limited in many cases to historical analysis and are not always useful as predictors. Again, the FSC has sufficient authority pursuant to Section 14 of the Insurance Act, as envisaged by the core principle, to intervene and to require additional capital. It was also noted that in practice the FSC takes steps to eliminate gearing of supervisory capital—the FSC requires consolidated statements where appropriate. However, absent access to significant detail regarding an insurer's operations, it is difficult for insurance supervisors to make the multitude of judgments respecting capital adequacy on a timely basis. The FSC, when it introduces its on-site inspection system and completes the process of issuing Guidance Notes respecting Corporate Governance and Internal Controls, will be well positioned to implement the enforcement of the authority contained in the act. Moreover, the planned amendments to the Insurance Act will elevate the insurance-specific authority of the FSC to the same level as is now generally applicable to all regulated entities, including insurers.
Assessment	Observed
Comments	Standards for capital adequacy beyond the minimum requirements for initial organization of an insurers, as concept, has universal acceptance among insurance regulatory professionals. There are a number of metrics that can be used in order to measure the adequacy of capital relative to the exposure to risk faced by an insurer. The FSC's plans to strengthen its supervisory presence and the measures it has already taken in requiring financial reporting and building a regulatory data base are positive steps. When the new Insurance Act and Regulations are adopted, the mission believes that a formalized dynamic set of risk-sensitive performance indicators ought to be promulgated. These should be based on study of the models that will best fit the BVI market; they should be made freely available so that insurers and the insurance managers and compliance officers are aware of them; and they should, initially at least, be indicators only and not inflexible compulsory benchmarks.
Principle 9.	**Derivatives and 'Off-Balance Sheet' Items** The insurance supervisor should be able to set requirements with respect to the use of financial instruments that may not form a part of the financial report of a company licensed in the jurisdiction. In setting these requirements, the insurance supervisor should address: restrictions in the use of derivatives and other off-balance sheet items; disclosure requirements for derivatives and other off-balance sheet items; and the establishment of adequate internal controls and monitoring of derivative positions.
Description	The issue of accounting for derivatives is one which the FSC has not yet had the occasion to address because none of the insurers have yet to engage in the practice. However, there is adequate authority respecting off balance sheet items which can be interpreted to include derivatives. Most importantly, there are also disclosure requirements. Given the nature of the business in the BVI, it has heretofore been difficult for the FSC to investigate compliance with its standards because it has not conducted on-site inspections and it has not issued Guidelines to the Insurance Managers. With the new requirement for Compliance Officers, the FSC can initiate the process of adding teeth to its current authority.

Assessment	Observed
Comments	Despite that fact that derivatives have not been a problem in the BVI, it perhaps would be useful to issue a guidance note dealing specifically with permissible uses of derivatives and the proper reporting and accounting treatment. A conservative approach would be to permit derivatives only for hedging particular assets or liabilities, or classes of the same.
Principle 10.	**Reinsurance** Insurance companies use reinsurance as a means of risk containment. The insurance supervisor must be able to review reinsurance arrangements, to assess the degree of reliance placed on these arrangements and to determine the appropriateness of such reliance. Insurance companies would be expected to assess the financial positions of their reinsurers in determining an appropriate level of exposure to them. The insurance supervisor should set requirements with respect to reinsurance contracts or reinsurance companies addressing: the amount of the credit taken for reinsurance ceded. The amount of credit taken should reflect an assessment of the ultimate collectability of the reinsurance recoverable and may take into account the supervisory control over the reinsurer; and the amount of reliance placed on the insurance supervisor of the reinsurance business of a company which is incorporated in another jurisdiction.
Description	The FSC has sufficient authority to regulate reinsurance business insofar as it has the authority to prohibit ceding insurers that it has licensed from taking credit for reinsurance ceded that does not meet the requirements of true reinsurance or when the ability of the assuming reinsurer to meet its obligations may be impaired. Just as most jurisdictions, the BVI does not license professional reinsurance firms as such—the onus is placed on the ceding insurer that is licensed to demonstrate the bona fides of the assuming reinsurer and that any credit that the ceding company has taken in its financial statements is for true reinsurance. Also, the BVI has sufficient authority to share information with other regulators that will facilitate swift reactions to any troubled unlicensed reinsurer. The major concern that the FSC has is that some captive insurers may be claiming credit for reinsurance ceded that is not true reinsurance. The on-site inspection process will assist the FSC in monitoring this possible activity.
Assessment	Observed
Comments	The introduction of the on-site inspection process will allow the FSC to become more active in monitoring reinsurance transactions that affect the BVI. Generally speaking, most captive insurers are not able to access the reinsurance mechanism, so any credit taken for reinsurance ceded by a captive company should be critically evaluated.
Principle 11.	**Market Conduct** Insurance supervisors should ensure that insurers and intermediaries exercise the necessary knowledge, skills, and integrity in dealing with their customers. Insurers and intermediaries should: at all times act honestly and in a straightforward manner; act with due skill, care, and diligence in conducting their business activities; conduct their business and organize their affairs with prudence; pay due regard to the information needs of their customers and treat them fairly; seek from their customers information which might reasonably be expected before giving advice or concluding a contract; avoid conflicts of interest; deal with their regulators in an open and cooperative way; support a system of complaints handling, where applicable; and

organize and control their affairs effectively.	
Description	Market conduct involves two very important elements of the insurance transaction—the policyholder and the service intermediaries, such as agents, brokers, and adjusters. Additionally, maintaining an orderly, reliable, and transparent marketplace is one of the important missions of insurance supervision. Through its comprehensive licensing system (described in core principle 2), the FSC has taken prudent steps to assure the skills and propriety of the service intermediaries. Also, having a relatively compact geographic jurisdiction with a small population, the FSC is able to communicate easily with the market players and is aware of major trends in the market. It appears that in these areas, the FSC is doing an admirable job of maintaining a competitive and accessible market. However, neither the FSC Act nor the Insurance Act contains precise language governing unfair trade practices, nor is there any statutory scheme proscribing unfair claim settlement practices. However, the Insurance Directorate does respond to consumer complaints by contacting insurers (or their local representatives) and encouraging reviews of disputed claims. As noted earlier, the BVI does not regulate the insurance contract language nor are there any standards relative to required provisions of insurance contracts. Also, the FSC does not yet conduct market conduct inspections. However, market conduct on-site inspections are planned for the near future. In our assessment discussions with the largest brokerage, we validated that there are substantial market oversight activities performed by the firms with whom the broker maintains agreements. The mission noted that a large international insurer had granted this particular broker both binding authority and claim settlement authority. The brokerage is subject to periodic audits by the insurance companies and also undergoes independent audits. The FSC also requires brokers to carry Errors & Omissions insurance. The above comments are directed solely at the insurance directly marketed within the BVI. The captive insurers are clearly not involved in these aspects of market conduct with the exception of the need for requiring E&O and other liability coverage for the insurance managers of the captives. The FSC has included such a requirement in its proposed amendments to the Insurance Act.
Assessment	Broadly Observed
Comments	The new paradigm in insurance supervision is protection of policyholders (although it is interesting to note that consumer protection was the “first paradigm” of the nineteenth century). The mission believes that the FSC should consider establishing requirements for direct writing insurers to maintain policyholder complaint logs that would be made available to the FSC during on-site inspections. Adopting standard insurance contract coverage and unfair trade practice and claim settlement regulations should also be considered. As noted, the FSC is planning to adopt a comprehensive professional liability insurance requirement for all service intermediaries.
Principle 12.	**Financial Reporting** It is important that insurance supervisors get the information they need to properly form an opinion on the financial strength of the operations of each insurance company in their jurisdiction. The information needed to carry out this review and analysis is obtained from the financial and statistical reports that are filed on a regular basis, supported by information obtained through special information requests, on-site inspections, and communication with actuaries and external auditors. A process should be established for: setting the scope and frequency of reports requested and received from all companies

	licensed in the jurisdiction, including financial reports, statistical reports, actuarial reports, and other information; setting the accounting requirements for the preparation of financial reports in the jurisdiction; ensuring that external audits of insurance companies operating in the jurisdiction are acceptable; and setting the standards for the establishment of technical provisions or policy and other liabilities to be included in the financial reports in the jurisdiction. In so doing, a distinction may be made: between the standards that apply to reports and calculations prepared for disclosure to policyholders and investors, and those prepared for the insurance supervisor; and between the financial reports and calculations prepared for companies incorporated in the jurisdiction, and branch operations of companies incorporated in another jurisdiction.
Description	The FSC has made remarkable strides in recent years in instituting a functional financial reporting system. Both the Insurance Act and the Regulations grant ample authority for the FSC to establish reporting standards and enforce them. Moreover, under Section 22 of the act, insurers are required annually to submit independently audited financial statements and under Regulation 12 the FSC may order insurers to hire independent experts, at the insurer's expense, to audit or review financial statements if the FSC has doubts regarding the accuracy of the statements. As previously noted in other discussions and below under Principle 13, the FSC does not yet conduct on-site inspections. That process is planned for implementation early in 2003.
Assessment	Observed
Comments	The implementation of the on-site inspection process will round out the FSC's activities in the area of financial reporting.
Principle 13.	**On-Site Inspection** The insurance supervisor should be able to: carry out on-site inspections to review the business and affairs of the company, including the inspection of books, records, accounts, and other documents. This may be limited to the operation of the company in the jurisdiction or, subject to the agreement of the respective supervisors, include other jurisdictions in which the company operates; and request and receive any information from companies licensed in its jurisdiction, whether this information be specific to a company or be requested of all companies.
Description	The FSC has sufficient authority to conduct on-site inspections. The material nonobservance arises from the fact that it has yet to adopt the draft inspections manuals and fully train its staff on proper use of the manuals and the techniques for conducting on-site inspections. The on-site inspection process is a vital tool in insurance supervision. The knowledge that the "inspectors will be coming" and discovery of improprieties thus being "certain" adds a strong incentive for compliance on the part of regulated entities. These issues will be fully addressed once on-site inspections begin.
Assessment	Materially Nonobserved
Comments	As previously noted, the FSC has prepared comprehensive manuals for on-site inspections. It is in the process of training staff on proper use of the manuals and for then commencing the inspection process. The mission hopes that the process will begin soon in 2003, but we agree with the hesitancy of the FSC to commence the inspections until the staff of the FSC is adequately trained. Any failure in the process would seriously damage the credibility of the FSC and, more pointedly, would remove the threat of "certain discovery" as a compliance incentive
Principle 14.	**Sanctions** Insurance supervisors must have the power to take remedial action where problems involving licensed companies are identified. The insurance supervisor must have a range of actions

	available in order to apply appropriate sanctions to problems encountered. The legislation should set out the powers available to the insurance supervisor and may include: the power to restrict the business activities of a company, for example, by withholding approval for new activities or acquisitions; the power to direct a company to stop practices that are unsafe or unsound, or to take action to remedy an unsafe or unsound business practice; and the option to invoke other sanctions on a company or its business operation in the jurisdiction, for example, by revoking the license of a company or imposing remedial measures where a company violates the insurance laws of the jurisdiction.
Description	The mission considers the matter of sanctions quite important in the OFC context and thus this description is quite detailed: (a) Under section 16(1) of the Insurance Act 1994, the FSC has a wide discretion to grant or refuse an insurance license. It may do so where, in its discretion, it is satisfied that it is proper to do so. Under section 26(k) , the FSC may cancel an insurer's license if it is, in the opinion of the FSC, carrying on insurance business in or from within the BVI in a manner that is or may be detrimental to the public interest. These provisions also allow the FSC to refuse or revoke a license if the licensee's organizational structure hinders effective supervision. (b) *The FSC has comprehensive enforcement powers; these are detailed under Part V of the FSC Act which, inter alia:* • Section 37 sets out the circumstances under which the FSC may take enforcement action. These circumstances include being in violation the FSC Act, financial services legislation, regulatory code, or enactments or guidelines relating to money laundering, is carrying on business in a manner detrimental to the public interest or to the interest of clients, investors, and creditors, or is no longer considered to be fit and proper; • Section 38, gives the FSC the power to revoke or suspend the license or certificate of a regulated person; • Section 39 gives the FSC power to apply to the court for a protective order to preserve the business or property of a regulated person, or the interests of its clients, investors, creditors, or the public. The order may prevent a regulated person from transferring or otherwise dealing with property, appoint an administrator to take over and manage the financial services business carried on by a regulated person, grant the winding up of a regulated person, or grant the FSC a search warrant; • Section 40 gives the FSC power to issue directives to regulated persons, directing that person to cease engagement in any class or type of business or not to enter into new contracts for any class or type of business. The FSC may also issue directives of a more general nature. • In addition, the Insurance Act supplements the FSC powers given under the FSC Act. For example, it allows the Commission to apply to the court to have an insurer wound up on certain grounds specified in section 50(1), including where the insurer has either carried on business, entered into a contract, or used its funds in a manner or for a purpose prohibited or not authorized by either the Insurance Act, the regulations made under it, or the insurer's instrument of incorporation. The FSC may use its general power, mentioned above, to issue directives under section 40(2) of the FSC Act in order to require changes in the composition of an insurer's board and/or senior management. To do so the FSC must be entitled to take enforcement action in accordance with section 37 of the FSC Act, which includes a situation where a regulated entity is carrying on or is likely to carry on business in a manner detrimental to the public interest or to the interest of clients, creditors, or investors.

	(c) The FSC has legal authority to take a range of remedial enforcement actions as indicated under Essential Criterion 2. (d) There is a wide range of sanctions as indicated under 2 above as well. The power to issue directives is a particularly flexible one that allows the FSC to tailor remedial actions to the particular circumstances at hand. However, the FSC does not currently have the power to impose fines or penalties. (e) The FSC makes every effort to ensure that remedial action is taken in a timely manner by issuing orders that are time bound. (f) It is the practice of the FSC to thoroughly document its actions. (g) The power to issue directives allows the FSC to direct an ailing company to submit a recovery plan and take such specific action as is reasonably required. (h) Appropriate directives may be issued to assure implementation of a recovery plan. In addition, section 38 of the FSC Act gives the FSC power, where enforcement action is warranted, to apply to the court for a protective order to preserve the business in question. Under such an order, an administrator may also be appointed, his powers may be fixed by the court, and a power to suspend payments may be granted (i) The measures described at 8 above may be taken once enforcement action is warranted in accordance with section 37(1) of the FSC Act, which would include a situation where an insurer fails to comply with a directive by the FSC, for example to produce an appropriate plan or to implement one (see section 37(1)(v)). (j) The FSC may issue directives to require an insurer to take measures to remedy its situation. Failure to comply with a directive is a ground for the taking of other enforcement action, as explained above. (k) Although the FSC does not have the power to issue public reprimands, it may carry out a range of other enforcement actions. (l) The FSC has all authority to intervene in order to halt an insurer from deteriorating. In particular, under section 40(1) of the FSC Act, it may, without prejudice to its power to issue other directives, issue a directive to the insurer to cease engagement in any class or type of business or not to enter into any new contracts for any class or type of business. It may also cancel an insurer's license and/or apply to the court to have the insurer wound up under the Insurance Act. *Additional criteria* The FSC has broad authority to levy sanctions on any person found to have violated the laws or regulations under its purview; this would include individuals who were acting as directors, agents, or employees of an insurance company.
Assessment	Observed
Comments	It would be useful if the FSC itself had the authority to impose monetary penalties. Often a civil penalty imposed by the regulatory authority is a useful form of punishment when harsher sanctions are not warranted but the conduct concerned should carry consequences and become a matter of record. Most jurisdictions require that insurers report any penalties imposed on them by regulatory authorities—often triggering of the reporting requirement is a more serious penalty to an insurer than the monetary forfeiture.
Principle 15.	**Cross-Border Business Operations** Insurance companies are becoming increasingly international in scope, establishing branches and subsidiaries outside their home jurisdiction, and sometimes conducting cross-border business on a services basis only. The insurance supervisor should ensure that:

	no foreign insurance establishment escapes supervision; all insurance establishments of international insurance groups and international insurers are subject to effective supervision; the creation of a cross-border insurance establishment is subject to consultation between host and home supervisors; and foreign insurers providing insurance cover on a cross-border services basis are subject to effective supervision.
Description	While the FSC Act anticipates all of the authority encompassed in the Essential and Additional Criteria, in practice the FSC has had no need to act in this regard since it has no domestic industry other than its captives. In that regard, as noted below under Coordination and Cooperation, the FSC Act is very "friendly" to supervisors from other jurisdictions. Accordingly, the mission's description and comments for Coordination and Cooperation are applicable to Cross-Border Operations as well.
Assessment	Observed
Comments	See core principle 16.
Principle 16.	**Coordination and Cooperation** Increasingly, insurance supervisors liaise with each other to ensure that each is aware of the other's concerns with respect to an insurance company that operates in more than one jurisdiction, either directly or through a separate corporate entity. In order to share relevant information with other insurance supervisors, adequate and effective communication should be developed and maintained. In developing or implementing a regulatory framework, consideration should be given to whether the insurance supervisor: is able to enter into an agreement or understanding with any other supervisor both in other jurisdictions and in other sectors of the industry (i.e., insurance, banking, or securities) to share information or otherwise work together; is permitted to share information, or otherwise work together, with an insurance supervisor in another jurisdiction. This may be limited to insurance supervisors who have agreed, and are legally able, to treat the information as confidential; should be informed of findings of investigations where power to investigate fraud, money laundering, and other such activities rests with a body other than the insurance supervisor; and is permitted to set out the types of information and the basis on which information obtained by the insurance supervisor may be shared.
Description	The Financial Services Commission Act (the FSC Act), in section 4(1)(n) expressly mandates the FSC to enter into memoranda of understanding with regulatory and law enforcement agencies within and outside the BVI. In section 4(1)(i), the act also charges the FSC with providing legal and regulatory assistance to foreign regulatory authorities. These provisions provide broad authority for the FSC to enter into agreements or understandings to share information or work together with other regulators. Part IV of the FSC Act, entitled "Gateways for Disclosure and Gathering of Information", and specifically section 29, allow for disclosure by the FSC of any information, document, record, or statement made or disclosed to the Commission in several limited circumstances only. However, these include: • On a request by: (i) a high ranking officer of a competent authority in an international organization recognized by the Board, (ii) a high ranking officer of the law enforcement authority in a country or jurisdiction approved by the Board, for the purpose of legal assistance in the

	investigation of a criminal activity; or • for the purpose of enabling or assisting a foreign regulatory authority, including a trading, security, or exchange authority, in a country or jurisdiction approved by the Board in discharging duties or exercising powers corresponding to those under the FSC Act or any subsidiary legislation made there under or under any financial services legislation. Section 29(3) further requires that the authority receiving the disclosure, in above circumstances, must be required not to transmit the material disclosed to it to any other person except with the prior consent of the Board of the FSC. In practice, the FSC uses the latter gateway to respond, as a matter or course, to a large number of routine inquiries from foreign counterparts regarding, for example, the regulatory status of entities in the BVI. The FSC has full authority under section 4(1)(n) to determine the terms of any agreement or understanding with another regulator as to the types of information to be shared and the basis for sharing it. Although the FSC has not yet used its new power to enter into MOUs, its practice to date has been to request that regulators that seek regulatory cooperation from it give an undertaking that they will give similar assistance when requested. This does not require strict reciprocity but allows for broad mutuality. *Additional criteria* The FSC receives feedback from the investigative body, usually the Financial Investigations Unit of the Royal Virgin Islands Police Force, concerning financial investigations relating to the FSC's work. Additionally, the FSC is able to obtain information on behalf of foreign regulators under the gateway provisions referred to above (at paragraph 2 of the Comments on Essential Criteria) in conjunction with the more detailed procedural provisions under the Financial Services (International Co-operation) Act, No. 18 of 2000. That act prescribes criteria that must be taken into account by the FSC in deciding whether to exercise compulsory powers to obtain information or documents not in its possession in order to give the assistance requested. The act also allows the FSC to require the foreign regulator to give certain written undertakings, such as to provide corresponding assistance when requested by a BVI authority and to make a contribution towards the costs of the exercise of the compulsory powers. In addition, the act prescribes the procedure for obtaining information by compulsion and provides certain safeguards in connection with this process.
Assessment	Observed
Comments	Clearly the FSC has the necessary tools for assisting foreign regulators and obtaining reciprocal assistance. More practically, the Insurance Directorate has established lines of communication through the Off-Shore Group of Insurance Supervisors, the NAIC, and the UK's Financial Services Commission.
Principle 17.	**Confidentiality** All insurance supervisors should be subject to professional secrecy constraints in respect of information obtained in the course of their activities, including during the conduct of on-site inspections. The insurance supervisor is required to hold confidential any information received from other insurance supervisors, except where constrained by law or in situations where the insurance supervisor who provided the information provides authorization for its release. Jurisdictions whose confidentiality requirements continue to constrain or prevent the sharing of

	information for supervisory purposes with insurance supervisors in other jurisdictions, and jurisdictions where information received from another insurance supervisor cannot be kept confidential, are urged to review their requirements.
Description	Section 29(1) of the FSC Act provides that any information, document, record, statement, or thing made or disclosed to the Commission, Board, a member of the Committee, or any person acting under their authority in the course of discharging any function or duty or exercising any power under the FSC Act or any subsidiary legislation made there under or under any financial services legislation (which includes the insurance legislation) concerning any person in relation to such enactment is privileged and must not be disclosed except as provided in subsection 29(2). Section 49(1) of the FSC Act makes confidential certain specific categories of information in the Commission's possession and prohibits disclosure of it by a Commissioner, officer, employee, agent, or adviser of the FSC except as provided in subsection 49(2). Sections 29(2) and 49(2) provide limited exceptions to the restrictions on disclosure under section 29(1) and 49(2) respectively, including the exception allowing the FSC to disclose information to other regulators. Gateways allowing the FSC to pass information to other regulators and law enforcement bodies are clearly set out in section 29(2) of the FSC Act, as discussed above (in the Essential Criteria for Principle 16). There is no freedom of information legislation in the BVI and no provisions that would override the FSC's confidentiality requirements. Under the provisions in section 29(1) and 49(1) of the FSC Act, discussed above, the FSC is able to hold confidential information received from another regulator with an expectation of confidentiality. To buttress the latter provisions, section 48 of the FSC Act also requires every Commissioner and staff member of the FSC to subscribe to an oath to maintain the confidentiality of information coming to them in the course of their duties with the FSC.
Assessment	Observed
Comments	None.

Table 12. Summary Observance of IAIS Insurance Core Principles

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	13	1, 2, 3, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17
Broadly observed	1	11
Materially non-observed	3	4, 5, 13
Non-observed	0	
Not applicable	0	

Recommended action plan and authorities' response to the assessment

Table 13. Recommended Action Plan to Improve Observance of IAIS Insurance Core Principles

Reference Principle	Recommended Action	Authorities' Response
Organization of an Insurance Supervisor		
CP 1. Legislation precludes the FSC from receiving penalties that are judicially determined.	Consider making penalties determined by the court as a funding source for the FSC.	To be considered.
Licensing and Changes in Control		
CP 2. There is not now a single comprehensive compilation of all licensing requirement.	Compile a checklist of licensing requirements once the new Insurance Act has been adopted.	To be implemented.
CP 2. The FSC Act provides for formal Memoranda of Understanding between BVI and other jurisdictions, but does not require that such an MOU be in place as a prerequisite to granting a license to an applicant licensed in a foreign jurisdiction.	Require that an MOU between the BVI and the jurisdiction of the applicant's domicile as a prerequisite to application and approval or that a "Certificate of Good Standing" be executed by the chief insurance supervisory official of the applicant's jurisdiction of domicile.	To be implemented.
CP 3. While changes in control are rare, the FSC obtains only yearly information on controlling persons.	Issue a guidance note require immediate reporting of any material changes in ownership, control, or partial control (for either the direct parent of the captive or of the "parent of the parent").	To be implemented.

Reference Principle	Recommended Action	Authorities' Response
Corporate Governance and Internal Controls		
CP 4 The nature of the business of insurance in the BVI makes the issue of corporate governance one for which it will be difficult for the FSC to maintain first-hand and direct supervision of the corporate governance standards practiced by the industry. No companies have a physical presence in the BVI and captive insurers are really individual risk-transfer mechanism of each founder's individual insurable risks. However, the FSC does rely on the corporate governance standards applied by the country of jurisdiction of the insurers that write direct business in the BVI.	Consider requiring insurance managers to establish corporate governance standards both for the manager's dealings with the FSC and for its dealings with the captive insurer itself.	To be implemented.
CP 5 As noted in the discussion of CP 4 above, the situation in the industry in the BVI does not easily lend itself to strong standards of internal control. However, the FSC will be requiring the insurance management firms to have appropriate procedures for management control of its functions as the nexus between the captive and the FSC, and adhere to quality assurance standards in performing its function as the management of the licensed entity. Additionally, the insurance managers are likely going to be filling the roles of compliance officers. For this reason, clear recordkeeping and reporting requirements are critical.	Adopt clear and unambiguous requirements for recordkeeping and reporting for the insurance manager/compliance officer.	To be implemented.
Prudential Rules		
CP 7	Consider including test-checks of particular insurers to determine if greater detail for internal (off-site) analysis would be useful.	To be considered.
CP 8	Consider promulgating a formalized dynamic set of risk-sensitive performance indicators (indicators only and not inflexible compulsory benchmarks) based on study of the models that will best fit the BVI market. Make this freely available to insurers, insurance managers, and compliance officers.	To be considered.

Reference Principle	Recommended Action	Authorities' Response
CP 9 Although derivatives are not currently available in the BVI, a market might develop in the future.	Issue a guidance note dealing specifically with permissible uses of derivatives and the proper reporting and accounting treatment. At the beginning, derivatives could be issues only for hedging particular assets or liabilities, or classes of the same.	To be considered.
Market Conduct		
CP 11 Neither the FSC Act nor the Insurance Act contains precise language governing unfair trade practices, nor is there any statutory scheme proscribing unfair claim settlement practices.	Consider establishing requirements for direct writing insurers to maintain policyholder complaint logs that would be made available to the FSC during on-site inspections. Adopting standard insurance contract coverage and unfair trade practice and claim settlement regulations should also be considered.	To be implemented.
Monitoring, Inspection, and Sanctions		
CP 13 There is no regular program of on-site inspections.	Complete preparations of manuals and training for on site inspections, and implement plan for inspections.	Implemented.
CP 14 While the FSC has broad authority to impose a wide range of penalties, it does not to impose money penalties.	Consider amending legislation that would allow levying of money penalties.	To be considered.
Cross-Border Operations, Supervisory Coordination and Cooperation, and Confidentiality		
None		

IV. IOSCO Objectives and Principles of Securities Regulation

A. General

66. The BVI's regulatory system was assessed for its observance of the IOSCO Objectives and Principles of Securities Regulation (the IOSCO Principles) as part of the IMF OFC mission to the BVI during November 2002. The assessment is of the legislative framework and the operations of the regulatory authority with jurisdiction over securities activities—the FSC—which make up the overall regulatory environment. Tanis MacLaren undertook the assessment.

Information and methodology used for assessment

67. The assessment was based on interviews with staff of the FSC and individual industry members, a review of the laws, the rules, the guidance, and the procedures with respect to the

securities regulatory regime, the draft Code of Practice, and the self-assessment provided by the FSC. The assessor used the IMF and World Bank Guidance Note for Assessing Implementation of IOSCO's Objectives and Principles of Securities Regulation.

68. The staff of the FSC accommodated the demands for information and interviews, and they adjusted their schedules to respond in a timely fashion. They were candid and open to discussions of areas where more authority, resources, or other enhancements might be desirable. Representatives of the industry were also helpful in providing additional information and perspective.

Institutional and macroprudential setting, market structure

69. The regulation of securities in the BVI was introduced with Mutual Funds Act, 1996, as amended (the MF Act) which was implemented in January 1997. The MF Act provides for the registration of public mutual funds and the recognition of private and professional funds. It also governs the licensing of mutual fund managers and mutual fund administrators operating in or from the BVI.

70. The FSC was created as a single independent supervisory agency under the Financial Services Commission Act, 2001 (the FSCA). The functions and powers of the Authority under the FSCA establish the FSC as the financial supervisor for the BVI. The act gives the FSC the authority to administer, enforce, carry out, and give effect to the provisions of the laws related to the financial services in the BVI. The FSC has the responsibility and authority to grant and revoke the licenses of banks, insurance companies, mutual fund managers and administrators, trust companies, and company service providers. It is also the authority responsible for the incorporation of companies under both the Companies Act and the International Business Companies Act, 1984. The act authorizes the FSC to conduct examinations of financial institutions and regulated persons and corporations, to impose levies, and to impose and collect fees. The legal system in the BVI operates under common law principles.

71. The FSCA and the MF Act provide the main legal framework for the supervision of securities activities in the BVI. This legislation is supplemented by the Financial Services (International Cooperation) Act, 2000, which sets out detailed requirements for information sharing with foreign regulators and foreign law enforcement agencies.

72. The BVI is a major jurisdiction for the incorporation of mutual funds. At the end of September 2002, a total of 2,606 mutual funds had been registered or recognized in the BVI, up from 2,346 at the end of 2001, an increase of more than 11 percent in nine months. About 8 percent of these are public mutual funds that may be sold by prospectus to any investor. The rest are either professional funds (sold to sophisticated purchasers only) or private funds, where offers to the public are prohibited and the number of investors must be fewer than 50. The BVI regulator does not collect data on the size of mutual funds authorized in the jurisdiction.

73. The FSC, under the MF Act, also licenses mutual fund administrators and managers operating in or from the jurisdiction. As of the end of September 2002, 490 licenses had been granted. One administrator license and 75 fund manager licenses were granted in the first nine months of 2002. Mutual funds are not required to have managers or administrators that are licensed by the FSC. Very few of the licensed managers or administrators are physically located in the BVI. The legislation in the BVI presently gives the FSC no authority to regulate other market participants such as portfolio managers, broker-dealers, or underwriters, and there is no data on the extent of this business that might be carried on in the BVI at this time.

74. There is no stock exchange in the BVI, nor is there any facility for the issue of securities other than mutual funds. There is no retail market for securities of any kind in the jurisdiction. The BVI Association of Mutual Fund Practitioners, a trade association, was formed in late 2001. There are no self-regulatory organizations in the BVI.

General preconditions for effective securities regulation

75. The general preconditions for effective securities regulation in the BVI appear to be present. There are no significant barriers to entry and exit for market participants. Competition is encouraged and foreign participation is welcomed. The legal system supports the operations of the FSC and the effective regulation of mutual funds, their administrators, and their managers. While the bankruptcy legislation in the jurisdiction is outdated, a much more modern Insolvency Act has been drafted and it is slated to be introduced to the legislature shortly. The regulator has legally enforceable powers of decision and action. The legal and accounting resources available to market participants do not pose constraints. The taxation framework is supportive to the operations of the industry in the jurisdiction.

Main findings

76. In general, the regulatory system that governs the securities market in the BVI appears to function fairly well. Legislation and guidelines combine to form a sound foundation for regulation, and the FSC has the authority it requires to carry out its regulatory functions with respect to the segments of the securities industry actually operating in or from the BVI.

77. The most pressing issue is the need for additional human resources to: (a) implement an effective system of oversight of fund managers and fund administrators and of the mutual funds themselves and (b) to staff the enforcement function at the FSC. The establishment of an effective system for oversight of the activities of all market participants is key to full implementation of many of the IOSCO Principles.

78. The FSC needs to have a regulation enacted setting out the prospectus disclosure requirements applicable for public funds, and the disclosure obligations of mutual funds need to be enhanced. Business conduct rules and requirements for books and records, internal controls, and risk management systems for mutual fund managers and mutual fund

administrators should be strengthened. All managers, administrators, and other mutual fund functionaries, such as custodians, should be required to segregate client assets effectively.

79. The FSC recognizes these issues and is actively engaged in various projects, including completing a new Code of Practice, which are intended to address the identified weaknesses and gaps.

Summary of principle-by principle assessment

80. **Strength of the regulator.** The responsibilities of FSC are clear and objective. It is operationally independent and is publicly accountable to the government and to the administrative courts in the exercise of its functions. The staff of the FSC meet high expectations of professionalism in their work. The processes followed are clear and consistently applied. All of the laws and regulations that FSC administers and the public Guidelines made by the FSC are publicly available, at least within the BVI. The availability of these laws outside the jurisdiction, and the transparency of the FSC's processes, guidelines, and codes should be improved. The FSC might also want to consider additional transparency regarding the processes followed, particularly regarding its application and consultation processes. The consultation process might benefit from being made more open and inclusive in order to get input from the public rather than from just local market participants.

81. The FSC does not have authority over the full range of securities activities and regulations covered by the IOSCO Principles. There are gaps, but these are in areas where there are no evident activities in the BVI at the present time. Should this situation change, the authority given to the FSC under the FSCA and other financial services legislation would have to be expanded accordingly.

82. **Self-regulation**. There are no self-regulatory organizations in the BVI. Given the current industry structure and activities, this is not inappropriate.

83. **Enforcement.** The FSC has a comprehensive array of inspection, investigation, surveillance, and enforcement powers. There are some limitations placed on when these powers may be exercised (for example, there must be a suspicion of a breach of the law before an examiner may be appointed) that should be eliminated. The monetary penalties that may not always be imposed for a breach of the law may not be an effective deterrent and should be reexamined. The most serious issue arises from the fact that the FSC has not yet implemented an effective system to exercise its powers in these areas. There is no comprehensive system of on-site or off-site inspections, and enforcement activities are undertaken on an ad hoc basis. A new computer based audit and inspection program is being developed, as are regular reporting requirements for fund managers and administrators which will improve activities in this area. The most pressing problem is the need for additional resources to implement an effective system of oversight of fund managers and fund administrators and of the mutual funds themselves. Also, the investigation and enforcement abilities of the FSC are limited by the lack of staff.

84. **Cooperation in regulation.** The FSC has very broad authority to share information with its domestic and foreign counterparts. There are no significant practical impediments to providing assistance to foreign regulators that need to make inquiries in the course of carrying out their regulatory activities. The relevant provisions in the legislation dealing with information sharing and providing assistance should be conformed so that there are no artificial constraints on what may be shared and with whom it may be shared. For example, the definitions used in the FSCA should be revised to ensure that they do not limit the ability of the FSC to share information with other regulators when those regulators are making inquiries regarding securities activities over which the FSC has no corresponding authority, such as market manipulation.

85. **Issuer regulation.** There are no primary market issues of securities in the BVI other than mutual funds, and no market for corporate control. Therefore, the fact that the FSC has no statutory authority in this area is not a weakness. The actual accounting and auditing standards applied are high and of an internationally acceptable quality. However, the processes for approving an auditor and recognizing a jurisdiction for the purposes of the MF Act should include an express assessment of the quality of the accounting and auditing standards to be applied.

86. **Mutual fund regulation.** Entry standards for fund managers and fund administrators are generally satisfactory. The rules governing conflicts of interest between fund managers, their related companies, and the funds that they manage need to be addressed more comprehensively. Requirements regarding business conduct rules and requirements for books and records, internal controls, and risk management systems for mutual fund managers and mutual fund administrators should be strengthened. In particular, there should be an express requirement applicable to all market participants that mutual fund assets must be segregated from the assets of the fund manager, the custodian, or other service providers. The initial disclosure (prospectus) requirements for public mutual funds should be set out in a regulation, and the continuous disclosure obligations of mutual funds need to be improved; in particular, the public disclosure of material changes should be more timely. The FSC should establish a supervision program for fund managers and fund administrators which would combine periodic receipt and review of financial information and other reports with on-site visits.

87. **Market intermediary regulation.** At the present time, market intermediaries are not subject to regulation in the BVI. As there do not appear to be any retail securities intermediation activities being carried on, this gap may not be serious. We did note that the FSC is currently drafting legislation to govern the activities of all persons carrying on investment business in the BVI.

88. **Secondary markets regulation.** The FSC has no authority to oversee the activities of securities exchanges, other trading systems, or clearing and settlement systems. However, as there is no organized market in securities in the BVI, nor any trading or clearing and settlement system operating in or from the BVI, this poses no particular issue. The FSC does not expect that any of these facilities will be established in the BVI in the foreseeable future.

B. Detailed Assessment

Table 14. Observance of the IOSCO Objectives and Principles of Securities Regulation

Principles Relating to the Regulator	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	FSC is the sole regulatory authority responsible for capital markets activities in the BVI. Its responsibilities are clearly set out in legislation. The Financial Services Commission Act, 2001(FSCA) provides the FSC with its general framework and authority. The FSCA was enacted by the Legislative Council of the Virgin Islands (the legislature) and came into force on January 1, 2002. FSC is responsible for prudential and business conduct regulation of mutual fund managers and mutual fund administrators, and the supervision and regulation of private, professional, and public mutual funds. FSC has the right to grant licenses and to withdraw those licenses. In addition to the FSCA, relevant legislation for securities regulation includes the Mutual Funds Act, 1996, as amended, (the MF Act) which was effective January 2, 1998. Section 4(1) of the FSCA establishes the functions of the FSC. The functions of the FSC include: *"(a) to supervise and regulate regulated persons in accordance with this act, the financial services legislation and the Regulatory Code;* *(b) to monitor and regulate, in accordance with relevant financial services legislation, financial services business carried on in or from within the BVI;* *(g) to develop appropriate legal, regulatory and supervisory mechanisms for the efficient and effective administration of the FSC and the financial services legislation;* *(i) to maintain contact and develop relations with foreign regulatory authorities and international associations of regulatory authorities and to provide legal and regulatory assistance to foreign regulatory authorities in accordance with this act or as may be provided in any other financial services legislation;* *(m) to monitor, in the public interest, promotional advertisements relating to any financial services business and give such advice relating to accuracy, fairness and compliance with established laws and policies; [and]* *(n) to enter into memoranda of understanding with regulatory and law enforcement agencies within and outside the BVI;"* Section 4(2) further provides that *"[i]n performing its functions the FSC may take into account any matter which it considers appropriate including international initiatives, geared toward establishing legal, business and regulatory standards relating to financial services business but shall, in particular, have regard to:* *(a) the protection of the public, including investors, whether within or outside the BVI, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business in the BVI;* *(b) the protection and enhancement of the reputation of the BVI as a financial services center; and* *(c) the reduction of crime and other unlawful activities relating to financial services business."* With respect to securities regulation, the FSCA is supplemented by the MF Act. The MF Act

	sets out the framework for regulation, authorization, and supervision of mutual funds business and restates the FSC's supervisory duties specifically in respect to mutual funds and their managers and their administrators. The regulatory regime for mutual funds makes no distinction in approach between domestic and foreign entities. There are some gaps in the FSC's powers when assessed against all the areas of securities regulation covered by the IOSCO Principles. Most notably, the FSC does not have clear authority over market intermediaries beyond mutual fund managers and mutual fund administrators, or general authority over issues of securities other than mutual funds. Also, the FSC has no express authority over markets or clearing systems. However, there are no issues of securities other than mutual funds, no evident secondary market trading or stock exchanges, and no clearance and settlement systems in the BVI at this time. As a single local regulator of the financial sector, the FSC benefits from having all the sector regulators in one organization. In this situation, gaps in jurisdiction can be addressed and information sharing is simplified. Like products and services are regulated alike. Securities activities are regulated on a functional, rather than institutional basis; that is, if a product is a mutual fund, it is subject to the MF Act, regardless of the sort of institution that is offering the product. Banks or insurance companies wishing to manage or administer mutual funds are also required to obtain a license under the MF Act.
Assessment	Implemented
Comments	The absence of clear authority over market intermediaries, over issues of securities other than mutual funds, and over markets or clearing systems is not a practical problem at this time, as apparently none of these activities are carried on in the jurisdiction. Should this situation change, the ambit of the FSC's authority would have to be addressed. In particular, the FSC has recommended that the legislature enact specific legislation that would regulate the activities of market intermediaries in or from the jurisdiction.
Principle 2.	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	The FSC is an autonomous agency created by statute. It reports to the executive council of the legislature and is required to make an annual report (including audited financial statements) to the executive council, which is then tabled with the legislature. In establishing the policy of the FSC, the Board of the FSC is required to *"take into account such general directions as may be given to the FSC"* by the executive council (FSCA s.6 (2)). There was no suggestion that any government official intervened in the day-to-day decisions of the agency. The FSC is funded primarily by the fees it charges to market participants for new authorizations and renewals. Under the FSCA, it is entitled to retain between 7.5 percent and 15 percent of the fees it collects; the rest are forwarded to the government. The actual percentage retained is negotiated between the FSC and the executive council pursuant to s. 20(2) of the FSCA through a budgeting process described in s. 24 of the FSCA. One of the considerations set out in the FSCA in determining the percentage to be retained is: *"the need to maintain the independence and viability of the FSC."* It is not clear how this statutory process will work in practice, as the FSC is still in its first full year of operation as an independent agency. However, the managing director of the FSC is confident that they have sufficient financial resources to do what they are charged with doing under the financial services legislation in the jurisdiction. Further, while the FSC can be funded directly through government appropriations, its funding depends primarily on the volume of authorized funds and licensees. If the numbers of participants decline, so will the funds available. As more than half of the government's revenue comes from fees for incorporation of international business companies under the International Business Companies Act, a statute administered by the FSC, if the volume of registrations falls

	there may be no other sources of funds available to operate the FSC. The regulator has a fairly close relationship with the local industry and it undertakes regular informal discussions. While not required, the FSC generally consults the local industry participants on new initiatives. The consultation process is not a formal one; it is not set out in guidelines or other public documents of the FSC. (Note that under legislation being drafted to regulate market intermediaries generally—the Investment Business Act, 2003—the consultation process for rulemaking would be set out in the statute.) It is clear that the FSC is responsive to this input, but both the industry and the FSC staff made it clear that the FSC does not defer its regulatory role to industry views. FSC Board members are appointed by the executive council for terms not exceeding three years. The appointments are "at pleasure" appointments. Specific reasons for terminating an appointment of a FSCer are set out in s. 9 of the FSCA. The Board comprises four to six Commissioners and the managing director of the FSC as an ex officio member. The FSCA states in s. 5(4) that all Commissioners *"are fit and proper and have relevant knowledge, experience and expertise which could aid the Commission in the performance of its functions."* People actively involved in the financial services business in the jurisdiction are not automatically disqualified from being appointed as Commissioners. However, the current Commissioners are generally retired from active business in the jurisdiction. The FSCA (s. 50) provides a broad immunity from liability to persons acting in good faith on behalf of FSC that extends to the Board members, staff, or agents of the FSC. It is not clear whether or not the provision would extend to paying the legal costs of defending a suit if a person were sued, alleging bad faith. The FSCA imposes on the Board members the usual director's duty to declare conflicts and abstain from any vote in which they might have a personal interest. Section 8(5) of the FSCA specifically provides that a Commissioner *"shall not act as a delegate of any government, commercial, financial or other interest with whom he may be connected and shall not accept directions from any person or authority in respect of his duties ask Commissioner."* These requirements are expanded upon in the Board's Procedures and Protocol Guidelines. The staff will be required to comply with a code of conduct set out in an employee manual that covers performance standards, rules against conflicts of interest, and confidentiality requirements. This code expands on the rules of professional conduct for public officers set out in the General Orders of the government that are applicable to public servants and to which most of the employees were subject prior to the formation of the FSC in January 2002. The decisions of the FSC generally are subject to an appeal to the Financial Services Appeals Board established under Part VI of the FSCA. However, s.44(1) of the act notes that there is no appeal from decisions of the Licensing and Supervisory Committee (LSC) established under Part II of the FSCA with regard to refusing a license under any of the financial services legislation administered by the FSC, and there is no appeal from any decision to refuse a license, registration, or recognition under the MF Act. The decisions of the Appeal Board are said to be final and not subject to appeal. The period in which to appeal is very short (14 days) and there is no procedure in place to extend the period in appropriate circumstances. It should be noted that the acts of the FSC and its staff are not exempt from the provisions of the general administrative courts. The Guidelines and Operating Procedures approved by the Board for the LSC apply the normal rules of natural justice; before taking action contrary to the interests of a person, the FSC must give notice to that person of the grounds for the proposed action and give that person the opportunity to make written representations to FSC, which must be taken into consideration. The MF Act provides that FSC is not bound to give reasons for its decisions on any refusal to grant a license, registration, or recognition under that act.

Assessment	Broadly implemented
Comments	The regulator is not required to give reasons for all significant decisions. The requirements for expertise at the board level are not extensive. The conflict of interest provisions that apply to the board are not very robust. The law should be amended to require the FSC (and the LSC) to give reasons for all decisions (other than those of a routine or minor nature). Consideration should be given to developing a more detailed conflicts policy, particularly with respect to the permissible business relationships between Board members and regulated persons or their affiliates.
Principle 3.	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
Description	The FSC's general authority to regulate is set out in s. 13 of the FSCA. The authority is worded quite broadly and in very general terms: *"the FSC may do all things necessary for, or reasonably ancillary or incidental to, the pursuance of the carrying out of its duties, functions or powers under this act or any financial services legislation."* The functions of the FSC are listed in s. 4(1) (see the list set out in the discussion under Principle 1 above). The FSC has an array of powers set out mainly in the FSCA and, in relation to securities regulation, the MF Act. The FSCA also confers broad power on the FSC's Licensing & Supervisory Committee to, among other things, review and determine applications for authorizations and supervise regulated businesses. In addition, the FSCA provides the FSC with an arsenal of specific regulatory, supervisory, and enforcement powers. Many of these are detailed under Part V of the act which, among other things: • confers power on the FSC or its Board to require persons engaged in financial services businesses or other persons to furnish information needed for the discharge of the FSC's functions (s. 30, 32); • stipulates that every regulated person should appoint compliance officers and further describes the compliance officers' responsibilities and functions (s. 34); • establishes the FSC's ability to conduct compliance inspections of regulated persons (s. 35); (Note that the definition of regulated persons would only extend to those persons regulated under the financial services legislation listed in Schedule 2 to the FSCA. It would not extend to persons not currently regulated.) • gives the FSC various enforcement powers: to appoint investigating examiners, to revoke or suspend authorizations, to apply to the court for orders to protect the businesses or property of regulated persons, and to issue directives (s. 36–40); (These powers are detailed further in the section on Principle 9 below.) • gives the FSC powers to issue, with the approval of Council, such regulatory codes as it considers necessary for the conduct of regulated persons, regulated officers and agents of regulated persons (s. 41); and, • details offenses that the FSC may prosecute and also compound (ss. 53–56). The MF Act details further aspects of the FSC's powers, in particular the powers of granting licenses and certificates; the power and grounds for canceling and varying licenses and certificates (sections 29 & 30); the power to prescribe Codes of Practice for mutual fund managers and mutual fund administrators (section 25A); and the power to advise the executive council to make regulations, generally for carrying out the purposes of the act better (section 42). Section 29(2)(d) and (e) of the FSCA and the Financial Services (International Cooperation) Act (the FS(IC)A) contain the authority of the FSC to share information with other regulators and

	law enforcement agencies. Note that s. 29(2)(e) allows the sharing of information: "*[f]or the purpose of enabling or assisting a foreign regulatory authority, including a trading or a security or exchange authority, in a country or jurisdiction approved by the Board in discharging duties or exercising powers corresponding to those under this act or any subsidiary legislation made hereunder or under any financial services legislation."* This seems quite broad. However, "financial services legislation" is defined in the FSCA as any of the specific legislation listed in Schedule 2 to the act. Given that the FSC does not presently regulate securities market intermediaries, markets, or trading systems, it is not clear that the power in this area would permit sharing information with securities regulators pursuing inquiries regarding market intermediaries or secondary market activities. While extensive, the FSC's powers are not comprehensive. It has no specific authority over market intermediaries, primary issues of securities other than mutual funds, secondary market trading generally, stock exchanges, or trading systems. The FSC has some control over certain officers and certain directors of licensed entities, as they are part of the terms of the license. It does not have direct power over individual employees of licensed firms, as they are not licensed. Violations of the law would be the responsibility of the firm for which the employee worked. The FSC could not ban a person from being employed by a licensed firm, although it could punish the firm for any malfeasance by that employee. The FSC is headed by a Board of FSCers currently comprised of six members, including the managing director. The FSCers are persons with extensive experience in the financial services sector. Beneath the Board and managing director, the staff consists of a deputy managing director and a permanent staff currently numbering 75 total. The staff is assigned to several regulatory and support divisions each headed by a director with several years of experience and professional training. Each regulatory division has a number of regulators with experience, professional qualifications, and training. The Investment Business Division, which is charged with regulating mutual fund business, is headed by a Director with over 15 years of experience in regulatory and compliance practices. She is supported by five additional regulators, as well as other administrative staff, all of whom are well qualified and experienced. Industry representatives viewed the staff as knowledgeable, competent, and helpful. The FSC has not experienced much turnover in staff and the salaries paid did not appear to hamper its ability to hire qualified staff. There is, however, a shortage of qualified persons in the BVI that makes hiring more difficult. The budget is not a limiting factor in ensuring staff have sufficient training to carry out their functions. The recently created Legal and Enforcement Division has no trained enforcement staff as yet and there are a limited number of staff at the FSC with experience in on-site supervision of regulated entities. These gaps are well known to the FSC management.
Assessment	Partially implemented.
Comments	The legislation gives the FSC the key the powers it needs to perform its functions in the area of securities regulation given the nature of the market in the BVI at the moment. It does not give the FSC all the powers contemplated by the IOSCO Principles. Staff resources for on-going supervision of authorized entities—including enforcement and on-site and off-site supervision-need to be increased substantially.
Principle 4.	The regulator should adopt clear and consistent regulatory processes.
Description	The laws, regulations and some of the guidelines governing financial services activities in the BVI are publicly available in paper form in the BVI. The government website containing information on the legislation in the BVI and other FSC related matters is outdated, and contains limited information. For example, the FSCA is not posted. A new website operated by the FSC is in development and will contain all public information available, including

	legislation, regulations, guidelines, guidance notes, and the public registers kept by the FSC under the legislation it administers. The application forms, which set out specific requirements, are available from the FSC. The checklists used to review applications and prospectuses are not publicly available. Most of the decisions of the FSC are subject to an appeal to the Financial Services Appeals Board established under the FSCA. The decisions of the Appeal Board are stated to be not subject to further appeal. The period for appeal is only 14 days and there is no provision for extending the time period. However, as the FSC is not exempt from the general BVI administrative law, the FSC's decisions would be subject to review under administrative law. The internal processes adopted by the LSC, which is responsible for making decisions regarding applications for licensing, etc. under BVI financial services legislation, and supervising regulated persons to ensure that they continue to meet the fit and proper criteria for conduct of financial services business (s. 16 FSCA), follow the general principles of natural justice and generally give an applicant or licensee the opportunity to make representations before the LSC makes a decision that would negatively affect the interests of that party. Before revoking a license under the MF Act, the FSC must give notice to the affected party of the grounds for the proposed action, and that party may make written representations to the FSC, which must be taken into consideration (s. 30). The FSCA and the MF Act generally provide that the FSC is not bound to give reasons for its decisions to refuse the grant of a license, registration, or recognition, although the LSC Guidelines provide that reasons for denial of an application will be given if requested by the applicant. The FSC must give reasons for other decisions (for example, under s. 20(4) of the MF Act, it must give reasons for refusing to grant recognition to a private or professional fund). Before finalizing new legislation, guidelines, or policies, or making significant amendments to existing ones, the FSC's practice has been to consult with local industry participants. The consultation process is an informal one, and no process has been publicly disseminated. There is no practice of publishing proposed rules, legislation, guidelines, etc. for general public comment outside the BVI. Industry members generally viewed the FSC as operating fairly and consistently. The FSC has the authority under s. 4(1)(k) and (l) to adopt measures to inform the public on matters relating to any financial services business, and the authority to issue advisories to investors, licensees, or the general public as it considers appropriate. The managing director and staff members regularly speak at seminars and community meetings regarding regulatory and investor protection issues.
Assessment	Broadly implemented.
Comments	The FSC's processes and rules are clear and consistent. These are set out in guidelines and operating procedures for the Board and the LSC, and in a detailed operating procedures manual for the Investment Business Division. These processes do not appear to be completely transparent to the public. The FSC is accountable for its actions through publication and reporting requirements to the legislature and through the actions of the administrative courts. However, it is expressly permitted not to give reasons for a refusal to license an applicant. The consultation process within the BVI is with local industry participants. It might be helpful if the consultation process were more transparent and if it were open to input from a wider array of participants. Providing the opportunity for direct input from all interested parties, whether local or overseas, would enhance the openness of the process and may add value to the final product. The new website and the publication of the Code of Practice (discussed under Principle 17) will improve the level of transparency for all interested parties.

	Reasons for all nonroutine decisions made by the FSC should always be given, even when they are not requested by the applicant. Consideration should be given to publishing significant decisions to provide guidance to market participants on the views of the FSC.
Principle 5.	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.
Description	Staff will be required to comply with a code of conduct set out in an employee manual that covers performance standards, rules against conflicts of interest, and confidentiality requirements. This code expands on the rules of professional conduct for public officers set out in the General Orders of the government that are applicable to public servants and to which most of the employees were subject prior to the formation of the FSC in January 2002. Further, the LSC has adopted guidelines for its members, who are: the Managing Director, the Deputy Managing Director, and the heads of the regulatory and supervisory divisions within the FSC. These guidelines impose additional requirements regarding conflicts of interest and confidentiality. Breach of any of the duties may give rise to disciplinary proceedings. All FSCers and staff members of the FSC must take a statutory Oath of Confidentiality that must be sworn before a judicial official. The FSCA and the MF Act each contain confidentiality provisions that make disclosure of information, other than as expressly permitted or by order of a court of competent jurisdiction, by anyone, an offence punishable by fine and/or imprisonment. There is no formal oversight program in place at the FSC to monitor the compliance of the staff with these standards.
Assessment	Implemented
Comments	The standards of professionalism, confidentiality, and ethics are very high.
Principles of Self-Regulation	
Principle 6.	The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.
Description	There are no self-regulatory organizations in the BVI.
Assessment	Not applicable.
Comments	Given the nature of the industry in the BVI and the types of activities presently carried on, this is appropriate.
Principle 7.	SROs should be subject to the oversight of the regulator, and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	There is no formal process or express authority in the BVI for recognition of an organization as a self-regulatory organization, nor any powers to oversee the activities of an SRO. However, there are no SROs at the present time, nor is there any expectation that one will be developed in the future.
Assessment	Not applicable.
Comments	Given the nature of the activities undertaken in the jurisdiction, there are no SROs, so the FSC has no need for these powers.
Principles for the Enforcement of Securities Regulation	
Principle 8.	The regulator should have comprehensive inspection, investigation, and surveillance powers.
Description	The FSC has extensive powers to obtain information from market participants and related parties under s. 30(1) and 32(1) of the FSCA. It has authority to inspect premises, business and assets of a financial services business carried on in or from within the BVI after giving reasonable notice of its intention to inspect under s. 35(2). This power is to be exercised "for the purposes of prudential supervision", which is an undefined term in the act. In practice, the FSC interprets the term liberally as meaning for any regulatory purpose. The limitation to “premises, business, and assets” also may be problematic. On a positive note, the section does contemplate the possibility of a foreign regulatory authority participating in such an inspection (s. 35(4)). The FSC also has the authority to appoint an examiner “where the FSC is entitled to take

	enforcement action" under s. 36 of the FSCA. The definition of where the FSC is entitled to take enforcement action is set out in s. 37 and includes situations where the FSC is of the opinion that the regulated person is insolvent, has contravened the act or other financial services legislation, or is carrying on business detrimental to the interests of the public or its clients. The powers of an examiner appointed under s. 36 are fairly broad and the FSC can appoint any "competent person" to act as an examiner (s.36(1)). Furthermore, under s. 36 of the MF Act, the FSC has power to require persons registered under that act to provide information to the FSC. All persons participating in compliance inspections or investigations would be subject to stringent confidentiality requirements under the FSCA.
Assessment	Broadly implemented
Comments	The FSC has a wide range of powers to conduct inspections for compliance and investigation purposes. However, it's power to appoint an examiner is premised on it having a suspicion that a breach of the act has taken place. The limitations on the situations in which these powers may be exercised may not be a practical problem at this time, given the wide interpretation placed on the limiting terms and the general level of cooperation that the local industry has exhibited. But, as the powers have not yet been widely used, nor the interpretation tested in court, it might not be prudent to rely on this position. Section 35(2) would be improved if the reference to "prudential" were deleted. The FSCA should be amended to allow the FSC to conduct an investigation without first having a suspicion of a breach of the law.
Principle 9.	The regulator should have comprehensive enforcement powers.
Description	Under s. 30(1) and 32(1) of the FSCA, the FSC has extensive powers to obtain information from market participants. According to s. 30, information may be obtained from any person engaged in or related to any financial services business. Under s. 32, the possible sources of information are wider and extend to a regulated person, a person connected to a regulated person, a person carrying on financial services business, or any person reasonably believed to have the information (s. 32(2)). Under s. 36 of the MF Act, the FSC has the power to require the person to whom that act applies to provide to the FSC information and access to any documents, records, books etc. that are, in the opinion of the FSC, necessary to enable it to determine compliance with the MF Act or regulations. Under s. 35(2) the FSC has the authority to inspect premises, businesses, and assets of a financial services business carried on in or from within the BVI, for the purposes of prudential supervision , after giving reasonable notice of its intention to inspect. Under s. 36 of the FSCA, the FSC also has the authority to appoint an examiner where it is entitled to take enforcement action. The definition of when the FSC is entitled to take enforcement action is set out in s. 37. This is somewhat circular, as the FSC needs to be of the opinion that a breach of the act has taken place (among other causes) in order to appoint an examiner to investigate. Section 38(1) of the FSCA gives the FSC the power to revoke or suspend the license of a regulated person. The MF Act (s. 29) gives the FSC power to impose terms and conditions on a regulated entity, to cancel the registration of a mutual fund licensee or to withdraw the approval for a mutual fund - which shuts down its ability to carry on business in the BVI. S. 40 of the FSCA gives the FSC the power to issue binding directives where it is entitled to take enforcement action (see above). FSCA s. 53 &54 are the offence/penalty sections of the act. Not every breach of the act is an offence and the penalties are not very high—the maximum fine is only US$25,000 and/or 5 years in jail. Section 40 of the MF Act sets out offenses under that act. The monetary penalties

	range up to US$50,000 and imprisonment for a maximum of two years. Note that in most cases the penalty actually imposed is the withdrawal of the registered person's license to carry on business. The FSC may initiate or refer matters for civil or criminal prosecution. Other than imposing terms and conditions, suspending a license, or canceling a license, (suspending or canceling a license may be done by the FSC), all prosecutions are done in front of the courts. However, given the importance of the financial services markets to the jurisdiction, FSC matters are dealt with on an expedited basis. The staff indicated that it was possible to get a protective order or an order freezing assets on 24 to 48 hours notice. S. 56 of the FSCA gives the FSC the power to compound an offense; that is, enter into a binding settlement with an offender. A draft FSC (Amendment) Act which is currently awaiting legislative approval will give the FSC further powers, including: • the power to declare that a person is not "fit and proper;" • the power to seek an injunction from a court which would prevent a breach or continued breach of law; and • the power to issue a directive requiring the substitution of any functionary of a mutual fund.
Assessment	Broadly implemented
Comments	The full range of relevant enforcement powers are in place, including those to obtain information, to take action to ensure compliance with the investigation process, to impose sanctions, and to refer matters for civil or criminal prosecutions. The proposed amendments to the MF Act will expand these powers further. It is not clear if the fines that may be imposed under the FSCA and the MF Act are an effective deterrent. Consideration should be given to increasing the monetary amounts and to making the maximum fines and penalties that may be imposed under the various acts administered by the FSC consistent.
Principle 10.	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance, and enforcement powers, and the implementation of an effective compliance program.
Description	The FSC has issued directives or notices allowing staff to inspect the premises and the records of businesses. These inspections have been mostly prudential in nature and have involved a review of basic compliance with legislation, and an overview of systems, controls, and procedures for the conduct of business. The FSC has issued directives and notices to regulated persons to produce documents such as asset records, financial statements, and other such documents relevant to the regulated person's business. This has allowed the FSC to investigate regulatory concerns about regulated entities. Throughout the course of regulation, a number of directives have also been issued ordering mutual funds to cease and desist their business as a result of various contraventions of the MF Act or of refusal by the FSC to grant licenses or certificates. The penalty imposed where it was evident that the regulated person was not fit and proper to continue to carry on business was the removal of the FSC's approval to carry on business. At the present time, the exercise of the inspection, investigation, and enforcement powers is on an ad hoc basis; there is no routine program of on-site or off-site inspections of regulated businesses. No mutual fund manager or administrator is required to file routine reports and the FSC does not require the filing of financial statements by mutual funds registered or recognized under the MF Act. Also, there are no personnel in the FSC dedicated to inspections or enforcement. To the extent that these activities are carried on, they are performed by regular

	staff in the licensing divisions. The FSC is well aware of these issues. They noted that they have engaged a major consulting firm to develop a computer assisted compliance and inspection program along with a regular reporting system for them. That will allow focused on-site and off-site supervision of firms to take place. The FSC has created a Legal and Enforcement division to provide it with expert and dedicated resources and it has the financial resources to staff this division. However, no trained inspection or enforcement staff have been hired as of yet.
Assessment	Partially implemented.
Comments	Compliance and enforcement functions are carried out on an ad hoc basis and regulatory actions are taken on the basis of those activities. There is no comprehensive compliance and inspection program in place as yet. The lack of staff with the appropriate training and experience to carry out compliance inspections and enforcement investigations poses a significant impediment to the fulfillment of this principle. The completion and implementation of the new compliance program (currently in development) will help somewhat. The FSC should take all necessary actions to increase its staff resources for inspections and enforcement as soon as possible. The completion and implementation of the new compliance program should also be expedited. The FSC should continue sending staff to relevant training programs sponsored by various international organizations or seconding them to other regulators with more developed systems in these areas. For example, it may be possible to send one or more staff to the annual compliance training program operated by the North American Association of Securities Administrators. Technical assistance in these areas is also undertaken by the US Securities and Exchange Commission, among others.
Principles for Cooperation in Regulation	
Principle 11.	The regulator should have the authority to share both public and nonpublic information with its domestic and foreign counterparts.
Description	The FSC is not subject to any constraints on its ability to receive information from other supervisors. The FSCA, in section 4(1)(i), expressly mandates the FSC to provide legal and regulatory assistance to foreign regulatory authorities. Part IV of the FSCA, entitled "Gateways for Disclosure and Gathering of Information", allows for disclosure of any information, document, record or statement made or disclosed to the FSC: *"(b) to any person for the purpose of discharging any duty or exercising any power under the FSCA or subsidiary legislation made there under or under any financial services legislation;* *(c) on the order of a court of competent jurisdiction for the purposes of any criminal or civil proceedings;* *(d) on a request by:* *(i) a high ranking officer of a competent authority in an international organization recognized by the Board;* *(ii) a high ranking officer of the law enforcement authority in a country or jurisdiction approved by the Board, for the purpose of legal assistance in the investigation of a criminal activity; or* *(e) for the purpose of enabling or assisting a foreign regulatory authority, including a trading or a security or exchange authority, in a country or jurisdiction approved by the Board in discharging duties or exercising powers corresponding to those under this act or any subsidiary legislation made hereunder or under any financial services legislation."* The FSC may, in the exercise of a relevant statutory duty or power, share information with

	relevant domestic bodies under paragraph 29(2)(b) above. As a matter or course ,the FSC also responds to a large number of routine inquiries from foreign counterparts regarding, for example, the regulatory status of entities in the BVI, pursuant to the gateway at paragraph 29(2)(e) above. In addition, more involved requests for information exchange are processed by the FSC under the FSCA provisions read in conjunction with the more detailed procedural provisions under the FS(IC)A. The FSC has wide authority to appoint third parties as its representatives in conducting examinations of licensed institutions, including foreign supervisory authorities. The foreign supervisor would be subject to the same confidentiality constraints as would apply to the FSC, and it could not use or transmit the information disclosed to it during the investigation without the written permission of the FSC. Under s. 6 of the MF Act, the FSC keeps a public register of all persons or entities that have been licensed, registered, or recognized under that Act—including private funds, professional funds, public funds, and managers and administrators of mutual funds. These registers are open for public inspection on the premises of the FSC. The registers contain information about the address of the applicant's place of business and its address for service in the BVI; the name and address of its authorized resident representative; the address of any place or places of business that the applicant may have outside the BVI; the date of registration, recognition or license, as the case may be; and the status of such registration, recognition or license if cancelled and the date thereof. This information may be freely shared with other regulatory bodies. The register does not include information on shareholders, officers of licensed entities, or directors of licensed entities, although the FSC does collect this information. The receiving regulatory authority may not disclose nonpublic information except with the written consent of the FSC.
Assessment	Broadly implemented
Comments	The FSC has the authority to share public and nonpublic information with both domestic and foreign regulators and law enforcement agencies. There may be some limitation in those powers, arising from the language used in s. 29(2)(e) and the statutory definition of financial services legislation in the FSCA, when the inquiring regulatory body is discharging a supervisory function in an area of financial services regulation that is not presently regulated by the FSC. For example, if the foreign regulator is looking for information about the activities of a market intermediary, which functions are not yet regulated in the BVI, the provisions of s. 29 may not extend to allow the FSC to provide the information. The language in s. 29 (2)(e) should be broadened to eliminate the need for the foreign regulator to be exercising powers and duties corresponding to those granted to the FSC under the listed BVI financial services legislation. It should be sufficient that the foreign regulator is exercising powers and duties with respect to regulated or supervised financial services activities under its own enabling legislation.
Principle 12.	Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts.
Description	S. 4(n) of the FSCA gives the FSC the power to enter into MOUs. As yet, the FSC has not entered into any MOUs with securities regulators. The FSC has only been operating as an independent agency since January 2002. They indicated that they need more experience with the new structure and legislation before entering into MOUs. Also, the BVI law does not require that there be an MOU with another agency before the FSC may share information. The FSC assesses current requests from foreign regulators on a case-by-case basis. However, they intend to pursue entering into MOUs with those jurisdictions, such as the U.S. and Hong Kong, that

	have approached them. The FS(IC)A contains the requirements from the FSC's perspective that would routinely be included in a MOU, such as: • identification of the circumstances under which assistance may be sought; • identification of the types of information and assistance that can be provided; • safeguards of the confidentiality of information transmitted; and • a description of the permitted uses of the information. The FS(IC)A provides a detailed legal framework covering the circumstances in which and the basis on which the FSC may render legal assistance with other regulators. This act must be read in conjunction with the gateway provisions in Part IV of the FSCA. Section 4 of the FS(IC)A defines the matters to be considered by the FSC in deciding whether to grant a request by a foreign regulatory authority for information. It also indicates the type of conditions that may be attached to the grant of such a request, including, for example, an undertaking by the foreign regulator to provide corresponding assistance when requested or to make a reasonable contribution toward the costs of the exercise. The FS(IC)A also empowers the FSC to require any person to furnish information or documents, or provide assistance, in connection with a request from a foreign regulator, it circumscribes the exercise of this power, and it prescribes penalties the courts may impose on persons failing to co-operate with the FSC's information gathering. Section 29(3) of the FSCA is also relevant as it requires prior written consent of the FSC Board to any transmission of information by the receiving authority to any other person.
Assessment	Implemented
Comments	BVI law provides a comprehensive framework for sharing information with other regulators and does not require the use of MOUs to facilitate those exchanges. Nevertheless, it may be prudent to establish MOUs with the jurisdictions from or to which most of the information requests pertain, if only to eliminate the need to repeat the procedures set out in s. 4 the FS(IC)A.
Principle 13.	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	See the discussion under Principles 11 & 12 regarding the ability of the FSC to obtain and share information with foreign regulators. The FS(IC)A provides the broadest range of information that can be shared with other regulators and actions that can be taken on behalf of these regulators. The definition of foreign regulatory authority is set out in s. 2 of the act and means: *"an authority which, in a country or BVI outside the Virgin Islands, exercises regulatory functions corresponding to any similar functions of a competent authority under any enactment, or exercises other regulatory functions which in the opinion of the FSC relates to companies or financial services."* The powers under the act are exercisable for the purposes of helping a foreign regulatory authority that has requested assistance in connection with inquiries being carried out in respect of any of its regulatory functions. The term "regulatory functions" is widely defined as any functions of a competent authority under an enactment, or any other functions relating to companies or financial services. Under s. 5 of the FS(IC)A, the FSC can direct any person to: provide information, produce documents, and provide other assistance on any matter relevant to the inquiries to which the request relates. Under s. 5(2) the FSC can get an order compelling compliance with a direction and s. 5(3) allows for examinations of persons under oath. The section also provides persons who render assistance or disclose information under the act with immunity for breach of their

	confidentiality duties. (s. 5(9)). There is no absolute dual illegality requirement, but it is a consideration for the FSC under s. 4(3)(b) of the FS(IC)A in deciding whether or not to provide assistance. Where financial conglomerates may be involved, there is no problem under either the FSCA or the FS(IC)A in sharing information across sectoral lines. For example, a regulator of a bank-led conglomerate in one country would not be prevented from obtaining information about the activities of BVI insurance companies or the mutual fund managers that were related to the bank. Confidentiality of the information obtained by the foreign regulator must be assured before the assistance is provided.
Assessment	Implemented
Comments	There are no significant legal impediments that limit the ability of FSC to provide information or other assistance to foreign securities regulators.
Principles for Issuers	
Principle 14.	There should be full, accurate, and timely disclosure of financial results and other information that is material to investors' decisions.
Description	Neither the corporate law (domestic or international business companies), nor the financial services legislation in the BVI addresses offering securities to the public. There is no primary market for securities in the BVI, other than for mutual funds. The rules governing mutual funds are addressed under Principles 17–20, below.
Assessment	Not applicable
Comments	See description.
Principle 15.	Holders of securities in a company should be treated in a fair and equitable manner.
Description	Neither the corporate law (domestic or international business companies), nor the financial services legislation in the BVI contemplates offering securities to the public. There is no primary market for securities in the BVI, other than for mutual funds, nor is there any public takeover activity or secondary market trading.
Assessment	Not applicable
Comments	See description above.
Principle 16.	Accounting and auditing standards should be of a high and internationally acceptable quality.
Description	For the purposes of issuer regulation, and other than mutual funds, there are no public companies that would be subject to accounting and auditing requirements by the FSC. The MF Act s. 13 provides: *(1) Every registered public fund shall:* *(a) prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles.* *(2) The financial statements required under subsection (1) shall be:* *(a) audited by an auditor acceptable to the FSC (in this act called "the approved auditor") in accordance with generally accepted auditing standards;* *(b) accompanied by the report of the approved auditor thereon which shall include a statement of the accounting principles under which statements have been prepared and a statement of the auditing standards which have been applied in the audit of such statements; and* *(c) provided to or made available for examination by all investors of the registered public fund.* The process of becoming an approved auditor is set out in the internal procedures manual of the Investment Business Division. The applying auditor must be entitled to practice as a public

	accountant and to perform audits under the laws of a recognized country or jurisdictions. The applicant must provide the FSC with: its company profile, its latest accounts, details of the partners and audit managers who will be responsible for the BVI audit; details of its profession indemnity insurance; information on the accounting principles and auditing standards which will be applied; a list of its global and BVI mutual fund clients, and evidence of approval to audit mutual funds in its home jurisdiction. It is also required to undertake to inform the FSC if a BVI mutual fund client is likely to become insolvent, is carrying on business in a manner prejudicial to public interest, or is not keeping adequate books and records to allow a proper audit. The process for recognition of a country or jurisdiction for the purposes of the MF Act is set out in the internal processes manual of the FSC. The application process entails a review of the domestic licensing regime applicable to mutual funds and their managers to determine if: (a) the jurisdiction has a prudent and reputable regulatory environment for the conduct of mutual fund business; and (b) the recognition of the jurisdiction would enhance the development of the BVI's mutual fund industry. The list of recognized jurisdiction presently includes the U.K., the U.S., Bermuda, Luxembourg, Switzerland, the Channel Islands (Guernsey, Jersey, and the Isle of Man), Hong Kong, France, Belgium, the Netherlands, Singapore, Spain, Gibraltar, and Malta. The FSC does not approve the accounting principles or audit standards applied, nor does it set out what financial statements must be prepared. The only requirement is that the standards and principles be set out in the financial statements. The financial statements are not routinely provided to the FSC. Under the MF Act, there is no requirement that the auditor be independent of the entity being audited, although the professional standards in most of the countries from which the auditors come would impose such a requirement. As a practical matter, most of the public funds are subject to the generally accepted accounting principles applicable in the EU or US, which are internationally accepted as of high quality. Accountants and auditors within the BVI apply International Accounting Standards (IAS).
Assessment	Partially implemented
Comments	The FSC does not approve the accounting principles or audit standards applied by mutual funds. It does not set requirements regarding the contents of the financial statements that must be prepared. The only requirements are that the auditor must be approved and the financial statements must disclose what accounting and auditing standards were used. Where an application is received from a mutual fund proposing to be audited in a jurisdiction that has not adopted IAS or other standards generally acknowledged to be of similar quality, the FSC should consider making an express assessment of the quality of the accounting principles and auditing standards applicable in a jurisdiction. This assessment could be included as part of the process of approving an auditor or recognizing a jurisdiction under the MF Act. The standards and principles should be equivalent to those of the IAS.
Principles for Collective Investment Schemes	
Principle 17.	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
Description	The standards and eligibility of those who wish to manage or administer a collective investment scheme in or from the BVI are determined by the FSC under the authority granted in the MF Act. The MF Act establishes that no person shall, in or from within the BVI, carry on or hold himself out as carrying on business as a manager of a mutual fund or an administrator of a mutual fund unless that person is licensed for the purpose under the act. Section 24 (2) says that the FSC shall not grant a license unless it is satisfied that the applicant: (a) is a fit and proper person to be engaged in the business proposed; (b) has or has available to him adequate knowledge, expertise, resources, and facilities

	necessary for the nature and scope of the business proposed; and (c) has appointed an auditor satisfying such conditions as may be prescribed by the FSC. The act does not apply to foreign incorporated managers and administrators whose operations are based entirely in a foreign jurisdiction, even though the manager or administrator may act for a BVI constituted fund. The application review process is detailed and comprehensive. The FSC has published a Guideline, which explains the purpose, scope, and key elements of the "fit and proper" assessment. Managers and administrators of mutual funds are also evaluated, on an ongoing basis, on their integrity, financial stability, competence, and track record. Staff of the FSC make detailed inquiries of applicants for licensing regarding their resources and facilities before recommending that the FSC grant the license. All applicants for licensing are required to provide full details of their ultimate beneficial owners. The Fit and Proper Guideline notes that the jurisdiction of incorporation or the constitution of an owner company or trust will have a direct bearing on the assessment of the fit and proper status of the applicant. Unnecessarily complex or opaque ownership structures are not accepted. It is also the FSC's practice, in the course of the ongoing regulation of managers and administrators, to require that these licensees provide prior notification to the FSC of any material changes. At the time any manager or administrator applies for any amendment to the terms of its license, the FSC reassesses the licensee's fitness using the conditions set out under s.24. There are no guarantees of performance of the investments required, nor are there any material competitive constraints imposed. The FSC has clear statutory powers to: • register a public mutual fund. - MF Act s.11(1); • require a custodian and that the custodian be functionally independent from the manager/administrator. - MF Act s.11(2) • conduct compliance audits for prudential purposes. - FSCA s.35(2) • require disclosure of material facts (at a very general level). - MF Act s.14(2) • investigate and take remedial and enforcement actions - see general enforcement powers under FSCA s.36-40 and MF Act s. 29 (discussed under Principles 3 and 9 above); and • recommend to the executive council that regulations be made relating to the matters that should be contained in a prospectus of a public fund (MF Act s. 42(1a)). At the present time, there is no program of routine off-site or on-site examinations of the operations of the mutual fund managers or mutual fund administrators. There are no routine reporting requirements; there is not even a requirement to file financial statements. There are no capital requirements and no internal control requirements. In the near future, receipt and monitoring of the audited accounts of managers and administrators will form part of the FSC's supervision of mutual fund licensees. These financial statements will be subject to monitoring standards currently being developed. BVI resident managers and administrators will be subject to regular compliance inspections. There also is no direct regulation of the disclosure by public funds, although the prospectuses are extensively reviewed against criteria set out in the internal procedures manual of the Investment Business Division during the process of registering a public fund or licensing a manager or administrator. Section 25A of the MF Act empowers the FSC to issue a Code of Practice to regulate the

	activities of mutual fund managers and mutual fund administrators. The staff of the FSC have drafted a very extensive Code of Practice that has been discussed with industry participants and which is expected to be implemented in early 2004. The Code provides detailed requirements for, and guidance on: • standards of conduct, particularly fitness and properness; • conduct of business, including advertising, duties to clients, safekeeping of client assets, advising on mutual funds, and administration of mutual funds; • compliance, reporting, records, and complaints; • financial resources, which would impose requirements regarding capital resources of licensees, books and records, internal controls, audit, and financial reporting to the FSC; • licensing requirements, including that for individuals; and • penalties for noncompliance. The Code also provides a number of appendices that set out various forms to be used and give additional guidance on the topics covered. Other than the reference to functionally independent custodians, there are no express legislative requirements addressing conflicts of interest. It is one of the topics to be included in the Code of Practice under s.25A. Under the draft code, conflicts of interest in the management or administration of a mutual fund would be generally prohibited unless fully disclosed in the prospectus or in another report to the directors of the fund, and fair treatment of the interests of the mutual fund was assured. The directors of a mutual fund would be subject to the usual common law duty to declare any conflict and abstain from voting on any decision where there was a conflict. Common law fiduciary duties would impose a requirement that anyone in a fiduciary relationship with the fund (this would include the investment manager and the directors of the fund) put the interests of the fund first. Unless full disclosure is made and the consent of all beneficiaries of the trust or the court is obtained, transactions where there was a material conflict generally would be prohibited by these fiduciary duties.
Assessment	Partially implemented
Comment	The conflict rules that govern the relationships and transactions between a public fund and its operators are minimal. There are few rules governing the relationship between the mutual fund and its service providers or related companies. There are no rules governing the use of related companies for trading or custodial services, other than that the custodian must be functionally independent of the administrator and manager of the fund. Conflicts of interest should be dealt with more comprehensively. At the very least, all of the relationships between the managers, administrators, other functionaries, and service providers should be required to be set out in the fund prospectus, along with the policy of the fund with respect to dealing with related companies. There is no ongoing oversight of the funds or their managers through a program of regular or ad hoc inspections. The requirements for funds to report to investors are limited to the provision of annual financial statements, and these are not filed with the FSC. There are no current requirements for fund managers or fund administrators to make any regular reports to the FSC; they are not required to file their financial statements. All of these areas should be strengthened. Many of these weaknesses should be addressed by the Code of Practice.
Principle 18.	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes, and the segregation and protection of client assets.

Description	A mutual fund can be organized as a corporation, unit trust, or partnership under BVI law (or other law). Most are incorporated under the International Business Companies Act. The form of the fund would be expected to be described in the prospectus of the fund. Mutual funds organized under BVI law would be subject to the general bankruptcy legislation of the BVI, which applies the British common law principle of tracing. Tracing would require a clear chain of title through proper record-keeping to establish the claim of the investor to the assets of the fund in priority to other creditors of the fund. There are no rules requiring the assets of the fund to be segregated from the assets of the fund manager, administrator, custodian, or from any other fund managed or administered by those functionaries. The draft Code of Practice would apply extensive segregation and record keeping requirements on all who hold or manage assets or cash belonging to mutual funds or individual clients. However, the Code will only apply to BVI licensed administrators and managers. As public funds registered in the BVI may not have BVI licensed administrators or managers, the FSC is considering preparing regulations specifically related to clients' monies and the segregation of assets to ensure that proper standards apply to all public funds, regardless of where their functionaries are located. There are no investment restrictions for public funds set out in the law or in the proposed Code. The internal procedures manual requires prospectus disclosure of any investment restriction that a fund has adopted. Public mutual funds are required to have a custodian that is functionally independent of its manager and administrator. Functionally independent means that the custodian may be the same company as the manager or administrator, but the custodial activities must be undertaken by a separate area of the company that does not report to the same part of the organization that manages or administers the fund. In practice, most are separate companies and are banks or trust companies. Very few, if any, custodians are BVI domiciled companies. The prospectus of the fund is expected to include details regarding the custodian, including its key personnel and experience, terms of appointment, and termination.
Assessment	Partially implemented
Comments	The lack of a clear requirement to identify and segregate the assets (money, securities, positions, and changes in derivative positions) of a fund from the assets of any other person is a serious shortcoming. This shortcoming is made more serious by the lack of detailed books and records requirements on fund managers and fund administrators. If a fund or a fund manager became insolvent, it would be very difficult and expensive to ensure that assets belonging to clients and funds do not become subject to the bankruptcy. The Code of Practice will address the weaknesses in the books and records requirements applicable to fund managers and fund administrators. However, as the Code will only apply to BVI licensed managers and administrators, the FSC should issue specific requirements covering books and records requirements and segregation requirements that apply to all functionaries (managers, administrators, custodians, and any other service providers) who hold BVI registered public mutual fund assets.
Principle 19.	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
Description	Section 13 (2) of the MF Act provides that all public funds must provide or make available annual audited fund reports and accounts to all of its investors. These must be prepared in accordance with generally accepted accounting principles and they must be audited in accordance with generally accepted auditing standards. The relevant accounting principles and auditing standards that have been applied must be disclosed in the financial statements. The legislation does not prescribe when the financial statements have to be made available to investors or what must be contained in those statements. For example, there is no requirement for audited statements of net asset value or for a portfolio summary. The audited financial

	statements don't necessarily have to be included in the prospectus. There are no specific requirements regarding management assurances of accuracy or completeness of the financial information. In addition, section 14 (1) of the MF Act provides that all public funds must publish a prospectus, the contents of which are approved, or its publication authorized, by the board of directors of the funds. It further provides under section 14 (2) that every prospectus shall provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed decision. The FSC has not published any rules regarding the required contents of a prospectus of a public fund, nor have regulations been made under the powers contained in s. 42(1a) of the MF Act. As a matter of administrative practice, the Investment Business Division has developed a checklist for the contents of a prospectus and against which all prospectuses of public funds are evaluated. This disclosure includes: • identification of the names and the addresses of all directors, custodians, trustees, administrators, investment advisors, registrars, and auditors; • all charges imposed on the fund or investor, including initial purchase fee, redemption charges, annual fee of the manager, custodian, investment advisor, and any performance fee payable; • details of the constitution of the fund: date, place, type of entity, share classes, and voting rights; • investment objectives, overall objective, types of investments to be made, investment restrictions, special investments, limits, and use of borrowing; • information about the valuation process and where such information regarding the value of an investor's investment can be found; • accounting issues; • risk factors, including conflicts of interests and difficulties in valuing assets; • summary of investors' statutory rights; and • a description of the subscription and redemption process, when sales, valuations, and redemptions may be suspended, winding up, etc. Any change in this information must be reflected in an amended prospectus that must be published within 14 days of the change. The amended prospectus must be filed with the FSC and provided to each of the fund's investors. The publication of the prospectus (or amended prospectus) must be authorized by the directors of the mutual fund, and they are responsible for certifying the truth and completeness of the statements made. The MF Act s. 16(2)(b) imposes liability on the mutual fund and the members of the board who were aware of any misrepresentation or would have been aware if they had made a reasonable investigation. No one else (underwriters, auditors, lawyers, other experts) who may have been involved in the preparation of the prospectus or the statements made in the prospectus are liable under this section. These persons may be liable at common law for negligent misrepresentation.
Assessment	Partially implemented
Comments	In practice, the nonfinancial information disclosed is extensive. However, legally there are no specified disclosure requirements. The financial disclosure requirements and the continuous disclosure obligations imposed on public funds are minimal and any disclosure required is not very timely. No one other than directors (such as underwriters, auditors, lawyers, other experts) who may have been involved in the preparation of the prospectus or the statements made in the

	prospectus are liable for misrepresentations made in the prospectus. Mutual funds should be subject to continuous disclosure requirements to make immediate public disclosure of any material changes and to make these changes known to investors. Consideration might be given to posting such notices on the FSC website. The prospectus should be amended promptly and filed with FSC as soon as practicable after the change. The FSC should issue regulations that set requirements for both financial and nonfinancial disclosure for public mutual funds. The liability under s. 16 for misrepresentations in the prospectus should be extended to all parties involved in preparing or authorizing the prospectus. In particular, the liability should extend to the lawyers and auditors involved.
Principle 20.	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
Description	Section 14 (1) of the MF Act provides that all public funds must publish a prospectus the contents of which are approved by the fund's governing body. It further provides under section 14 (2) that every prospectus must provide full and accurate disclosure of all such information as investors would reasonably require and expect to find for the purpose of making an informed decision. • There are no specific requirements in law or regulation that set out the contents of a prospectus. There are no specific requirements that relate to: • fair and accurate valuation of investments and correct calculation of net asset value; • the provision of information about asset value and pricing policies in a manner that allows investors and others to accurately assess performance over time; • the consistent use of a set of accounting rules and disclosure of which accounting rules are used in the valuation; • the minimum frequency of valuation. There are no limits on illiquid investments. Any changes and limitations on redemption rights are not subject to prior approval of regulators. However, when vetting a public fund's application for registration, the Investment Business Division's checklist requires that a fund's prospectus provide for disclosure of information about the asset valuation process, about where information regarding the value of an investor's investment can be found, about the subscription process, and about the redemption process. The FSC does no routine oversight, via reporting or on-site inspections, to check that the disclosed policies regarding valuation of assets, etc. are being followed in practice.
Assessment	Not implemented.
Comments	There are no requirements governing the use of a consistent set of accounting rules for asset valuation, or for disclosure of the rules used to investors. There are no rules or guidelines governing the valuation of illiquid securities. There is no monitoring of compliance with the provisions that have been disclosed to investors in a prospectus and no regulatory oversight to ensure the calculations of net asset value are done properly. No regulatory action is required before redemptions may stop. A binding guideline or regulation should be developed setting out requirements on asset valuations and related disclosure provisions. A registered mutual fund should not be permitted to change its redemption policies or cease to redeem its securities, without the permission of the FSC. This permission should be given only in the investors' collective interest.
Principles for Market Intermediaries	
Principle 21.	Regulation should provide for minimum entry standards for market intermediaries.
Description	There are no statutory provisions regulating the activities of market intermediaries (dealers, brokers, underwriters, or investment managers) in the BVI. However, it is not evident that there

	are any significant securities intermediation activities taking place from within the BVI.
Assessment	Not applicable.
Comments	The FSC has recommended that the government introduce legislation in the near future to license and regulate market intermediaries, including investment managers, investment advisers, market makers, and broker/dealers. The overall aim is the general regulation of all investment businesses. This legislation would include: • minimum entry standards for market intermediaries; • minimum and ongoing capital requirements; • books and records, internal control and compliance requirements; • fit and proper requirement for both the firm and key personnel; • duties to clients; • audit and insurance requirements; • powers of the FSC regarding licensing, oversight, and inspections; • rulemaking powers, including a set consultation process; and • penalties for breaches, etc. The proposed legislation would also give a great deal of authority to the FSC to mandate rules, issue statements of principles, issue codes of practice, etc. The FSC's powers set out in the FSCA (discussed above under Principle 3) would also apply to this new Investment Business Act. It should also be noted that under s. 25A of the MF Act the draft Code of Practice would set minimum capital and on-going capital requirements, books and records requirements, and internal control and risk management systems for mutual fund managers and mutual fund administrators. The requirements contained in the draft code were prepared with the intention of having similar requirements apply to all market intermediaries.
Principle 22.	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	See the discussion under Principle 21.
Assessment	Not applicable
Comments	See the comments under Principle 21. The draft Code of Practice would require mutual fund managers and administrators to notify the FSC if their capital falls below the minimum requirements set by the Code.
Principle 23.	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients and ensure the proper management of risk, and under which the management of the intermediary accepts primary responsibility for these matters.
Description	See the discussion under Principle 21. Under the FSC all regulated persons are required to establish policies and procedures to ensure compliance with all applicable legal and regulatory requirements and to appoint a responsible compliance officer.
Assessment	Not applicable
Comments	See the comments under Principle 21. The draft Code of Practice sets out extensive standards regarding the conduct of business by mutual fund managers and mutual fund administrators. These provisions include requirements to:

	• act with due care and diligence in the best interest of the client and toward the integrity of the market; • establish a written contact with customers; • provide clients with transaction reports or confirmations of each trade (including price, volume and market) and periodic account statements (no less than annual); • seek information from customers regarding financial circumstances and investment objectives, and where advice is provided, such advice must be given upon a proper understanding of customer needs and circumstances—the licensee must "know your client;" • disclose potential conflicts of interest to the client; • make adequate such disclosures to customers necessary to make a balanced and informed investment decision; may include risk disclosure for certain products; • ensure that staff who provide investment advice are properly trained; • adhere to a duty of confidentiality and not disclose any information about the client or use information about the client's investment activities for its own profit; and • have in place policies to put the interests of the client first, avoid conflicts of interest, and treat all clients in a fair, honest, and professional manner. If put in place and made applicable to all market intermediaries, the code would meet virtually all of the requirements to fulfill the conduct of business expectations under this principle.
Principle 24.	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	See the discussion under Principle 21.
Assessment	Not applicable
Comments	See the comment under Principle 21.
Principles for the Secondary Market	
Principle 25.	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	None of the financial services legislation in the BVI contains any specific provisions giving the FSC the authority to regulate exchanges or trading systems.
Assessment	Not applicable
Comments	There is no secondary market trading of securities within the BVI. Other than mutual funds, there is no primary market for securities in the BVI, and there are no organized exchanges or OTC markets operating in or from here.
Principle 26.	There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	There are no approval or licensing criteria specified in legislation for exchanges and other trading system, nor any rules governing oversight of an exchange.
Assessment	Not applicable
Comments	See comments under Principle 25.
Principle 27.	Regulation should promote transparency of trading.
Description	See the description under Principle 25.
Assessment	Not applicable
Comments	See the comments under Principle 25.
Principle 28.	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	See the description under Principle 25.

Assessment	Not applicable
Comments	See the comments under Principle 25.
Principle 29.	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	See the description under Principle 25.
Assessment	Not applicable
Comments	See the comments under Principle 25.
Principle 30.	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective, and efficient and that they reduce systemic risk.
Description	FSC does not have any authority to oversee or license clearing and settlement systems. However, there are no clearing and settlement systems operating in the BVI.
Assessment	Not applicable
Comments	Given the level of development of the secondary market in the BVI, the FSC's lack of authority to oversee these systems poses no issue.

Table 15. Summary Implementation of the IOSCO Objectives and Principles of Securities Regulation

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Implemented	4	Principles 1, 5, 12 and 13
Broadly Implemented	5	Principles 2, 4, 8, 9, and 11
Partly Implemented	7	Principles 3,10, and 16 through 20
Not Implemented	0	
Not applicable	14	Principles 6, 7, 14, 15, and 21 through 30.

Recommended action plan and authorities' response to the assessment

Table 16. Recommended Plan of Actions to Improve Implementation of the IOSCO Objectives and Principles of Securities Regulation

Reference Principle	Recommended Action	Response of Authorities
Principle 2.	Consider amending the legislation to require the FSC to give reasons for all non-routine decisions even when not requested. Consider developing a more detailed conflicts policy for board members.	Under consideration.

Reference Principle	Recommended Action	Response of Authorities
Principle 3.	Increase staff resources for on-going supervision and enforcement.	To be implemented.
Principle 4.	Make the detailed licensing and approval processes and requirements publicly available. Enhance the breadth and the transparency of the consultation process.	Forms, specific requirements and checklists are made available (though not on the website) to the public. In addition, training is open to all members of the local regulated population. It is the intention to include more information on the website. Consultation process is being enhanced and a more rigorous consultation with the Mutual Funds Advisory Committee is already taking place. Consideration is being given to including application forms and the public register on the FSC website.
Principle 9.	The fines that may be imposed under the FSCA and Ensure that sanctions are set at a level to be an effective deterrent.	Under consideration.
Principle 10	Take all necessary actions to increase staff resources for inspections and enforcement. The completion and implementation of the new audit and compliance program should also be expedited.	Agree that all appropriate actions will be taken. The audit and compliance program is finalized but cannot be implemented until the Code of Practice is issued (against which firms will be measured). Expected to be implemented end of Q1 2004.
Principle 11	The legislative language relating to information sharing should be broadened to eliminate any need for the foreign regulator to be exercising powers and duties corresponding to those granted the FSC under the listed BVI financial services legislation.	Under consideration.
Principle 16	FSC should make an assessment of the quality of the accounting principles and auditing standards applicable in a jurisdiction before approving an auditor or recognizing a jurisdiction under the MF Act. The standards and principles should be equivalent to those of the IAS.	Agree, expected end of Q1 2004.

Reference Principle	Recommended Action	Response of Authorities
Principle 17.	Mutual fund conflicts of interest should be dealt with more comprehensively. All of the relationships between the managers, administrators, other functionaries and service providers should be required to be disclosed. Mutual funds, managers and administrators should be required to file annual audited financial statements with the FSC. Managers and administrators should also be required to file other regulatory reports. Institute a program of regular inspections of all of these entities.	This will be a formal requirement under the prospectus requirements in proposed public fund regulations. However, currently informally a requirement through the application vetting process. Other conflicts are also dealt with in the draft Code of Practice. Reporting (financial and other) requirements are included in the draft Code of Practice. Public mutual funds are required to prepare annual accounts though not to file them; these will be a requirement in the proposed public fund regulations. Expected end of Q1 2004 (Code of Practice) and end of Q2 2004 (Proposed Public Funds Regulations).
Principle 18.	Impose specific requirements regarding books and records and asset segregation requirements that apply to all functionaries (managers, administrators, custodians and any other service providers) who hold BVI registered public mutual fund assets.	Agree, these are predominantly covered for managers and administrators in the draft Code of Practice. FSC has no remit over custodians or other functionaries. Expected end of Q1 2004.
Principle 19.	Issue prospectus regulations for public mutual funds. Require public mutual funds to make immediate disclosure of any material changes and to make these changes known to investors in a timely fashion. Statutory liability for misrepresentations in a mutual fund prospectus should be extended to all parties involved in preparing or authorizing the prospectus.	Agree, to be included in proposed public fund regulations, expected end of Q2 2004. Agree, though already a requirement to notify FSC of any material changes to that information supplied at time of application, expected end of Q2 2004. Disagree, will be difficult to determine who is responsible; ultimately the directors of the fund are responsible.

Reference Principle	Recommended Action	Response of Authorities
Principle 20.	Enact binding rules on mutual fund asset valuations and related disclosure provisions. Prohibit public mutual funds from ceasing to redeem its securities without notification to the FSC.	Agree, for public mutual funds only; these will be included in proposed public fund regulations, expected end of Q2 2004. Partially agree, would be prudent to require notification of any cessation as could be an indication of problems with the fund, expected end of Q2 2004.

V. GOOD PRACTICES FOR COMPANY AND TRUST SERVICE PROVIDERS

A. Information and Methodology Used in the Review

89. This review is based upon the premise and fact that there is no international group of company and trust service providers (CSPs), as there is for banking, insurance, and securities. In addition, there are no international standards for the licensing and supervision of CSPs. Two recent reviews of certain offshore jurisdictions, which included a substantive assessment of companies, trusts and related service providers, focused on broad principles, which should be applied, explicitly and implicitly, as guidance as to what can be considered best practice.[6]

90. The Trust and Company Service Providers Working Group set up by the Offshore Group of Banking Supervisors (OGBS) decided that a statement of best practice should be prepared rather than a statement of minimum standards.[7] This decision was based upon the fact that at the present time, many jurisdictions do not regulate trust and company service providers, and in some cases such providers are not presently embraced by anti-money

[6] a. Review of Financial Regulation in the Crown Dependencies, November 1998 (Edwards Report); and

b. review of Financial Regulation in the Caribbean Overseas Territories and Bermuda, October 2000 (KPMG Report).

[7] The terms of reference of the Working Group originally were "to produce a recommended statement of minimum standards/guidance for Trust and Company Service Providers; and to consider and make recommendations to the Offshore Group of Banking Supervisors for transmission to all relevant international organizations/authorities on how best to ensure that the recommended minimum standards/guidance are adopted as an international standard and implemented on a global basis."

laundering legislation. Accordingly, it was considered that a statement of best practice is more appropriate, and it was finalized on September 6, 2002 (the OGBS Statement of Best Practice). On October 11, 2002, a draft methodology for the assessment of the supervision of trust and company service providers was circulated by the OGBS to its members. Since the IMF has yet to consider and approve this document, it was not utilized as a benchmark or template for the review. Rather, the principles expounded in the Statement of Best Practice have been used as a guideline.

91. In compiling the review, the following reports and documentation were used:

a. Report on Mission to the British Virgin Islands, December 13–16, 2001, regarding Company Service Providers and Trust Service Providers;

b. Back-to-Office Report: British Virgin Islands Pre-Module 2 Mission November 13–16, 2001;

c. Code of Conduct for the Performance of Licensed Members of the BVI Association of Registered Agents;

d. Companies Questionnaire completed by the Registry of Corporate Affairs of the British Virgin Islands FSC;

e. Trust and Company Service Providers Questionnaire completed by the Banking and Fiduciary Services Division of the FSC;

f. Self-assessment reports completed by the Banking and Fiduciary Services Division, and the Registry of Corporate Affairs of the FSC; and

g. All applicable legislation.

92. In addition, with regard to gaining a deeper understanding of the company and trust services providers industry, the mission conducted interviews and discussions with both the authorities and with a substantial number of representatives from the private sector.

B. Institutional Setting, Market Structure—Overview

93. As at June 30, 2002, the BVI had 501,353 incorporated international business companies (IBCs). The actual number of active IBCs, however, is estimated by the FSC and industry representatives to be between 300,000 and 400,000; as many IBCs are struck off the register, and no final figure will be available before the end of 2002. IBCs are incorporated under the International Business Companies Act, 1984 (IBC Act), with the Registrar of Corporate Affairs, who is also responsible for incorporation of domestic companies under the Companies Act, 1985. Most IBCs appear to be used as holding companies for shares, trust property, and other assets, while a smaller but still significant number appear to be used for private investment activity. On balance, the IBCs client base tends to come from the Far East, Europe, and Latin America.

94. The rationale for all regulatory and oversight arrangements pertaining to CSPs is found in section 38 of the International Business Companies Act, 1984 (IBC Act), which states that an international business company incorporated under the IBC Act "shall at all times have a registered office in the British Virgin Islands, and the registered office must be an office maintained in the British Virgin Islands by the company or its registered agent."

95. A registered agent—as defined in section 39 of the International Business Companies Act, 1984 (IBC Act)—can be licensed:

2.1 either under the Company Management Act, 1990 (CM Act); or
2.2 or under the Banks and Trust Companies Act, 1990 (BTC Act)

to carry on the business of company management.

96. Company management is defined in the CM Act, and by incorporation by reference in the BTC Act, as:-

(a) the registration of companies under the Companies Act or the IBC Act;

(b) the provision of registered agent services for companies incorporated under the IBC;

(c) the provision of registered office services for companies incorporated under the Companies Act or the IBC Act;

(d) the provision of directors or officers for companies; and

(e) the provision of nominee shareholders of companies.

97. A registered agent licensed under the BTC Act is automatically licensed to conduct trust business, which is defined in section 2(1) of the BTC Act as:

(a) acting as a professional trustee, protector or administrator of a trust or settlement;
(b) managing or administering any trust or settlement; and
(c) company management as defined in the CM Act.

98. A license to conduct trust business is referred to as a General Trust License in section 10(1)(d) of the BTC Act. Not all General Trust License holders are registered agents, however, as is evidenced by the statistics provided in 69 below.

99. The holder of a Restricted Trust License under section 10(1)(e) of the BTC Act may not conduct the business of company management, and can therefore not be a registered agent. In addition, it may only act as a professional trustee, protector, or administrator of a trust or settlement, and manage or administer any trust or settlement (i.e., trust business as defined, excluding company management), up to a maximum of 25 trusts, all who have to be listed in the original license application. Any addition or change to the list of trusts in the

original license application requires a new application, and a subsequent reassessment of the applicant is undertaken.

100. All licenses are valid until December 31 of the year in which they are issued, and are renewable during January of the next year. As of October 31, 2002, the following licenses have been issued by the Banking and Fiduciary Services Division of the FSC:

- 20 licenses for Company Management Services, under the CM Act;
- 96 licenses for Restricted Trust Business under the BTC Act; and
- 92 licenses for General Trust Business under the BTC Act.

Sixty-nine of the 92 General Trust Business license holders have also been registered as registered agents, which would bring the total number of registered agents (including the 20 licenses for Company Management Services) to 89. Of the 89 registered agents, 88 belong to the BVI Association of Registered Agents. No CSP is a provider of banking, accounting or legal services, but a number of them have connected entity relationships with law firms, banks, accounting, or other financial service firms. All CSPs are required to maintain a principal office in the BVI.

101. The Banking and Fiduciary Services Division of the FSC is responsible for oversight of CSPs in the British Virgin Islands. The Division consists of a Director, four regulators, and one administrative assistant.

C. Practice-by-Practice Review

Companies: Registry of Corporate Affairs

102. The Registry of Corporate Affairs of the FSC is the agency in charge of the registration of companies. As indicated above, these include IBCs incorporated under the IBC Act, as well as domestic companies under the Companies Act, 1985. A company is not allowed to be incorporated or formed through the internet, by telephone, fax, or mail. The responsibility of incorporating companies is not shared with any other agency, and for administrative purposes, the Registrar of Corporate Affairs reports to the managing director of the FSC. The key functions of the Registry of Corporate Affairs are:

- to register companies, limited partnerships, and trademarks;
- to maintain and update the relevant registers and files;
- to ensure that documents filed are in accordance with the requirements of the legislation;
- to respond to queries on companies both locally and overseas;
- to provide services to the registered agents in relation to companies that have been registered;
- to provide search information on companies both locally and overseas; and

- to receive and account for all revenue collected.

103. There are no stated restrictions on who can beneficially own a company. Therefore, a company may ultimately be beneficially owned by the beneficiary or beneficiaries of a trust. With regard to money laundering considerations, IBCs can only be incorporated by registered agents who—as either trust or company management service providers (see 2 below)—have due diligence obligations under the Anti-Money Laundering Code of Practice and related Guidance Notes. In particular, when a service provider acts as a trustee for a trust, the service provider is expected to satisfy itself that assets settled into the trust are not or were not made as part of a criminal or illegal transaction or disposition of assets.

104. Companies are only authorized to issue bearer shares if registered under the IBC Act, and if the company's memorandum allows it, or expressly grants the directors authority to determine at their discretion whether shares are to be issued as registered shares or to bearer. The Registrar of Corporate Affairs is not able, however, to give precise figures on how many IBCs who have the power to issue bearer shares actually do so. Amending legislation to the IBS Act that implements the immobilization of bearer shares by requiring that they be deposited with authorized custodians, or with or with recognized custodians has been finalized. An amendment to the Banks and Trust Companies Act, 1990 (BTC Act), to define and establish authorized custodians will consequently have to be undertaken. Recognized custodians are persons not licensed under the BTC Act and not resident in the BVI, but based in countries not subject to sanctions by the FATF, and who are subject to prudential and anti-money laundering regulation. While recognizing the rationale for introducing the proposed amending legislation, industry representatives in the BVI have pointed out the wide use in other jurisdictions (including onshore jurisdictions) of bearer shares for legitimate purposes.

105. The IBC Act allows for directors to be either individuals or companies, and also does not prohibit nominee directors. The disclosure of information about the true identity of directors to the Registrar is optional. Money laundering concerns are said to be addressed by the fact that IBCs have to be incorporated by registered agents who have due diligence responsibilities under the Anti-Money Laundering Code of Practice and related Guidance Notes. If information about directors and officers is disclosed to the Registrar, it is publicly available.

106. The Registrar of Corporate Affairs is not obliged in terms of the IBC Act, to independently verify the information submitted for the registration of new, or the registration renewal of existing, companies or international business companies (IBCs). The Registrar is also not charged with a duty to ascertain the beneficial ownership of the company or IBC being registered. The information on ownership that is available, is the share register which is publicly available under the Companies Act, 1985, and, if filed with the Registrar, also under the IBC Act. The RAs who incorporate IBCs and company management service providers who manage such IBCs, have due diligence obligations under anti-money laundering legislation, which would include know-your-customer requirements.

107. Where information is reasonably required for the FSC (of which the Registry of Corporate Affairs is a division) to discharge its functions, it has powers under section 30 of

the FSCA to obtain such information in possession of company management service providers. That information may only be disclosed by the FSC in the exceptions listed in section 29(2) of the FSCA. A parallel exists under section 5 of the Financial Services (International Cooperation Act, 2000, in terms of which the FSC may direct any person in writing—once it is satisfied that the assistance requested from a foreign regulatory authority is warranted—to furnish it with the information relevant to the request, or to produce documents relevant to the request.)

108. In the context of the provisions of the IBC Act, the Companies Act, 1985, the Company Management Act, 1990 (CM Act), and the Banks and Trust Companies Act, 1990 (BTC Act), the Registrar of Corporate Affairs is not a regulator supervising companies, but at the most maintains registers of information filed by companies as required. The Registrar's right to request additional information would therefore arise only where the information is required in order to file a document, or in the limited circumstances where a document may be applied for from the Registrar, such as a Certificate of Good Standing under the IBC Act.

109. However, like any other person or institution, the Registrar is obliged to make a suspicious transaction report to the Reporting Authority, established under the Proceeds of Criminal Conduct Act, 1997 (PCC Act), in order to be able to raise the defense under the PCC Act to a charge or indictment, such as assisting a person to retain a benefit arising form criminal conduct.

Trust and company service providers: Banking and Fiduciary Services Division

110. The trust and company service providers industry is regulated and supervised in terms of the legal framework set out in B.2–8 above. As indicated, companies that are only company service providers may be licensed under either the CM Act or the BTC Act, whereas companies that wish to provide trust services may only be licensed under the BTC Act.

111. Company service providers licensed under the CM Act are required to submit annual returns within six months of the financial year end, and must at the same time furnish a Certificate of Compliance issued by an independent auditor to the FSC, in the terms of section 17 of the FSCA. This section of the FSCA also provides that the licensee may be required to submit a Certificate of Compliance at any time, once requested by the FSC. This Certificate of Compliance requirement is to be introduced in the proposed amendments to the BTC Act, which currently does not contain such a provision. General trust licensees are required to file annual audited statements within three months of their financial year's end. Restricted trust licensees are exempt from this requirement.

112. Under section 10 of the CM Act, company service providers are required to maintain a minimum paid-up capital of US$25,000. General trust licensees are required, in terms of section 12(3)(a) of the BTC Act to maintain a minimum fully paid-up capital of US$250,000. Restricted trust licensees are exempt from minimum capital requirements. Under section 12(3)(b) of the BTC Act, general trust licensees are required to make an investment deposit

with the FSC. General trust licensees may not change their name or operate outside the BVI any subsidiary, branch, agency, or representative office without the prior written approval of the FSC in the terms of section 18 of the BTC Act.

113. Both the CM Act and the BTC Act require service providers to seek prior approval from the FSC for the following:

- Transfer, issue, or disposal of shares or other interest;
- Appointment of directors and senior officers;
- Inclusion of a subsidiary on its license by a general trust licensee;
- Change in name; and
- Establishment of a subsidiary, branch, agency, or representative office outside the BVI.

114. Both the CM Act and the BTC Act may require service providers to effect insurance against relevant risks.

115. On-site inspection by staff of the Bank and Fiduciary Services Division of all registered agents and licensees takes place on a regular basis, and in accordance with a questionnaire, which essentially covers the principles set out in the OGBS Statement of Best Practice. However, specific transaction testing is not yet fully implemented as part of both on-site inspection and as a requirement for internal audit testing by reporting persons.

Code of conduct for the performance of licensed members of the BVI Association of Registered Agents

116. The BVI Association of Registered Agents was established during 1996 and approved a Code of Conduct for its members at an Extraordinary Meeting on December 20, 1996. The Code was revised in May 2002. The mission met with Mr. Kenneth W. Morgan, current chairperson of the Association, who indicated that all registered agents in the BVI bar one, are members of the Association.[8] He stressed that many members had already started, a number of years ago, to implement, as a regular feature of their business, most of the recommendations and requirements of the OGBS Statement of Best Practice, and that the association fully supports the objectives of the Statement. It also supports all anti-money laundering legislation in the BVI, and in principle does not object to the proposed Draft

[8] Offshore Incorporations Limited (OIL), a joint venture partner of HWR, a general trust licensee in the BVI, initially objected to exit fees payable by clients of members of the Association. OIL has, however, reconsidered its stance, and has applied to become a member.

International Business Companies (Amendment) Act, 2002 to introduce the immobilization of bearer shares.

D. Cross-Border Cooperation and Information Sharing

117. Section 29 of the FSCA sets out restrictions on the disclosure of information disclosed to the FSC and its organs, and the circumstance(s) in which these restrictions do not apply. By way of exception to the restrictions on disclosure of information by the FSC, section 29(2)(e) of the FSCA allows disclosure when it is made for the purpose of enabling or assisting a foreign regulatory authority in a country or jurisdiction approved by the FSC Board, including a trading or a security or exchange authority, in discharging duties or exercising powers corresponding to those under the FSCA, any subsidiary legislation made there under, or any financial services legislation. The authority receiving the disclosure will, however, be required not to transmit any information, document, record, statement, or thing disclosed to any other person except with the prior consent of the FSC Board.

118. These provisions allow the FSC and its organs to provide assistance to foreign regulatory authorities. As a matter of practice, the FSC makes a distinction between routine informal inquiries and more formal inquiries for legal or regulatory assistance, such as requests for information or documents in connection with an investigation into regulatory or criminal violations. The latter are dealt with by the FSC and its organs in accordance with the provisions of the Financial Services (International Cooperation) Act, 2000 (the FS(IC) Act) which sets out criteria to be taken into account by the FSC in deciding whether to exercise compulsory powers to obtain information or documents not in its possession, in order to provide the assistance requested. The FS(IC) Act also allows the FSC to require the foreign regulator to give certain written undertakings, such as providing corresponding assistance when requested by a BVI authority, and making a contribution toward the costs of the exercise of the compulsory powers. In addition, the FS(IC) Act prescribes the procedure for obtaining information by compulsion and provides certain safeguards in connection with the process. The Banking and Fiduciary Services Division, which carries out the day-to-day supervision of CSPs, has received and responded to 43 routine informal inquiries over the last two years form various foreign agencies. Most of the inquiries concerned IBCs, and not the CSPs themselves.

119. The extent to which the BVI Director of Banking and Fiduciary Services can hold confidential information received from a regulating authority in another jurisdiction will depend on the law in that jurisdiction and the conditions attached by the foreign regulating authority sharing the information. In addition, section 29(1) of the FSCA provides that any information and disclosures made to the FSC or any of its organs and representatives in the course of discharging any function or duty or exercising any power under applicable legislation, is privileged and must not be disclosed except as provided in the circumstances enunciated in section 29(2) of the FSCA.

E. Recommended Actions

120. Since the coming into force on January 1, 2002 of the FSCA, and the establishment of the FSC as a regulatory authority independent from government, great strides have been made to ensure that the oversight of CSPs is undertaken in accordance with international best practice. When measured against the OGBS Statement of Best Practice, the FSC and its supervisory organs—in this case the Banking and Fiduciary Services Division—is structurally, and as far as methodology is concerned, in substantial compliance with the principles expounded in the Statement of Best Practice. An ongoing project of monitoring and measuring the division's policies against the methodology paper, issued by the OGBS as a follow-up to their statement of best practice, is currently underway in the division.

121. The Banking and Fiduciary Services Division of the FSC is staffed by individuals who have all previously worked in a banking or other financial services environment. Continued training and the attendance by staff of international fora to keep abreast of pertinent regulatory developments are a high priority. All staff members bar one have attended the available annual international seminars on company and trust services providers. In this regard, it should also be noted that the FSC is hosting a training seminar for the Caribbean Group of Banking Regulators in 2003. The Divisional budget for 2003 provides for the creation of two further regulators' posts, which will increase the staffing capacity. The Division also runs a summer internship program, which provides exposure and potential employment opportunities to BVI students. Industry representatives have expressed a high regard for the integrity and dedication of the Division in the execution of its statutory duties.

122. However, given the imperative to undertake more detailed and structured on-site inspection of CSPs in view of its very large IBC client base, and in particular the need to assess compliance with the OGBS statement of best practice (including that action can be taken where there is evidence of noncompliance), the following recommendations are made:

123. Consideration should be given to engage with the CSPs industry (perhaps through the offices of the ARA) and auditing firms, with a view to introducing a staff secondment program, both to and from the private sector. Although a modus operandi will have to be established to overcome potential conflicts of interest and confidentiality issues, the cross-pollination of skills and perspective will deepen the levels of understanding and cooperation, to the benefit of both the regulator and the industry.

124. Although very good progress has been made in addressing the permanent staffing situation in the Banking and Fiduciary Services Division, it is recommended that a detailed three to five year recruitment and succession program be devised for the purpose of implementing a long-term enhancement and deployment of skills strategy.

125. Specific transaction testing should be implemented as part of both on-site inspection and as a requirement for internal audit testing by reporting persons. Supervisory controls should pay particular attention to adherence to KYC requirements by eligible introducers.

Authorities' Response

The immobilization of bearer shares has been implemented.