

Group of International Finance Centre Supervisors

Standard on the Regulation of Trust and Corporate Service Providers (as amended)

First Round Mutual Evaluation Report

British Virgin Islands (BVI)

Adopted 20 October 2020

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Background

1. The Group of International Finance Centre Supervisors was in its original form established in October 1980, at the instigation of the Basel Committee on Banking Supervision, as an association of the relevant authorities concerned with the supervision of banks and related financial services primarily engaged in cross-border activities.
2. While maintaining a close working relationship with the Basel Committee on Banking Supervision the Group has since developed into a body which has represented the interests of member jurisdictions on the whole range of banking supervision matters, AML/CFT issues, supervision of funds and securities activities, and the regulation of trust and company service providers (TCSPs). In the mid-1990's the Group became an observer body attending meetings of the FATF. It is also a member of the FSB Regional Consultative Group for Europe, and a member of the Basel Consultative Group.
3. Twenty-one jurisdictions were members of GIFCS as at March 2020.
4. In 2002 the Group published a paper on best practices in the regulation of Trust and Company Service Providers. Building on the significant experience of GIFCS members with licensing and regulating TCSPs, a new Standard for the Regulation of TCSPs was issued in October 2014. That Standard has now developed into a full regime embracing a Multi-Lateral Memorandum of Understanding, peer group assessments of members' compliance against the Standard, and meetings of colleges of supervisors on an as-needed basis.
5. The Standard incorporates the following objectives:
 - customers of TCSPs should receive a degree of protection equivalent to that afforded to the customers of other financial institutions.
 - TCSPs should be subject to a similar regulatory regime as other financial institutions.
 - to be effective, standards should be applied internationally.
6. The Standard notes that "Regulators should view the Standard as a minimum requirement that sets out the broad framework for TCSP oversight, which can be tailored to each jurisdiction's individual needs. Regulators should apply the Standard to all TCSPs in their jurisdiction. Jurisdictions may satisfy the Standard by adopting requirements which are of substantially similar effect and may impose higher standards in some or all areas where national legislation requires. It is recognized that the Standard may be supplemented by other measures in individual jurisdictions designed to mitigate risks of TCSPs."
7. Following initial self-assessments by members, in November 2016 a Plenary session of GIFCS agreed to commence a first round of mutual evaluations against the Standard.

8. This is the report of the first round mutual evaluation of the BVI. The evaluation included a desk-based review and a visit to the BVI which was conducted in the week of 11 - 15 November 2019.
9. This report:
 - Evaluates technical compliance with the Standard;
 - Evaluates effectiveness in applying the Standard in practice, using a broad range of measures of effectiveness appropriate to the subject matter.

The first round mutual evaluation process

10. The following process was adopted:
 - BVI Financial Services Commission (“BVI FSC”) submitted a technical self-assessment;
 - BVI FSC provided information on effectiveness of implementation;
 - Assessors reviewed the information provided;
 - Assessors carried out an on-site visit in November 2019 including meetings with the BVI FSC, BVI FIA, representatives of several TCSPs and the Chairperson of the Association of Registered Agents;
 - Draft analysis sheets and drafts of the visit report were prepared and circulated to BVI FSC for comment;
 - The recommendations of the working group were determined at the xxx 2020 GIFCS Plenary Session. The report reflects the decisions of the Plenary Session on those matters;
 - The report was subject to a moderation process prior to finalisation;
 - A close to final draft was circulated to the peer reviewers and the assessed jurisdiction
 - The same draft was circulated to GIFCS members and discussed at the October 2020 Plenary;
 - At the Plenary it was agreed that the report could be finalised and published by agreement of the Chairman, assessors and BVI FSC. Actions arising from recommendations made will be followed up by Plenary.
11. GIFCS will invite each assessed jurisdiction to give feedback on the mutual evaluation process following its first round evaluation. The assessors believe that this should further support and benefit the development of the mutual assessment process.

Assessment philosophy and approach

12. In conducting the assessment, the assessors took into account the following considerations:

- GIFCS members have committed to meet the Standard;
- Self-evaluation is an important component of the overall evaluation process. Self-evaluation should be accurate and effective – it should lead to action where necessary;
- Mutual evaluation should take into account the extent to which the assessed jurisdiction’s self-evaluation has been accurate and has demonstrated a pro-active approach to correction of any deficiencies against the Standard which were self-identified;
- The findings of other external evaluations should be taken into account in the GIFCS mutual evaluation process (having regard to the scope of such evaluations and the time elapsed since they were undertaken). The BVI has not yet received a CFATF fourth round mutual evaluation (the third round evaluation having taken place in 2008), and thus assessors conducted their own assessment of BVI’s compliance with the relevant parts of the TCSP Standard.

Ratings to be used

13. The GIFCS methodology applies ratings set out below. These were applied during the review process at paragraph level in the main Standard (part 3). Ratings are not applied to the Principles (Part 2). The “1 – 4” ratings at paragraph level summarise whether action is required, and the status of such action.

Rating	Description
1	In place and being effectively applied through legislation and/or other enforceable arrangements
2	In place and largely being applied, but possibly lacking full enforceability
3	Effective measures planned with political support, with introduction and implementation in demonstrable progress
4	Requirements not planned, or not in progress as per 3 above.

14. Ratings at section (Parts 3 A-J) level for the summary report are on the widely-used basis of Compliant (“C” – no shortcomings), Largely Compliant (“LC” – only minor shortcomings), Partly Compliant (“PC” – moderate shortcomings) and Non-Compliant (“NC” – major shortcomings). These are compiled taking into account the paragraph ratings in each section as at the date of the visit. Post-visit events are reflected in the text of the report but not the ratings.

Disambiguation and guidance

15. Evaluation against a Standard is an iterative process in which both the evaluated jurisdiction and the standard-setting body learns from the experience. Jurisdictions share the benefits of their experiences and the relevant standard and methodology are refined as a result of learning points arising from each round of mutual evaluations.

The jurisdiction

16. The British Virgin Islands are a British Overseas Territory located in the Lesser Antilles in the Caribbean. According to the BVI’s National Risk Assessment, it has a population of 28,800, of which 60% are expatriates from over 110 countries and territories. Financial services contribute 60% of Government revenue.
17. In September 2017 the BVI was struck by Hurricane Irma, which caused extensive damage and a significant economic impact.

The TCSP sector in the BVI

18. As at 31 December 2018 there were 171 licensed TCSPs in the BVI:

Class I Trust and company management business	60
Class II Trust business	22
Class III Company management	18
Restricted Class II	54
Restricted Class III	0
Class IV Trust business*	0

Class V Company management *	0
Company Management	17
Total	171
* Recently introduced and no licences issued yet	

19. As at 30 June 2019, there were 396,932 BVI Business Companies registered.
20. Most TCSPs that are providing company management services provide a registered agent service, which means that they are acting as the registered office of the BVI company, but do not normally provide directors or officers.

The regulator

21. The BVI FSC was established under the Financial Services Commission Act 2001 as an autonomous regulatory authority responsible for the regulation, supervision and inspection of all financial services in and from within the BVI.
22. Supervision of TCSPs is carried out by the Banking, Insolvency and Fiduciary Services Division, which includes an Approved Persons Unit and a Compliance Inspection Unit. There is a separate Legal and Enforcement Division which provides ongoing legal support to all areas of the BVI FSC. The Enforcement Unit is responsible for conducting investigations and enforcement actions.
23. The Registry of Corporate Affairs (companies registry) also falls within the remit of the BVI FSC.
24. The average number of full time employees in 2019 was 155
25. The BVI FSC's staff gave the mutual assessment team full cooperation and assistance.

Report date and post-visit events

26. The report is based on the position as at the last day of the on-site visit.
27. Post-visit events are reflected if a change is in effect six weeks before the presentation of the report to the GIFCS Plenary Session for adoption.

28. In this mutual evaluation the principal post-visit event are the amendments to the Regulatory Code, which came into effect on 13 November 2019, except that for transitioning (ie existing) licensees the amendments took effect on 1 July 2020.
29. The amendments to the Regulatory Code arose from BVI FSC's self-assessment against the Standard, and these are reflected as post-visit events in the relevant sections of the report.

Summary and key findings

30. Whilst the BVI FSC was able to demonstrate technical compliance with the Standard in many areas, the assessors noted that the BVI FSC's self-assessment had identified a number of areas where the regulatory regime was not technically compliant with the Standard, and an amendment to the Regulatory Code was implemented whilst the assessors were onsite. It was not possible for the effectiveness of the recent amendments to be assessed, and there were also some difficulties in demonstrating effectiveness generally due to concerns around the implementation of the onsite inspection process. However, the BVI FSC appears committed to achieving technical compliance with the Standard, and in discussions with assessors the BVI FSC expressed their intentions to address the deficiencies in their onsite programme.
31. The BVI FSC appears to have a good reputation amongst its stakeholders. Most of the licensees and industry associations the assessors met during the onsite spoke highly of the BVI FSC. Generally, the BVI FSC is viewed as reliable, strong and highly visible. The industry practitioners were very commendable of the BVI FSC's ability to respond to internal and external challenges, for example, its responsiveness to Hurricane Irma and Economic Substance initiatives. The key findings from the assessment can be summarised under the following headings:

AML/CFT

32. The BVI has not yet received a CFATF fourth round mutual evaluation (the third round evaluation having taken place in 2008), and thus assessors conducted their own assessment of the BVI's compliance with the relevant parts of the TCSP Standard.
33. Whilst the AML Regulations and AMLTFCOP provide a comprehensive framework for the AML/CFT regulatory regime, the AML Regulations and AMLTFCOP would require amendments to ensure that the AML/CFT Regime is fully compliant with the FATF's 2012 International Standards. Thus TCSPs are presently applying practices which may not be fully compliant with international measures particularly in the area of effectiveness. During the time of the onsite assessment in November 2019, the BVI FSC was in the process of

undertaking a benchmarking exercise against the 2012 FATF standards, separate to the review against the standard undertaken within its NRA exercise.¹

34. The BVI undertook its first National Risk Assessment in 2017. The published NRA document does not highlight money laundering or terrorist financing risks for the BVI and includes only a very limited risk assessment of the money laundering or terrorist financing risks posed by trusts and companies, which form the majority of the BVI's financial services offering.
35. The BVI's AML/CFT regulatory regime includes provisions relating to the identification and verification of beneficial owners and controllers, and the requirement to keep customer due diligence up to date. The services provided by TCSPs in the BVI are mainly registered office and registered agent services. Typically the TCSPs do not provide directors to the companies for whom they act, nor is there any requirement in the regulatory regime for TCSPs to maintain accounting records for their clients.
36. The TCSPs that were interviewed by the assessors during the onsite visit advised that they operate risk based periodic reviews, and in between these reviews will rely on trigger events to monitor for potential changes in beneficial ownership or control. However generally the TCSP is not in frequent communication with a company about its activities, and they do not receive copies of its minutes or accounting records. This can compromise the accuracy of a TCSP's beneficial ownership records and present challenges for monitoring the activities of these companies.

¹ Footnote requested by the BVI

The VI as a member of CFATF has committed to full implementation of the FATF 2012 Recommendations. Since the approval and implementation by FATF and CFATF of the FATF 2012 Recommendations the VI has taken several steps to ensure that it fully complies with the FATF 2012 Recommendations. These includes providing outreach and training both to the industry and relevant law enforcement and competent authorities on the FATF 2012 Recommendations. Further, in addition to undertaking an assessment against the 2012 FATF Recommendations within its NRA exercise, a separate benchmark exercise was also being undertaken during the time of the onsite visit to identify any deficiencies in compliance that remained. Assessors were informed that the VIs assessment does not contain any significant deficiencies that would directly negatively impact the AML/CFT obligations of TCSPs. As the VI was deemed largely compliant with the 2003 FATF recommendations in 2008, the VI considered that only minor legislative amendments would be required which the VI stated was consistent with its expectations. Furthermore, the VIs AML framework has been reviewed and amended through changes to AML Regulations and AMLTFCOP to address some issues relevant to TCSPs and the FATF 2012 Recommendations.

37. It is recommended that the BVI FSC continue to work with the BVI Government and private sector to address the areas noted above.

Onsite inspection process

38. The table below sets out the number of onsite inspections of TCSPs for the last five years:

2015	33
2016	9
2017	17
2018	2
2019	4

39. Following the impact of Hurricane Irma in September 2017, the BVI FSC suspended all onsite inspections, and recommenced in quarter 3 of 2018. By the time of the assessors' onsite visit in November 2019, six TCSPs had been inspected since the programme resumed. Those TCSPs collectively acted for around 10% of BVI companies.
40. Compounding the fall in number of onsite inspections was the issue of the length of time taken by the BVI FSC to deliver the onsite inspection reports. This issue related not only to the inspections delivered recently, but also to those conducted in earlier years. One TCSP indicated to the assessors that there had been a delay of 18 months between submitting its comments on the draft inspection report and receiving the final version.
41. Onsite inspections are a primary tool in the BVI FSC's supervision of TCSPs. The assessors are of the view that the onsite inspection programme needs additional qualified human resources, and if unaddressed will have a detrimental impact on the ongoing oversight of the implementation of the Standard. The BVI FSC acknowledged the human resource challenges and the effect on the number of inspections that can be carried out and the resulting lengthy turnaround on on-site inspections that have been conducted.
42. Other issues noted by the assessors included that the BVI FSC's onsite inspection procedures manual has not been updated since 2010, notwithstanding that the Regulatory Code has been updated multiple times since then. The BVI FSC confirmed to the assessors that work is taking place to update the procedures manual, but a draft updated version or details of the planned enhancements were not available to the assessors to review. The BVI FSC has also asserted that although the manual has not been updated, the onsite inspection team has updated its practices. Review documents are continuously updated.

Implementation of the updated review documents and new procedures are undertaken during internal training.

43. Whilst the assessors are sympathetic to the impact of Hurricane Irma on the jurisdiction, it has been difficult for the BVI FSC to demonstrate full effectiveness in a number of areas of the Standard, due to the fall in the number of onsite inspections and the shortcomings identified in the programme.
44. It is recommended that the BVI FSC review its onsite inspection programme including the planning, execution and reporting phases to ensure it is fit for purpose and is consistent with its risk based framework. The assessors also recommend that the BVI FSC perform a detailed review of its onsite report process (including the timeliness of report issuance and the structure and content captured by inspection reports) to ensure the information being provided is appropriate and effective.

Key Persons

45. The BVI regulatory regime does not require MLROs to undergo a fit and proper assessment and approval process by the BVI FSC. This is a departure from the Standard, which includes MLROs in its definition of Key Persons.
46. The BVI FSC has advised that in practice, most MLROs are also Compliance Officers, which do have to go through an approval process. Thus the number of MLROs who have not been assessed by the BVI FSC is low.
47. It is recommended that the BVI amend its regulatory regime to bring MLROs into its Approved Persons regime so that all persons acting as MLRO undergo a fit and proper test and approval process.

Legislation

48. There are no data protection laws enacted in the BVI. The BVI FSC confirmed there are ongoing government initiatives focused on developing data protection regulations. However, specific details and timelines were not available to the assessors for review at the time of the on-site visit.
49. It is recommended that the BVI FSC work with the government to progress the implementation of data protection legislation to enable the jurisdiction to comply with internationally recognised standards.

GLOSSARY

50. The report follows the definitions established in the Standard and set out in Part 1 of the Standard for the following terms:

- Client
- Client Money
- Controller
- Key Person
- Shareholder Controller
- TCSP
- Vehicle

51. Additional terms and abbreviations used in this report include:

BVI FSC	BVI Financial Services Commission
GIFCS	The Group of International Finance Centre Supervisors
TCSP	Trust and Company Service Providers, as defined in the Standard, is used generically in this report, to cover either or both of CSP and TSP services.
TSP	A sub-set of TCSPs, relating specifically to the provision of services to trusts and other legal arrangements
CSP	A sub-set of TCSPs, relating specifically to the provision of services to companies and other legal persons
The Standard	The Standard on the Regulation of Trust and Corporate Service Providers as issued by GIFCS in 2014 and revised in December 2018
AMLFCOP	Anti-Money Laundering and Terrorist Financing Code of Practice
BTCA	Bank and Trust Companies Act
CFATF	Caribbean Financial Action Task Force
CMA	Companies Management Act
FIA	Financial Investigation Agency
FSCA	Financial Services Commission Act

MoU	Memorandum/a of Understanding
NRA	National Risk Assessment

THE PRINCIPLES FOR REGULATION

52. The first substantive section of the Standard is the Principles for Regulation (Part 2 of the Standard).
53. The Principles set out high level objectives, covering the regulator, the regulatory regime, domestic and international cooperation, enforcement, and other requirements for the jurisdiction.
54. GIFCS has agreed that the Principles are addressed as a whole rather than point by point for technical compliance and effectiveness. The Principles are supported by more detailed and granular material in the Standard itself (Part 3 of the Standard document).

Observations relating to Part 2 of the Standard - the Principles

Summary

- **The BVI FSC and the jurisdiction were able to demonstrate compliance with most of the Principles**
- **Assessors have made recommendations in respect of resourcing and transparency of regulatory processes.**

Principles relating to the Regulator

55. The responsibilities of the BVI FSC are clearly set out in the Financial Services Commission Act 2001 (FSCA) and appear appropriate. Assessors noted that the BVI FSC has fulfilled its responsibility to “to develop...a system of continuing education for practitioners in financial services businesses and towards this end to develop such curriculum as it considers appropriate” by instituting a ‘Compliance Masterclass’ training programme aimed at TCSPs. By the end of 2020 senior staff at all TCSPs should have completed this training. Assessors reviewed the syllabus and considered it reasonable. Industry feedback was generally positive.

56. The FSCA requires members of the Board of the Commission to be appointed by the Cabinet of the Virgin Islands, however the FSCA also provides that a Commissioner shall not act as a delegate of any Government, commercial, financial or other interest with whom he or she may be connected and shall not accept directions from any person or authority in respect of his or her duties as a Commissioner or in relation to, or on behalf or in the name of, the Commission.
57. The FSCA also provides that in establishing the policy of the Commission, the Board shall take into account such general directions as may be given to the Commission by the Cabinet. The BVI FSC advised the assessors that a direction had never been given in practice and was intended to relate to strategic policy eg regulation of new types of business. Given that the Cabinet's power in this respect does not affect the BVI FSC at an operational level, assessors were content that this does not adversely affect the BVI FSC's ability to act independently.
58. Staff resourcing has been an issue for the BVI FSC in recent times, and this has manifested itself in the extended time taken to turn around inspection reports. The BVI FSC is under resourced in some areas and is taking steps to address this issue. The staff however are appropriately qualified and experienced.
59. The BVI FSC is not required to consult on changes to regulatory law and requirements. It advised assessors that in practice it speaks to a focus group from industry before publishing any changes. Consultations are not generally published on the BVI FSC website. Limited public consultation means that there may be licensees and other stakeholders who are unaware of changes until the time they are published and thus have not had the opportunity to provide feedback. Assessors were also advised that the BVI FSC does not publish its annual work plan. Summaries of the results from onsite inspections are not published, but the BVI FSC intends to start doing this in 2020. Assessors recommend that the BVI FSC implements a process of formal consultation and communication with industry in order to improve transparency.

Principles for Regulation

60. Assessors were satisfied that the BVI FSC has appropriate and adequate powers to undertake prudential and conduct supervision, as well as supervision of AML/CFT obligations. The Regulatory Code and the Anti-Money Laundering and Terrorist Financing Code of Practice (AMLTF COP) have the status of subsidiary legislation and thus have the force of law and are enforceable.
61. Whilst the BVI FSC has adequate powers in order to gather information and undertake onsite inspections, the assessors have some concerns about the effectiveness of the onsite inspection process (see paragraphs 38 to 44).

62. The BVI FSC undertakes the monitoring of systemic risk posed by the TCSP sector and the financial services industry generally.

Principles for Cooperation

63. The BVI FSC has the necessary powers and mechanisms to share information with domestic and foreign counterparts. It has published on its website an International Cooperation Handbook and has entered into 15 Memoranda of Understanding (MoU) with domestic and international authorities.
64. The BVI FSC regularly and actively participates in TCSP supervisory colleges.
65. The BVI FSC provided statistics to demonstrate the regular sharing of information with foreign regulators.

Principles for Enforcement

66. Assessors were satisfied that the BVI FSC has comprehensive enforcement powers. The BVI FSC evidenced use of these powers by way of the provision of statistics and a number of case studies.
67. There is a dedicated Enforcement Unit which receives referrals from the supervision and inspection teams. At the time of the assessors' onsite visit, the BVI FSC was reviewing the staffing levels of this unit to assess whether they are adequate.

Other requirements on Jurisdictions

68. Assessors were satisfied that the BVI FSC demonstrated compliance with the requirements of this section.

PART 3 - THE STANDARD

Observations relating to Part 3A of the Standard - Licensing

Summary

- **The BVI FSC was able to demonstrate that the regulatory regime in most places is technically compliant with the Standard.**
- **There are a couple of technical gaps, one of which has now been rectified by an amendment to the Regulatory Code.**
- **One action point has been identified by the assessors.**
- **The assessors have some concerns in respect of the onsite inspection process, which impacts on the BVI FSC's ability to demonstrate the effectiveness of their supervision.**
- **The assessors have rated this section as Largely Compliant.**

This framework should allow for:

The Regulator to license TCSPs that want to operate in or from within the jurisdiction

69. The appropriate laws are in place that require licensing of TCSP activity, and prohibit unlicensed activity.
70. TCSP licenses are divided into a number of types: Class I Trust, Class II Trust, Class III, Restricted Class II Trust, Restricted Class III and Company Management.
71. The law also makes provision for Class IV and V, although at the time of the assessors' onsite visit no licenses had been issued in these classes.

The Regulator to assess whether a TCSP is at the time of licensing, and remains, fit and proper over the period for which it holds a TCSP licence

72. The Bank and Trust Companies Act (BTCA) and Companies Management Act (CMA) both set out the criteria that have to be satisfied before an applicant will be granted a licence.
73. The BVI FSC's Licensing and Supervisory Committee (LSC) has responsibility, set out in the FSCA, for ensuring that licensees remain fit and proper on a continuing basis.

74. The BVI FSC was able to provide examples of their fit and proper assessment at work both at the licensing stage and on an ongoing basis (through onsite inspections, collection of returns and interaction with the licensees and associated approved persons).
75. However the assessors consider that the effectiveness of the BVI FSC's ongoing assessment of licensees' fit and proper status is liable to be adversely impacted by the inefficiencies identified in the onsite inspection process.

The Regulator to assess whether the Controllers of a TCSP are at the time of licensing, and remain, fit and proper to hold those interests and/or positions

76. At the date of the assessors' onsite visit, the BVI was not fully technically compliant with the Standard as the Regulatory Code did not completely match the definition of Controller in the Standard. This was remedied during the onsite by an amendment to the Regulatory Code.
77. The BVI FSC was found to be largely effective in this section, outside of the impact to onsite inspections caused by Hurricane Irma and challenges with retaining human resources. Part 3C of the Standard covers Controllers in more detail.

The Regulator to assess whether the Key Persons of a TCSP are at the time of licensing, and remain, fit and proper to hold those positions

78. The BVI FSC does not include MLROs in its definition of approved persons that have to be assessed for fit and proper status. Assessors were advised that in many cases MLROs of TCSPs are also Compliance Officers, who are subject to fit and proper assessment. However a technical gap against the Standard remains and the assessors recommend that the relevant regulatory requirements are amended to include MLROs in the fit and proper assessment process.
79. Apart from this issue, the BVI FSC was found to be largely effective in this section, outside of the impact to onsite inspections caused by Hurricane Irma and challenges with retaining human resources. Part 3D of the Standard covers key persons in more detail.

Withdrawal of the relevant licence in the event that a TCSP is no longer fit and proper or is in material breach of regulatory standards

80. There is clear legislative provision to revoke, suspend and cancel licences.
81. The BVI FSC provided examples of a revocation and a winding down of a licensee's affairs.

The Regulator should consider the ownership, structure, control and/or management of a TCSP. The ownership structure should not hinder effective supervision or facilitate regulatory arbitrage.

82. Assessment of the management and ownership structure of a TCSP is undertaken at time of licensing and ongoing. Assessments consider transparency of the ownership structure of the licensee and its group. Bearer shares are not allowed in an ownership structure.

The Regulator should require that a TCSP demonstrates a physical presence in the jurisdiction in which it is regulated².

83. Generally, TCSPs are required to maintain a principal office and an authorised agent in the BVI, and at least one director must be registered in the BVI, pursuant to the BTCA and CMA. However, at the time of the assessors' onsite visit, this requirement did not extend to Class II and restricted Class II trust licensees.

84. This technical gap was filled during the onsite by an amendment to the Regulatory Code, requiring all TCSPs to have at least one director registered in the BVI.

The Regulator should require that a TCSP's affairs are conducted in a prudent and financially sound manner.

85. Part 3G of the Standard covers prudential supervision in more detail. Assessors noted that the Regulatory Code requires the organisation, management and financial resources of an applicant to be adequate for carrying on the business in respect of which a licence is sought, before a licence can be issued by the BVI FSC.

86. The BVI FSC has a number of supervisory mechanisms for assessing whether TCSPs are operating in a prudent and financially sound manner, including desk based supervision and onsite inspections. As noted at paragraphs 38 to 44, the assessors have some concerns about the effectiveness of the onsite inspection process.

The Regulator should require that a TCSP has appropriate policies, procedures and controls to ensure full compliance with the anti-money laundering and the combating of the financing of terrorism requirements, including the ability to accurately detail the ultimate beneficial owners of Vehicles.

87. Part 3I of the Standard covers financial crime and international sanctions in more detail.

88. The AMLTFCOP includes a requirement for TCSPs to maintain "...a written and effective system of internal controls which provides appropriate policies, processes and procedures for forestalling and preventing money laundering and terrorist financing".

² The Regulator may consider that physical presence is duly demonstrated by:

- those persons who represent the mind and management of the TCSP being registered in the Regulator's jurisdiction and actively involved in the governance of the business; and
- having an operational place of business in the Regulator's jurisdiction.

89. The assessors' comments at paragraph 86 are also relevant here.

The Regulator should require that a TCSP is and remains resourced, structured and organised appropriately so that it can manage all Vehicles and assets it administers. This requirement should address policies, procedures and controls, staff capabilities and the numbers and types of appointments to Vehicles which are undertaken by staff, whether in their own name or through corporate directors or other indirect appointments.

90. Parts 3D and 3H of the Standard address in more detail key persons and other employees, and administration of the TCSP's business.

91. Assessors were satisfied with the regulatory regime in respect of this aspect of the Standard, although the comments at paragraph 86 are relevant.

Observations relating to Part 3B of the Standard - Corporate Governance (of the TCSP)

Summary

- **The BVI FSC was able to demonstrate that the regulatory regime in most places is technically compliant with the Standard.**
- **There are a number of technical gaps, which have now been rectified by amendments to the Regulatory Code.**
- **One action point has been identified by the assessors.**
- **The assessors have some concerns in respect of the onsite inspection process, which impacts on the BVI FSC's ability to demonstrate the effectiveness of their supervision.**
- **The assessors have rated this section as Largely Compliant.**

92. The BVI FSC has relied on its onsite inspection programme to demonstrate effectiveness for much of this section of the Standard. It should be noted that the assessors have some concerns about the effectiveness of the onsite programme – this comment applies to many of the paragraphs below but has not been repeated each time.

The Board³ collectively comprises an appropriate balance of skills, knowledge and competence considering its members' relevant experience such that the Board as a whole is able to discharge its duties and responsibilities effectively, and further that no individual or group of individuals can or does unduly dominate the Board's decision making

93. The Regulatory Code requires a TCSP to have an adequate number of directors with sufficient knowledge, skill and experience, who are capable of exercising independent judgement, and have sufficient time and commitment to undertake their duties diligently.

94. In discussions with the BVI FSC, the assessors identified that it is possible to have a group of closely connected persons comprising the whole or majority of a board. It will be important for the BVI FSC to continue to stress that all directors however connected have statutory responsibilities and should exercise independent judgement at all times.

95. The assessors recommend that the BVI FSC give further consideration to ensuring that all board members are able to exercise independent judgement.

³ Or any alternate body that manages a TCSP where it is not a company.

Where functions have been delegated by the Board, the Board clearly and comprehensively records the functions delegated and ultimate responsibility for the delegated functions remains with the Board

96. At the commencement of the onsite assessment, there was no explicit requirement in the BVI's regulatory regime to address this aspect of the Standard, although the BVI FSC asserted that other provisions would cover these requirements.

97. During the assessors' onsite visit, the Regulatory Code was amended to address this deficiency by making the requirement explicit. Under transition arrangements for existing licenceholders the Code came into effect after the visit (see paragraph 28 above).

The management structure should be appropriate to the size, complexity, structure and risk profile of an individual TCSP

98. The assessors were satisfied that the BVI's regulatory regime met the requirements of this aspect of the Standard.

Every Board has a minimum of two individuals to direct the business; who are sufficiently independent of each other such that each would not be unduly influenced by another Board member

99. The Regulatory Code requires a TCSP to have a minimum of two directors appointed at all times.

Directors are aware of and understand their duty to understand applicable legislation, regulation, policy, rules, instructions, guidance and codes of practice to an appropriate level to enable them to discharge their responsibilities

100. The Regulatory Code includes a requirement for directors to have sufficient skills, knowledge, experience and understanding of the business, however, that section doesn't specifically reference a duty for directors to understand applicable legislation, although this can be implied.

101. During the assessors' onsite visit the Regulatory Code was amended to include a requirement for a TCSP to have policies and procedures in place to enable a full understanding of the duties arising under the laws relevant to the administration and affairs of its customers. Under transition arrangements the amendments to the Regulatory Code for existing licenceholders came into effect after the onsite visit.

Boards comprise individuals that are aware of and understand the Board's collective duty to ensuring that robust arrangements for compliance with the regulatory regime are maintained

102. In addition to the abovementioned requirement in the Regulatory Code, the Code also includes a provision for the board of a TCSP to review and on an ongoing basis assess the effectiveness of a licensee's compliance policies. Combined with the fit and proper assessments undergone for each individual director, the assessors consider that the BVI FSC has achieved technical compliance with the Standard.

Boards establish, implement, document and maintain an effective conflicts of interest policy for both the Board and the TCSP, which sets out the standards of expected behaviour including, amongst other matters, the treatment of any non-compliance with the policy

103. At the time of the onsite visit, there was no explicit requirement for a board of a licensee to implement a conflicts of interest policy. During the assessors' onsite visit the Regulatory Code was amended to introduce this requirement in line with the Standard.

Boards ensure that they formulate and implement a suitable risk framework for the TCSP, including the production of a statement of risk appetite⁴ so that the types of business the firm is prepared to take on and risk tolerance are clear

104. Assessors were satisfied that the Regulatory Code complies with this requirement of the Standard.

Boards undertake a periodic self-assessment of their effectiveness

105. At the time of the onsite visit there was no explicit requirement in the BVI regulatory regime equivalent to this paragraph of the Standard, however the Regulatory Code has now been updated to require boards of TCSPs to undertake self-assessments.

The Board retains ultimate responsibility for the compliance function, and should ensure:

That it approves and regularly reviews a compliance policy and establishes a defined and resourced compliance function

106. The assessors were satisfied that the BVI's regulatory regime meets the technical requirements of this paragraph of the Standard.

There is periodic verification of adherence with established applicable standards

107. The Regulatory Code states that the board is responsible for ensuring that the licensee complies with its regulatory and AML/CFT obligations, and the FSCA does require the Compliance Officer to report to the board (see further comments at paragraph 111 below).

There is periodic verification of adherence with all regulatory and other legal requirements

⁴ "... statement of risk appetite" is in lower case to reflect the Standard as amended.

108. The assessors were satisfied that the BVI's regulatory regime meets the technical requirements of this paragraph of the Standard.

That necessary remedial actions to rectify any shortcomings in the TCSP's operations are taken promptly

109. The Compliance Officer has responsibility under the Regulatory Code to identify shortcomings in the systems and controls of the licensee, and to submit a compliance report to the board annually. During the assessors' onsite visit, the Regulatory Code was amended to require a licensee's breaches register to include details of the remedial action taken to address the breach and a timeframe for the remediation, amplifying a requirement where the BVI FSC state the objective was already met.

110. The Compliance Officer also must submit a detailed compliance report annually to the BVI FSC. Remedial action will be required by the BVI FSC as appropriate.

That there are regular reports on the performance of the TCSP's compliance function

111. As noted above the Compliance Officer is required to report both to the TCSP's board and also to the BVI FSC. The Regulatory Code was updated during the onsite visit to extend the details of what must be included in the report to the BVI FSC.

In assessing the quality and strength of the Board of a TCSP, the Regulator should have the power to require the amendment of the composition and size of the Board

112. The assessors were satisfied that the BVI FSC has the necessary powers to comply with this paragraph of the Standard. The BVI FSC has evidenced that the individual directors and board composition are assessed at time of licensing, on an ongoing basis as a part of the onsite inspection programme, and through prudential reports such as the Compliance Officer's report. The BVI FSC evidenced a circumstance where it has required a licensee to alter its board composition and increase its board size.

Regulators shall not permit a corporate director to be on the Board of a TCSP

113. The Regulatory Code provides that only an individual shall be appointed to the board of a licensee.

Observations relating to Part 3C of the Standard - Controllers of TCSPs

Summary

- **The BVI FSC was able to demonstrate that the regulatory regime in most places is technically compliant with the Standard.**
- **There are a number of technical gaps, which have now been rectified by amendments to the Regulatory Code.**
- **The assessors have some concerns in respect of the onsite inspection process, which impacts on the BVI FSC's ability to demonstrate the effectiveness of their supervision.**
- **The assessors have rated this section as Largely Compliant.**

Fit and proper standards

The Regulator should ensure that:

the Controllers of a TCSP must be, and must remain, fit and proper

114. At the date of the assessors' onsite visit, the BVI was not fully technically compliant with the Standard as the Regulatory Code did not match the definition of Controller in the Standard. The Regulatory Code included owners but not persons who are not owners but who can exercise influence over the management of the TCSP. This gap was remedied during the onsite by an amendment to the Regulatory Code.

115. The BVI FSC has a framework to assess the fit and proper status of owners of TCSPs at time of licensing and on an ongoing basis. A change in the ownership or controlling interest in a TCSP requires the prior approval of the BVI FSC, per the BTCA and the CMA. The criteria utilised in assessing fit and proper status are outlined in the Regulatory Code.

it understands the relationship created by any debt, option, equity or beneficial interest holding in the TCSP⁵ which would make the holder of that interest a shareholder controller

116. The BVI FSC advised the assessors that when reviewing an application for a new, or change in, a person holding a significant interest in a licensee, that the criteria in this paragraph of the Standard will be documented and understood before approval would be given.

⁵ Both the existence of debt and options can give the holder effective control.

The appointment of, or change in, a Controller may only take place after the Regulator has been notified and has positively confirmed its approval of, or no objection to, the appointment via a separate vetting process

117. A change in the ownership or controlling interest in a TCSP requires the prior approval of the BVI FSC, per the BTCA and the CMA. Approval of persons is undertaken by a separate unit within the BVI FSC, unless persons are being approved in conjunction with a licence application.

where a Controller exercises a Key Person function within the TCSP, they undergo a separate approval process specific to that role

118. The BVI FSC have confirmed that where a beneficial owner or controller exercises a key person function within a TCSP, that person will be assessed against the Guidelines for the Approved Persons Regime. His/her approval as fit and proper to hold a significant interest in a licensee does not automatically translate to approval in accordance with the Approved Persons Regime.

it has powers to refuse approval and remove existing Controllers

119. The BVI FSC has the power to refuse an application by a controller. However, the BVI's Self-Assessment document identified that the BVI FSC does not have the direct power to remove controllers.

120. The BVI FSC may, however, attach a condition to a licence, requiring the removal of a controller. A licensee who did not comply with the condition would be subject to enforcement action.

121. In the view of the assessors, whilst not technically compliant the BVI FSC are able to obtain an equivalent outcome.

Where a Controller is associated with a jurisdiction that is assessed as higher risk by the Regulator, the Regulator should require the TCSP to demonstrate that it can manage any such risks arising

122. The assessors do not have any adverse findings in respect of technical compliance or effectiveness in respect of this paragraph of the standard. The previously noted deficiencies in the onsite inspection program (paragraphs 38 to 44) are applicable here also, as the BVI FSC relies, albeit not solely, on onsite inspections to ensure that this requirement is met. The BVI FSC also relies on Compliance Officer Reports that are filed with them.

Integrity

The Regulator should require that any Controller acts with integrity at all times

123. The BVI FSC, pursuant to the BTCA and the CMA, may refuse to approve an acquisition of or change in controlling interest if they are not satisfied as to honesty and integrity. The Regulatory Code sets out detailed guidance notes to the fit and proper test. The BVI FSC assesses whether the regulated person is considered to have integrity at the time of application and on an ongoing basis.

Competence

Controllers who exert an influence over the day to day affairs of a TCSP should be competent

124. In order to meet the criteria for being assessed as fit and proper, as set out in the Regulatory Code, a Controller must demonstrate competence and capability.

Financial soundness

If the TCSP is part of a group, the Regulator should assess the financial strength of the group insofar as it may impact the TCSP. Accordingly, the Regulator may require copies of the parent company financial statements and other relevant information to be submitted to it.

125. The BVI has the power under the BTCA and the CMA to request a licensee's group accounts. The Regulator should assess the solvency of Controllers and the impact on the TCSP where any Controller has been or is likely to be declared bankrupt or insolvent or has been the subject of a money judgement

126. The fit and proper test set out in the Regulatory Code includes financial soundness. The Regulator should require that Controllers demonstrate clearly their sources of wealth and source of funds

127. At the time of the onsite visit, there was no explicit requirement in the BVI regulatory regime for the BVI FSC to assess a Controller's source of wealth and funds. The Regulatory Code has now been amended to state that when assessing financial soundness as part of the fit and proper test, the BVI FSC will also assess the source of wealth and source of funds of the Controller of a regulated person.

Conflicts of interest

The Regulator should assess whether Controllers of TCSPs have any existing or potential conflicts of interest⁶ and should any conflicts exist, the Regulator should ensure that these are addressed appropriately

⁶ Care should be taken to ensure that Controllers do not exert undue influence on the Board of a TCSP to act against the best interest of the TCSP especially where it would place it in breach of its licence.

128. It was indicated that conflicts of interest were addressed at application and on an ongoing basis, however at the time of the visit there was no explicit requirement for this in the regulatory regime.

129. During the onsite visit, the Regulatory Code was amended to include consideration of conflicts of interest as part of the assessment of honesty, integrity and reputation in the fit and proper test. The phased implementation of amendments to the Code has been referred to earlier.

Observations relating to Part 3D of the Standard - Key Persons and Other Employees

Summary

- The BVI FSC was able to demonstrate that the regulatory regime in most places is technically compliant with the Standard.
- There are a number of technical gaps, which have now been rectified by amendments to the Regulatory Code.
- One action point has been identified by the assessors.
- The assessors have some concerns in respect of the onsite inspection process, which impacts on the BVI FSC's ability to demonstrate the effectiveness of their supervision.
- The assessors have rated this section as Largely Compliant.

Key Persons

The Regulator should assess the fit and proper standards and ensure that the appointment of, or change in, a Key Person may only take place after the Regulator has been notified and has positively confirmed its approval of, or no objection to, the appointment via a separate vetting process. The Regulator should require that all Key Persons of a TCSP are fit and proper for their roles on an ongoing basis.

130. The BVI FSC has a positive approval process and carries out fit and proper assessments, at time of appointment and on an ongoing basis, for directors, managers and Compliance Officers. Money Laundering Reporting Officers are considered Key Persons by the Standard, but they are not included in the BVI FSC's Approved Persons Regime and they are only vetted by the BVI FSC in circumstances where they are also appointed to the role of Compliance Officer, who is required to be approved. The BVI FSC represented that in most circumstances, the MLRO is also the Compliance Officer. However, a technical gap against the Standard exists.

131. The assessors recommend that the relevant regulatory requirements are amended to include MLROs in the fit and proper assessment process.

The Regulator should have the power to refuse approval to and remove a person from a Key Person role

132. The BVI FSC has the power under the FSCA to both refuse and remove a Key Person.

133. The BVI FSC provided evidence of removal of a Key Person that was found to not be fit and proper. Statistics were also provided to the assessors showing refusal of 21 Key person approvals between 2014 and 2018.

In making a fit and proper determination, the Regulator should consider integrity, competence and financial soundness

134. In making a fit and proper determination, the BVI FSC assesses:

- a. honesty, integrity and financial soundness;
- b. competence and capability; and
- c. financial soundness.

135. The criteria for assessing the above are set out in the Regulatory Code.

Prior to appointing a Key Person, the Regulator should assess the outcome of the following checks in respect of a proposed Key Person:

criminal records; regulatory sanctions; professional reprimands; other formal censure, discipline or public criticism; refusal of the right to carry on a trade, business or profession for which a specific licence, registration or other authority is required; refusal of entry to a trade organisation; declaration of bankruptcy (or similar); civil action; whether the person is subject to any investigation personally or in relation to any associated corporation; professional or other relevant qualifications; and knowledge and/or experience relevant to the business concerned.

136. The assessors are satisfied that all the above criteria are considered by the BVI FSC when assessing the fit and proper status of a Key Person.

Other employees

The Regulator should require a TCSP to implement controls in respect of the recruitment and ongoing assessment of all employees including directors. The Regulator should require that the TCSP:

has recruitment procedures to ensure it employs employees who are competent to perform their roles

137. The Regulatory Code and the AMLTFCOP require that the TCSP appoint competent persons to perform both prudential and AML/CFT functions.

appropriately supervises its employees

138. The BVI FSC interprets the requirement on licensees, set out in the Regulatory Code, to ensure that the licensee's business affairs are "...adequately monitored and controlled by

the directors and senior managers...” to include the duty to monitor employees, however this is not explicit. Further, the AMLTFCOP requires that TCSPs have in place adequate supervision of staff, with a focus on AML /CFT concerns.

139. During the onsite visit, the Regulatory Code was updated to introduce a requirement for licensees to maintain a clear and appropriate apportionment of responsibilities among directors and senior managers so that the employees of the licensee are appropriately supervised.

regularly reviews the competence of its employees, and that the level of competence is appropriate to the nature and size of the business

140. The Regulatory Code and the AMLTFCOP impose requirements on the licensee to monitor its staff resource needs as well as the adequacy of the appointed staffing resource, with respect to the nature and size of the business, both from a prudential and AML/CFT perspective. The Regulatory Code requires a licensee to ensure it has sufficiently qualified and experienced employees, and the AMLTFCOP requires a licensee to assess the competence and probity of its employees.

141. Thus the only explicit requirement for competence can be found in respect of AML/CFT.

142. During the assessors’ onsite visit, an amendment to the Regulatory Code was made which introduced an explicit requirement for TCSPs to ensure their employees’ competence is regularly reviewed.

ensures all employees remain competent for the role they undertake by undertaking appropriate training or professional development

143. The comments in paragraphs 140 and 141 also apply here.

144. The AMLTFCOP does include a requirement for employees to be trained in AML/CFT, but there is no explicit training requirement in the Regulatory Code.

145. During the assessors’ onsite visit, the Regulatory Code was amended to include a requirement for licensees to have policies and procedures that require their employees to be adequately trained, or to undertake sufficient professional development, to perform their duties as above.

The Regulator should require TCSPs to have procedures in place to control recruitment practices in regard to all individuals including Key Persons. The Regulator should require the TCSP to, prior to hiring an employee, give due consideration to an applicant’s:

criminal records; regulatory censure; professional reprimands; other formal censure, discipline or public criticism.

146. The assessors did not have any adverse findings in respect of this paragraph of the Standard.

Training and development

The Regulator should require that a TCSP establishes and implements policies and procedures that require its employees, including Key Persons, to undertake an annual programme of training and professional development

147. As noted at paragraph 145, the Regulatory Code has been amended to include a training requirement for employees. However, the amendment did not specify that the training or professional development must be annual.

148. The assessors found no adverse findings regarding the BVI FSC's effectiveness in this section, given that the "pre-amendment" practices promoted TCSPs ensuring professional development of key persons and employees.

Observations relating to Part 3E of the Standard - Control over vehicles

Summary

- The BVI FSC was able to demonstrate that the regulatory regime in most places is technically compliant with the Standard. However the assessors have concerns over the accuracy of beneficial ownership information, because the current definition of beneficial owner does not meet the FATF definition, and because in most cases as the TCSP is providing only a registered office the extent of monitoring of beneficial ownership is limited.
- There are a number of technical gaps, which have now been rectified by amendments to the Regulatory Code.
- Four action points have been identified by the assessors.
- The assessors have some concerns in respect of the onsite inspection process, which impacts on the BVI FSC's ability to demonstrate the effectiveness of their supervision.
- The assessors have rated this section as Partially Compliant.

Professional duties

Regulators should require that TCSPs have adequate written policies and procedures to ensure the professional performance of their duties

149. Technical compliance is met through the Regulatory Code which requires that a TCSP must establish strategies, policies, systems and controls that are appropriate given the nature, size, complexity, structure and diversity of its business, which must be fully documented and communicated to staff and other functionaries. The board and senior management's duties and responsibilities must be clearly specified.

150. The BVI FSC reviews policies and procedures during onsite inspections to assess their adequacy. A sample of inspection reports provided to the assessment team confirm this. Policies and procedures are also reviewed as part of desk-based supervision on a risk based approach. The reduction in the number of onsite inspections since 2017 has impaired effectiveness. However the BVI FSC has enforced for breaches of the AML regulations and AMLFCOP, public notices of which remind TCSPs of their obligations.

Regulators should ensure that in order to meet the requirements and obligations under the FATF Recommendations relating to money laundering and terrorist financing risk that in respect

of any Vehicle which a TCSP may incorporate, create, administer, manage or provide services to, the TCSP:

documents, verifies and keeps updated the beneficial ownership of those Vehicles as a component of its policies, procedures and controls on a customer's due diligence

151. The AML Regulations and AMLTFCOP include adequate provisions to meet this paragraph of the Standard, apart from the definition of beneficial owner which is not fully consistent with FATF requirements.
152. The assessors recommend that the definitions are updated appropriately.
153. Amendments were made to the AML Regulations in 2015 to ensure that beneficial ownership information was held within the jurisdiction. In 2017 the BVI FSC undertook a thematic review of 15 TCSPs which had confirmed that they fully complied with the amended regime. The BVI FSC's findings corroborated this.
154. The AML regulations require a TCSP to keep up to date and review customer due diligence at a minimum of three years and annually for high risk relationships. This does not strike the assessors as consistent with a standard requiring a TCSP "keeps updated" the beneficial ownership.
155. Most TCSPs met by the assessors during the onsite visit provide registered office and registered agent services. They operate risk-based periodic reviews with high risk relationships typically reviewed annually and other relationships reviewed on a three or four year cycle. In between these reviews, a TCSP will rely on trigger events to monitor for potential changes of beneficial ownership, such as notice of a filing to be made for a change of director. However the TCSP is not generally in frequent communication with a company about its activities. It has no sight over the bank account/s and does not receive periodic information from the directors to monitor if there have been any changes within the relationship which may present undisclosed or new beneficial owners which do not trigger a filing to be made at the Registry. TCSPs met by the assessors said they did not receive information about the company such as copies of a company's accounts or copies of minutes of board meetings. This may compromise the accuracy of a TCSP's beneficial ownership records.
156. The assessors recommend that the BVI FSC consider issuing guidance to TCSPs on how to meet their obligations to keep beneficial ownership information accurate and up to date where limited services are provided to clients.

knows the beneficial ownership of the source of funds being vested in those Vehicles

157. Technical compliance is achieved via the requirements of the AMLTFCOP.

158. The BVI FSC has indicated that its onsite inspections include verifying whether a TCSP has adequate CDD controls, which includes obtaining information on the beneficial ownership and the source of funds of a customer.

159. The BVI FSC has observed that most TCSPs obtain information on source of wealth and funds through an incorporation questionnaire, but the extent to which or the circumstances when the BVI FSC would expect this to be corroborated by documentation or independent sources has not been explained.

160. Additionally as most TCSP activity is in relation to the provision of registered office/registered agent only the TCSP is unlikely to know about funds being received into the company's account/s.

has policies and procedures to ensure that full documentation is held evidencing the nature of business to be engaged in, as well as the powers of any Vehicle; and

161. No adverse findings on technical compliance or effectiveness (save for the issue of reduced onsite numbers) were identified.

has policies and procedures to establish, access in a timely manner and retain documentation of beneficial ownership information for all Vehicles

162. The assessors have no adverse findings in respect of technical compliance, other than those expressed in i) of paragraph 151.

163. The BVI FSC undertakes desk-based and pre-onsite reviews of the policies and procedures of TCSPs to ascertain if a TCSP has relevant procedures for establishing and maintaining beneficial ownership. During an onsite inspection, beneficial ownership information is requested and the BVI FSC will assess the timeliness with which it is made available.

Regulators should also require that TCSPs:

have a robust system in place to establish beneficial ownership⁷ information in accordance with the FATF Recommendations

164. Technical compliance is subject to the comments made at paragraph 151. Although TCSPs are required to have systems in place their effectiveness is compromised by the regulations being out of date in respect of the definition of beneficial ownership. No adverse findings in respect of effectiveness were identified (save for the issue of reduced onsite numbers).

⁷ The Standard uses the FATF definition for beneficial owner, which refers to, "... the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement."

document the rationale for the establishment of any Vehicle

165. No adverse findings on technical compliance or effectiveness (save for the issue of reduced onsite numbers) were identified.

undertake a risk-based approach to the establishment of and monitoring of a complex structure and that they hold adequate, accurate and timely information on the rationale for its use

166. No adverse findings on technical compliance were identified, although the comments at paragraph 155 regarding the limitations upon the scope to monitor transactions apply here too where a TCSP is only acting as registered agent and providing a registered office, which will impede effectiveness.

undertake enhanced due diligence in respect of all high risk Vehicles

167. No adverse findings on technical compliance were identified, although the comments at paragraph 155 regarding the limitations upon the scope to monitor transactions apply here too where a TCSP is only acting as registered agent and providing a registered office, which will impede effectiveness.

undertake enhanced due diligence in respect of all Politically Exposed Persons

168. The assessors identified some deficiencies in the definitions of a PEP, and enhanced customer due diligence, compared to FATF requirements. It is recommended that the definitions are updated fully to meet international standards.

169. Effectiveness is subject to the comments in the preceding paragraph and at paragraph 155 regarding the limitations upon the scope to monitor transactions where a TCSP is only acting as registered agent and providing a registered office.

ensure there is adequate, accurate and current information on the ultimate beneficial ownership and control of Vehicles that can be obtained or accessed in a timely fashion by competent authorities; and

170. The comments at paragraphs 151 and 155 are relevant here.

171. The BVI FSC undertakes desk-based and pre-onsite reviews of the policies and procedures to ascertain if a TCSP has relevant procedures for establishing and maintaining beneficial ownership information. During an onsite inspection, beneficial ownership information is requested and the BVI FSC will assess the timeliness with which it is made available.

retain accurate evidence of all decisions made in the course of acting as a director or other controlling party of a Vehicle

172. No adverse findings on technical compliance or effectiveness (save for the issue of reduced onsite numbers) were identified.

The Regulator should require that TCSPs remain responsible for obtaining and documenting beneficial ownership information, even where reliance is placed on a third party⁸.

173. No adverse findings on technical compliance were identified, however effectiveness is impaired by the reduced onsite numbers and deficiencies in the definition of beneficial ownership.

Where TCSPs place reliance on third parties, the TCSP should ensure that contractual agreements with all third parties are sufficiently robust to ensure that they can fulfil the requirements set out above

174. The FATF standard on reliance includes that “When determining in which countries the third party that meets the conditions can be based, countries should have regard to information available on the level of country risk.” The AML Regulations do not stipulate from where a third party can be based or require a TCSP to assess the jurisdiction from where the third party is based. However the AMLTFCOP requires the third party to be based in a country or territory recognised by the BVI under Schedule 2 of the Code issued by the BVI FSC. The AMLTFCOP cites that jurisdictions on this list are recognised as jurisdictions which apply the FATF Recommendations, and which the BVI FSC considers apply or sufficiently apply these Recommendations. Additionally where the BVI FSC is satisfied that a jurisdiction on the list no longer satisfies the FATF recommendations it may remove them from the list.

175. This schedule lists 56 jurisdictions including the Bahamas, Iceland and Panama, which have been identified by the FATF as having strategic AML/CFT deficiencies. It also includes countries generally regarded as presenting higher ML and TF risks such as China, Mexico and Russia. There has been no assessment of the adequacy of the AML/CFT regime or of the ML and TF risks present within jurisdictions on this list. There is an increased risk for a TCSP relying on a third party in one of these jurisdictions of being provided with incorrect beneficial ownership information.

176. The assessors recommend that the BVI FSC review their own list of jurisdictions, and consider issuing guidance on how TCSPs should assess the country risk relevant to third parties on which they are relying.

⁸ FATF Recommendation 17 permits the reliance on third parties

Where TCSPs rely on third parties, the Regulator should require TCSPs to test the ability of all third parties to provide adequate beneficial ownership information upon request by the TCSP and without delay, which should also be supported by a contractual agreement

177. No technical or effectiveness deficiencies were identified by the assessors (save for the issue of reduced onsite numbers). The BVI FSC will seek to confirm that a TCSP tests its relationships with a third party and will carry out its own test on an introduced customer during an onsite inspection.

In cases where a TCSP cannot obtain beneficial ownership information from a third party, the Regulator should require such relationships should be terminated

178. The assessors have no adverse findings in respect of technical compliance or effectiveness.

Vehicle assets

The Regulator should require TCSPs to establish and document clear policies and procedures that ensure:

they act with professional skill care and diligence with regard to the administration of Vehicle assets

179. The assessors have no adverse findings in respect of technical compliance or effectiveness.
there is a segregation of Vehicle assets from those of the TCSP; and

180. No adverse findings on technical compliance or effectiveness (save for the issue of the effectiveness of the onsite inspection process) were identified.

there is a recording and monitoring of any receipt or movement of assets of a Vehicle administered by a TCSP

181. No adverse findings on technical compliance or effectiveness (save for the issue of the effectiveness of the onsite inspection process) were identified.

Client money rules

The Regulator should put in place rules for the administering of and holding of Client monies which at a minimum address:

segregation of the Client monies from the monies of the TCSP

182. No adverse findings on technical compliance or effectiveness (save for the issue of the effectiveness of the onsite inspection process) were identified.

the requirement to hold Client monies in clearly separate and distinct accounts from any accounts of the TCSP's own monies

183. No adverse findings on technical compliance or effectiveness (save for the issue of the effectiveness of the onsite inspection process) were identified.

the disclosure to Clients of the terms upon which Client money is held

184. At the time of the assessors' onsite visit, a technical gap existed as there was no explicit requirement in the regulatory regime for TCSPs to disclose to clients the terms on which their money was held.

185. This has been addressed by an amendment to the Regulatory Code, further details of which can be found at paragraph 207.

the requirement for Client money accounts to be reconciled promptly by the TCSP

186. No adverse findings on technical compliance or effectiveness (save for the issue of the effectiveness of the onsite inspection process) were identified.

to be subject to a dual signature regime; and

187. No adverse findings on technical compliance or effectiveness (save for the issue of the effectiveness of the onsite inspection process) were identified.

the establishment of policies, procedures and controls to prevent the inappropriate use of Client monies for the settlement of TCSP fees and disbursements

188. No adverse findings on technical compliance or effectiveness (save for the issue of the effectiveness of the onsite inspection process) were identified.

The Regulator should require a TCSP to implement an independent, competent, appropriately qualified, review of the controls over Client money, on a risk based approach

189. The assessors have identified adverse findings in respect of technical compliance, as there was no explicit regulatory requirement that matched this paragraph of the Standard.

190. However, the BVI FSC has updated its Regulatory Code to require Class I and Class II trust licensees (the TCSPs that hold client monies) to have an internal audit function. It is the assessors' view that this amendment does not directly address the requirement of this paragraph of the Standard, as it does not impose a requirement for the TCSP's internal audit function to review the controls over client money, on a risk based approach. The objective of this paragraph of the Standard is for an independent review of the design and effectiveness of the TCSPs controls over client money.

191. It is recommended that the Regulatory Code is amended to make the requirement for a review of the controls over client money more explicit.

Observations relating to Part 3F of the Standard - Conduct

Summary

- The BVI FSC was able to demonstrate that the regulatory regime in most places is technically compliant with the Standard.
- There are a number of technical gaps, which have now been rectified by amendments to the Regulatory Code.
- One action point has been identified by the assessors.
- The assessors have some concerns in respect of the onsite inspection process, which impacts on the BVI FSC's ability to demonstrate the effectiveness of their supervision.
- The assessors have rated this section as Largely Compliant.

Integrity

The Regulator should require that a TCSP acts with integrity and fair dealing in the conduct of its business

192. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Conflicts of interest

The Regulator should require that a TCSP's policies and procedures reflect its duty to Clients over the referrers of those Clients and maintain the highest standards of ethical behaviour in order to avoid conflicts of interest so as to always act in the best interests of the Client

193. The assessors have no adverse findings in terms of technical compliance or effectiveness.

The Regulator should require that a TCSP has clearly established policies and documented procedures to either avoid any conflict of interest arising or, where a conflict arises, to keep adequate records of such conflicts and ensure fair treatment to its Clients by disclosure of the conflict, internal rules of confidentiality, declining to act, or otherwise

194. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Interaction with clients

The Regulator should require that TCSPs adopt and maintain prudent standards in its interactions with Clients, and further require that, inter alia, a TCSP should:

ensure that, where appropriate, there is a full understanding of the duties arising under the laws relevant to the administration and affairs of Clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed are held

195. The BVI FSC's self-assessment identified a technical departure from this paragraph of the Standard. The Regulatory Code did not require a TCSP, where appropriate, to ensure full understanding of the duties arising under the laws relevant to the administration, and affairs of clients for which they are acting in the jurisdictions in which they are carrying on business, and in which the assets being managed are held.

196. The BVI FSC have now updated the Regulatory Code to require licensees to have appropriate policies and procedures in place that enable a full understanding of the duties arising under the laws relevant to the administration and affairs of its customers.

ensure that all decisions taken or transactions entered into by or on behalf of Clients are actioned in a timely manner appropriately authorised and handled by persons with an appropriate level of knowledge, experience and status

197. The assessors have no adverse findings in terms of technical compliance or effectiveness.

ensure that all reasonable steps are taken to ensure that it obtains sufficient information about the Client in order to exercise a relevant discretion or other power in a proper manner and that such discretion or power is only exercised for a proper purpose

198. A technical gap existed at the time of the assessors' onsite visit as the Regulatory Code did not directly include the content of this paragraph of the Standard.

199. The Regulatory Code has now been amended to require TCSPs to take all reasonable steps to ensure that they obtain sufficient information about their customers to exercise a relevant discretion or other power in a proper manner, and to ensure that such discretion or power is only exercised for a proper purpose.

inform the Client in writing of the agreed terms between the CSP and the Client, including the instructions received and the capacity and scope of discretion, if any, within which the CSP will act for the Client; and

200. A technical gap exists as the BVI's regulatory regime did not include any provisions requiring a CSP to agree written terms of business with its clients.

201. The Regulatory Code has been amended and now requires a BVI licensee to inform its customer, in writing, of the agreed terms of business between the licensee and the customer, including the instructions received and the capacity and scope of discretion, if any, within which the licensee will act for the customer.

establish and maintain policies, procedures and controls to monitor and ensure it always has the requisite capacity and resources to provide the services agreed with its Clients

202. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Advertising and communication

The Regulator should require that a TCSP adopts advertising and communication practices that: do not violate local and international laws; do not violate standards of prudence and fairness; are clear and ethical; do not contain any element that is in breach of laws or promotes the breach of other legislation; as far as possible, do not place the jurisdiction at risk of being brought into disrepute.

203. At the time of the assessors' onsite visit there were no explicit requirements requiring a TCSP to adopt advertising and communication practices that comply with the requirements of the Standard.

204. The Regulatory Code has been updated and now requires a licensee to adopt advertising and communication practices that promote advertisement that is clear and fair, and is free of false or misleading statements. Whilst the update is fairly broad and encompassing, in the assessors' view, it does not specifically address the requirements of the paragraph relating to the *violation of local and international laws* and requirements for advertisement *not to contain any element that is in breach of laws or promotes the breach of other legislation*.

205. It is recommended that the Regulatory Code is amended to match the requirement of the Standard more closely.

Terms of business

The Regulator should require a TCSP to enter into written terms of business with Clients for whom the TCSP has agreed to act. The terms should provide: a description of the services to be provided; the fees to be charged and the basis of the calculation of those fees; any exit fee and the basis upon which it is calculated; the means by which complaints about the TCSP's services can be made;

206. The BVI FSC's self-assessment identified a departure from this paragraph of the Standard as the regulatory regime did not require a TCSP to issue written terms of business.

207. However, the Regulatory Code has been updated to now require a BVI licensee to (i) issue a written terms of business and (ii) to ensure that agreed term of business include:

- a. a description of the services to be provided;
- b. the fees to be charged and the basis of the calculation of those fees;

- c. where applicable, the terms upon which customers' monies are to be held;
- d. any exit fee and the basis upon which it is calculated; and
- e. the means by which complaints about the TCSP's services can be made.

the Regulator should require that a TCSP's written terms of business provide that termination of a relationship be on reasonable notice, unless a good reason can be given

208. As noted at paragraph 206, the BVI regulatory regime did not require a written terms of business to be in place between a TCSP and its client.

209. An amendment to the Regulatory Code now requires a written terms of business to make provision that the relationship between a licensee and its customer shall be terminated upon giving reasonable notice, unless there are good reasons for not doing so.

Complaints handling

The Regulator should require that a TCSP:

has an effective documented complaints handling mechanism which is fair and timely

210. At the time of the assessors' onsite visit, the BVI FSC's Regulatory Code required: "*A licensee shall establish and maintain a complaints policy which provides for the effective consideration and proper handling of any complaints made to the licensee and for appropriate remedial action to be taken, where appropriate.*" However, the Regulatory Code did not explicitly require the implementation of a complaint process that is fair and timely.

211. The BVI FSC has subsequently updated the Regulatory Code to require a licensee to ensure its complaint handling mechanism is fair and timely.

212. Despite the lack of a formal requirement for a TCSP's complaints handling mechanism to be fair and timely prior to the recent amendments to the Regulatory Code, the assessors concluded that the requirement was largely effective. For example, the BVI FSC reviews any significant complaints received by TCSPs, which are required to be submitted within Compliance Officer reports. Compliance Officers from TCSPs are required to file an annual report to the BVI FSC which includes an overview of complaints received and details of resolution during the relevant reporting period.

provides advice to Clients about the TCSP's complaints handling mechanism; and

213. A departure from this paragraph of the Standard was identified as the BVI regulatory regime did not require a TCSP to disclose its complaints handling process to clients.

214. However, the Regulatory Code has been updated to require a TCSP to “*advise its customers about the licensee’s complaints handling mechanism, including providing the customers with copies of the complaints handling mechanism*”.

maintains a log of all complaints and their current status

215. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Observations relating to Part 3G of the Standard - Prudential

Summary

- The BVI FSC was able to demonstrate that the regulatory regime in most places is technically compliant with the Standard.
- There are a number of technical gaps, which have now been rectified by amendments to the Regulatory Code.
- Five action points have been identified by the assessors.
- The assessors have rated this section as Largely Compliant.

Capital and liquidity requirements of a TCSP

The Regulator should undertake an analysis of the capital and liquidity of a TCSP, based on an analysis of financial information

216. The assessors have no adverse findings in terms of technical compliance or effectiveness.

The Regulator should implement regulatory capital and liquidity requirements that:

set out minimum standards of net assets and liquidity that TCSPs must maintain, so as to reduce the risk of financial failure

217. The assessors identified partial technical departures from this paragraph of the Standard as only TCSPs with Class I, II and III licences are required to maintain minimum capital. There are eight categories of TCSP licences in the BVI (see paragraphs 70 and 71), however, two categories had no licence holders at 30 September 2019.

218. Furthermore the Regulatory Code requires minimum contributed capital instead of net assets, as required by this paragraph of the Standard. Also, the BVI FSC does not prescribe minimum liquidity that TCSPs must maintain, so as to reduce the risk of financial failure.

219. However, the BVI FSC confirmed its review of the financial statements filed by TCSPs includes an analysis of the TCSP's liquidity position using ratio analysis, and checks to ensure that retained earnings /retained loss does not reduce contributed capital below the minimum requirement. The assessors deemed these compensating mechanisms as adequate.

220. The assessors recommend that the BVI FSC consider:

- a. amending the regulatory requirements to specify that TCSPs must maintain a set level of net assets and liquidity, rather than contributed capital, and
- b. extending the financial requirements to all classes of TCSPs.

set out minimum standards of surplus liquid assets to be retained in the business, sufficient to meet the TCSP's expenditure for a specific period in the event of the need to have an orderly wind up of the TCSP; and

221. The assessors identified a partial technical departure from this paragraph of the Standard.

222. The BVI FSC does not set out minimum standards of surplus liquid assets to be retained in the business, sufficient to meet the TCSP's expenditure for a specific period in the event of the need to have an orderly wind up of the TCSP. However, a TCSP that holds a Class I, II or III trust licence is required to maintain a regulatory deposit with the BVI FSC. The regulatory deposit may be used by the BVI FSC in the "running off" and "winding up" of the TCSP's licensed business. Only TCSP licensees Class I, II and III are required to maintain a regulatory deposit.

223. The assessors recommend that the requirement for a regulatory deposit be extended to all classes of TCSP.

require TCSPs to notify the Regulator when they fall below the minimum capital and/or liquidity requirements established by the Regulator

224. The assessors identified a partial departure from this paragraph of the Standard. Whilst the Regulatory Code requires licensees to immediately notify the BVI FSC when they are in breach of the capital or financial requirements, there are no capital requirements for TCSPs other than Classes I, II and III.

225. Further, the BVI FSC does not prescribe minimum liquidity that TCSPs must maintain, so as to reduce the risk of financial failure.

226. The assessors recommend that financial requirements are extended to all classes of TCSP.

The Regulator should:

consider whether to apply restrictions on what assets may be included in regulatory capital and liquidity requirements

227. The assessors identified a partial departure from this paragraph of the Standard.

228. The BVI FSC asserts in its self-assessment questionnaire that the "Commission has considered as a matter of policy that capital requirements should be held in the form of cash at bank". However, this policy is not formalised. Further, the BVI FSC does not

prescribe minimum liquidity standards or capital requirements for TCSPs other than Classes I, II and III.

229. The BVI FSC did demonstrate to the assessors that their review of the financial statements submitted by TCSPs includes a review of the composition of assets included in the financial statements.

230. It is recommended that the BVI FSC formalise its policy of requiring capital to be held in the form of cash at bank.

take into account any deductible and claims payable for any insurance policies in force.

231. A departure from this paragraph of the Standard was identified. The BVI FSC in its self-assessment questionnaire confirmed that the *“Commission in considering a licensee’s financial soundness on an ongoing basis would assess the deductible and any claims payable in determining the financial soundness of a TCSP”*. However, there was no legislative requirement for a TCSP to notify the BVI FSC of any claim or potential claim on its insurance policies.

232. However, the BVI FSC has now updated its Regulatory Code to require TCSPs to notify the BVI FSC of any claim or potential claim on their professional indemnity insurance.

support prudential regulation by allowing peer group comparison; and

233. The BVI FSC represented that it uses statistical data from prudential returns and other sources to perform peer group comparison to support its resource allocation and risk assessment.

234. Whilst the BVI FSC does collect prudential data from TCSPs, the format does not allow for efficient peer group comparison.

define a mechanism for intervention, including triggers, where a TCSP is at risk of falling below acceptable minimums

235. The assessors have no adverse findings in terms of technical compliance or effectiveness.

The Regulator may choose exceptionally to grant a modification to the capital and liquidity requirement to reflect particular circumstances. Where a modification is granted, the Regulator may apply additional requirements to compensate for any increased risk

236. The assessors did not identify any departures from this paragraph of the Standard. The BVI FSC in its self-assessment questionnaire represented that the BVI FSC is not authorised to grant any modification to capital requirements stated in the Regulatory Code.

Maintenance of adequate accounting and other records of a TCSP

The Regulator should require a TCSP to produce and retain financial records that accurately reflect its affairs. Such records must be available to the Regulator immediately upon request

237. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Regulators should implement rules wherein a TCSP should retain sufficient accounting and financial data with regard to any financial transaction in which it played a part, to ensure the preservation of an audit trail for a minimum period of five years

238. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Regulators should implement controls to require a TCSP to maintain accounting records in a manner that is accessible and promotes inspection by the Regulator

239. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Requirement to have accounts audited

The Regulator should require a TCSP to produce financial statements, in line with the accounting standards applicable in its home jurisdiction, and to have them audited

240. The assessors have no adverse findings in terms of technical compliance or effectiveness.

A time limit for the provision of audited financial statements to the Regulator should be enforced

241. The assessors have no adverse findings in terms of technical compliance or effectiveness.

A copy of the Auditor's management letter and the management response should be presented to the Regulator

242. At the time of the assessors' onsite visit, there was a departure from this paragraph of the Standard. The regulatory regime did not require a TCSP to file a copy of the auditor's management letter and the management response with the Regulator.

243. The BVI FSC updated the Regulatory Code and now requires licensees to submit a copy of the auditor's management letter and the management response (where applicable). Notwithstanding the above comments, there are existing requirements for auditors to report to the BVI FSC where they identify matters relating to solvency, criminal offence, breach of regulatory requirements or significant weaknesses in internal controls.

A TCSP should be required to notify the Regulator on a timely basis of any decision by its Auditor to qualify its audit report or to raise an emphasis of matter

244. The assessors identified a departure from this paragraph of the Standard.

245. The BTCA and CMA require auditors to report to the Commission where they identified matters relating to solvency, criminal offence, breach of regulatory requirements or significant weaknesses in internal controls. The assessors identified this as a departure from this paragraph of the Standard, which places an obligation on the TCSP to notify the regulator on a timely basis of any decision by its auditor to qualify its audit report or to raise an emphasis of matter.

246. The assessors recommend that the regulatory regime is formally amended to introduce a requirement for TCSPs to notify the BVI FSC in a timely manner of any decision by their auditors to issue a qualified audit report or emphasis of matter.

The Regulator should require the Auditor to be suitably qualified to undertake the audit

247. The assessors have no adverse findings in terms of technical compliance or effectiveness.

The Regulator should be empowered to refuse a proposed Auditor and to remove Auditors

248. The assessors have no adverse findings in terms of technical compliance or effectiveness.

The Regulatory framework should include provisions for gateways between the Regulator and the Auditor. These should include an obligation for the Auditor to report to the Regulator on significant breaches of regulatory requirements by the TCSP, and protection from civil liability for an Auditor in respect of any such information supplied to the Regulator

249. The assessors have no adverse findings in terms of technical compliance or effectiveness.

The Regulatory framework should enable the Regulator to require copies of financial records, including audited financial statements of parent and ultimate parents entities, particularly where the TCSP is dependent on support from its parent or group, or otherwise has significant financial exposure to the parent or group

250. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Insurance

The Regulator should require a TCSP to maintain Professional Indemnity Insurance (“PII”) cover which is commensurate with the size and nature of its business

251. The assessors have no adverse findings in terms of technical compliance or effectiveness.

The Regulator should require notification to itself and insurers concerned of any material potential claim on a timely basis

252. The assessors identified a departure from this paragraph of the Standard as the BVI FSC did not require a TCSP to notify the regulator of any material potential claim.

253. However, the BVI FSC has updated the Regulatory Code to now require TCSPs to notify the BVI FSC and the TCSP's insurer of any claim or potential claim on its professional indemnity insurance.

The Regulator should give consideration to imposing requirements for the TCSP to have in place run-off PII where a licence is surrendered or revoked

254. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Liquidations and receiverships

The Regulator should have the power to apply to the Court to appoint a Manager, Administrator, Receiver or Liquidator ("insolvency practitioner") to a TCSP

255. The assessors have no adverse findings in terms of technical compliance or effectiveness.

The regulatory framework should establish whether insolvency practitioners: are required to be licensed; are subject to rules or regulations of the Regulator; are subject to other regulatory powers; and can be required to submit reports to the Regulator

256. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Observations relating to Part 3H of the Standard - Administration

Summary

- The BVI FSC was able to demonstrate that the regulatory regime in relation to record keeping and outsourcing is mostly technically compliant with the Standard.
- The main technical gap in this section relates to the absence of data protection legislation.
- There are a number of other technical gaps, which have now been rectified by amendments to the Regulatory Code.
- One action point has been identified by the assessors.
- The assessors have some concerns in respect of the onsite inspection process, which impacts on the BVI FSC's ability to demonstrate the effectiveness of their supervision.
- The assessors have rated this section as Partially Compliant.

Record keeping requirements

The Regulator should ensure that it has the statutory power to access the records of a TCSP, and to take copies of such records to undertake its regulatory functions

The Regulator should require that TCSPs have in place robust record keeping policies and procedures that deliver effective information and document management systems. The Regulator should require that a TCSP:

maintains all records so that they are accessible and up-to-date at all times as far as is reasonable

arranges files and indexes all records so as to permit prompt access to any particular record

records information in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the TCSP, in particular in such manner as to enable early identification of balances and of the particular items which make up those balances

ensures any records it maintains in an electronic format are stored in such a way as to be and remain admissible in evidence before a relevant Court

maintains adequate policies and procedures for the maintenance, security, privacy and preservation of records, working papers and documents of title belonging to the TCSP and/or its Clients or others so that they are admissible before a relevant Court and reasonably safeguarded against loss, unauthorised access, alteration or destruction; and

maintains adequate records identifying relevant financial transactions following the closing of an account, the end of a transaction or the cessation of the business relationship for a minimum period of five years from the last of these events; or for as long as the law requires

257. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Accounting requirements for vehicles administered by TCSPs

Regulators should require that a TCSP with responsibility for maintaining accounting records of a Vehicle does so with sufficient particularity to show and explain the transactions and commitments (whether effected on its own behalf or on behalf of others)

258. The BVI FSC in its self-assessment questionnaire advised that TCSPs are not required to maintain accounting records on behalf of vehicles administered by them.

259. This paragraph of the Standard is therefore not applicable and has not been assessed.

Outsourcing of key functions

The Regulator should define the functions of a TCSP which should not be outsourced, giving careful consideration to ensure that a TCSP does not delegate so many of its functions as would leave an inadequate presence in the jurisdiction

260. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Outsourcing must not hamper supervision of a TCSP by the Regulator. The terms of the outsourcing agreement must include a contractual requirement for the provider of the outsourcing services to give the Regulator the right to direct access to material which it holds in relation to the business of a TCSP⁹.

261. The BVI Regulatory Code prohibits a licensee from outsourcing an activity if the outsourcing of that activity would impair the BVI FSC's ability to supervise the licensee. However, it does not mandate that the terms of the outsourcing agreement must include a contractual requirement for the provider of the outsourcing services to give the Regulator the right to direct access to material which it holds in relation to the business of a TCSP.

⁹ This should generally include the power to conduct an on-site visit

262. While the BVI FSC requires the TCSP to have access to all documents and information relevant to an outsourced activity, and presumes it will be able to request any relevant document from the licensee, there is a departure from the Standard in relation to there not being a contractual requirement for the provider of the outsourcing services to give the Regulator the right to direct access to material which it holds in relation to the business of a TCSP.

263. The assessors recommend that the Regulatory Code is updated to require an outsourcing agreement to include this requirement.

In any instance of proposed outsourcing, the Regulator should require a TCSP to:

assess the risk of the proposal

264. The assessors did not identify any technical gaps against this paragraph of the Standard, but due to the concerns around the onsite inspection process, the BVI FSC were not able to adequately demonstrate effectiveness. This comment around effectiveness applies equally to the other paragraphs in this section.

document the capability and suitability of the proposed provider of the outsourced services

265. The assessors did not identify any technical gaps against this paragraph of the Standard.

establish a clear responsibility within the TCSP for monitoring the conduct of the outsourced services, and for reporting to the Board

266. The Regulatory Code requires the board to approve a TCSP's outsourcing policy and be responsible for ensuring that outsourcing decisions are taken and outsourced activities are undertaken in accordance with the TCSP's outsourcing policy. The assessors view this requirement as consistent with this paragraph of the Standard.

consider the risks which could arise from the failure of the provider of outsourced services or other breakdown in the provision of services; and

267. The assessors did not identify any technical gaps against this paragraph of the Standard.

have in place a contingency plan in case of the failure of the provider of outsourced services or other breakdown in the provision of services

268. The assessors did not identify any technical gaps against this paragraph of the Standard.

The Regulator should require that:

a TCSP notify it before outsourcing functions which are relevant to its management, compliance or the delivery of TCSP services

269. The BVI FSC indicated that this paragraph of the Standard is not applicable because the Regulatory Code restricts TCSP from outsourcing compliance or core management functions.

270. The assessors identified a departure from this paragraph of the Standard. In the assessors' view, the restrictions outlined in the Regulatory Code relate to the responsibility as opposed to the execution of the activity. The general presumption here is that even if the function is outsourced, responsibility still rest with the TCSP. Further, the BVI FSC's regulatory regime does not require that a TCSP notify it before outsourcing functions which are relevant to its management, compliance or the delivery of TCSP services.

271. The assessors recommend that the Regulatory Code is updated to require notification to the BVI FSC of outsourced functions.

there is an outsourcing agreement in writing between a TCSP and the provider of the outsourcing services

272. The assessors did not identify any technical gaps against this paragraph of the Standard.

if the outsourcing is of a regulated activity, then the provider of the outsourcing services should normally itself be regulated; and

273. The assessors identified a departure from this paragraph of the Standard as the BVI FSC does not explicitly require that if the outsourcing is of a regulated activity, then the provider of the outsourcing services should normally itself be regulated.

274. The assessors recommend that the Regulatory Code is updated to require the providers of outsourced regulated activities to themselves be regulated.

there is no sub-outsourcing without the explicit approval of the Regulator

275. The BVI FSC's self-assessment indicated that this paragraph of the Standard is not applicable because its regulatory framework does not allow sub-outsourcing of activities. However, this prohibition is not stated in the Regulatory Code.

276. It is recommended that the prohibition against sub-outsourcing is formalised in the Regulatory Code.

The Regulator should require a TCSP which maintains its accounting records of Vehicles and other records with a provider of outsourced services (whether or not in a location outside the jurisdiction), to ensure that:

the records are kept secure and pose no operational risk; the records are maintained so as to be readily accessible; all regulatory and confidentiality laws are complied with; and the Regulator has ready and reasonable access to the records at all times

277. The assessors identified a departure from this paragraph of the Standard. The Regulatory Code requires an outsourcing agreement to specify the protection by the service provider of confidential information with respect to the licensee or its customers. However, the assessors deemed this a departure from the standard as the requirement is not as comprehensive as the requirement in the Standard.

278. The BVI FSC confirmed that TCSPs are not required to maintain the accounting records of vehicles. Notwithstanding this, the assessors recommend that the Regulatory Code is updated to incorporate this requirement of the Standard, to ensure that in cases where accounting records of clients are maintained, that their security is not compromised.

Data security

The Regulator should require that data (whether in a physical or digital format) is held in a secure manner. This should include reasonable steps to ensure:

security against theft or unauthorised access; security against loss or destruction; compliance with the statutory requirements which apply to the TCSP; and suitable backup and disaster recovery arrangements

279. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Data protection

The data protection principles framework for holding data about individuals varies slightly between jurisdictions, but the principles can be summarised as below. Personal data must be:

used fairly and lawfully; used for specific and lawful purposes, in a manner that is compatible with those purposes; adequate, relevant and not excessive; accurate and where necessary kept up to date; kept for no longer than necessary; used in accordance with the rights of individuals; and kept secure to avoid unauthorised or unlawful use, accidental loss, or damage

Regulators should require a TCSP to follow the above data protection principles and to:

not transfer data to another jurisdiction unless that jurisdiction subscribes to the above principles or an agreement exists between the TCSP and transferee providing an equivalent level of protection; document the capability and suitability of the proposed provider of outsourced services; establish a clear responsibility within the TCSP for monitoring the conduct of the outsourced services, and for reporting to the Board; consider the risks which could arise from the failure of the provider of outsourced services or other breakdown in the provision of services; and have in place a contingency plan in case of the failure of the provider of outsourced services or other breakdown in the provision of services

280. There are no data protection laws enacted in the British Virgin Islands.

281. The BVI FSC confirmed there are ongoing government initiatives focused on developing data protection regulations. However, specific details and timelines were not available to the assessors for review at the time of the on-site visit.

282. The assessors recommend that the BVI FSC work with the government to progress the implementation of data protection legislation to enable the jurisdiction to comply with internationally recognised standards.

Observations relating to Part 3I of the Standard - Financial Crime and International Sanctions

Summary

- **The BVI FSC was able to demonstrate that the regulatory regime is in some places technically compliant with the Standard, however the assessors do not consider that the regime fully complies with the FATF's 2012 Recommendations. Together with deficiencies in the jurisdiction's assessment of its ML and TF risks in the NRA, the assessors have concerns over effectiveness.**
- **There are some technical gaps that have yet to be addressed.**
- **Six action points have been identified by the assessors.**
- **The assessors have some concerns in respect of the onsite inspection process, which impacts on the BVI FSC's ability to demonstrate the effectiveness of their supervision.**
- **The assessors have rated this section as Partially Compliant.**

The Regulator should require TCSPs to have policies, procedures and controls to ensure that their business is protected from the threats of money laundering, the financing of terrorism and other financial crime.

Regulators should require TCSPs to have policies, procedures and controls to ensure that they and entities that they control and administer do not become engaged directly or indirectly in bribery, corruption or other crimes.

283. The AML Regulations impose general requirements upon TCSPs to maintain identification procedures, record-keeping procedures, internal reporting procedures, internal controls, and communication procedures, which are appropriate for the purposes of forestalling and preventing money laundering. The AML Regulations are enforceable and carry criminal penalties for non-compliance.

284. The AMLTFCOP requires a TCSP to establish and maintain written and effective systems of internal controls which provide appropriate policies, processes and procedures for forestalling and preventing money laundering (ML) and terrorist financing (TF).

285. Although some amendments have been made, the AML Regulations and AMLTFCOP would require amendments to ensure that the AML/CFT Regime is fully compliant with the FATF's 2012 International Standards.
286. The AML Regulations are not compliant with the FATF Recommendations as revised in 2012, and make little reference to measures for countering terrorist financing. For example, there is no obligation to establish procedures for reporting suspicion of terrorist financing or to provide training to staff on the topic. This could present an enforcement issue should a TCSP fail to establish appropriate measures to counter terrorist financing.
287. The Regulatory Code also contains provisions that a licensee establish policies, systems and controls that prevent it being used intentionally or unintentionally for fraud or other criminal activities and enable it to detect and remedy fraud or other criminal activity.
288. During the time of the onsite assessment in November 2019, the BVI FSC was in the process of undertaking a benchmarking exercise against the 2012 FATF standards, separate to the review against the standard undertaken within its NRA exercise.
289. Presently TCSPs are applying measures which are not fully compliant with international standards.

AML/CFT Policies

The Regulator should require that TCSPs assess risks and apply a risk-based approach to discharging their AML/CFT obligations. The Regulator should require TCSPs to:

290. The AMLTFCOP requires a TCSP to undertake ML and TF risk assessments of each customer, business relationship or one off transaction to determine the risk present and how best to manage and mitigate those risks.
291. The BVI undertook its first national risk assessment (NRA) in 2017 and issued a public version that July. The public NRA does not highlight ML or TF risks for the BVI. There is a very limited risk assessment on the ML and TF risks posed by trusts and companies in particular which form the bulk of the BVI financial services offering.
292. It identifies instead for each authority and each sector risks within activities, processes or measures. In the absence of an analysis of the ML and TF risks the jurisdiction is exposed to, it is difficult to see how a TCSP can apply an effective risk based approach to discharging its AML/CFT obligations if it does not know what risks the jurisdiction faces.
293. The NRA identified the need for TCSPs to review their policies and procedures to ensure effectiveness of controls relating to senior management oversight, risk assessment, suspicious transaction and activity reporting, internal controls, recordkeeping and training.

During 2017, all TCSPs had to confirm to the BVI FSC that they had fully implemented effective controls.

294. The private sector was involved in the development of the NRA via surveys and interviews. TCSPs met by the assessment team commented that the NRA was “rather old” and uninformative on the ML and TF risks to the BVI.

295. There is a non-public version which was not available to the assessment team. The BVI FSC recognises that more information on ML and TF risks needs to be in the public domain.

296. The assessors recommend that the BVI FSC work with the government to refresh the NRA and publish further information about the ML and TF risks facing the jurisdiction.

identify, assess, and understand the money laundering and terrorist financing risks for their jurisdiction and the TCSP sector, and apply resources aimed at ensuring those risks are mitigated effectively;

identify, assess and document a ML/FT risk assessment relevant to their business, based on their business plans and risk profiles (for example, customer base, markets, distribution channels and products and services offered)

ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified; and

implement a suitable AML/CFT programme with effective oversight over the Vehicles for which they act. The programme should include the implementation of adequate controls to mitigate any identified money laundering and terrorist financing risks

297. The AMLTFCOP requires a TCSP’s written system of internal controls to provide “increased focus on the entity’s or professional’s operations, such as its or his products, services, customers and geographic locations, that are more vulnerable to abuse by money launderers, terrorist financiers and other criminals”.

298. The AMLTFCOP requires a ML and TF risk assessment for new products, and ML and TF risk assessments in relation to each customer, business relationship or one-off transaction.

299. There are no obligations within the AML regulations or AMLTFCOP for a TCSP to identify, assess and understand the ML and TF risks its business faces as a whole and apply corresponding measures.

300. The absence of a requirement for a TCSP to undertake a business risk assessment is being considered as part of the FATF 2012 standards benchmarking exercise (see paragraph **Error! Reference source not found.**).

National co-operation and co-ordination

The Regulator should ensure that it has legal authority and effective mechanisms in place which enable it to co-operate, and, where appropriate, coordinate domestically with policymakers, the Financial Investigation Agency (FIA), law enforcement Authorities, Regulators and other relevant competent Authorities concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction

301. Technical compliance is met through the AMLTFCOP, which provides the mechanism by which the Financial Investigation Agency (the FIA) and the BVI FSC can cooperate and exchange information for the purposes of detecting and preventing ML and TF. This includes notice of any activities that involve or may relate to potential criminal conduct, rendering of assistance to each other and the promotion of cooperation with a foreign authority in relation to ML or TF.
302. The AMLTFCOP also enables both authorities to cooperate and exchange information with other BVI public authorities including the Attorney General's Chambers, Customs, RVI Police, the Office of the Director of Public Prosecutions, Post Office, Airport Authority, Immigration Department, Shipping Registry, the Trade & Investment Promotion Department and any other department or authority with a key function in preventing ML and TF.
303. The AMLTFCOP also requires the FIA and BVI FSC to promote cooperation with the Joint Anti-Money Laundering and Terrorist Financing Advisory Committee, a public and private sector statutory body that advises on ML and TF initiatives.
304. There is an MOU between the BVI FSC and the FIA.
305. The BVI has established a national structure for coordination and cooperation on ML and TF matters. At the apex is a national coordinating body. It is supported by four committees including the joint advisory committee, an intergovernmental committee, Council of Competent Authorities and Committee for Law Enforcement Authorities. The BVI FSC is represented on the coordinating body and each of the four committees. It was a key party in the development of the NRA.
306. The managing director of the BVI FSC is on the Board of the FIA. There is regular dialogue on a quarterly basis between the BVI FSC and FIA, and consideration is being given to include the Financial Crime Unit of the RVI Police in these meetings.
307. Referrals by the BVI FSC to law enforcement would be made on the direction of the BVI FSC's Enforcement Committee. Referrals from Law Enforcement to the BVI FSC would be considered initially by the Enforcement Committee which would determine the relevant division to deal with it.

308. The BVI FSC provided examples of two referrals from the FIA, which it took forward to establish if there were supervisory or enforcement issues to address.

309. The BVI FSC receives no information from the FIA on suspicious transaction or activity reporting by TCSPs. Such information would assist it in applying an effective risk based approach, including assisting in identifying trends, emerging issues and under-reporting TCSPs, and the assessors recommend that the BVI request the FIA to provide SAR data on a regular basis.

Regulation and supervision

The Regulator should ensure that TCSPs are subject to regulation and supervision and have policies, procedures and controls which effectively implement the FATF Recommendations by undertaking on-site inspections. The Regulator should:

require that TCSPs be licensed or registered and adequately regulated, and subject to supervision or monitoring for AML/CFT purposes, having regard to the risk of money laundering or terrorist financing in the trust company business sector. This requirement is in addition to the requirement for the TCSP to be licensed to conduct trust and company business as provided for in Section A

310. Technical compliance with the Standard is met, as a TCSP must be licensed under the CMA or BTCA. An entity licensed under these acts is subject to the AML Regulations and the AMLTFCOP. The BVI FSC confirmed that there are no exemptions from licensing.

311. The FSCA gives the BVI FSC powers to undertake onsite inspections with reasonable notice and without reasonable notice where the circumstances justify such action.

312. The BVI FSC introduced a risk assessment methodology in 2017 which includes an assessment of the quality of a TCSP's financial crime management policies. This contributes to an overall categorisation of a TCSP into one of five priority "buckets" which then determines the level of supervisory engagement. The other factors which are taken into account, are prudential or conduct in nature, which could dilute the overall assessment of ML and TF risks and result in supervision which is not commensurate with the ML or TF risks present within that TCSP but based upon other factors.

313. The categorisation of TCSPs into these priority "buckets" was taking place at the time of the assessors' onsite visit in November 2019.

314. An annual prudential and statistical return to the BVI FSC provides business data on the amount of business a TCSP has including data relevant for AML/CFT purposes, but it excludes data on the number of relationships with Politically Exposed Persons, no information on the geographic location of clients (at jurisdiction level) or the number of

Suspicious Activity Reports filed with the FIA. This information would assist the BVI FSC in more fully assessing the ML and TF risks posed by a TCSP and the assessors recommend that this information is collected in future.

have adequate powers to supervise or monitor, and ensure compliance by, TCSPs with regard to combatting money laundering and terrorist financing;

require that TCSPs provide an explanation of any recorded information or state where it may be found;

verify the TCSPs' compliance with AML/CFT requirements by undertaking regular on-site inspections;

be authorised to compel production of any information from TCSPs that is relevant to monitoring such compliance

315. Technical compliance is met through the following:

316. The FSCA includes a general provision to supervise and monitor compliance with the Proceeds of Criminal Conduct Act, AML Regulations and AMTFCOP, and other relevant enactments relating to ML and TF. There is a specific provision enabling the BVI FSC to require a regulated person to submit a return for statistical analysis or supervisory purposes.

317. Under the FSCA, the BVI FSC can compel the production of information or documentation from a TCSP, and the FSCA also covers undertaking of onsite inspections.

318. As indicated at paragraphs 38 to 41 there have been delays in providing feedback from onsite inspections undertaken since 2015. Only a small number of TCSPs have been inspected since 2017 due to Hurricane Irma.

have the legal powers and internal procedures to impose sanctions on TCSPs for failing to comply with the AML/CFT regulatory framework established by the Regulator or failing to provide information requested by the Regulator

319. The FSCA empowers the BVI FSC to take enforcement action where it is of the opinion that the AML Regulations and AMTFCOP and other relevant enactments have been contravened. It can also take enforcement action if a TCSP fails to comply with a direction or contravenes the FSCA, which would include a failure to provide information sought.

320. The FSCA also establishes an Enforcement Committee comprising senior members of the BVI FSC.

321. The BVI FSC has applied a range of penalties for AML/CFT failings. This included using powers to fine, issue public statements, suspend individuals, place restrictions on a licence and require the appointment of an additional director.

322. It has internal processes for referring cases to enforcement.

have the ability, supported by legislation, to impose a range of disciplinary and financial sanctions, including the power to withdraw, revoke, restrict or suspend the financial institution's licence, where applicable and to issue directions to TCSPs

323. The powers to impose a range of penalties are set out in the FSCA including licence revocation or suspension, applying a financial penalty, and issuing a public statement. The BVI FSC can also impose a prohibition, restriction or limitation on the licensee.

324. The AMLTFCOP sets out the offences and financial penalties which apply to breaches.

325. An amendment to the FSCA in 2016 gave the BVI FSC powers to prohibit a natural person from holding an approved position. An "approved position" includes a director, senior manager, significant owner or other independent officer but it does not include an MLRO (see paragraph 130).

326. The BVI FSC explained that most MLROs also hold the Compliance Officer role, which is an approved position. It provided a case where it had denied the appointment of an individual as the Compliance Officer and MLRO.

Bribery and corruption

Regulators should require TCSPs to have systems and policies, procedures and controls in place to ensure that they or entities that they control and administer do not become engaged directly or indirectly in bribery or corruption

327. The UN Convention against Corruption has been extended to the BVI. Corruption offences are set out in the Criminal Code and cover private and public sector corruption.

328. The AMLTFCOP requires TCSPs to conduct ongoing monitoring of a business relationship and transactions which are undertaken by the customer, and the circumstances and business of the customer. The BVI FSC contends that this means that the monitoring arrangements a TCSP has to have in place will ensure that a TCSP does not become engaged directly or indirectly with bribery or corruption. Additionally if a suspicion of bribery or corruption arises this would have to be reported to the FIA.

329. The TCSP sector provides registered office and registered agent services to approximately 400,000 BVI companies. The books and records for most of these companies are maintained outside the jurisdiction. Only a small number of companies hold bank accounts

within the BVI to which TCSP staff will be authorised signatories on transactions over the account.

330. There is no requirement for the registered agent to collect accounts for a company or obtain information from the directors of the company about its activities or transactions. TCSPs met onsite by the assessors review their high risk clients annually and the remainder on a four year cycle unless a trigger event occurs. Larger TCSPs have invested in automated screening systems to pick up public source information about their clients but this will not identify individual company activities and transactions. The BVI FSC has issued no guidance on how it expects registered agents to monitor the activities of a company.

331. As a BVI company may be a holding company or carry out trading activities anywhere in the world, including jurisdictions generally regarded as presenting higher risks of bribery and corruption, the assessment team has concerns regarding effectiveness of the measures TCSPs must have to guard against bribery and corruption risks.

332. The assessors recommend that the BVI FSC issues guidance to TCSPs on the systems and controls TCSPs should have in place to counter bribery and corruption by their clients.

The Regulator should prohibit TCSPs from:

soliciting, receiving or accepting bribes or gifts, inducements, rewards or advantage that is likely to conflict with the TCSPs' duty to any Client, to facilitate breach of the regulatory framework or to facilitate the commission of an offence under any law applicable to the TCSPs or to the person offering the bribe, gift, inducement, reward or advantage;

being involved or offering services to corrupt entities or individuals. In this context "entities" includes any entity, whether incorporated or not offering, promising or giving a bribe, gift, inducement or other benefit to a public official as consideration for co-operation, assistance, exercise of influence or act of omission in connection with any transaction or business relating to a governmental matter or a claim, advantage, approval or exemption that the government is entitled to bestow, whether or not the public official is willing or able to render such assistance; and

directly or indirectly, offering, promising, giving, or demanding a bribe or other undue advantage to obtain or retain business, to facilitate a breach of any law or other improper advantage

333. The Regulatory Code requires TCSPs to have policies, systems and controls to i) promote high ethical and professional standards, ii) prevent the licensee being used intentionally or unintentionally for fraud or criminal activities and iii) enable the TCSP to detect fraud and other criminal activity.

334. The BVI FSC maintains that this prevents a TCSP from soliciting, receiving or accepting bribes, gifts or inducements etc. It reviews policies and procedures during onsite inspections.

335. The BVI FSC also cited Section 19 of the AMLTFCOP requiring TCSPs to conduct ongoing monitoring of a business relationship and transactions which are undertaken by the customer, and the circumstances and business of the customer.

336. As indicated in the preceding section the assessment team has concerns that registered agents receive little information on the activities and transactions of the companies for which they act, which undermines the effectiveness of the Regulatory Code.

Policies, procedures and controls

Regulators should require that TCSPs promote employee awareness of Financial Crime Risk and compliance with its policies, procedures and controls

337. The BVI FSC refers to the Regulatory Code requiring TCSPs to have policies, systems and controls to i) promote high ethical and professional standards, ii) prevent the licensee being used intentionally or unintentionally for fraud or criminal activities and iii) enable the TCSP to detect fraud and other criminal activity. The policies to be maintained include a clear formal customer acceptance policy.

338. In addition the Regulatory Code requires senior management to ensure that “all staff of a licensee are made aware of and understand the strategies, policies, systems and controls established and maintained by the licensee”.

339. The AMLTFCOP requires a TCSP to ensure that its employees receive appropriate training on anti-money laundering and countering terrorist financing.

340. The BVI FSC will assess employees’ knowledge of policies and procedures during an onsite inspection. Additionally as part of the annual compliance report, a TCSP must submit a training register covering combatting ML risks.

International sanctions

An effective sanctions regime in relation to terrorism and proliferation financing is required under Recommendations 6 and 7 of the Financial Action Task Force Standards. Regulators should monitor the readiness of TCSPs to comply with sanctions regimes. Testing regulatory compliance with the sanctions regimes should form part of their on-site and off-site supervision

341. The framework for implementing UN and EU sanctions in the BVI is through Orders in Council applied to the Overseas Territories by the UK. These orders are sent to the

Governor's Office, which is the competent authority for the BVI's sanctions regime. It gives notice of the new or amended listings to both the BVI FSC and FIA.

342. The FIA's website has a link to the consolidated list issued by the UK Office of Financial Sanctions Implementation. The BVI FSC publishes sanctions orders on its website but at the time of the onsite visit in November, the latest notices on its website were those notices issued in June 2019. Several Orders in Council had been made since. The notices are located in the news section and not on a dedicated page, which would make it easier for TCSPs to locate.
343. The assessors recommend that the BVI FSC reviews the way in which sanctions notices are published on its website, with a view to keeping them up to date and easily accessible.
344. The BVI FSC informed the assessment team that TCSPs would assess customers against UNSCR lists as part of the customer due diligence process. It will assess whether a TCSP's CDD processes take into account relevant UNSCR through its examination of client files to determine the level of adherence to these processes including sanction screening. Specifically it assesses whether written controls are in place to: i) identify sanctioned persons, ii) to manage risks of clients associated with a sanctioned country /individual, iii) training of staff to ensure they have appropriate knowledge and understanding of relevant sanctions regimes and iv) the conduct of an audit so as to identify any deficiencies in the controls.
345. In the BVI FSC's experience, TCSPs screen new clients at take on and existing clients when there are changes to their profile, which would trigger a review. Most firms use commercial databases to screen clients but the BVI FSC could not offer a view on industry practice on the frequency of screening or to whom it is applied.
346. Documents seen by the assessors relating to the BVI FSC's onsite inspections conducted since 2017 did not refer to examining a TCSP's screening systems or applying a test.
347. The frequency and depth of screening applied by TCSPs appears to vary. In discussion with assessors, one large TCSP advised that it runs overnight screening of all its clients including directors, shareholders and underlying beneficial owners, but other TCSPs indicated that they would screen new clients and only screen existing clients upon trigger events or as part of a periodic review. There was also an inference of reliance on screening by parent offices located outside the jurisdiction.
348. The BVI FSC has issued no guidance on screening but has delivered presentations on sanctions at seminars organised by the BVI Association of Compliance Officers in 2018 and 2019. In the presentations it set out the supervisor's expectation that screening should cover new customers, and be applied to existing customers when new designations are

published. It also set out that licensees should be testing their controls frequently (more than annual).

349. The assessors recommend that the BVI FSC review the effectiveness of their supervisory processes in respect of TCSPs' compliance with sanctions.

The Regulator should require that TCSPs:

have adequate procedures to identify their obligations and comply with national laws on financial sanctions. Implementation should include the development of proportionate and adequate systems, internal controls and processes to satisfy relevant sanctions requirements and manage overlapping sanctions regimes;

ensure that their policies and procedures on sanctions legislation are compliant and being applied in practice. Adequate resources must be allocated to monitoring sanctions compliance. Regular risk assessments and AML/CFT audits are recommended to help assess the effectiveness of the policies and procedures;

350. The AMLTFCOP requires a TCSP to establish internal control systems to provide appropriate policies, procedures and controls to forestall and prevent money laundering and terrorist financing. The section lists a number of areas which controls should cover, but does not refer specifically to procedures for identifying designated/sanctioned parties.

351. The assessors have some concerns in respect of effectiveness in respect of this section of the Standard (see paragraphs 346 to 348).

ensure that their staff possess the appropriate knowledge, competencies, awareness and understanding of relevant sanctions regimes, especially staff charged with developing and implementing systems of compliance and policies, procedures and controls

352. The BVI FSC advised that the AMLTFCOP sets a general requirement for training which would extend to a TCSP having to provide employees with training on sanctions screening and the process and procedures that are required if a designated person is identified.

353. The AMLTFCOP sets out that a TCSP shall ensure that staff receive appropriate and proportionate training to the standard and level required by the AML Regulations in relation to ML and TF, and employ appropriate systems and procedures for testing the awareness and understanding of employees with respect to the training provided to them.

354. The BVI FSC cited that it assesses whether training on sanctions is included in a TCSP's training programme. It also questions a TCSP's employees on their knowledge about sanctions.

inform the relevant competent Authorities forthwith where they know or suspect a Client or a person with whom the TCSP has or has had business is affected by a relevant sanction

355. The relevant authority is the Office of the Governor. It has issued one licence in each year of 2014, 2015 and 2017.

356. From the shortcomings identified in respect of supervision, and information from TCSPs indicating uneven sanction screening practices, the assessors have some concerns that designated individuals or entities are not being identified.

357. TCSPs could be required to advise the FSC if they have clients that have been impacted by sanctions and whether they have made reports to the relevant Authority. Also, TCSPs should be required to satisfy the FSC that it has controls in place to identify such scenarios with sanctions and make reports.

Observations relating to Part 3J of the Standard - Co-operation

Summary

- **The BVI FSC was able to demonstrate that the regulatory regime is technically compliant with the Standard and is effective in practice.**
- **No action points have been identified by the assessors.**
- **The assessors have rated this section as Compliant.**

Information sharing

The Regulator should have the legal authority and sufficient resources to obtain and share both public and non-public information with domestic and foreign counterparts without the approval of another body or government department. The existence of a Memorandum of Understanding (“MOU”) should not be a pre-requisite to exchanging information

358. The FSCA gives the BVI FSC the power to share information with foreign regulatory authorities, competent authorities and other persons who have functions relating to the prevention or detection of financial crime.

359. Statistics provided by the BVI FSC in the self-assessment document show many more requests are received than outgoing requests made.

360. The NRA recommended a shorter turnaround time by the BVI FSC for incoming requests.

361. The BVI FSC advised assessors that MoUs extend to TCSP services where TCSPs are regulated by the other party to the MoU, and that information can be shared without an MoU. Assessors were advised that the BVI FSC actively shares information with other regulators and they are a member of FIN-NET.

362. Statistics were provided by the BVI FSC during the assessors’ onsite visit that show that average response times to requests from foreign regulators have decreased from 23.5 days in 2018 to 11.5 days in 2019 (to date of visit). The statistics showed 6 outgoing requests in 2018 and 14 in 2019 (to date of visit).

The regulatory system should allow for assistance to be provided to foreign Regulators who make enquiries in the discharge of their supervisory functions and exercise of their powers, including for purposes of day-to-day supervision, investigations and inquiries and enforcement. Information sharing mechanisms and procedures should extend to sharing information both in the context of regular supervision and in other conditions, including crisis situations

363. The assessors have no adverse findings in respect of technical compliance or effectiveness. The BVI FSC are a party to the GIFCS Multilateral MoU.

Requested Regulators may impose conditions on the use of the information by the Requesting Regulator, including limiting the use of the information by the requesting authority

364. The FSCA allows the BVI FSC to impose such conditions as it deems appropriate when sharing information. The BVI FSC have confirmed that when responding to requests for information, they include a statement that the information should not be disclosed without the consent of the BVI FSC.

365. In addition, the BVI FSC have confirmed that this requirement is generally a standard clause within MoUs to which the BVI FSC is a party.

Regulators should have the legal authority to enter into information sharing mechanisms, including MOUs, with other Regulators and Competent Authorities

366. The assessors have no adverse findings in respect of technical compliance or effectiveness. The BVI FSC are a party to 15 MoUs.

The mechanisms established by a Regulator to share information should cover information sharing on a timely and constructive basis at the Regulator's own initiative and also on request

367. The BVI FSC has issued a Handbook on International Co-Operation and Information Exchange, which is published on its website.

368. The Handbook sets out the BVI's regime for information sharing and gives guidance on how to make requests for legal assistance and cooperation in regulatory and tax matters.

369. During the onsite visit, the assessors were informed that although there are examples of proactive information sharing in recent years by the BVI FSC, none relate to TCSPs.

Regulators that receive information from another Regulator should have measures to ensure that the information is kept confidential, used only for supervisory purposes and is not disclosed to any third party without the other Regulator's prior approval

370. The FSCA defines "protected information" and sets out the legal gateways by which the BVI FSC may disclose protected information.

371. The assessors have no adverse findings in respect of technical compliance or effectiveness.

Information sharing mechanisms could, where appropriate, include establishing colleges for supervisory co-operation and exchange of prudential supervisory information in relation to TCSPs whose operations extend to different jurisdictions

372. The assessors have no adverse findings in respect of technical compliance or effectiveness. The BVI FSC had participated in seven TCSP supervisory colleges at the time of the onsite visit.

Regulators should adopt a pro-active approach to sharing information in a coordinated, timely and effective way during each stage of the regulatory relationship pertaining to a TCSP.

Regulators should inform any other Regulator concerned with a TCSP as soon as possible when taking any action that might reasonably be considered to affect that TCSP

373. The assessors have no adverse findings with respect to technical compliance.

374. During the onsite visit, the assessors were informed that the BVI FSC actively shares information with other regulators, and although there are examples of proactive information sharing in recent years by the BVI FSC, none relate to TCSPs.

Other forms of co-operation

Regulators should have the legal ability to provide assistance to foreign Regulators upon request

Regulators should have the legal authority to allow a foreign counterpart to conduct an onsite inspection of a TCSP operating in the Regulator's jurisdiction that is also regulated by the foreign counterpart

Regulators should have mechanisms to collaborate with each other and other competent authorities in exercising their functions in the case of suspected or actual criminal activities by a TCSP. The existence of a MOU should not be a pre-requisite to exchanging information

375. The assessors have no adverse findings in respect of technical compliance or effectiveness.

376. The FSCA allows the disclosure of protected information with a view to the institution of criminal proceedings. The AMLTFCOP establishes a domestic cooperating and coordinating body on AML/CFT matters.

377. The Inter-Governmental Committee on AML/CFT was established in 2009, and in 2014 an MMoU was established between the members. Members include all relevant competent authorities and government bodies that relate to the BVI's AML/CFT framework.