

Antigua and Barbuda: Detailed Assessment of Compliance with Basel Core Principles for Effective Banking Supervision—Offshore Banking

This Detailed Assessment of Compliance with Basel Core Principles for Effective Banking Supervision—Offshore Banking for Antigua and Barbuda was prepared by a staff team of the International Monetary Fund as part of the Eastern Caribbean Currency Union Financial Sector Assessment Program and as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed in November 2004. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of Antigua and Barbuda or the Executive Board of the IMF.

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FINANCIAL SECTOR ASSESSMENT PROGRAM

ANTIGUA AND BARBUDA

DETAILED ASSESSMENT OF COMPLIANCE WITH BASEL CORE PRINCIPLES FOR EFFECTIVE BANKING SUPERVISION: OFFSHORE BANKING

NOVEMBER 2004

INTERNATIONAL MONETARY FUND
MONETARY AND FINANCIAL SYSTEMS DEPARTMENT

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Contents	Page
I. Basel Core Principles (Offshore Banking)	4
A. General	4
II. Principle-by-Principle Assessment and Recommended Action	6
A. Recommended Action Plan and Authorities' Response to the Assessment	35
Tables	
1. Detailed Assessment of Compliance of the Basel Core Principles	6
2. Summary Compliance of the Basel Core Principles	34
3. Recommended Action Plan to Improve Compliance of the Basel Core Principles	35

I. BASEL CORE PRINCIPLES (OFFSHORE BANKING)

A. General

1. This Report on the Observance of Standards and Codes (ROSC) for the Basel Core Principles for Effective Banking Supervision was prepared by a team of two independent bank supervision experts.¹ The mission was conducted from February 23 to March 5, 2004. The report provides a summary of the level of observance of the regulation and supervision of offshore banks licensed by the Financial Services Regulatory Commission (Commission) of Antigua and Barbuda with the Basel Core Principles (CP).

Information and methodology used in the assessment

2. The assessment of Antigua and Barbuda's regulation and supervision of offshore banks was based on an examination of the legal framework as it related to offshore banking, and assessing the supervisory procedures used by the Commission. The self-assessment questionnaire was very helpful and useful information was provided in meetings with the Board of the Commission, the Administrator and senior staff of the Commission, who made themselves freely available. Meetings were also held with senior management of licensed offshore banks and accounting firms. The assessment reviewed examination procedures for offshore banking, as well as draft prudential policies or guidelines, which will only have effect once Antigua formally adopts and implements them. Subsequent to the completion of the missions' on-site work, the mission was notified by the Commission of the implementation of a number of regulatory, guideline, and procedural changes. The mission commends the authorities for these positive developments. The changes are noted at the bottom of the descriptions of the affected CP. While credit is given where due for these changes, the ratings also reflect the mission's views on how quickly and effectively in each case the new powers can be implemented in practice.

3. The assessment of compliance with each CP was made on a qualitative basis. A four-part assessment system was used: compliant; largely compliant; materially non-compliant; and non-compliant. To achieve a "compliant" assessment with a principle, all essential criteria had to be met without any significant deficiencies. A "largely compliant" assessment was given if only minor shortcomings were observed, and these were not seen as sufficient to raise serious doubts about the authority's ability to achieve the objective of that principle. A "materially non-compliant" assessment was given when the shortcomings were sufficient to raise doubts about the authority's ability to achieve compliance, but substantive progress had been made. A "non-compliant" assessment was given when no substantive progress towards compliance had been achieved. A CP was considered not applicable when, in the view of the assessor, it did not apply given the structure of the offshore banking industry in Antigua.

¹ Marcel Maes (Belgium) and Tony Maxwell (Canada).

4. The assessment takes account only of existing laws and requirements. However, limited credit is given to legal instruments and guidelines that were introduced immediately following the assessment mission. These are noted where appropriate in the comments section of each CP assessment.

Institutional and macroprudential setting, market structure—Overview

5. Antigua and Barbuda is part of the Eastern Caribbean Currency Union (ECCU), which is comprised of eight members, the others being: Anguilla, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines.² There are 16 offshore banks licensed in Antigua and Barbuda, some employing 50 or more staff in Antigua and Barbuda, and some with only a single staff member in the jurisdiction, the remaining management and staff being located in offices in Central and South America.

6. Aggregated assets reported by the offshore banking sector totaled about US\$ 3.0 billion as at December 2002. The largest bank represents 61 percent of the sector's aggregated assets, highlighting an important degree of concentration. Investment portfolios represent the bulk of the banks' assets, and are predominantly composed of government and corporate bonds and equities. Loan portfolios include a number of large exposures, some exceeding 25 percent of capital, and/or connected party loans. Since 2002, there has been a gradual strengthening of the regulatory and supervisory regime, which has reduced such exposures somewhat, but some banks still require more time to meet the higher standards. A few banks reportedly also carry substantial investments in local real estate projects.

7. Mission staff were informed that loans are frequently collateralized by cash, CDs and equities (so-called "back-to-back lending"), that would reduce their risk of loss. Reported non-performing loans are low. Some banks appear to undertake substantial derivative transactions but no data is available at this moment to substantiate the extent of the exposure.

8. Two of the licensed banks accept deposits only from within their groups, or from related companies. Although, in principle, identical regulatory requirements apply to such captive banks, in practice they are routinely in violation of the large loan and connected lending limits applicable to the other licensed offshore banks. Both such banks (one of which appears to be a special purpose vehicle set up to finance a single investment) have little or no activity reported on their income statements.

9. The number of licensed offshore banks has been substantially reduced in the past few years partly due to the strengthening of the regulatory requirements regarding minimum capital (US\$5 million), minimum equity to assets (5.0 percent), connected lending and the need to establish a physical presence. A stronger anti-money laundering regime has also contributed to the decline in numbers. This assessment acknowledges that substantial

² Anguilla and Montserrat are overseas territories of the United Kingdom.

progress has been made, while highlighting a number of areas that need to be further strengthened in order to achieve compliance with the CPs.

General preconditions for effective banking supervision

10. The Commission’s functions and responsibilities are set out in the IBC Act. The Office of National Drug Control Policy (ONDCP), which is the authority responsible for the implementation of the AML/CFT measures in Antigua and Barbuda, works in close collaboration with the Commission.

II. PRINCIPLE-BY-PRINCIPLE ASSESSMENT AND RECOMMENDED ACTION

Table 1. Detailed Assessment of Compliance of the Basel Core Principles

<p>Principle 1.</p>	<p>Objectives, Autonomy, Powers, and Resources</p> <p>An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks. Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to the authorization of banking establishments and their ongoing supervision; powers to address compliance with laws, as well as safety and soundness concerns; and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.</p>
<p>Principle 1(1)</p>	<p>An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks.</p>
<p>Description</p>	<p>Offshore banking in Antigua and Barbuda is regulated under the International Business Corporation Act (IBC Act), 1982, which also establishes in Section (S.) 316 the Financial Services Regulatory Commission (established in 2002) - the sole institution responsible for the regulation and supervision of the international banks. S. 316 (3) lays down the responsibility of the Commission and S. 316 (4) empowers the Commission to take any necessary action required to ensure the integrity of the international business corporations sector.</p> <p>The framework for prudential regulation is provided by the IBC Act and by regulations in Statutory Instruments, as well as by the supervisory practices that have been built into the operational procedures of the Commission. Among other things, these encompass licensing, capital requirements, offsite and onsite examination, powers of the bank supervisor, supervisory interventions, monitoring and prudential regulation and compliance with AML/CFT standards.</p> <p>S. 259 of the Act empowers the bank Supervisor or an examiner appointed by the Board of the Commission to examine the affairs of every bank at least once a year. S. 261 empowers the Supervisor, when he is of the opinion that the bank is carrying on business in an unlawful manner or is in unsound financial condition, to require the bank to take such remedial action, as he considers necessary.</p> <p>Domestic banking in Antigua and Barbuda is supervised by the Eastern Caribbean Central Bank (ECCB). There are no direct linkages between offshore and domestic banks in the jurisdiction, although some have common ownership links. There is no mechanism as yet for on-going cooperation between the ECCB and the Commission on matters relating to these affiliated banks. Apart from the Commission, the only other domestic agency that has direct</p>

	<p>responsibility for offshore banks is the ONDCP (Office of National Drug and Money Laundering Control Policy) on money laundering-related matters, with which there is evidence of close cooperation.</p> <p>The IBC Act has been amended and updated periodically (most recently in 2004) in an effort to ensure that it remains effective and relevant to changing industry and regulatory practices.</p> <p>Subsequent to the mission’s on-site work, the Commission advised that regulations had been issued (April 2004) that empower the Commission to require a regulated entity to furnish any relevant information regarding the entity’s related companies. To the extent that the regulated entity is able to provide this information, this will improve the Commission’s access to regulatory information about the domestic affiliates and the entire group. The Commission also reported that it has the legal authority to share information with foreign regulatory authorities.</p>
Assessment	Largely Compliant
Comments	<p>To comply with this CP:</p> <ul style="list-style-type: none"> • There must be a defined coordination mechanism between the Commission and the ECCB primarily, but not exclusively, focused on potential risks represented by the affiliated banks, and evidence that it is used in practice.
Principle 1(2)	Each such agency should possess operational independence and adequate resources.
Description	<p>S. 316 (2) of the IBC Act provides that the Commission shall be a body corporate with perpetual succession and the capacity to do anything and enter into any transaction which, in the opinion of the Commission, is necessary to ensure the proper performance of its functions.</p> <p>S. 316 (5), (6) & (8) of the IBC Act provide for the Commission to be managed by a Board of Directors comprised of four persons appointed by the Minister of Foreign Affairs after approval by the Cabinet, and the Administrator who is the administrative and technical head of the Commission and an <i>ex-officio</i> member of the Board with voting rights. The current Chairman is the Solicitor General, and the other members are the Permanent Secretary, Ministry of Foreign Affairs, and the former Commission of Police. There is one position vacant. All such appointments are effectively “at pleasure”, as there is no defined dismissal procedure. The Act provides that no person shall be qualified to be a member or employee of the Board if such person or his spouse is a shareholder, director, officer or employee of a banking, insurance or trust corporation or any other corporation licensed to do business under this Act.</p> <p>S. 360 (1) & (6) of the IBC Act provide the statutory basis for the appointment by the Board, with the approval of the Minister, of the main functionaries of the Commission viz., Supervisor of International Banks and Trust Corporations, Superintendent of International Insurance Corporations, Manager of International Business Corporations and Director of Internet Gaming with defined powers and duties. All such persons function under the direction and control of the Administrator, and may be dismissed by the Board with the approval of the Minister.</p> <p>The international banking supervision sector of the Commission is staffed by persons experienced in banking and banking supervision, and is financed by a share of the fee revenues generated by the Commission. S. 317 (6) of the IBC Act empowers the Commission to retain all revenues from fees received until its expenses have been met after which any surplus may be transferred to the government’s Consolidated Fund. The Commission’s budget is approved by the Board.</p> <p>The Commission salary scales are independent of government scales and appear to be</p>

	<p>competitive. The Commission also has the ability to hire outside professionals, depending on the requirement. It functions from a modern, well appointed office in a fully computerized environment. It has an active training program for its professional staff, and sufficient resources to meet its travel requirements.</p>
Assessment	Largely Compliant
Comments	<p>The above rating reflects the fact that although the mission found no significant evidence of government interference, the requirement that the appointment of the Supervisor of International Banks (who reports to the Administrator, who reports to the Board) be approved by the Minister gives the Minister de facto control over three layers of appointments at the Commission, which is a concern since it leaves the way open to significant interference. The mission recommends that the security of tenure provided the Director and Deputy Director of the ONDCP Act 2003 (Sections 7(1) & 7(2)) be provided to the senior management of the Commission. [Postscript - despite the legal protections in the ONDCP Act, the Director of the ONDCP was required to step down immediately following the recent change of government, which indicates the absence of effective legal protection for the Supervisor against government interference.]</p> <p>Historically, the Commission has been able to return surpluses to the Consolidated Fund, but recent declines in banking and gaming license fee income could result in a tighter financial situation, and threaten the Commission’s ability to fund essential activities, including training in market risk and risk-based capital. Steps should be taken to address this without compromising the Commission’s independence, such as giving the Board the power to set the level of fees and/or allowing the Commission to build up a “rainy day” surplus of, say, 50 percent of annual revenues.</p>
Principle 1(3)	A suitable legal framework for banking supervision is also necessary, including provisions relating to authorization of banking establishments and their ongoing supervision.
Description	<p>Authorization of banking establishments is governed by S. 227 (2) of the IBC Act, which states that any international banking business shall be required to obtain a license in order to carry on such business. S. 229 specifies that the Supervisor of Banking and Trust Corporations (“Supervisor”) may issue or revoke a license, while S. 317 specifies that no license may be issued or revoked without the approval of the Board of the Commission.</p> <p>S. 316 (4) of the IBC Act empowers the Commission to take any necessary action required to ensure the integrity of the international business corporations sector and this power has been utilized to set prudential guidelines administratively without the necessity of amending the law or the regulations. S. 242 of the IBC Act requires that a banking corporation must, as a condition of its license, submit to the Supervisor quarterly and annual (audited) returns with prescribed information, and within prescribed timeframes. In addition, the Act requires an annual certification attesting to the ownership, directors and officers of the institution, and such other returns as required.</p> <p>S. 243 empowers the Supervisor to require a banking corporation to submit to him such additional information and returns as the Supervisor considers necessary for the proper understanding of any statement or return received under S. 242 within such time and in such manner as are prescribed.</p>
Assessment	Compliant
Comments	None.
Principle 1(4)	A suitable legal framework for banking supervision is also necessary, including powers to address compliance with laws, as well as safety and soundness concerns.
Description	S. 261 of the IBC Act empowers the Supervisor, when, on the result of an examination, he is

	<p>of the opinion that the bank is carrying on its business in an unlawful manner or is in unsound financial condition, to require that the corporation immediately take such remedial measures as the Supervisor considers necessary. It also empowers the Supervisor to appoint a person to advise the corporation on the action to be taken by it to remedy the situation. Such actions are subject to appeal.</p> <p>S. 260 of the IBC Act gives the examiner the right to such information concerning a bank's affairs, business and activities as the examiner requests, and access to all books, records, cash, securities, vouchers, customer identification, customer account and transaction records and all other documentation and records relating to its assets, liabilities and business generally.</p> <p>S. 261 empowers the Supervisor, following an examination, to take prompt remedial action, including: appointing an examiner; requiring that the institution immediately take such remedial measures as the supervisor considers necessary; and appointing a person to advise the licensee on the remedial measures. S. 236 allows the Supervisor to revoke a license under certain circumstances, including contravening a condition of the license.</p>
Assessment	Compliant
Comments	See CP 22 for comments.
Principle 1(5)	A suitable legal framework for banking supervision is also necessary, including legal protection for supervisors.
Description	<p>Prior to the amendment reported below, the IBC Act did not provide legal protection for the Supervisor. However, the members of the Board have protection from personal liability for any act or default of the Board done or omitted to be done in good faith (Schedule II under S. 316), although the Commission itself may be liable.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that the IBC Act has been amended (July 2004) to provide officers and employees of the Commission immunity from legal process with respect to acts performed by them in their official capacity, except when the Commission waives this immunity.</p>
Assessment	Compliant
Comments	None.
Principle 1(6)	Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	<p>There is no system of cooperation and information sharing between the ECCB, which has supervisory responsibility for all domestic banks, and the Commission, which is responsible for all offshore banks. This weakness is particularly relevant in the case of two sets of affiliated banks, each set with a domestic bank and an offshore bank, and raises concerns about weakness in any one of the offshore banks being transmitted into the domestic banking system, and vice versa.</p> <p>S. 373 of the IBC Act gives the Commission the authority to disclose (at its discretion) information concerning the ownership, management, operations and the financial returns of a licensed institution to enable or assist a foreign regulatory authority to exercise its regulatory functions, except that no customer information may be disclosed without an order from a court of competent jurisdiction.</p> <p>In practice, the Commission shares information with other supervisors under Memoranda of Understanding (MoUs) that include the condition that the foreign supervisory authority will not disclose any confidential information without the consent of the Commission, and that the information will be used only for supervisory purposes. The MoUs are viewed as a useful but</p>

	<p>not essential tool for facilitating exchange of information.</p> <p>S. 244 (1a) requires the Supervisor or any employee of the Commission to maintain the confidentiality of information relating to a customer that has been acquired during the performance of duty. In addition, S. 244 (3) requires the Supervisor to protect statements, returns and information provided under S. 242 and S. 243 as confidential.</p>
Assessment	Materially non-compliant
Comments	<p>To comply with this CP:</p> <ul style="list-style-type: none"> • There should be a system of cooperation and information sharing between the ECCB and the Commission. Such a system must be focused in particular on potential risks represented by the affiliated banks. The designation of a lead supervisor for the affiliated banking groups may also be considered. <p>While the IBC Act appears to provide adequate protection of confidential information, the clauses providing this information are located in separate sections. It is recommended that any revisions to the Act include a single and comprehensive section on confidentiality.</p>
Principle 2.	<p>Permissible Activities</p> <p>The permissible activities of institutions that are licensed and subject to supervision as banks must be clearly defined, and the use of the word “bank” in names should be controlled as far as possible.</p>
Description	<p>The IBC Act does not define “bank”. However, S. 4 (2) defines international banking as carrying on from within Antigua and Barbuda banking in any currency that is foreign in every country of the CARICOM Region (Caribbean Community). An exception is made for residents holding accounts in a foreign currency authorized under exchange control regulations. S. 240 further clarifies that a banking corporation must operate in a lawful and prudent manner and may engage in any generally acceptable banking activities from within Antigua and Barbuda and elsewhere, but shall not knowingly accept deposits in the legal currency of a country of the CARICOM region.</p> <p>Statutory Instrument (“SI”) 10 restricts the use of the word “bank” and any derivative thereof to a bank licensed under the IBC Act. The Commission uses its authority to disallow incorporation of any IBC that may purport to use the name ‘bank’ or ‘banking’ without obtaining a license from the Commission. S. 227 requires any entity proposing to carry on international banking business to obtain a license and under S. 340 (b) (1) if the Act. The Commission may refuse to accept the name of a corporation if it may deceive or mislead as to the nature of its business or, if in the opinion of the Administrator, it is, for any reason, objectionable.</p> <p>S. 227 (2) requires that international banking business be licensed under the Act. A standard clause in the Articles of Association for non-bank companies licensed under the IBC Act states; “The objects for which the Company is established are:- To conduct any and all business activities permitted by the laws of Antigua and Barbuda other than international banking, trust, ... (etc.)”.</p> <p>The law does not distinguish between wholly owned “captive” banks, and banks that are more widely held. Both are legally able to take deposits from the (offshore) public. One of the captive banks appears to be, in effect, a special purpose vehicle for project financing. It should be noted, however, that there are only two such banks, and one is apparently inactive.</p>
Assessment	Largely Compliant
Comments	<p>To comply with this CP:</p> <ul style="list-style-type: none"> • The permissible activities of banks that are licensed and subject to supervision as banks

	<p>should be clearly defined either by supervisors, or in laws or regulations, with particular reference to restrictions on the ability of captive banks to accept third-party deposits.</p> <p>Mission staff also felt that the definition of bank could be made clearer and more explicit. S. 4(20) does not refer to accepting deposits, while S. 240 does. It is recommended that the definition contained in the ECCB Uniform Banking Act (S. 2) be considered as the basis for a revised definition that could be incorporated into the IBC Act.</p>
<p>Principle 3.</p>	<p>Licensing Criteria</p> <p>The licensing authority must have the right to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the banking organization’s ownership structure, directors and senior management, its operating plan and internal controls, and its projected financial condition, including its capital base; where the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor should be obtained.</p>
<p>Description</p>	<p>Under S. 228 of the IBC Act the applicant for a license must apply to the Commission and the Commission has the authority to prescribe the format of the application form. Other licensing criteria have been laid down in the IBC Regulations (SI 41). There is no separate licensing requirement for captive banks (i.e. banks that take funds only from other members of the corporate group to which it belongs), notwithstanding that there are no restrictions in law on them taking deposits from outside the group, and that the two captive banks currently licensed have historically enjoyed a degree of regulatory forbearance on matters of large exposures and connected lending and investments.</p> <p>The criteria that are considered for issuing the licenses are also used, along with other prudential requirements, for the on-going supervision of the banks. The Supervisor may revoke a license if a condition of the license is contravened. The most recent license issued was in January 2003.</p> <p>Under S. 229 the Supervisor has the authority to reject the license, if he has reason to believe that it would be contrary to the public interest. He may also attach terms and conditions to a license. A rejected license application may be appealed to the Board and, ultimately, to the Minister.</p> <p>The Commission, while considering an application for a license, takes into account the legal and managerial structures and their possible impact on the supervision. In this process, the Commission is guided by S. 232, which empowers the Commission to make investigations of the applicants’ affiliates or associates as he considers it necessary in the public interest.</p> <p>The license application requires extensive information on all direct or beneficial shareholders holding 5 percent or more of any class of stock, and information on the source of initial capital.</p> <p>Regulation 4 of the IBC Regulations (SI 42) prescribes a minimum capital of US\$ 5.0 m. for international banks licensed under the Act.</p> <p>S. 232 allows the Supervisor to examine the character and experience of the directors. The license application form is used to obtain relevant information, which may be verified through an independent evaluation agency with the costs paid for by the applicant. The names and personal details of proposed senior managers must also be submitted, and may be vetted. S. 232 states that the Supervisor may investigate the “financial circumstances” of shareholders (as well as directors, officers, and promoters) of the intended corporation as he considers is required in the public interest. The mission was advised that bank references are often sought, but this may not provide adequate information on the shareholder as a source of financial strength.</p> <p>The license application also requires a detailed business plan, including three- year financial</p>

	<p>projections (optimistic and pessimistic versions), plans for outsourcing, “know your customer” policies and procedures, and proposed use of the Internet. There is no explicit requirement to address corporate governance.</p> <p>The business plan must include a description of the strategy for managing products and services, arrangements for maintaining records in Antigua and Barbuda, and an estimated cost of installing the administrative services and the organization for attracting business, but there is no requirement for adequate policies and procedures, internal control procedures and appropriate oversight of the bank’s various activities.</p> <p>Regulation 5 (SI 41) prohibits licensing of a subsidiary or branch of an institution located in a foreign country, if in view of the Commission that foreign country does not have adequate procedures for supervision of such institution. There is no explicit requirement that a statement of “no objection” be obtained from the foreign supervisor, although the practice is to propose an MoU on supervisory cooperation with the foreign supervisor.</p> <p>S. 353 (1) (b) provides that a person making an untrue statement of a material fact or omitting to state a material fact commits an offence, which would be grounds for canceling a license under S. 236.</p> <p>Subsequent to the completion of the mission’s on-site work, the Commission reported that revised licensing procedures now require:</p> <ul style="list-style-type: none"> • consideration of policies and procedures, internal controls and oversight of the bank’s activities; • financial information on the principal shareholders in order to ensure that the shareholder has, or has access to, the necessary financial resources to provide ongoing financial support to the licensee; • that a “no objection certificate” be obtained from the home supervisor before consideration of a license for a subsidiary or branch.
Assessment	Largely Compliant
Comments	<p>The minimum initial capital requirement of US\$5.0 million appears to be at the top end when compared to the practice in other offshore banking centers.</p> <p>The mission commends the Commission for the reported changes in licensing procedures. However, to be rated compliant with this CP, it will be necessary to confirm that the new procedures are being applied in practice.</p> <p>It is also recommended that:</p> <ul style="list-style-type: none"> • To the extent that the Commission applies less onerous prudential requirements on captive banks, such banks could be issued a separate license that clearly prohibits taking deposits from outside the group, and requires that its status be made known to all its external financial counter-parties. Notwithstanding such steps, the reputation of the jurisdiction still risks being tarnished should such a bank fail.
Principle 4.	<p>Ownership</p> <p>Banking supervisors must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.</p>
Description	<p>Regulation 10 of SI 41 of 1998 requires that no licensed institution shall change its board of directors or change the direct or indirect, legal or beneficial ownership of five percent or more of a class of shares in that institution, without prior approval from the Commission. Under S. 242 (1), banks are required to submit an annual certification attesting to the ownership,</p>

	directors and officers of the institution.
Assessment	Compliant
Comments	None.
Principle 5.	Investment Criteria Banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.
Description	<p>SI 9 (2004) authorizes the Commission to issue guidelines or directions as to banks' policies, practices and procedures related to the granting of loans and making of investments. The draft Investments and Lending Guideline ("IL guideline") will require that a bank have written investment (and lending) policies, approved by its board. Such a policy should identify acceptable ranges for investments in different types of instruments, including (<i>inter alia</i>) equities. It also addressed large exposures (see CP 9). All exposures over 10 percent of capital are required to be reported on a quarterly basis.</p> <p>All investments in offshore branches and subsidiaries require the Commission's pre-approval, and the criteria by which such proposals should be judged are set out in Reg. 41-7 and 41-8 (see CP 23). Otherwise, and with the exception of large exposures, there is no definition of the types and amounts of acquisitions needing supervisory approval. For instance, there is no supervisory pre-approval or notification required regarding minority investments in foreign banks, nor on large aggregate investments in equities and/or real estate.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that SI-9 of 2004 has been amended to include a new Regulation 10 (see SI21-2004), which addresses the above requirements.</p>
Assessment	Largely Compliant
Comments	The mission notes the new regulation, which has had a positive effect on the assessment rating. However, to be rated compliant with this CP, it will be necessary to confirm that the new procedures are being applied in practice.
Principle 6.	Capital Adequacy Banking supervisors must set minimum capital adequacy requirements for banks that reflect the risks that the bank undertakes, and must define the components of capital, bearing in mind its ability to absorb losses. For internationally active banks, these requirements must not be less than those established in the Basel Capital Accord.
Description	<p>Reg. SI 42-4 (1998) increased the fully paid up minimum capital requirement from US\$ 1.0 million to US\$ 5.0 million. It also required that US\$1.5 million of the minimum capital be deposited in a licensed financial institution in Antigua and Barbuda.</p> <p>Reg. SI 41-13 (1998) imposes a minimum equity to asset ratio of 5 percent, which does not take account of off-balance sheet assets. According to the regulator the offshore banks currently comply with these requirements.</p> <p>The regulatory framework does not give the Commission the power to impose a risk-based capital requirement.</p> <p>However, Reg. SI 9-8 (2004) authorizes the Commission to establish an appropriate capital charge for market risk. The detailed requirements to implement this regulation have not yet been developed, but are planned for later this year.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that Regulation 8(1) of SI9-2004 has been amended to provide for a capital charge for credit risk</p>

	(SI21-2004).
Assessment	Materially Non Compliant
Comments	<p>The Commission is to be commended for its efforts to strengthen the supervisory requirements by substantially increasing the minimum fully paid up capital. The Mission has been informed that the introduction of this requirement and the 5 percent minimum equity to assets requirement have been instrumental in reducing the number of bank licenses and has acted as a barrier for de novo banking in the country.</p> <p>As noted above, the Commission is examining the introduction of a specific capital requirement for market risk.</p> <p>The equity-to-assets ratio reported by the existing banks show that twelve out of sixteen banks had ratios in excess of 10 percent, whereas three banks had ratios between 5 percent to 7 percent, and one (a member of a consolidated bank) a ratio of 2.5 percent. The Commission will have to take a view on a number of important issues amongst which is the OECD/non-OECD classification of assets versus the more universal basis for risk weighting, including credit assessments by the private rating agencies provided for in the Basel Consultative Paper 3. The Commission will also have to consider the position taken by other offshore jurisdictions in this matter.</p> <p>In order to comply with this Core Principle:</p> <ul style="list-style-type: none"> • Guidelines should be issued in order to define the method of calculation and the ratio required which should not be lower than those established in the Basel Capital Accord; • The required capital ratio should reflect the risk profile of individual banks, in particular credit risk and market risk. Both on-balance-sheet and off-balance-sheet risks should be included and the revised laws or regulations, or the supervisor, should define the components of capital, ensuring that emphasis is given to those elements of capital available to absorb losses; • Capital adequacy ratios should be calculated and applied on a consolidated bank basis; • At least semi-annual reporting by banks to the supervisor is to be required on capital ratios and their components. <p>The Commission should also take account of particular circumstances characterizing an individual bank that should justify a higher capital requirement and be given the authority to impose a higher capital requirement on that bank.</p>
Principle 7.	<p>Credit Policies</p> <p>An essential part of any supervisory system is the independent evaluation of a bank's policies, practices, and procedures related to the granting of loans and making of investments and the ongoing management of the loan and investment portfolios.</p>
Description	<p>S. 259 (1) of the IBC Act authorizes the supervisor to examine the affairs of every bank at least once a year. Under S. 259 (2), when the Commission has reasonable grounds for believing that a bank is not in a sound financial condition, or is not operating in a reasonable and prudent manner, or is otherwise not operating in compliance with the IBC Act, it shall immediately undertake an examination of that bank.</p> <p>The offsite and annual on-site examinations conducted by the Commission under S. 259 include an evaluation of investment policies, practices, and procedures. These include, inter alia, an assessment of the institution's loan review system to determine: procedures for ensuring the prompt charge-off of loans; the comprehensiveness and adequacy of the institution's process for determining the provisions for loan losses and reserves; loan</p>

	<p>accounting practices and procedures; the lending and loan loss experience of the institution; consistency of the policies with internationally recognized standards in credit administration; the level of oversight exerted by the credit committee and the board of directors; and the extent of any concentrations of credit.</p> <p>In conducting an evaluation of the policies, procedures and practices relating the investments the Commission generally assesses: the quality of systems and controls which are in place to ensure timely; frequent valuations of the bank's exposure; the level of involvement of the board and senior management in oversight to satisfy itself that banks have systems which accurately measure, monitor and control market risk; management reports generated for monitoring exposure and compliance with limits and goals set by management.</p> <p>Recently, Reg. SI 9-8 (2004) authorized the Commission to issue guidelines or directions as to the bank's policies, procedures and practices related to the granting of loans and making of investments. Pursuant to this regulation the Commission prepared in February 2004 its draft Investment and Lending Guidelines (IL guidelines).</p> <p>This regulation also establishes that lending to connected parties should take place on an arm's length basis, free of any pressure or conflict of interest. The draft guideline further requires identification of potential sources of conflict of interest and to put in place procedures to ensure that those involved with the implementation of the investment and lending policies understand where these situations could arise and how they should be addressed.</p> <p>SI 9-7 (2004) requires the board of directors of a bank to communicate its policies, procedures and practices to the personnel involved in the concerned activities of the bank and establish appropriate mechanisms to monitor their implementation and reporting.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that the IL Guidelines were issued in March 2004.</p>
Assessment	Largely Compliant
Comments	<p>This rating acknowledges the recent IL guideline, and reflects our assessment of the Commission's ability to effectively move the offshore banks towards compliance with these new standards, recognizing that it will take some time for the banks to be in full compliance. In order to comply with this CP:</p> <ul style="list-style-type: none"> • The supervisor should verify periodically that banks make credit decisions free of conflicting interests.
<p>Principle 8. Loan Evaluation and Loan-Loss Provisioning</p> <p>Banking supervisors must be satisfied that banks establish and adhere to adequate policies, practices, and procedures for evaluating the quality of assets and the adequacy of loan-loss provisions and reserves.</p>	
Description	<p>The 2004 SI 9-8 requires the board of directors of a bank to establish and adhere to adequate policies, practices and procedures for classification and control of assets and credits, including off-balance sheet exposures and provisioning and write-off and the procedure to deal with problem exposures. The draft IL guideline contains additional guidelines in this area.</p> <p>However, these issues had already been taken up in on-site examination of the banks. At present, the Commission uses the following categories for asset classification: (1) Pass Category (adequately collateralized, current in the payment of interest and principal), (2) Special Mention Category (show potential weaknesses and require close monitoring), (3) Substandard (non- performing), (4) Doubtful (exhibit clearly defined weaknesses and are</p>

	<p>grouped according to the least to most severe), and (5) <u>Loss</u>. As a part of the examination process, the banking institutions are advised to apply the following percentages for making provisions for these asset categories: Loss (100 percent), Doubtful (50 percent), Substandard (10 percent) and Special Mention and Pass (0 percent).</p> <p>As already mentioned, under section 261 of the IBC Act the supervisor has the power to require a bank to take such remedial measures as the supervisor thinks necessary, if in his opinion the bank is in an unsound financial condition. The experience so far has been that the banking institutions have in all cases complied with the Commission’s recommendations relating to quality of assets and the loan-loss provisions and reserves.</p> <p>The recently proposed draft prudential reporting forms will inform the Commission on a quarterly basis of the credit classification and of provisioning (Forms IB 1 and IB 7).</p> <p>Subsequent to the completion of the mission’s on-site work, the Commission reported that the IL Guidelines were issued in March 2004, and that the prudential reporting forms have since been issued for implementation. The guidelines now require banks to continually assess the strength of guarantees and appraise the worth of collateral, and require that the valuation of collateral reflects net realizable value.</p>
<p>Assessment</p>	<p>Largely Compliant</p>
<p>Comments</p>	<p>As in CP 7, this rating reflects our acknowledgment of the recent IL guideline, and our assessment of the Commission’s ability to effectively move the offshore banks towards compliance with these new standards, recognizing that it will take some time for the banks to be in full compliance.</p> <p>In general licensed banks do not engage intensively in loan activities and the mission has been advised that a high proportion of it is cash collateralized.</p> <p>This assessment also gives the Commission credit for the new quarterly prudential returns although they will only be implemented for the first time at the end of December 2004 given the delay banks need to adapt their data systems.</p> <p>It is also recommended that the Commission requires a general provision for losses incurred in on- and off-balance sheet assets that have not yet been specifically identified.</p>
<p>Principle 9.</p>	<p>Large Exposure Limits</p> <p>Banking supervisors must be satisfied that banks have management information systems that enable management to identify concentrations within the portfolio, and supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.</p>
<p>Description</p>	<p>The 2004 SI 9 authorizes the Commission to issue guidelines or directions as to the bank’s policies, practices and procedures related to the granting of loans and making of investments.</p> <p>SI 9 and the draft IL guideline explicitly defines “a closely related group” and also establishes that exposures to a single counterparty or to a closely related group should not exceed 25 percent of the capital base of the bank. In individual cases the Commission may agree to an exposure beyond 25 percent; however a bank must seek the Commission’s prior agreement, furnishing full justification for exceeding the limit.</p> <p>The prudential requirements applicable to the two licensed captive banks are identical to the other offshore banks and the Commission does not intend to introduce such a distinction in practice.</p> <p>The IL draft guideline also requires banks to have in place the necessary control systems and have the board not only specify the policy regarding large exposures but also assume the monitoring. The guideline also recommends that exposures to a single counterparty or a group of closely related counterparties do not exceed 10 percent as a matter of course. All exposures</p>

	<p>equaling or exceeding 10 percent of capital will have to be reported to the Commission on a quarterly basis.</p> <p>However, in the past the onsite examinations have already addressed the large exposures issue. The large exposures definition used on that occasion was based on the Basel Core Principle document. The examinations have resulted in supervisory action requiring banks to reduce their large exposures within the 25 percent limit.</p> <p>The Commission has the legal authority to prescribe any monitoring system and set prudential limits on bank exposures. Already under Regulation 14 of statutory instrument No. 41 of 1998, the Commission is empowered to require any licensed institution to implement any accounting, monitoring or reporting system prescribed by the Commission. The supervisor may also recommend prudential limits to restrict bank exposures to single borrowers or groups of related borrowers taking recourse to the powers vested in him by Section 261 of the IBC Act.</p> <p>The Commission will monitor the bank exposures through the quarterly reports that will be introduced.</p> <p>A bank should notify the Commission immediately of any breach of the 25 percent limit, together with a timetable to bring the exposure quickly back below 25 percent. A bank should maintain additional capital cover while the breach remains. Such additional capital cover should be significantly higher than that for an exposure of 25 percent or less.</p> <p>Subsequent to the completion of the mission’s on-site work, the Commission reported that the IL Guidelines (issued March 2004) incorporate a limit on short-term deposit to banks and also require that for exposures exceeding the 25% limit, additional capital of at least 30% of the amount by which the exposure exceeds the 25% limit, will be maintained by a bank.</p> <p>Subsequent to the mission’s on-site work, the Commission reported that it had recently introduced the quarterly reports referred to above.</p>
Assessment	Materially Non-Compliant
Comments	<p>The Commission is to be commended for its supervisory action undertaken in the course of the last few years which it claims has substantially reduced the number of large exposures in excess of the 25 percent limit. The new guideline should provide further impetus to this effort, but the mission has doubts about the Commission’s ability to achieve substantial and widespread compliance in a timely manner, due to contractual and other reasons. Captive banks, which admittedly are small, will be a particular challenge in this regard.</p>
Principle 10.	<p>Connected Lending</p> <p>In order to prevent abuses arising from connected lending, banking supervisors must have in place requirements that banks lend to related companies and individuals on an arm’s-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.</p>
Description	<p>The 2004 SI 9 authorizes the Commission to issue guidelines or directions as to the bank’s policies, procedures and practices related to the granting of loans and making of investments.</p> <p>SI 9 and the IL guideline explicitly define connected party and require lending to connected parties to be based on an arm’s length basis, free from pressure or conflict of interest. The guideline further stipulates that the bank should take special care to ensure that a proper objective credit assessment is undertaken for proposed exposures to companies or persons connected with the bank, its managers, directors or controllers. Such an exposure may be justified only if it is undertaken for the clear commercial advantage of the bank and if it is negotiated on an arm’s length basis.</p> <p>The Commission does have discretion to make judgments about the existence of connections</p>

	<p>between the bank and other parties.</p> <p>The IL guideline requires a bank to have written investment and lending policies approved by its board. These policies should describe the objectives for the investment and lending programs and the overall risk philosophy of the institution. The policies should establish limits on the bank's exposure to a person or a group of closely related persons or connected person(s).</p> <p>The draft quarterly prudential Form IB 12 will inform the Commission on related party loans.</p> <p>Reg SI 41-11 prohibits licensed banks from extending loans directly or indirectly: to the direct or indirect, legal or beneficial owner of an aggregate of five percent or more of a class of shares of the institution; or to an entity which the direct or indirect, legal or beneficial owner owns, controls or has an interest in; without securing collateral equal to one hundred percent of the amount of the loan.</p> <p>The quarterly prudential Form IB 12 will inform the Commission on related party loans.</p> <p>The Commission's examination procedures involve an assessment of banks' lending to employees and directors and affiliated companies.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that the March IL guidelines stipulates that:</p> <ul style="list-style-type: none"> • all connected exposures should be approved at the Board level and be fully collateralized. • a Board member who has a direct interest in the connected entity shall not participate in the decision-making relating to the lending to that entity. <p>It also reported that Regulation 11 of SI41-1998 requires 100% collateralization of lending to connected parties, and that the limit of 25% for exposures prescribed in the IL Guidelines includes exposures to connected parties.</p>
Assessment	Largely Compliant
Comments	<p>As in CPs 7 & 8, this rating reflects our acknowledgment of the recent IL guideline, and our assessment of the Commission's ability to effectively move the offshore banks towards compliance with these new standards, recognizing that it will take some time for the banks to be in full compliance.</p> <p>Referring to comments already made under CP 9, the Commission also limits the application of this criterion to a bank that accepts deposits from outside its group of related companies.</p> <p>The Commission should put an end to this supervisory forbearance vis-a-vis captive bank practices. The mission has been informed of this resolve.</p>
Principle 11.	<p>Country Risk</p> <p>Banking supervisors must be satisfied that banks have adequate policies and procedures for identifying, monitoring, and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining appropriate reserves against such risks.</p>
Description	<p>The 2004 SI 9 authorizes the Commission to issue guidelines or directions as to the bank's policies, practices and procedures related to the granting of loans and making of investments.</p> <p>Reg. SI 9-8 (e) requires the board of a licensed bank to issue and to implement prudential policies, practices and procedures regarding the identification, measurement, monitoring and control of country risk and transfer risk.</p> <p>According to the draft IL guideline the bank's approach to sovereign lending and country</p>

	<p>exposures limits should be covered in the board's statement.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that the new reporting formats - Supplement A & B of form IB1, forms IB5 and IB10 - introduced in March 2004, will provide timely information to the Supervisor on country/ transfer risk of the individual banks.</p>
Assessment	Largely Compliant
Comments	<p>In order to be fully compliant with this CP:</p> <ul style="list-style-type: none"> The supervisor verifies that banks have information systems, risk management systems and internal control systems to comply with those policies. The mission has been advised that the Commission's onsite examination of the banks will cover this aspect in future. The revised examination manual will also incorporate this module.
Principle 12.	<p>Market Risks Banking supervisors must be satisfied that banks have in place systems that accurately measure, monitor, and adequately control market risks; supervisors should have powers to impose specific limits and/or a specific capital charge on market risk exposure, if warranted.</p>
Description	<p>The 2004 SI 9 requires that the policies, practices and procedures of the board of directors of a licensed bank to be guided by such guidelines or directions as the Commission may issue.</p> <p>The areas that are to be covered by these guidelines include the identification, measurement, monitoring and control of market risk and provision of appropriate capital charge to cover the market risk exposure (Regulation 8 (f)). No such guidance has been issued up to now.</p> <p>However, the criteria used by the Commission during on-site examinations for assessing an institution's management of market risk already include: the suitability of related policies and procedures; the quality of systems and controls to ensure timely valuations of the bank's exposure; the complexity of the bank's market activities; the level of involvement of the board and senior management in oversight market risk management; evaluation of management reports generated for monitoring exposure and compliance with set limits and goals, if any; and evaluation of the timeliness and quality of market risk related management decisions.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that Regulations 4 and 6 of SI9-2004 give the Commission sufficient power to issue guidelines or directions for imposing a capital charge to cover the market risk (which includes foreign exchange risk in the Basel framework), and that the Commission intends to address the issue of credit and market risks in the near future.</p>
Assessment	Materially Non-Compliant
Comments	<p>The Commission is considering issuing Guidelines to ensure full compliance with this criterion.</p> <p>To comply with this CP, the Supervisor should:</p> <ul style="list-style-type: none"> Determine that the bank has set appropriate limits for various market risks, including their foreign exchange business. Determine that banks perform scenario analysis, stress testing and contingency planning, as appropriate, and periodic validation or testing of the systems used to measure market risk. Have the expertise needed to monitor the actual level of complexity in the market activities of banks.

<p>Principle 13.</p>	<p>Other Risks</p> <p>Banking supervisors must be satisfied that banks have in place a comprehensive risk management process (including appropriate board and senior management oversight) to identify, measure, monitor, and control all other material risks and, where appropriate, to hold capital against these risks.</p>
<p>Description</p>	<p>The 2004 SI 9 requires the board of directors of a licensed bank to lay down policies, practices and procedures for the conduct of business in a prudent manner and establish an appropriate control environment to ensure that the policies, practices and procedures are implemented with efficiency, economy and effectiveness (Reg. 5). It also requires that these policies, practices and procedures adhere to such guidelines or directions as the Commission may issue (Reg. 6). The areas that are to be covered by these guidelines include the identification, measurement, monitoring and control of credit risk, liquidity risk, interest rate risk, legal risk and operational risk.</p> <p>Pursuant to SI 9, the IL draft guideline requires a licensed bank to analyze its interest rate and maturity mismatch, having recourse also to the results of scenario testing as appropriate. The draft quarterly prudential Form IB 8 will inform the Commission about its liquidity and asset and liability maturity profile, including on a daily basis where required.</p> <p>The Commission also prepared in February 2004 a draft Liquidity Risk Management (LRM) guideline. According to this guideline the responsibility for ensuring liquidity rests with the bank's management. A bank should be able to satisfy the Commission on an on-going basis that it has a prudent liquidity policy and adequate management systems in place to ensure that the policy is adhered to. The Commission will monitor a corporation's liquidity position through its examination process and if necessary by imposing periodic reporting requirement.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that it issued guidelines on (1) Interest Rate Risk and (2) Operational Risk on April 16, 2004, and that foreign exchange risk will be covered under market risk guidelines to be issued under BCP 12.</p>
<p>Assessment</p>	<p>Materially Non-Compliant</p>
<p>Comments</p>	<p>To comply with this CP, the Commission should:</p> <ul style="list-style-type: none"> • assess compliance with the recently issued guidelines on risk management processes that address interest rate risk and operational risk, as well as all other risks, including those risks covered in other Principles (e.g., market risk).
<p>Principle 14.</p>	<p>Internal Control and Audit</p> <p>Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale of their business. These should include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding its assets; and appropriate independent internal or external audit and compliance functions to test adherence to these controls, as well as applicable laws and regulations.</p>
<p>Description</p>	<p>S. 60 of the IBC Act requires the directors of the corporation to direct the management of the business and affairs of the corporation. This forms the general basis for the corporate governance in the IBCs registered in Antigua and Barbuda.</p> <p>SI 9 requires the board of directors of a licensed bank to lay down policies, practices and procedures for the conduct of business in a prudent manner and establish an appropriate control environment to ensure that the policies, practices and procedures are implemented</p>

	<p>with efficiency, economy and effectiveness (Reg. 5).</p> <p>In establishing its policies, practices and procedures the board shall be guided by such guidelines or directions as the Commission may issue. The areas that are to be covered by these guidelines include internal controls, independent internal or external audit and compliance functions to test the adequacy and effectiveness of these controls.</p> <p>Pursuant to SI 9 the recent draft guideline on Internal Control Systems and Maintenance of Accounting and Other Records (ICS) will require a licensed bank to have in place adequate internal controls. The draft guideline will require that the board of directors of the bank be responsible for: approving and periodically reviewing the overall business strategies and significant policies of the bank; understanding the major risks run by the bank; setting acceptable levels for these risks and ensuring that senior management takes the steps necessary to identify, measure, monitor and control these risks; approving the organizational structure; and ensuring that senior management is monitoring the effectiveness of the internal control system. The board is ultimately responsible for ensuring that an adequate and effective system of internal controls is established and maintained.</p> <p>The ICS draft guideline further determines that at a minimum each bank should address a number of internal control objectives regarding organizational structure, risk management, and monitoring procedures. It also requires that banks should have an appropriate internal audit function. The internal audit should provide independent assurance over the integrity and effectiveness of systems. Important considerations in assessing the effectiveness of internal audit include the scope of its terms of reference, its independence from operational management, its reporting regime and the quality of its staff.</p> <p>The existing on-site examination procedure involves evaluation of internal controls and the existing bank examination manual (being revised) lays down some parameters for examination. In addition, the annual examination of the bank includes evaluation of the internal audit system and the Supervisor has unfettered access to the records of the banks, including the reports of the internal and external audit functions. The supervisory examination looks into the internal audit arrangements and highlights the need for an independent audit committee and board oversight.</p> <p>The need for an audit committee has been confirmed in the 2004 ICS draft guideline of the Commission. According to this draft guideline licensed banks should have an audit committee chaired by a non-executive director of the bank or be an audit committee of non-executive directors of the bank's holding company. The ICS draft guideline provides a comprehensive description of criteria to be observed as to the functioning of the audit committee.</p> <p>Regulation 10 of the IBC Regulations 1998 enables the Supervisor to exercise a control over the appointment of the directors (and thereby a check on whether they possess the necessary skills). S.65 of the Act gives the Commission power to apply to court for removal of a director if in its opinion he is unfit.</p> <p>The supervisor has access to the reports of the audit function.</p> <p>For the banks having overseas offices, the Commission has in the past conducted examination by visiting the overseas offices. The mission has been informed that this practice will continue in future.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that Section 65 of the IBC Act has been replaced with the following:</p> <p>“(1) The Board may, on the recommendation of the appropriate official, direct a corporation to effect changes in the composition of the corporation's board of directors and management if the Board considers that such a change is required to ensure that directors and officers of the</p>
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	<p>corporation are fit and proper persons and have the skills commensurate with the size and nature of the activities of the corporation.</p> <p>(2) Any corporation that fails to comply with the directions of the Board under paragraph (1) commits an offence and on conviction is liable to a fine not exceeding twenty thousand dollars.”</p>
<p>Assessment</p>	<p>Largely Compliant</p>
<p>Comments</p>	<p>The recent amendment of Section 65 of the IBC Act represents a marked improvement of the legal framework. However, given the pivotal importance of the fit and proper requirement of the management for the soundness of the individual banks, the question is to be raised why the fine has been made dependent upon a court conviction, which is to delay the process.</p> <p>An appropriate amendment of Section 359A of the IBC Act which has also been changed recently to allow the Commission to apply penalties to management and/or the board of directors in certain circumstances would have been preferable.</p> <p>The Commission is also to be commended for the recent ICS draft guideline. In due time, this draft guideline should be amended in order to take account of the changes to Section 65 and be circulated to the offshore banks.</p> <p>Taking into account the particular situation of some offshore banks having only a basic physical presence in the country, verification of the guideline’s implementation will require careful resource management.</p>
<p>Principle 15.</p>	<p>Money Laundering Banking supervisors must determine that banks have adequate policies, practices, and procedures in place, including strict “know-your-customer” rules that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.</p>
<p>Description</p>	<p>S. 316 (4) of the IBC Act requires the Commission to take any necessary action required to ensure the integrity of the International Business Corporation sector.</p> <p>Reg. SI 9-8(j) (2004) prescribes that a licensed bank shall carry out its business in a prudent manner in accordance with the ethical and professional standards that protect the integrity of the financial sector and prevent its misuse for criminal activity. Know your customer and know your employees policies in accordance with best international practices will also have to be established by the board of a licensed bank and appropriate mechanisms to monitor their implementation will have to be provided for (Reg. 8(k)).</p> <p>SI 9 stipulates that the policies and procedures regarding the prudential management of the affairs of a licensed bank as well as their adequacy and effectiveness of implementation shall be subject to review as part of the annual examination conducted under section 259 (1) of the IBC Act.</p> <p>The laws (Money Laundering (Prevention) Act, 1996, IBC Act), regulations (Money Laundering Regulations and IBC Regulations) and guidelines (Money Laundering Guidelines issued by the ONDCP, and Customer Due Diligence Guidelines (CDD) issued by the Commission) make detailed provision for observance of adequate policies, procedures and practices that deter the banks from being used for criminal activities.</p> <p>These include CDD guidelines conforming to the Basel guidelines, AML/CFT standards that are in accordance with the international best practices and a compliance-testing regime that requires annual examination of all the banks to ensure compliance with the Money Laundering (Prevention) Act and its Regulations and the IBC Act and its Regulations. (Reg. SI 41-20 1998).</p>

	<p>Section 1.0 and 1.1 of the Money Laundering Guidelines for Financial institutions issued by the ONDCP require the financial institutions to establish clear responsibilities and accountabilities to ensure that policies, procedures and controls are introduced and maintained which deter criminals from using their facilities for money laundering.</p> <p>The ONDCP Guidelines and the Guidelines issued by the Commission cover in detail the issues relating to customer identification, record keeping and record retention, recognition and reporting of suspicious transactions, appointment of compliance officer and his duties in relation to the reporting of suspicious transactions (the supervisor gets a copy of the STRs), adequate protection in law to the person making a STR in good faith, and an annual examination of the banks to check compliance with anti- money laundering and countering the terrorist financing laws.</p> <p>Furthermore, in September 2000, the ONDCP and the Commission signed an Agreement for Cooperation and Partnership. The intent is to allow the Commission to do its regulatory work, with the ONDCP assisting and for the ONDCP to carry out the criminal investigation, with the Commission assisting. While the role statement defines which party has the lead responsibility at a given state stage of the case, it is not intended to preclude the support and co-operation of the other party when not in the lead role. The two regulatory agencies meet quarterly to discuss matters applicable to their AML objectives.</p> <p>Annual on-site examinations of the licensed banks are mandatory in order to ensure compliance with the MLPA and its regulations as well as compliance with the IBC Act and its regulations. Further, if the Commission suspects that a bank is engaged in fraudulent or unlawful activities or is acting in a manner that is unfair or prejudicial to the interest of a security holder, it can apply to a court for an order for investigation of the bank.</p> <p>The existing laws also provide for sharing of the information with foreign supervisory authorities (S. 373 of the IBC Act).</p> <p>The 2004 draft ICS guideline also recalls that licensed banks should have policies and procedures in place to guard against their business and the financial system being used for the purpose of money laundering or terrorist financing. These should conform to the laws and regulations in Antigua and Barbuda and any guidelines issued by the appropriate authority.</p> <p>According to the 2004 draft ICL guideline the board of directors and senior management will be responsible for promoting high ethical and integrity standards, and for establishing a culture within the organization that emphasizes and demonstrates to all levels of personnel the importance of internal controls. The control culture encompasses the management style, and corporate culture and values shared by all employees. It includes notably a requirement to establish a strong ethical environment, sound personnel policies and Code of Conduct.</p> <p>The ONDCP was admitted to membership of the Egmont Group at its plenary meeting in July 2003.</p> <p>Subsequent to the completion of the mission’s on-site work, the Commission reported that the ICS Guidelines was issued 29th March 2004, and that paragraph 15.1 c requires a bank to report, among other things, the incidents of fraud material to the safety, soundness or reputation of the corporation.</p>
Assessment	Compliant
Comments	The Commission is to be commended for reinforcing its supervisory approach in general and its involvement in matters of AML in particular.
Principle 16.	<p>On-Site and Off-Site Supervision</p> <p>An effective banking supervisory system should consist of some form of both on-site and off-site supervision.</p>
Description	The Commission has a system of both offsite and on-site supervision of the banks. S. 259 (1)

	<p>requires the Commission to conduct onsite examinations of the affairs of every bank at least once a year. The scope of examinations include risk management and internal control systems; verification of information provided by banks; and any additional information needed to assess the condition of the bank. In planning the examination, the Supervisor has access to the internal and external audit reports. In cases where material problems are identified, the Supervisor and the bank enter into a memorandum of understanding on the how and by when each of the deficiencies will be remedied.</p> <p>In the case of some banks, the location of senior managers outside the jurisdiction poses an additional on-site challenge that has been met by having the examiner travel to these locations. In the 2003 round of examinations, visits were made to Brazil, Uruguay, Panama and Venezuela.</p> <p>S. 259 (2) allows a special examination when the Board has reasonable grounds for believing that a bank is not in a sound financial position or is not operating in a reasonable and prudent manner.</p> <p>Under S. 242 of the IBC Act, a bank must submit:</p> <ol style="list-style-type: none"> a. A quarterly return in US dollars providing an analysis of customers' liabilities to the corporation in respect of loans, advances and other assets of the corporation, and a statement of assets and liabilities. b. An annual audited statements, providing an analysis of customers' liabilities to the corporation in respect of loans, advances and other assets of the corporation, a profit and loss statement, a balance sheet, and the statement of assets and liabilities. c. An annual certification attesting to the ownership, directors and officers of the institution. d. Such other returns as the Supervisor requires. <p>S. 260 of the IBC Act requires a corporation to provide all necessary books and records to the examiner.</p> <p>Information from the banks is currently analyzed using Excel spreadsheets, although not to monitor trends and developments for the offshore banking sector as a whole. Exercising his powers under 242 (d), the Supervisor has recently reached industry agreement on the introduction of a comprehensive set of quarterly reporting forms similar to those used by the Eastern Caribbean Central Bank for domestic and offshore banks.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that the new reporting forms have been implemented, and that a database is being developed to monitor trends and developments for the banking sector.</p>
Assessment	Largely Compliant
Comments	<p>This rating does not fully reflect concerns about the current off-site regime. However, these are dealt with in CP 18.</p> <p>In order to comply with this CP:</p> <ul style="list-style-type: none"> • A database should be created that will facilitate monitoring trends and developments for the banking sector as a whole. <p>It will also be necessary to verify that the new reporting forms are providing the required information, and in a timely manner.</p>

<p>Principle 17.</p>	<p>Bank Management Contact</p> <p>Banking supervisors must have regular contact with bank management and a thorough understanding of the institution's operations.</p>
<p>Description</p>	<p>The Commission maintains contact with the bank management through a formal meeting during the annual examinations, and informal meetings and contacts through telephone calls, etc., although these latter meeting/contacts are not logged. The Supervisor routinely meets with the board of directors of the bank at the conclusion of an annual examination, where that is possible. The Commission organizes occasional meetings with bank management to discuss issues arising out of the developments in areas of anti-money laundering, onsite examination and general industry issues. There is no evidence of the frequency of examinations or meetings with management reflecting the risk profile of the banks.</p> <p>An attempt is made during the offsite and on-site examinations to develop a better understanding of the functioning and operations of the banks.</p> <p>The banks are required to inform the Supervisor of changes in their directors and owners of 5 percent or more shares and receive prior approval before offering Internet services of any type. They are also required under the draft Investments and Lending Guideline to advise of breaches of the 25 percent large exposures limit. The Supervisor keeps himself informed of other changes and developments through the annual examinations and informal contacts.</p> <p>The IBC Act requires the Commission to consider the quality of the bank's management as part of the licensing process (S. 232). The Commission also evaluates this aspect during the on-site examinations.</p> <p>The Commission created the International Bank Advisory Board, made up of representatives of four offshore banks (rotating) and chaired by the Administrator (head of the Commission). This board, which held its first meeting in January 2004, plans to meet quarterly to advise the Commission on proposed guidelines and regulations, and on other matters pertinent to offshore banking in the jurisdiction.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that it has taken a policy decision that from now onwards issues arising out of the offsite analysis of the quarterly reports will be discussed with the banks' managements and logged. The Commission has also taken a decision, in consultation with the Advisory Committee, that all visiting directors and officers of the banks will routinely meet the Supervisor. These meetings (which also will be logged) will provide an additional opportunity for the Commission to take up any issues of concern. Paragraph 15.1 (d) of the ICS guidelines issued in March 2004 now requires the banks to report any substantive changes in activities or any material adverse developments, including breaches of legal and prudential requirements.</p>
<p>Assessment</p>	<p>Materially Non-Compliant</p>
<p>Comments</p>	<p>The procedural improvements recently reported by the Commission are commendable, but a stronger rating for this CP will require evidence that they effective in practice. This will be a particular challenge given the number of banks with a minimal physical presence.</p> <p>Thus, in order to comply with this CP, there should be consistent evidence that:</p> <ul style="list-style-type: none"> • Based on the risk profile of individual banks, the Supervisor has a program of regular meetings with senior and middle management (including the board, non-executive directors and heads of individual units) to discuss operational matters such as strategy, group structure, corporate governance, performance, capital adequacy, liquidity, asset quality, risk management systems etc. • Banks are notifying the Supervisor in a timely manner of any substantive changes in their activities or any material adverse developments, including breaches of legal and

	<p>prudential requirements generally.</p> <p>In addition, it is recommended that the required background, experience and duties of the resident Senior Officer (required as of July 2002) for those banks that have only a basic physical presence in Antigua and Barbuda be strengthened in order to facilitate meaningful contact with managements. The two Senior Officers that mission staff met with did not have banking experience prior to assuming their current positions, and did not appear qualified to speak on substantive management issues on behalf of their respective banks.</p>
Principle 18.	<p>Off-Site Supervision</p> <p>Banking supervisors must have a means of collecting, reviewing, and analyzing prudential reports and statistical returns from banks on a solo and consolidated basis.</p>
Description	<p>As discussed under CP 16, the IBC Act sets out certain quarterly and annual reporting requirements, and the Supervisor has the power to require such other returns as he may require, and within such time period and in such manner as he requires.</p> <p>IBC Regulations No.14 (1998) empowers the Commission to require the banks to employ any accounting, monitoring, or reporting system prescribed by the Commission, but does not address the accounting techniques to be used. Some banks claim to be using International Accounting Principles, with non-performing loans recognized as per the instructions issued by the ECCB to domestic banks. However, the notes to the financial statement of the largest offshore bank states: “The accounts have been prepared under the historical cost convention and in accordance with applicable accounting standards”</p> <p>The submission of the financial information, according to S. 242, is a condition of the license and in terms of S. 236 the license of a bank can be revoked for violating a condition of the license. Further, under S. 353, a person making a return, report or other document required by the Act that contains an untrue statement of a material fact is guilty of an offence and liable on summary conviction to a fine of \$5,000 or imprisonment for 6 months or both. An exception is made where the transgression was unknown to the individual and with the exercise of reasonable diligence could not have been known to him.</p> <p>The information required at present does not include data on loan classification and provisioning, and on off balance sheet exposures. These weaknesses will be addressed with the implementation later this year of the uniform quarterly reporting forms.</p> <p>There is at present no standardized analytical framework for monitoring of the condition and performance of the individual banks; however, it is being done through a mix of quantitative and qualitative analysis and these are validated through on-site examination.</p> <p>Subsequent to the completion of the mission’s on-site work, the Commission reported that:</p> <ul style="list-style-type: none"> • Regulation 4 of the Accounts, Audit and Disclosure of Information Regulations (AADIR), 2004 (SI22-2004) now requires a bank to prepare its accounts in accordance with the International Financial Reporting Standards (IFRS). • Regulation 4(3) of AADIR (SI22-2004) authorizes the Supervisor to issue such directions on specific accounting issues, as he considers necessary for proper preparation and consolidation of accounts on both solo and consolidated basis, as the case may be. • Regulation 6 (2) (b) of AADIR (SI22-2004) and paragraph 15.2 of the ICS Guidelines require a bank to furnish any relevant information regarding its related companies, irrespective of their activities, if in the opinion of the appropriate official it is material to the financial situation of the bank or to the assessment of the risks of the bank.
Assessment	Materially Non-Compliant
Comments	The new regulations appear to address the previously identified legal shortfalls, but the rating

	reflects the mission’s opinion that it will take some time for the new reporting requirements to be effectively implemented. In addition, still outstanding is the design and implementation of an analytical framework that uses the statistical and prudential information for the ongoing monitoring of the condition and performance of individual banks.
Principle 19.	Validation of Supervisory Information Banking supervisors must have a means of independent validation of supervisory information either through on-site examinations or use of external auditors.
Description	<p>The annual examinations are conducted on the basis of the Bank Examination Manual and prudential requirements. The Examination Manual (which is being updated) addresses examination objectives; pre-examination preparation; examination process; and post examination reporting and review. Required corrective actions to address material weaknesses are set out in a memorandum of understanding signed by both the Supervisor and the Chairman of the Board of the bank. The Supervisor has access during an examination to the auditor’s management letter, but there is no practice of regular meetings between the Supervisor and external auditors.</p> <p>Under S. 242, the Board of the Commission must approve the appointment of the external auditor. S. 259 empowers the Board to appoint an examiner, including an external examiner/auditor from outside the Commission, if it believes that the bank is not in a sound financial condition (this has not, as yet, been used in practice). There appears to be a well developed, professional and independent auditing and accounting profession in Antigua and Barbuda, but it should be noted that banks with only a basic physical presence in the jurisdiction are generally audited in the country where their primary books and records are held.</p> <p>S. 260 gives the Supervisor access to all books and records of the bank. This provision has been used to carry out comprehensive on-site examination, both through the Commission’s examiners and outside examiners contracted for special assignments. There is no requirement that the external auditor examine key supervisory returns.</p> <p>Subsequent to the completion of the mission’s on-site work, the Commission reported that:</p> <ul style="list-style-type: none"> • Regulation 5(4) of the AADIR (SI22-2004) states that the appropriate official may request and a corporation shall arrange on such request a meeting with the corporation’s auditors and the appropriate official may require that a corporation or its representative be excluded from such meeting. The Supervisor will hold meetings with the external auditors to discuss the results of their work. • Regulation 5(3) of the AADIR (SI22-2004) states that the appropriate official may request and a corporation shall arrange on such request that the supervisory returns or any other information submitted to the appropriate official be audited by the corporation’s auditors. • In its instructions for completing the IB forms, the Commission has prescribed that Forms 1A (annual statement of assets and liabilities) and Form 2 (annual profit and loss statement) be audited by the bank’s external auditors.
Assessment	Largely Compliant
Comments	The new regulations appear to address the shortfalls previously identified, but a compliant rating will require evidence that the changes have been implemented in practice.
Principle 20.	Consolidated Supervision An essential element of banking supervision is the ability of the supervisors to supervise the banking group on a consolidated basis.

<p>Description</p>	<p>The Commission keeps information on the overall structure of the banking organizations licensed by the Commission. However, the supervisory practice at present does not include an evaluation of the risks arising from the non-banking activities of the bank, nor of significant investments in other banking organizations.</p> <p>The present legal framework allows review of the activities of the branches and subsidiaries. Regulation 41-7 (1998) requires that a bank shall require the approval of the Commission to open a subsidiary or branch in a foreign country and the Commission, in granting approval, shall take into consideration all the circumstances including whether there are adequate provisions for access to the records located in the foreign country, (other than account information) and whether the laws of the foreign country make provisions for adequate record keeping and inspection of records.</p> <p>Regulation 41-8 (1988) requires a foreign subsidiary or branch of a licensed institution to maintain appropriate records as determined by the Commission concerning the ownership, management and operations of the foreign subsidiary or branch and that the records shall be made available for examination. S. 144 requires that a bank must keep at its registered office a copy of the financial statements of each of its subsidiaries whose accounts are consolidated in the financial statements of the bank.</p> <p>Although there are currently no foreign subsidiaries or branches of banks registered under the IBC Act, some banks have representative offices abroad. The Commission inspects these offices and has pursued a policy of entering into Memoranda of Understanding (MoU) with the supervisory authority of the country in which such offices are located. To this end, the Commission has established MoU with the Superintendent of Banks in Panama and the Texas State Banking Department, and has initiated MoU proposals with the Florida State Banking Department and the Superintendent of Banks in Venezuela. A MoU has also been proposed with the Swiss and Austrian banking supervisors in their capacities as home supervisors of bank subsidiaries supervised by the Commission.</p> <p>The supervisor can exercise a control on the range of activities of the banking group through its power to approve the license for a bank, its branches or subsidiaries under this Regulation. S. 261 gives the Supervisor the authority to restrict the activities of a bank.</p> <p>Subsequent to the completion of the mission’s on-site work, the Commission reported that:</p> <ul style="list-style-type: none"> • The Government has recently issued new Regulations (AADIR-SI22-2004). Regulation 6(2) (b) of AADIR and paragraph 15.2 of the ICS guidelines empower the Commission to seek information on all related corporations of a licensed bank. • Regulation 6(2) (b) of AADIR (SI22-2004) requires a corporation to furnish any relevant information regarding a corporation’s related companies, irrespective of their activities, if in the opinion of the appropriate official it is material to the financial situation of the corporation or to the assessment of the risks of the corporation. • The Supervisor has authority to impose prudential standards on a consolidated basis under the amended Regulation 9 of SI9-2004 (amended by SI21-2004, enclosed), which states that the policies, practices and procedures regarding the prudential management of the affairs of a licensed corporation as well as their adequacy and effectiveness of implementation shall be <u>applicable to a corporation both on solo and consolidated basis, as the case may be, and be</u> subject to review by the appropriate official as part of the examination conducted under Section 259 (1) of the Act.
<p>Assessment</p>	<p>Materially Non-Compliant</p>
<p>Comments</p>	<p>The powers granted under the new regulations are an important step in meeting the requirements of this CP. However, as in other instances where new regulations have been enacted but we foresee significant implementation challenges, a compliant rating will require</p>

	appropriate evidence of effective implementation.
Principle 21.	<p>Accounting Standards</p> <p>Banking supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business, and that the bank publishes on a regular basis financial statements that fairly reflect its condition.</p>
Description	<p>S. 145 of the IBC Act requires that the financial statements of a corporation be approved and signed by the directors and accompanied by a report of the auditor. Regulation 16 (1985) requires that the financial statements and the auditor’s report be prepared in accordance with generally accepted accounting practices in Antigua and Barbuda. S. 242 requires the licensed banks to submit to the Supervisor, as a condition of the license, certain prescribed financial returns at prescribed interval, and within prescribed time frames; failure to do so may entail supervisory action including revocation of the license. Onsite verification of the information submitted is included in the examination scope. Under S. 353, a person who knowingly furnishes false information (“untrue statement of a material fact”) commits an offence and is punishable.</p> <p>S. 242 ensures timely furnishing of the required supervisory information, and also requires that an auditor approved by the Board prepares the annual accounts. S. 245 states that such audited financial returns provided to the Commission shall remain confidential, except that the balance sheet and profit and loss statements (but not the notes) shall be published in the <i>Gazette</i>. Banks are, of course, permitted to publish their full audited financial statements, and several banks do so.</p> <p>S. 242 provides the legal basis for establishing lines of communication with the external auditors, although in practice this is limited to dealing with questions arising out of the audited statements.</p> <p>The Supervisor does not currently set valuation rules to ensure consistent, realistic and prudent valuations, although the proposed new quarterly reporting returns will ensure a more consistent reporting of delinquent loans.</p> <p>S. 259 gives the Supervisor the authority, in certain circumstances, to establish the scope and standards of a special audit.</p> <p>Confidentiality of information is provided for in S. 244, and confidentiality of audited financial statements provided to the Supervisor is protected under S. 245.</p> <p>Though the Supervisor does not have explicit right to revoke the appointment of a bank’s auditors, the Commission has the authority to approve the appointment of the auditors and this power can be used to not approve an appointment.</p> <p>Subsequent to the completion of the mission’s on-site work, the Commission reported that:</p> <ul style="list-style-type: none"> • Regulations 5 (2), 5(3) and 5(4) of AADIR (SI22-2004) are designed to ensure open and effective communication with external auditors. The Supervisor may require additional information in relation to the audit, may require that the supervisory returns be audited, and may require a meeting with the auditors at which bank management are excluded. • Regulation 4(1) of AADIR (SI22-2004) which states that a corporation shall prepare its accounts and such supervisory returns as may be prescribed under the Act or the regulations made thereunder in accordance with the International Financial Reporting Standards issued by the International Accounting Standards Board (IASB), London, both on solo and consolidated basis, as the case may be. • Regulation 4(5) of AADIR (SI22-2004) stipulates that the appropriate official may require

	that the financial statements of a corporation be issued to the public after prior approval of the appropriate official.
Assessment	Largely Compliant
Comments	<p>The new regulations appear to address the previously identified shortfalls, and it is reasonable to expect that they can and will be implemented over time. However, a compliant rating will have to await appropriate evidence of implementation. It is also recommended that:</p> <ul style="list-style-type: none"> • The Supervisor holds regular meetings with auditors to exchange information and views that will assist in the planning of both the supervisory examination and the external audit. • The Supervisor has access to the external auditor's working papers. • The Supervisor encourages, or the law requires, that the audited financial statements published in the <i>Gazette</i> include the notes to the financial statements.
Principle 22.	<p>Remedial Measures</p> <p>Banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances, this should include the ability to revoke the banking license or recommend its revocation.</p>
Description	<p>The IBC Act contains several options for supervisory intervention. Under S. 259, if the Board has reasonable grounds for believing that a bank is not in a sound financial condition, or is not operating in a reasonable and prudent manner, or is otherwise not acting in compliance with the Act, the Supervisor may appoint an examiner to examine the affairs of the institution. Upon the findings of such examination, the Supervisor can require under S. 261 that the institution immediately takes such remedial measures as he considers necessary, which may include appointing a person to advise the licensee on the implementation of the remedial measures. Supervisory actions taken under S. 261 may be appealed to the Board and, ultimately, to the Minister, in which case the measures are suspended pending the outcome of the appeal.</p> <p>Under S. 236, the Supervisor may revoke a banking license if, in his opinion, the bank has contravened a condition of its license, or if the bank has been convicted of an offence under the IBC Act or under the Money Laundering (Prevention) Act. A decision by the Supervisor to revoke a license under S. 236 may be appealed to the courts.</p> <p>Under S. 261, the Commission may adopt different measures, depending on the situation, to correct deficiencies brought out during an onsite examination.</p> <p>S. 359 A deals with administrative penalties. It authorizes the Board to assess a penalty not exceeding US\$10,000 against a bank for failure to (1) file a return or other information required in law, (2) provide complete and accurate information with respect to the return or other information required by law or agreement, and (3) comply with any directions given in writing by the Commission. There is no provision under S. 359 for applying penalties to individuals, although under S. 353 a person who knowingly furnishes false information is punishable.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that Section 359A of the IBC Act has been amended to allow the Commission to apply penalties to management and/or the board of directors. In addition, Section 65 of the Act has been amended to allow the Commission to direct a corporation to effect changes in its board of directors.</p>

Assessment	Largely Compliant
Comments	<p>While the powers of the Supervisor to effect remedial measures are quite broad, a compliant rating should await evidence that remedial action is being taken in a timely manner. This will be tested as some banks will likely be challenged to implement the new guidelines on matters such as large exposures and connected lending.</p> <p>It is also recommended that the Act explicitly include the power to restrict or suspend payments to shareholders or share repurchases; to bar individuals from banking; to replace or restrict the powers of controlling owners; and to restrict the activities and investments of a bank.</p> <p>It is further recommended that Supervisory actions taken under S. 261 not be suspended, or at least not wholly suspended, pending the outcome of an appeal.</p>
Principle 23.	<p>Globally Consolidated Supervision</p> <p>Banking supervisors must practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organizations worldwide, primarily at their foreign branches, joint ventures, and subsidiaries.</p>
Description	<p>Currently, there are no foreign branches or subsidiaries of banks licensed under the IBC Act. However, there are management and representative offices located abroad.</p> <p>Reg. 41-7 and 41-8 (1998) require that a licensed institution shall require the approval of the Commission to open a subsidiary or branch in a foreign country and the Commission in granting approval shall take into consideration all the circumstances including: whether there are adequate provisions for the Commission to have access to the records located in the foreign country, other than account information; ownership of the subsidiary; whether the laws of the foreign country make provision for adequate record keeping and inspection of the records; and whether there is a bilateral or multilateral treaty in effect in the foreign country for the prevention of money laundering.</p> <p>Reg. 8 also requires a foreign subsidiary or branch of a licensed institution to maintain appropriate records as determined by the Commission concerning the ownership, management and operations of the foreign subsidiary or branch, and for the records to be made available for examination by the Commission or their designee.</p> <p>Reg. 41-20 (1998) states that a licensed institution shall be subject to on-site examinations by the Commission at its head office, its local office, and any other office deemed appropriate by the Commission at least once a year to ensure that the institution is in compliance with the Money Laundering (Prevention) Act and its Regulations and the IBC Act and its Regulations.</p> <p>The Commission has a system of examining the foreign operations of its licensed banks. This process is further aided by the MoUs that the Commission has entered into with foreign supervisory authorities.</p> <p>Reg. 41-6 (1998) prohibits licensing of an international banking corporation that is a subsidiary or branch of an international business corporation located in a foreign country.</p>
Assessment	Not Applicable
Comments	<p>The above assessment reflects the fact that three of the four essential criteria are not applicable. However, mission staff have some concerns about parallel banking situations which, although not strictly covered by this CP (and therefore not reflected in the assessment) should be addressed. It is recommended that, in cases where a bank licensed under the IBC</p>

	<p>Act has an affiliate bank, the Commission establish an agreement with the other supervisor(s) as to who will be the lead supervisor, in line with the recommendation in the Basel paper on parallel banks. This would be particularly important in the case of the ECCB, given that two Antiguan offshore banks, including the largest, have domestic bank affiliates supervised by the ECCB.</p>
Principle 24.	<p>Host Country Supervision</p> <p>A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.</p>
Description	<p>The foreign branches or subsidiaries of a bank licensed in Antigua and Barbuda require the approval of the Commission before being opened and the Commission can use this power to prohibit its banks from opening branches or subsidiaries in a foreign country with secrecy laws or other regulations prohibiting flows of information deemed necessary for adequate supervision. As previously noted, there are currently no such foreign branches or subsidiaries.</p> <p>Exchange of information with foreign supervisors is permitted under S. 373 of the IBC which states that nothing in this Act shall prevent the Commission from disclosing information concerning the ownership, management, operations and the financial returns submitted in compliance with S. 242 of a licensed institution to enable or assist a foreign regulatory authority to exercise its regulatory functions, except that no customer information may be disclosed without an order from a court of competent jurisdiction.</p> <p>As previously noted, the Commission has or is attempting to establish MoU with several foreign banking supervisors.</p>
Assessment	Not Applicable
Comments	None
Principle 25.	<p>Supervision Over Foreign Banks' Establishments</p> <p>Banking supervisors must require the local operations of foreign banks to be conducted with the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.</p>
Description	<p>Under Reg. 41-5 and 41-6 (1998), a license may be issued to a subsidiary or branch of a foreign institution (other than an international business corporation) subject to the home country having adequate procedures for supervision of such institution and furnishing necessary information concerning the ownership, management and operation of the institution located in the home country. There is no requirement to determine that the home supervisor approves (or has no objection) to the license being granted. However, it should be noted that the Commission has contacted the home supervisors in Switzerland and Austria concerning subsidiaries supervised by the Commission as host supervisor.</p> <p>The IBC Act and the IBC Regulations do not make a distinction between the prudential inspection and regulatory reporting requirements for the entities incorporated in Antigua and Barbuda and the branches and subsidiaries of entities located in a foreign country. S. 373 of the IBC Act empowers the Commission to share information with foreign supervisors.</p> <p>Subsequent to the completion of the mission's on-site work, the Commission reported that the requirement that the supervisor must determine that approval (or no objection) from the home supervisor has been received has now been incorporated in the Commission's</p>

	Licensing Manual.
Assessment	Compliant
Comments	None.

Table 2. Summary Compliance of the Basel Core Principles

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

^{1/} C: Compliant.

^{2/} LC: Largely compliant.

^{3/} MNC: Materially non-compliant.

^{4/} NC: Non-compliant.

^{5/} NA: Not applicable.

A. Recommended Action Plan and Authorities' Response to the Assessment

Recommended action plan

Table 3. Recommended Action Plan to Improve Compliance of the Basel Core Principles

Reference Principle	Recommended Action
1.2 Independence	The security of tenure provided in law to the senior management of the Commission should be strengthened.
1.6 Information sharing	Implement an effective system of cooperation and information sharing between the ECCB and the Commission.
2. Permissible activities	Consider making the definition of bank clearer and more explicit. Clearly define the permissible activities of banks that are licensed and subject to supervision, with particular reference to restrictions on the ability of captive banks to accept third-party deposits.
3. Licensing	Apply the recently revised licensing procedures in practice at the first opportunity. Address concerns in respect of captive banks noted above in licensing procedures and/or regulations.
5. Investment criteria	Fully implement the new regulation and guideline governing investment criteria.
6. Capital adequacy	Establish a definition of capital, a method of calculation and the ratio required not lower (more lenient) than established in the Basel Capital Accord, and grant the Commission the power to impose a higher capital ratio. Require that the capital adequacy ratio be calculated and applied on a consolidated bank basis, where applicable. Require at least semi-annually capital adequacy reporting by banks to the supervisor.
7. Credit policies	Fully implement the credit policy requirements of the recently finalized Investment and Lending guideline. The supervisor should verify periodically that banks make credit decisions free of conflicting interests.
8. Loan evaluation and loan-provisioning	Fully implement the loan evaluation and loan loss provisioning requirements of the recently finalized Investment and Lending guideline. Consider introducing a requirement for a general provision for loss.
9. Large exposures limits	Fully implement the large exposure limits set out in the recently finalized Investment and Lending guideline, and without undue forbearance.
10. Connected lending	Fully implement the connected lending restrictions set out in the recently finalized Investment and Lending guideline, and without undue forbearance.
11. Country risk	The supervisor verify that banks have information systems, risk management systems and internal control systems to comply with the Commission's policies, and revise the examination manual accordingly.

Reference Principle	Recommended Action
12. Market risk	<p>Determine that banks have set appropriate limits for various market risks, including their foreign exchange business.</p> <p>Determine that banks perform scenario analysis, stress testing and contingency planning, as appropriate, and periodic validation or testing of the systems used to measure market risk.</p> <p>Have the expertise needed to monitor the actual level of complexity in the market activities of banks.</p>
13. Other risks	<p>The supervisor should assess compliance with the recently issued guidelines on risk management processes.</p>
14. Internal control and audit	<p>Amend the draft guideline to reflect the changes to Section 65 of the IBC Act, and fully implement the new requirements in practice.</p>
16. On-site and off-site supervision	<p>Create a database that facilitates monitoring trends and developments for the banking sector as a whole.</p> <p>Ensure that the new quarterly reporting system is providing the required information in a timely manner.</p>
17. Bank management contacts	<p>Fully implement a program of regular meetings with senior and middle management to discuss operational matters such as strategy, group structure, corporate governance, performance, capital adequacy, liquidity, asset quality, risk management systems, etc.</p> <p>Ensure that the supervisor is being notified by the banks in a timely manner of any substantive changes in their activities or any material adverse developments, including breaches of legal and prudential requirements generally.</p> <p>Strengthen required background, experience and duties of the resident Senior Officer (required as of July 2002) for those banks that have only a basic physical presence in Antigua and Barbuda.</p>
18. Off-site supervision	<p>Ensure that the new quarterly reporting system is providing the required information in a timely manner, including information on on- and off-balance sheet exposures, assets and liabilities, profit and loss, capital adequacy, liquidity, large exposures, loan loss provisioning, market risk and deposit sources.</p> <p>Implement an analytical framework that uses the statistical and prudential information for the ongoing monitoring of the condition and performance of individual banks.</p>
19. Validation of supervisory information	<p>Fully implement the plan to hold meetings with banks and their auditors to discuss the results of work by the external auditors and to agree on the responsibilities for any corrective work.</p>
20. Consolidate supervision	<p>Fully implement the new powers granted the supervisor to evaluate the risks that non-banking activities conducted by a bank or banking group may pose to the bank or banking group. This includes developing supervisory routines to ensure awareness of the overall structure of banking organizations (i.e., the bank and its subsidiaries) or groups and an understanding of the activities of all material parts of these groups, including those that are supervised directly by other agencies.</p>
21. Accounting standards	<p>Fully implement the requirements of the recently enacted legislation.</p>

Reference Principle	Recommended Action
22. Remedial measures	Implement the new powers in practice as/when the situation warrants. Consider amending the law so that supervisory action taken under Section 261 of the IBC Act is not suspended, or at least not wholly suspended, pending the outcome of an appeal.

Authorities' response to the assessment

After the mission in March 2004, the authorities have undertaken a wide range of legislative, regulatory and supervisory steps to improve the offshore banking supervisory regime and expressed commitment to fully implement the Basel Core Principles for Effective Banking Supervision in a time bound manner. While noting that the mission has downgraded the ratings against four principles after issuing the first report, the jurisdiction's response on key issues follows:

- While not agreeing that the existing laws foster “significant interference” from the political directorate with respect to the management of FSRC, the authorities have nonetheless undertaken to revisit this matter.
- While disagreeing with the mission's assessment of information-sharing, in view of clear legal powers to: share information with other supervisors and seek information on banks' affiliates, FSRC is nonetheless finalizing a MOU with ECCB. FSRC does not view the absence of MOU as an impediment to information sharing since: (1) FSRC is not dependent on ECCB for information because of its powers (already being exercised) to seek information about their related companies directly from the offshore banks; (2) FSRC has been sharing information and cooperating with other supervisors, including the ECCB, even without a MOU.
- FSRC does not apply diluted standards to captive banks but is considering a separate licensing category for them. The new licensing procedures are already being applied to new applications.
- The new investment criteria have been incorporated into the examination procedures.
- FSRC will implement a risk-based capital regime allowing for capital charges for credit and market risks, in consultation with regional supervisors.
- Revised bank examination procedures include a review of the implementation of recently issued Guidelines on Investment and Lending (regarding credit policies, loan evaluation and loan loss provisioning, large exposure limits, and connected lending), internal control systems and risk management processes. FSRC will implement a provision for general losses.
- The new quarterly reports will be fully implemented from December 2004, which will facilitate monitoring of trends and developments in the offshore banking sector.
- The already existing program of contact with bank management will be strengthened.

- The Supervisor already has authority to: hold meetings with external auditors and demand a copy of their management letters and work papers. FSRC will ensure that all financial statements published in future also contain the notes.
- The Supervisor already has powers to apply penalty to corporations, including their directors and officers.