

British Virgin Islands Financial Services Commission

Consolidated Supervision Policy



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Contents

A. Introduction	3
B. Background	4
C. Commission as Host Supervisor	5
D. Commission as Home Supervisor	6
E. Supervisory Relationship: Home-Host Cooperation	7

A. Introduction

1. The BVI Financial Services Commission (“the Commission”), as an autonomous regulatory authority responsible for the regulation, supervision, and inspection of all financial services in and from within the Virgin Islands, must uphold the integrity of the Virgin Islands as a well-regulated international finance centre and safeguarding the economic interests of the Territory by:

- protecting the interests of the general public and market participants;
- ensuring industry compliance with the highest international regulatory standards and best business practices; and
- ensuring that the Virgin Islands plays its part in the fight against trans-national crime while safeguarding the privacy and confidentiality of legitimate business transactions.

2. The Commission, established through the Financial Services Commission Act, authorises and supervises entities and persons who conduct financial services business in compliance with relevant Virgin Islands legislation.

3. The following regulated activities are considered financial services business:

- a) Insurance – includes the provision of insurance products and related services covering insurers, insurance brokers, insurance agents, insurance loss adjusters and insurance managers;
- b) Banking - includes the provision of general banking services including loans, savings accounts, and fixed deposits;
- c) Fiduciary Services - includes the provision of trustee services, company management business, registered office and registered agent services, directorships and other services;
- d) Investment Business - includes services related to the dealing or arranging of deals in investments, managing investments, providing investment advice, providing custodial or administration services with respect to investments, operating an investment exchange;
- e) Financing and Money Services Business - includes the provision of credit under financing agreements, leasing of property under a financing lease, provision of money transmission services, cheque cashing services, currency exchange services, the issuance, sale or redemption of money orders or traveler’s cheques, as well as the provision of lending in the peer-to-peer (P2P) FinTech market, including peer-to-business (P2B) and business-to-business (B2B) markets; and
- f) Insolvency Services - includes appointments as administrators, administrative receivers, interim supervisors, supervisors, provisional liquidators, liquidators or bankruptcy trustees.

B. Background

4. The objective of the Consolidated Supervision Policy (“the Policy”) is to ensure that the Commission has mechanisms in place to identify, assess and mitigate the risks of a licensee which forms part of a group. The Policy forms a part of and will operate in conjunction with the Commission’s Risk Assessment Framework. The Commission seeks to ensure that where it acts as home or host supervisor for licensees operating within or outside the Virgin Islands that form part of a group structure that such entities are subject to effective consolidated supervision. Such consolidation will be from a prudential, conduct and anti-money laundering/countering the financing of terrorism (“AML/CFT”) perspective. This Policy will buttress the requirements in the Regulatory Code, which deals with consolidated supervision and groups in general, and makes it clear that the application of consolidated supervision applies to all regulated entities once criteria have been met and the Commission determines that consolidated supervision is required to mitigate risk. The Commission may make a determination of whether consolidated supervision is required at the stage of licensing or at any stage during which the entity remains regulated.

5. The Commission’s overall considerations will be based on identifying, understanding, assessing and mitigating any risk to the regulated entity, its customers/clients/investors, the Commission, other impacted stakeholders, as the case may be, and the jurisdiction. All consideration will be risk-based, having regard for the Commission’s Risk Assessment Framework. The Commission will assess the risk of the regulated entity, the group, other group members and any other connected entity or person considered necessary.

6. Financial globalisation and technological innovations have stimulated the increase in cross-border operations, resulting in financial groups being considered as the leading institutional structures in the financial services industry. Financial institutions usually benefit from synergies formed within a wider group; however, such participation also increases their vulnerability to certain risk factors. On this basis, additional scrutiny and supervision geared towards addressing any threats and systematic risk of a group are needed, hence the benefits of consolidated supervision.

7. Consolidated supervision is a group-wide comprehensive approach to supervision which includes the assessment and evaluation of the strength of an entire group, while taking into account the group’s reputation and financial soundness, as well as the overall risks which may affect the group regardless of whether the risk is identified within the regulated entity or an affiliate entity within the group. Consolidated supervision should be viewed as a complement to, rather than a substitute for, the independent standard of licensing and governance implemented for regulated entities.

8. Consolidated supervision typically requires an assessment of both quantitative and qualitative factors. The quantitative factors involve an assessment of prudential returns and financial statements which utilises an approved accounting model to determine, among other things, aggregate risk exposure levels and adequacy of capital, current circumstances (earnings, NAV etc.), AML/CFT risks, geographical makeup of clients, funding, solvency and liquidity for all relevant financial entities in the group. In contrast, qualitative consolidated supervision focuses on the suitability and appropriateness of corporate structures, risk management, board and

management oversight, internal controls, degree of complexity of the structure, ultimate beneficial ownership, corporate governance, and transparency. Consolidated supervision extends beyond accounting consolidation to the assessment of qualitative information about the entities within the group. Group-wide supervision should keep an updated map of the group's structures and, through investigation and proactive licensing, seek to prevent complex structures that may hinder the effectiveness of regulation and supervision.

C. Commission as Host Supervisor

9. The Commission will generally be considered as the host supervisor when the Virgin Islands regulated entity is a subsidiary of an entity regulated in a foreign jurisdiction. Where the Commission acts as the host regulator, the Commission will engage mechanisms to ensure and verify that the entity's home supervisor conducts consolidated supervision and that such supervision is within acceptable parameters.

10. In making an assessment of whether consolidated supervision is conducted in accordance with the standards acceptable to the Commission, the Commission will take into account whether or not the home country supervisor adheres to internationally recognised standards such as the Basel Core Principles, the International Association of Insurance Supervisors Core Principles, the Core Principles of the International Organisation of Securities Commissions, Group of International Financial Centre Supervisors, Group of International Insurance Centre Supervisors or any other international standard considered appropriate by the Commission. The Commission will directly engage with the home country supervisor to agree on acceptable parameters.

11. The Commission will not grant approval or authorisation unless it receives written confirmation from the home supervisor that:

- a. there is no impediment to sharing information on the group;
- b. there is no objection to the establishment of a branch or subsidiary in the Virgin Islands;
- c. there are no regulatory concerns with respect to the parent company and its affiliated entities, ultimate beneficial owners, management and other persons within the group; and
- d. the branch or subsidiary will be included in the consolidated supervision of the parent entity.

12. A regulated entity or applicant for a licence must submit, to the Commission, an Organisational Chart for the group to which it belongs, disclosing details of the parent company, any subsidiaries and the name(s) of the supervisory authority responsible for regulating each entity within the group. As part of the ongoing supervision, the regulated entity should provide an updated Organisational Chart to reflect any changes made to the group's structure.

13. The Commission, as host supervisor, reserves right of access to any information or documentation relating to the regulated entity, sufficient to facilitate proper oversight of all the material risks to which it may be exposed. This information may include, but not be limited to,

company governing documents, statutory documents, management accounts, audited financial statements and interim financial statements, together with any supporting documents and reports, for other entities within the group structure.

14. The Commission may also require provision of qualitative information including those relating to the operational and internal structures of the group and any inherent risks, details to support assessment of the fitness and propriety of significant shareholders, directors and senior managers, corporate governance practices, internal controls, risk management practices and the adequacy and security of information systems. Generally, the Commission expects that established policies, systems and controls that are implemented across the group will, at a minimum, be equivalent to those that are required under applicable Virgin Islands financial services legislation.

D. Commission as Home Supervisor

15. The Commission will generally be the home supervisor where the regulated entity is the parent of the group and based in the Virgin Islands, and will therefore supervise the regulated entity on a consolidated basis in accordance with international standards such as the Financial Action Task Force (FATF), Basel Core Principles, the International Association of Insurance Supervisors Core Principles, the Core Principles of the International Organisation of Securities Commissions, Group of International Financial Centre Supervisors, Group of International Insurance Centre Supervisors or any other international standard considered appropriate by the Commission.

16. The Commission assesses the risk posed to the regulated entity by the activities of other members within the group. Such an assessment is comprised of quantitative measures, such as financial indicators and qualitative measures relating to the operational and internal structures of the group and any inherent risks, details to support assessment of the fitness and propriety of significant shareholders, directors and senior managers, corporate governance practices, internal controls, risk management practices and the adequacy and security of information systems.

17. Where a request is made for establishing a branch or subsidiary in another jurisdiction, the Commission will determine whether consent should be given by assessing:

- a. the type and class of business undertaken, written or authorised at home and in the host country;
- b. the financial strength of the group and the appropriateness of the regulated entity's organisational and operational procedures; and
- c. the adequacy of regulation and supervision in the proposed host jurisdiction having regard to compliance with internationally recognised standards. This will include the Commission ascertaining from the intended host supervisor that there is no objection to the establishment of a branch or subsidiary and that there are no regulatory concerns with respect to the establishment of the branch or subsidiary.

18. The Commission may, at its sole discretion, request additional information or reject an application if it would not be in the best interest of the public and or in the interests of the regulated

entity's customers and creditors. Further, the Commission reserves the right to require a regulated entity to pay for part or all of the cost related to the supervision, including on-site inspections, of a subsidiary or representative office.

19. A regulated entity or applicant must submit, to the Commission, an Organisational Chart for its group, disclosing details of related entities by ownership or control, any subsidiaries or branch and the name(s) of the supervisory authority responsible for regulating each entity within the group. As part of ongoing supervision, the licensee should provide an updated organisational chart to reflect any changes made to the group's structure or member.

20. The Commission will not grant a licence to an applicant if the applicant's group structure hinders effective consolidated supervision. This may include instances where the structure is overtly and unnecessarily complex, without a clear governance structure, and where there exists varying regulatory and supervisory standards not consistent with those of the Commission, as these may present consolidated supervisory challenges.

E. Supervisory Relationship: Home-Host Cooperation

21. The Commission will develop and continue to engage in a productive relationship with foreign counterparts where it is either the home supervisor or host supervisor, including the development of a framework which promotes the sharing of necessary information and cooperation for an effective supervision plan based on any risks identified.

22. The Commission will ensure that there is an open line of communication with other regulators and will share appropriate information on a need-to-know and timely basis. This includes information both on the material risk and risk management practices of the group and on the supervisors' assessments of the safety and soundness of the relevant entity under their respective jurisdiction.

23. The Commission will enter into formal arrangements (such as Memoranda of Understanding) required for the safe and confidential exchange of information for the purpose of consolidated supervision. The Commission has established criteria that a foreign regulatory authority must satisfy prior to engaging in any Memoranda of Understanding ("MOU") arrangements.

24. Each MOU established and entered into with a foreign regulator will communicate the mutually accepted expectations of all parties involved. The MOU will cover a variety of issues including the ability to conduct onsite supervision and for each to be part of such supervisions. It would be made clear that each supervisor will be given on-site access to amongst other things, review details surrounding the management, internal controls, AML/CFT polices, investor and due diligences services to ascertain if there are any inherent risks in the line business and if so, determine if there are appropriate measures implemented to mitigate against these risks. Joint reports will be produced and where appropriate joint or coordinated action for breaches would be taken.